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89TH CONGRESS
2D SESSION

S. 1160

[Report No. 1497]

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 14, 1965

Referred to the Committee on Government Operations

MAY 9, 1966

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

AN ACT

To amend section 3 of the Administrative Procedure Act, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 3, chapter 324, of the Act of June 11, 1946
4 (60 Stat. 238), is amended to read as follows:

5 "SEC. 3. Every agency shall make available to the
6 public the following information:

7 "(a) PUBLICATION IN THE FEDERAL REGISTER.—

8 Every agency shall separately state and currently publish in
9 the Federal Register for the guidance of the public (A) de-

1 criptions of its central and field organization and the estab-
2 lished places at which, the officers from whom, and the
3 methods whereby, the public may secure information, make
4 submittals or requests, or obtain decisions; (B) statements
5 of the general course and method by which its functions are
6 channeled and determined, including the nature and require-
7 ments of all formal and informal procedures available; (C)
8 rules of procedure, descriptions of forms available or the
9 places at which forms may be obtained, and instructions as
10 to the scope and contents of all papers, reports, or examina-
11 tions; (D) substantive rules of general applicability adopted
12 as authorized by law, and statements of general policy or in-
13 terpretations of general applicability formulated and adopted
14 by the agency; and (E) every amendment, revision, or
15 repeal of the foregoing. Except to the extent that a person
16 has actual and timely notice of the terms thereof, no person
17 shall in any manner be required to resort to, or be adversely
18 affected by any matter required to be published in the Fed-
19 eral Register and not so published. For purposes of this sub-
20 section, matter which is reasonably available to the class of
21 persons affected thereby shall be deemed published in the
22 Federal Register when incorporated by reference therein
23 with the approval of the Director of the Federal Register.

24 “(b) AGENCY OPINIONS AND ORDERS.—Every agency
25 shall, in accordance with published rules, make available for

1 public inspection and copying (A) all final opinions (in-
2 cluding concurring and dissenting opinions) and all orders
3 made in the adjudication of cases, (B) those statements of
4 policy and interpretations which have been adopted by the
5 agency and are not published in the Federal Register, and
6 (C) administrative staff manuals and instructions to staff
7 that affect any member of the public, unless such materials
8 are promptly published and copies offered for sale. To the
9 extent required to prevent a clearly unwarranted invasion of
10 personal privacy, an agency may delete identifying details
11 when it makes available or publishes an opinion, statement
12 of policy, interpretation, or staff manual or instruction: *Pro-*
13 *vided*, That in every case the justification for the deletion
14 must be fully explained in writing. Every agency also shall
15 maintain and make available for public inspection and copy-
16 ing a current index providing identifying information for the
17 public as to any matter which is issued, adopted, or promul-
18 gated after the effective date of this Act and which is re-
19 quired by this subsection to be made available or published.
20 No final order, opinion, statement of policy, interpretation, or
21 staff manual or instruction that affects any member of the
22 public may be relied upon, used or cited as precedent by an
23 agency against any private party unless it has been indexed
24 and either made available or published as provided by this

1 subsection or unless that private party shall have actual
2 and timely notice of the terms thereof.

3 “(c) AGENCY RECORDS.—Except with respect to the
4 records made available pursuant to subsections (a) and (b),
5 every agency shall, upon request for identifiable records made
6 in accordance with published rules stating the time, place,
7 fees to the extent authorized by statute and procedure to be
8 followed, make such records promptly available to any per-
9 son. Upon complaint, the district court of the United States
10 in the district in which the complainant resides, or has his
11 principal place of business, or in which the agency records
12 are situated shall have jurisdiction to enjoin the agency from
13 the withholding of agency records and to order the produc-
14 tion of any agency records improperly withheld from the
15 complainant. In such cases the court shall determine the
16 matter de novo and the burden shall be upon the agency to
17 sustain its action. In the event of noncompliance with the
18 court’s order, the district court may punish the responsible
19 officers for contempt. Except as to those causes which the
20 court deems of greater importance, proceedings before the
21 district court as authorized by this subsection shall take
22 precedence on the docket over all other causes and shall be
23 assigned for hearing and trial at the earliest practicable date
24 and expedited in every way.

25 “(d) AGENCY PROCEEDINGS.—Every agency having

1 more than one member shall keep a record of the final votes
2 of each member in every agency proceeding and such record
3 shall be available for public inspection.

4 “(e) EXEMPTIONS.—The provisions of this section
5 shall not be applicable to matters that are (1) specifically
6 required by Executive order to be kept secret in the interest
7 of the national defense or foreign policy; (2) related solely
8 to the internal personnel rules and practices of any agency;
9 (3) specifically exempted from disclosure by statute; (4)
10 trade secrets and commercial or financial information ob-
11 tained from any person and privileged or confidential; (5)
12 inter-agency or intra-agency memorandums or letters which
13 would not be available by law to a private party in litigation
14 with the agency; (6) personnel and medical files and similar
15 files the disclosure of which would constitute a clearly
16 unwarranted invasion of personal privacy; (7) investigatory
17 files compiled for law enforcement purposes except to the
18 extent available by law to a private party; (8) contained
19 in or related to examination, operating, or condition reports
20 prepared by, on behalf of, or for the use of any agency
21 responsible for the regulation or supervision of financial
22 institutions; and (9) geological and geophysical informa-
23 tion and data (including maps) concerning wells.

24 “(f) LIMITATION OF EXEMPTIONS.—Nothing in this
25 section authorizes withholding of information or limiting

1 the availability of records to the public except as specifically
2 stated in this section, nor shall this section be authority to
3 withhold information from Congress.

4 “(g) PRIVATE PARTY.—As used in this section, ‘private
5 party’ means any party other than an agency.

6 “(h) EFFECTIVE DATE.—This amendment shall be-
7 come effective one year following the date of the enactment
8 of this Act.”

Passed the Senate October 13, 1965.

Attest:

FELTON M. JOHNSTON,

Secretary.

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