

89TH CONGRESS  
1ST SESSION

# S. 1160

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1965

Mr. LONG of Missouri (for himself, Mr. BARTLETT, Mr. BAYH, Mr. BOGGS, Mr. BURDICK, Mr. CASE, Mr. DIRKSEN, Mr. ERVIN, Mr. FONG, Mr. HART, Mr. METCALF, Mr. MORSE, Mr. MOSS, Mr. NELSON, Mrs. NEUBERGER, Mr. PROX-  
MIRE, Mr. RIBICOFF, Mr. SMATHERS, and Mr. SYMINGTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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 public  
6 the following information:

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

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

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

1 either made available or published as provided by this sub-  
2 section or unless that private party shall have actual and  
3 timely notice of the terms thereof.

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

24 “(d) AGENCY PROCEEDINGS.—Every agency having  
25 more than one member shall keep a record of the final votes

1 of each member in every agency proceeding and such record  
2 shall be available for public inspection.

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

21 “(f) LIMITATION OF EXEMPTIONS.—Nothing in this  
22 section authorizes withholding of information or limiting  
23 the availability of records to the public except as specifically  
24 stated in this section, nor shall this section be authority to  
25 withhold information from Congress.

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

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

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By Mr. LONG of Missouri, Mr. BARTLETT, Mr. BAYH, Mr. BOGGS, Mr. BURDICK, Mr. CASE, Mr. DIRKSEN, Mr. ERVIN, Mr. FONG, Mr. HART, Mr. METCALF, Mr. MORSE, Mr. MOSS, Mr. NELSON, Mrs. NEUBERGER, Mr. PROXMIRE, Mr. RIBICOFF, Mr. SMATHERS, and Mr. SYMINGTON

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Read twice and referred to the Committee on the  
Judiciary