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*How the Electronic Freedom of Information Act Amendments of 1996 Update Public Access for the Information Age*

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Abstract by Meredyth S. Cooper

This article examines the revolutionary effect that technology has had on public expectations of speed and efficiency in all facets of life, especially when dealing with the government. The Electronic Freedom of Information Act (E-FOIA) Amendments of 1996 recognized the integral role electronic technology plays in government and sought to improve agency actions employing this technology in response to requests under the Freedom of Information Act (FOIA). Significant provisions examined by the author include expanding the categories of records that agencies must now make available, mandating that agencies provide online access to records through “electronic reading rooms,” and requiring agencies to provide indexes and search tools to guide individuals looking for public information within an agency. The Amendments also sought to address many ambiguous areas that were often litigated under FOIA by requiring agencies to provide records in format requested if feasible, making the use of computer codes or programming to locate records a search (thus negating agency argument that it created a new record) and formally applying FOIA to electronic records.

While the new provisions seek to facilitate individuals making FOIA requests, the author contends that implementation may be more difficult for agencies that have historically failed to meet statutory deadlines under FOIA. Additionally, the author argues that the wide discretion given to agencies to determine which records to make available in their traditional and newly created electronic reading rooms may create the potential for abuse and limited access. The author suggests employing judicial review to require agencies to publish or make available records without a request where an agency’s decision to not do so was arbitrary or based on an erroneous interpretation. The author also highlights significant omissions from the E-FOIA Amendments, including failing to require expedited processing in cases of multiple requests for similar documents. The author notes that if these requests were prioritized and made available in the agency reading room, reduction in backlog of similar requests would likely result. Additionally, the author notes that the statute is ambiguous as to where records must be made available. Thus, if agencies choose to make records available in the traditional reading room, public access would often be limited to those in the local vicinity of the agency itself, defeating the purpose of increased public access embodied in the FOIA. Ultimately, the author concludes, the success of the Amendments will largely depend on the amount of agency compliance achieved. In order to increase agency compliance and ensure the provisions are properly implemented, the government must allocate the necessary resources to agencies.