

105TH CONGRESS
1ST SESSION

S. 1220

To provide a process for declassifying on an expedited basis certain documents relating to human rights abuses in Guatemala and Honduras.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 1997

Mr. DODD (for himself, Mr. BINGAMAN, Mr. BUMPERS, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To provide a process for declassifying on an expedited basis certain documents relating to human rights abuses in Guatemala and Honduras.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Human Rights Infor-
5 mation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Agencies of the Government of the United
2 States have information on human rights violations
3 in Guatemala and Honduras.

4 (2) Members of both Houses of Congress have
5 repeatedly asked the Administration for information
6 on Guatemalan and Honduran human rights cases.

7 (3) The Guatemalan peace accords, which the
8 Government of the United States firmly supports,
9 has as an important and vital component the estab-
10 lishment of the Commission for the Historical Clari-
11 fication of Human Rights Violations and Acts of Vi-
12 olence which have Caused Suffering to the Guate-
13 malan People (referred to in this Act as the “Clari-
14 fication Commission”). The Clarification Commis-
15 sion will investigate cases of human rights violations
16 and abuses by both parties to the civil conflict in
17 Guatemala and will need all available information to
18 fulfill its mandate.

19 (4) The National Commissioner for the Protec-
20 tion of Human Rights in the Republic of Honduras
21 has been requesting United States Government doc-
22 umentation on human rights violations in Honduras
23 since November 15, 1993. The Commissioner’s re-
24 quest has been partly fulfilled, but is still pending.
25 The request has been supported by national and

1 international human rights nongovernmental organi-
2 zations as well as members of both Houses of Con-
3 gress.

4 (5) Victims and survivors of human rights vio-
5 lations, including United States citizens and their
6 relatives, have also been requesting the information
7 referred to in paragraphs (3) and (4). Survivors and
8 the relatives of victims have a right to know what
9 happened. The requests have been supported by na-
10 tional and international human rights nongovern-
11 mental organizations as well as members of both
12 Houses of Congress.

13 (6) The United States should make the infor-
14 mation it has on human rights abuses available to
15 the public as part of the United States commitment
16 to democracy in Central America.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) HUMAN RIGHTS RECORD.—The term
20 “human rights record” means a record in the pos-
21 session, custody, or control of the United States
22 Government containing information about gross
23 human rights violations committed after 1944.

24 (2) AGENCY.—The term “agency” means any
25 agency of the United States Government charged

1 with the conduct of foreign policy or foreign intel-
2 ligence, including the Department of State, the
3 Agency for International Development, the Depart-
4 ment of Defense (and all of its components), the
5 Central Intelligence Agency, the National Reconnaissance
6 Office, the Department of Justice (and all of
7 its components), the National Security Council, and
8 the Executive Office of the President.

9 **SEC. 4. IDENTIFICATION, REVIEW, AND PUBLIC DISCLO-**
10 **SURE OF HUMAN RIGHTS RECORDS REGARD-**
11 **ING GUATEMALA AND HONDURAS.**

12 (a) IN GENERAL.—Notwithstanding any other provi-
13 sion of law, the provision of this Act shall govern the de-
14 classification and public disclosure of human rights
15 records by agencies.

16 (b) IDENTIFICATION OF RECORDS.—Not later than
17 120 days after the date of enactment of this Act, each
18 agency shall identify, review, and organize all human
19 rights records regarding activities occurring in Guatemala
20 and Honduras after 1944 for the purpose of declassifying
21 and disclosing the records to the public. Except as pro-
22 vided in section 5, all records described in the preceding
23 sentence shall be made available to the public not later
24 than 30 days after a review under this section is com-
25 pleted.

1 (c) REPORT TO CONGRESS.—Not later than 150 days
 2 after the date of enactment of this Act, the President shall
 3 report to Congress regarding each agency’s compliance
 4 with the provisions of this Act.

5 **SEC. 5. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
 6 **SURE OF RECORDS.**

7 (a) IN GENERAL.—An agency may postpone public
 8 disclosure of a human rights record or particular informa-
 9 tion in a human rights record only if the agency deter-
 10 mines that there is clear and convincing evidence that—

11 (1) the threat to the military defense, intel-
 12 ligence operations, or conduct of foreign relations of
 13 the United States raised by public disclosure of the
 14 human rights record is of such gravity that it out-
 15 weighs the public interest, and such public disclosure
 16 would reveal—

17 (A) an intelligence agent whose identity
 18 currently requires protection;

19 (B) an intelligence source or method—

20 (i) which is being utilized, or reason-
 21 ably expected to be utilized, by the United
 22 States Government;

23 (ii) which has not been officially dis-
 24 closed; and

1 (iii) the disclosure of which would
2 interfere with the conduct of intelligence
3 activities; or

4 (C) any other matter currently relating to
5 the military defense, intelligence operations, or
6 conduct of foreign relations of the United
7 States, the disclosure of which would demon-
8 strably impair the national security of the
9 United States;

10 (2) the public disclosure of the human rights
11 record would reveal the name or identity of a living
12 individual who provided confidential information to
13 the United States and would pose a substantial risk
14 of harm to that individual;

15 (3) the public disclosure of the human rights
16 record could reasonably be expected to constitute an
17 unwarranted invasion of personal privacy, and that
18 invasion of privacy is so substantial that it out-
19 weighs the public interest; or

20 (4) the public disclosure of the human rights
21 record would compromise the existence of an under-
22 standing of confidentiality currently requiring pro-
23 tection between a Government agent and a cooperat-
24 ing individual or a foreign government, and public

1 disclosure would be so harmful that it outweighs the
2 public interest.

3 (b) SPECIAL TREATMENT OF CERTAIN INFORMA-
4 TION.—It shall not be grounds for postponement of disclo-
5 sure of a human rights record that an individual named
6 in the human rights record was an intelligence asset of
7 the United States Government, although the existence of
8 such relationship may be withheld if the criteria set forth
9 in subsection (a) are met. For purposes of the preceding
10 sentence, the term an “intelligence asset” means a covert
11 agent as defined in section 606(4) of the National Security
12 Act of 1947 (50 U.S.C. 426(4)).

13 **SEC. 6. REQUEST FOR HUMAN RIGHTS RECORDS FROM OF-**
14 **FICIAL ENTITIES IN OTHER LATIN AMERICAN**
15 **CARIBBEAN COUNTRIES.**

16 In the event that an agency of the United States re-
17 ceives a request for human rights records from an entity
18 created by the United Nations or the Organization of
19 American States similar to the Guatemalan Clarification
20 Commission, or from the principal justice or human rights
21 official of a Latin American or Caribbean country who is
22 investigating a pattern of gross human rights violations,
23 the agency shall conduct a review of records as described
24 in section 4 and shall declassify and publicly disclose such

1 records in accordance with the standards and procedures
 2 set forth in this Act.

3 **SEC. 7. REVIEW OF DECISIONS TO WITHHOLD RECORDS.**

4 (a) DUTIES OF THE APPEALS PANEL.—The Inter-
 5 agency Security Classification Appeals Panel (referred to
 6 in this Act as the “Appeals Panel”), established under Ex-
 7 ecutive Order No. 12958, shall review determinations by
 8 an agency to postpone public disclosure of any human
 9 rights record.

10 (b) DETERMINATIONS OF THE APPEALS PANEL.—

11 (1) IN GENERAL.—The Appeals Panel shall di-
 12 rect that all human rights records be disclosed to the
 13 public, unless the Appeals Panel determines that
 14 there is clear and convincing evidence that—

15 (A) the record is not a human rights
 16 record; or

17 (B) the human rights record or particular
 18 information in the human rights record quali-
 19 fies for postponement of disclosure pursuant to
 20 section 5.

21 (2) TREATMENT IN CASES OF NONDISCLO-
 22 SURE.—If the Appeals Panel concurs with an agency
 23 decision to postpone disclosure of a human rights
 24 record, the Appeals Panel shall determine, in con-
 25 sultation with the originating agency and consistent

1 with the standards set forth in this Act, which, if
 2 any, of the alternative forms of disclosure described
 3 in paragraph (3) shall be made by the agency.

4 (3) ALTERNATIVE FORMS OF DISCLOSURE.—

5 The forms of disclosure described in this paragraph
 6 are as follows:

7 (A) Disclosure of any reasonably seg-
 8 regable portion of the human rights record
 9 after deletion of the portions described in para-
 10 graph (1).

11 (B) Disclosure of a record that is a sub-
 12 stitute for information which is not disclosed.

13 (C) Disclosure of a summary of the infor-
 14 mation contained in the human rights record.

15 (4) NOTIFICATION OF DETERMINATION.—

16 (A) IN GENERAL.—Upon completion of its
 17 review, the Appeals Panel shall notify the head
 18 of the agency in control or possession of the
 19 human rights record that was the subject of the
 20 review of its determination and shall, not later
 21 than 14 days after the determination, publish
 22 the determination in the Federal Register.

23 (B) NOTICE TO PRESIDENT.—The Appeals
 24 Panel shall notify the President of its deter-
 25 mination. The notice shall contain a written un-

1 classified justification for its determination, in-
2 cluding an explanation of the application of the
3 standards contained in section 5.

4 (5) GENERAL PROCEDURES.—The Appeals
5 Panel shall publish in the Federal Register guide-
6 lines regarding its policy and procedures for adju-
7 dicating appeals.

8 (c) PRESIDENTIAL AUTHORITY OVER APPEALS
9 PANEL DETERMINATION.—

10 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
11 OF DISCLOSURE.—The President shall have the sole
12 and nondelegable authority to review any determina-
13 tion of the Appeals Board under this Act, and such
14 review shall be based on the standards set forth in
15 section 5. Not later than 30 days after the Appeals
16 Panel’s determination and notification to the agency
17 pursuant to subsection (b)(4), the President shall
18 provide the Appeals Panel with an unclassified writ-
19 ten certification specifying the President’s decision
20 and stating the reasons for the decision, including in
21 the case of a determination to postpone disclosure,
22 the standards set forth in section 5 which are the
23 basis for the President’s determination.

24 (2) RECORD OF PRESIDENTIAL POSTPONE-
25 MENT.—The Appeals Panel shall, upon receipt of

1 the President's determination, publish in the Federal
2 Register a copy of any unclassified written certifi-
3 cation, statement, and other materials transmitted
4 by or on behalf of the President with regard to the
5 postponement of disclosure of a human rights
6 record.

7 **SEC. 8. REPORT REGARDING OTHER HUMAN RIGHTS**
8 **RECORDS.**

9 Upon completion of the review and disclosure of the
10 human rights records relating to Guatemala and Hon-
11 duras, the Information Security Policy Advisory Council,
12 established pursuant to Executive Order No. 12958, shall
13 report to Congress on the desirability and feasibility of
14 declassification of human rights records relating to other
15 countries in Latin America and the Caribbean. The report
16 shall be available to the public.

17 **SEC. 9. RULES OF CONSTRUCTION.**

18 (a) **FREEDOM OF INFORMATION ACT.**—Nothing in
19 this Act shall be construed to limit any right to file a re-
20 quest with any executive agency or seek judicial review of
21 a decision pursuant to section 552 of title 5, United States
22 Code.

23 (b) **JUDICIAL REVIEW.**—Nothing in this Act shall be
24 construed to preclude judicial review, under chapter 7 of

1 title 5, United States Code, of final actions taken or re-
2 quired to be taken under this Act.

3 **SEC. 10. CREATION OF POSITIONS.**

4 For purposes of carrying out the provisions of this
5 Act, there shall be 2 additional positions in the Appeals
6 Panel. The positions shall be filled by the President, based
7 on the recommendations of the American Historical Asso-
8 ciation, the Latin American Studies Association, Human
9 Rights Watch, and Amnesty International, USA.

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