

Calendar No. 700

106TH CONGRESS
2^D SESSION

S. 1902

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mrs. FEINSTEIN (for herself, Mr. WELLSTONE, Mr. GRAMS, Mrs. BOXER, Mr. LEVIN, Mr. HATCH Mr. ROBB, Mr. ASHCROFT, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 18, 2000

Reported by Mr. HATCH, with an amendment

[Insert the part printed in *italic*]

JUNE 7 (legislative day, JUNE 6), 2000

Referred to the Select Committee on Intelligence pursuant to section 3(b) of S. Res. 400, 94th Congress for a period not to exceed 30 days of session

JULY 20, 2000

Reported by Mr. SHELBY, with amendments

[Omit the part in boldface brackets and insert the part in bold roman]

A BILL

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair

any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Japanese Imperial
 5 Army Disclosure Act”.

6 **SEC. 2. ESTABLISHMENT OF JAPANESE IMPERIAL ARMY**
 7 **RECORDS INTERAGENCY WORKING GROUP.**

8 (a) DEFINITIONS.—In this section:

9 (1) AGENCY.—The term “agency” has the
 10 meaning given such term under section 551 of title
 11 5, United States Code.

12 (2) INTERAGENCY GROUP.—The term “Inter-
 13 agency Group” means the Japanese Imperial Army
 14 Records Interagency Working Group established
 15 under subsection (b).

16 (3) JAPANESE IMPERIAL ARMY RECORDS.—The
 17 term “Japanese Imperial Army records” means clas-
 18 sified records or portions of records that pertain to
 19 any person with respect to whom the United States
 20 Government, in its sole discretion, has grounds to
 21 believe ordered, incited, assisted, or otherwise par-
 22 ticipated in the experimentation and persecution of
 23 any person because of race, religion, national origin,

1 or political option, during the period beginning Sep-
2 tember 18, 1931, and ending on December 31,
3 1948, under the direction of, or in association
4 with—

5 (A) the Japanese Imperial Army;

6 (B) any government in any area occupied
7 by the military forces of the Japanese Imperial
8 Army;

9 (C) any government established with the
10 assistance or cooperation of the Japanese Impe-
11 rial Army; or

12 (D) any government which was an ally of
13 the Imperial Army of Japan.

14 (4) RECORD.—The term “record” means a Jap-
15 anese Imperial Army record.

16 (b) ESTABLISHMENT OF INTERAGENCY GROUP.—

17 (1) IN GENERAL.—Not later than 60 days after
18 the date of enactment of this Act, the President
19 shall establish the Japanese Imperial Army Records
20 Interagency Working Group, which shall remain in
21 existence for 3 years after the date the Interagency
22 Group is established.

23 (2) MEMBERSHIP.—The President shall appoint
24 to the Interagency Group individuals whom the
25 President determines will most completely and effec-

1 tively carry out the functions of the Interagency
2 Group within the time limitations provided in this
3 section, including the Historian of the Department
4 of State, the Archivist of the United States, the
5 head of any other agency the President considers ap-
6 propriate, and no more than 3 other persons. The
7 head of an agency appointed by the President may
8 designate an appropriate officer to serve on the
9 Interagency Group in lieu of the head of such agen-
10 cy.

11 (3) INITIAL MEETING.—Not later than 90 days
12 after the date of enactment of this Act, the Inter-
13 agency Group shall hold an initial meeting and begin
14 the functions required under this section.

15 (c) FUNCTIONS.—Not later than 1 year after the date
16 of enactment of this Act, the Interagency Group shall, to
17 the greatest extent possible consistent with section 3 of
18 this Act—

19 (1) locate, identify, inventory, recommend for
20 declassification, and make available to the public at
21 the National Archives and Records Administration,
22 all classified Japanese Imperial Army records of the
23 United States;

1 (2) coordinate with agencies and take such ac-
2 tions as necessary to expedite the release of such
3 records to the public; and

4 (3) submit a report to Congress, including the
5 Committee on Government Reform and Oversight of
6 the House of Representatives, **the Select Com-**
7 **mittee on Intelligence of the Senate, the**
8 **Permanent Select Committee on Intel-**
9 **ligence of the House of Representatives,**
10 *and the Senate Committee on the Judiciary*, describ-
11 ing all such records, the disposition of such records,
12 and the activities of the Interagency Group and
13 agencies under this section.

14 (d) FUNDING.—There are authorized to be appro-
15 priated such sum as may be necessary to carry out the
16 provisions of this Act.

17 **SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS.**

18 **[(a) RELEASE OF RECORDS.—**

19 **[(1) IN GENERAL.—**Subject to paragraphs (2),
20 (3), and (4), the Japanese Imperial Army Records
21 Interagency Working Group shall release in their en-
22 tirety Japanese Imperial Army records.

23 **[(2) EXCEPTION FOR PRIVACY.—**An agency
24 head may exempt from release under paragraph (1)
25 specific information, that would—

1 【(A) constitute a clearly unwarranted inva-
2 sion of personal privacy;

3 【(B) reveal the identity of a confidential
4 human source, or reveal information about the
5 application of an intelligence source or method,
6 or reveal the identity of a human intelligence
7 source when the unauthorized disclosure of that
8 source would clearly and demonstrably damage
9 the national security interests of the United
10 States;

11 【(C) reveal information that would assist
12 in the development or use of weapons of mass
13 destruction;

14 【(D) reveal information that would impair
15 United States cryptologic systems or activities;

16 【(E) reveal information that would impair
17 the application of state-of-the-art technology
18 within a United States weapon system;

19 【(F) reveal actual United States military
20 war plans that remain in effect;

21 【(G) reveal information that would seri-
22 ously and demonstrably impair relations be-
23 tween the United States and a foreign govern-
24 ment, or seriously and demonstrably undermine

1 ongoing diplomatic activities of the United
2 States;

3 [(H) reveal information that would clearly,
4 and demonstrably impair the current ability of
5 United States Government officials to protect
6 the President, Vice President, and other offi-
7 cials for whom protection services are author-
8 ized in the interest of national security;

9 [(I) reveal information that would seri-
10 ously and demonstrably impair current national
11 security emergency preparedness plans; or

12 [(J) violate a treaty or other international
13 agreement.

14 [(3) APPLICATIONS OF EXEMPTIONS.—

15 [(A) IN GENERAL.—In applying the ex-
16 emptions provided in subparagraphs (B)
17 through (J) of paragraph (2), there shall be a
18 presumption that the public interest will be
19 served by disclosure and release of the records
20 of the Japanese Imperial Army. The exemption
21 may be asserted only when the head of the
22 agency that maintains the records determines
23 that disclosure and release would be harmful to
24 a specific interest identified in the exemption.
25 An agency head who makes such a determina-

tion shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

[(B) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption provided in subparagraphs (B) through (I) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

[(4) LIMITATION ON EXEMPTIONS.—

[(A) IN GENERAL.—The exemptions set forth in paragraph (2) shall constitute the only grounds pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

[(B) RECORDS RELATED TO INVESTIGATION OR PROSECUTIONS.—This subsection shall not apply to records—

[(i) related to or supporting any active or inactive investigation, inquiry, or

1 prosecution by the Office of Special Inves-
2 tigations of the Department of Justice; or
3 [(ii) solely in the possession, custody,
4 or control of the Office of Special Inves-
5 tigations.

6 [(b) INAPPLICABILITY OF NATIONAL SECURITY ACT
7 OF 1947 EXEMPTION.—Section 701(a) of the National
8 Security Act of 1947 (50 U.S.C. 431) shall not apply to
9 any operational file, or any portion of any operational file,
10 that constitutes a Japanese Imperial Army record under
11 this Act.]

12 **(a) RELEASE OF RECORDS.—Subject to sub-**
13 **sections (b), (c), and (d), the Japanese Impe-**
14 **rial Army Records Interagency Working**
15 **Group shall release in their entirety Japanese**
16 **Imperial Army records.**

17 **(b) EXCEPTION FOR PRIVACY.—An agency**
18 **head may exempt from release under sub-**
19 **section (a) specific information, that would—**

20 **(1) constitute a clearly unwarranted**
21 **invasion of personal privacy;**

22 **(2) reveal the identity of a confiden-**
23 **tial human source, or reveal information**
24 **about the application of an intelligence**
25 **source or method, or reveal the identity**

1 of a human intelligence source when the
2 unauthorized disclosure of that source
3 would clearly and demonstrably damage
4 the national security interests of the
5 United States;

6 (3) reveal information that would as-
7 sist in the development or use of weapons
8 of mass destruction;

9 (4) reveal information that would im-
10 pair United States cryptologic systems or
11 activities;

12 (5) reveal information that would im-
13 pair the application of state-of-the-art
14 technology within a United States weap-
15 on system;

16 (6) reveal actual United States mili-
17 tary war plans that remain in effect;

18 (7) reveal information that would se-
19 riously and demonstrably impair rela-
20 tions between the United States and a
21 foreign government, or seriously and de-
22 monstrably undermine ongoing diplo-
23 matic activities of the United States;

24 (8) reveal information that would
25 clearly, and demonstrably impair the cur-

1 rent ability of United States Government
2 officials to protect the President, Vice
3 President, and other officials for whom
4 protection services are authorized in the
5 interest of national security;

6 (9) reveal information that would se-
7 riously and demonstrably impair current
8 national security emergency prepared-
9 ness plans; or

10 (10) violate a treaty or other inter-
11 national agreement.

12 **(c) APPLICATIONS OF EXEMPTIONS.—**

13 **(1) IN GENERAL.—**In applying the ex-
14 emptions provided in paragraphs (2)
15 through (10) of subsection (b), there shall
16 be a presumption that the public interest
17 will be served by disclosure and release
18 of the records of the Japanese Imperial
19 Army. The exemption may be asserted
20 only when the head of the agency that
21 maintains the records determines that
22 disclosure and release would be harmful
23 to a specific interest identified in the ex-
24 emption. An agency head who makes
25 such a determination shall promptly re-

1 port it to the committees of Congress
2 with appropriate jurisdiction, including
3 the Committee on the Judiciary and the
4 Select Committee on Intelligence of the
5 Senate and the Committee on Govern-
6 ment Reform and Oversight and the Per-
7 manent Select Committee on Intelligence
8 of the House of Representatives.

9 (2) APPLICATION OF TITLE 5.—A deter-
10 mination by an agency head to apply an
11 exemption provided in paragraphs (2)
12 through (9) of subsection (b) shall be sub-
13 ject to the same standard of review that
14 applies in the case of records withheld
15 under section 552(b)(1) of title 5, United
16 States Code.

17 (d) LIMITATION ON EXEMPTIONS.—

18 (1) IN GENERAL.—The exemptions set
19 forth in subsection (b) shall constitute
20 the only grounds pursuant to which an
21 agency head may exempt records other-
22 wise subject to release under subsection
23 (a).

1 **(2) RECORDS RELATED TO INVESTIGA-**
2 **TION OR PROSECUTIONS.—This section shall**
3 **not apply to records—**

4 **(A) related to or supporting any**
5 **active or inactive investigation, in-**
6 **quiry, or prosecution by the Office of**
7 **Special Investigations of the Depart-**
8 **ment of Justice; or**

9 **(B) solely in the possession, cus-**
10 **tody, or control of the Office of Spe-**
11 **cial Investigations.**

12 **SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR**
13 **JAPANESE IMPERIAL ARMY RECORDS.**

14 For purposes of expedited processing under section
15 552(a)(6)(E) of title 5, United States Code, any person
16 who was persecuted in the manner described in section
17 2(a)(3) and who requests a Japanese Imperial Army
18 record shall be deemed to have a compelling need for such
19 record.

20 **SEC. 5. EFFECTIVE DATE.**

21 The provisions of this Act shall take effect on the
22 date that is 90 days after the date of enactment of this
23 Act.

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