Public Law 98-477
98th Congress

An Act

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

Oct. 15, 1984
[H.R. 5164]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Information Act".

Central Intelligence Agency Information Act.
50 USC 401 note.

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

"SEC. 701. (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

50 USC 431.

"(b) For the purposes of this title the term 'operational files' means—

"(1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;

"(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

"(3) files of the Office of Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources;

except that files which are the sole repository of disseminated intelligence are not operational files.

"(c) Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

"(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, United States Code (Freedom of Information Act), or section 552a of title 5, United States Code (Privacy Act of 1974);

"(2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act); or

"(3) the specific subject matter of an investigation by the intelligence committees of the Congress, the Intelligence Over-

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sight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

"(d)(1) Files that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

"(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

"(3) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files for sole retention shall be subject to search and review.

"(e) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

Courts, U.S.

"(f) Whenever any person who has requested agency records under section 552 of title 5, United States Code (Freedom of Information Act), alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code, except that—

"(1) in any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Central Intelligence Agency, such information shall be examined ex parte, in camera by the court;

"(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

"(3) when a complaint alleges that requested records were improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

"(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Central Intelligence Agency shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

"(B) the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of this paragraph, unless the complainant disputes the Central Intelligence Agency's showing with a sworn written

submission based on personal knowledge or otherwise admissible evidence;

"(5) in proceedings under paragraphs (3) and (4) of this subsection, the parties shall not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admission may be made pursuant to rules 26 and 36; 28 USC app.

"(6) if the court finds under this subsection that the Central Intelligence Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Central Intelligence Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section; and

"(7) if at any time following the filing of a complaint pursuant to this subsection the Central Intelligence Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

"DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

"SEC. 702. (a) Not less than once every ten years, the Director of Central Intelligence shall review the exemptions in force under subsection (a) of section 701 of this Act to determine whether such exemptions may be removed from any category of exempted files or any portion thereof. 50 USC 432. *Ante*, p. 2209.

"(b) The review required by subsection (a) of this section shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

"(c) A complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this section may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review.". Courts, U.S.

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.

"Sec. 702. Decennial review of exempted operational files.".

(c) Subsection (q) of section 552a of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(q)"; and

(2) by adding at the end thereof the following:

"(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.".

5 USC 552.

Reports.

50 USC 432 note.

SEC. 3. (a) The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

(b)(1) The Director shall, once each six months, prepare and submit an unclassified report which includes—

(A) a description of the specific measures established by the Director to improve the processing of requests under section 552 of title 5, United States Code;

(B) the current budgetary and personnel allocations for such processing;

(C) the number of such requests (i) received and processed during the preceding six months, and (ii) pending at the time of submission of such report; and

(D) an estimate of the current average response time for completing the processing of such requests.

(2) The first report required by paragraph (1) shall be submitted by a date which is six months after the date of enactment of this Act. The requirements of such paragraph shall cease to apply after the submission of the fourth such report.

(c) Each of the reports required by subsections (a) and (b) shall be submitted to the Permanent Select Committee on Intelligence and the Committee on Government Operations of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

Effective date.

50 USC 431 note.

SEC. 4. The amendments made by subsections (a) and (b) of section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984.

Approved October 15, 1984.

LEGISLATIVE HISTORY—H.R. 5164 (S. 1324):

HOUSE REPORTS: No. 98-726, Pt. 1 (Permanent Select Committee on Intelligence) and Pt. 2 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Sept. 17, 19, considered and passed House.

Sept. 28, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):

Oct. 15, Presidential statement.