

standing of the Government's investigation into this tragic event in American history.

(c) In the course of their review, agencies have identified a limited number of records containing information for continued postponement of public disclosure. NARA has reviewed these proposed redactions and has coordinated with relevant consulting agencies, where appropriate, to ensure that the proposed redactions meet the statutory standard for continued postponement. The Acting Archivist has recommended certifying a small subset of the reviewed records for continued postponement of public disclosure.

(d) The Acting Archivist has further indicated that additional work remains to be done with respect to a limited number of other reviewed records that were the subject of agency proposals for continued postponement of public disclosure. The Acting Archivist believes such additional work could further reduce the amount of redacted information. The Acting Archivist therefore recommends that I temporarily certify the continued postponement of public disclosure of the redacted information in these records to provide additional time for review and to ensure that information from these records is disclosed to the maximum extent possible, consistent with the standards of the Act.

SEC. 3. Certification. In light of the proposals from agencies for continued postponement of public disclosure of information in the records identified in section 2(c) of this memorandum under the statutory standard, and the Acting Archivist's recommendation, I agree that continued postponement of public disclosure of such information is warranted to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure. Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5(g)(2)(D) of the Act, I hereby certify that continued postponement of public disclosure of these records is necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure. All information within these records that agencies have proposed for continued postponement under section 5(g)(2)(D) of the Act shall accordingly be withheld from public disclosure. Further release of the information in these records shall occur in a manner consistent with the Transparency Plans described in section 7 of this memorandum.

SEC. 4. Temporary Certification. In light of the proposals from agencies for continued postponement of public disclosure of information in the records identified in section 2(d) of this memorandum under the statutory standard, the Acting Archivist's request for an extension of time to continue review of those records, and the need for an appropriately thorough review process, I agree with the Acting Archivist's recommendation regarding temporary postponement. Temporary continued postponement of public disclosure of such information is necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure. Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5(g)(2)(D) of the Act, I hereby certify that all information within these records that agencies have proposed for continued postponement under section 5(g)(2)(D) of the Act shall be withheld from public disclosure until June 30, 2023.

SEC. 5. Release. Any information currently withheld from public disclosure that agencies have not proposed for continued postponement shall be released to the public by December 15, 2022.

SEC. 6. Review. (a) From the date of this memorandum [Dec. 15, 2022] until May 1, 2023, relevant agencies and NARA shall jointly review the remaining redactions in

the records addressed in sections 2(d) and 4 of this memorandum with a view to maximizing transparency and disclosing all information in records concerning the assassination, except when the strongest possible reasons counsel otherwise. Any information that agencies propose for continued postponement of public release beyond June 30, 2023, shall be limited to the absolute minimum under the statutory standard. Agencies shall not propose to continue redacting information unless the redaction is necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure. In applying the statutory standard, agencies shall:

(i) accord substantial weight to the public interest in transparency and full disclosure of any record that falls within the scope of the Act; and

(ii) give due consideration that some degree of harm is not grounds for continued postponement unless the degree of harm is of such gravity that it outweighs the public interest in disclosure.

(b) If, by no later than May 1, 2023, NARA agrees that a proposed redaction meets the statutory standard for continued postponement, the Archivist shall recommend to the President, no later than May 1, 2023, that continued postponement of public disclosure of the information is warranted after June 30, 2023.

(c) If, by no later than May 1, 2023, NARA does not recommend that a proposed redaction meets the statutory standard for continued postponement, agencies shall, no later than May 15, 2023:

(i) withdraw the proposed redaction; or

(ii) recommend to the President, through the Counsel to the President, on a document-by-document basis, that release of the information continue to be postponed, providing an explanation for each proposed redaction of why continued postponement remains necessary to protect against an identifiable harm to the military defense, intelligence operations, law enforcement, or the conduct of foreign relations that is of such gravity that it outweighs the public interest in disclosure.

(d) In the development of the recommendations described in this section, as questions arise about particular proposed redactions, NARA shall consult, as appropriate, with relevant agencies as described in section 5(d) of my 2021 Memorandum.

(e) At the conclusion of the review described in this section, any information withheld from public disclosure that agencies do not propose for continued postponement beyond June 30, 2023, shall be released to the public by that date.

SEC. 7. Transparency Plans. As part of their review, each agency prepared a plan for the eventual release of information (Transparency Plan) to ensure that information would continue to be disclosed over time as the identified harm associated with release of the information dissipates. Each Transparency Plan details the event-based or circumstance-based conditions that will trigger the public disclosure of currently postponed information by the National Declassification Center (NDC) at NARA. These Transparency Plans have been reviewed by NARA, and the Acting Archivist has advised that use of the Transparency Plans by the NDC will ensure appropriate continued release of information covered by the Act. Accordingly, I direct that the Transparency Plans submitted by agencies be used by the NDC to conduct future reviews of any information that has been postponed from public disclosure, including information in the records described in sections 2(c) and 3 of this memorandum.

SEC. 8. Publication. The Acting Archivist is hereby authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

§ 2108. Responsibility for custody, use, and withdrawal of records

(a) The Archivist shall be responsible for the custody, use, and withdrawal of records trans-

ferred to him. When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions with respect to the examination and use of records applicable to the head of the agency from which the records were transferred or to employees of that agency are applicable to the Archivist and to the employees of the National Archives and Records Administration, respectively. Except as provided in subsection (b) of this section, when the head of a Federal agency states, in writing, restrictions that appear to him to be necessary or desirable in the public interest with respect to the use or examination of records being considered for transfer from his custody to the Archivist, the Archivist shall, if he concurs,¹ impose such restrictions on the records so transferred, and may not relax or remove such restrictions without the written concurrence of the head of the agency from which the material was transferred, or of his successor in function, if any. In the event that a Federal agency is terminated and there is no successor in function, the Archivist is authorized to relax, remove, or impose restrictions on such agency's records when he determines that such action is in the public interest. Statutory and other restrictions referred to in this subsection shall remain in force until the records have been in existence for thirty years unless the Archivist by order, having consulted with the head of the transferring Federal agency or his successor in function, determines, with respect to specific bodies of records, that for reasons consistent with standards established in relevant statutory law, such restrictions shall remain in force for a longer period. Restriction on the use or examination of records deposited with the National Archives of the United States imposed by section 3 of the National Archives Act, approved June 19, 1934, shall continue in force regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the Archivist with the concurrence in writing of the head of the agency from which material was transferred or of his successor in function, if any.

(b) With regard to the census and survey records of the Bureau of the Census containing data identifying individuals enumerated in population censuses, any release pursuant to this section of such identifying information contained in such records shall be made by the Archivist pursuant to the specifications and agreements set forth in the exchange of correspondence on or about the date of October 10, 1952, between the Director of the Bureau of the Census and the Archivist of the United States, together with all amendments thereto, now or hereafter entered into between the Director of the Bureau of the Census and the Archivist of the United States. Such amendments, if any, shall be published in the Register.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1288, § 2104; Pub. L. 95-416, § 1(b), Oct. 5, 1978, 92 Stat. 915; renumbered § 2108 and amended Pub. L. 98-497, title I, §§ 102(a)(1), 107(a)(2), Oct. 19, 1984, 98 Stat. 2280, 2285.)

¹ So in original.

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., § 397(b) (June 30, 1949, ch. 288, title V, § 507, as added Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583).

Editorial Notes

REFERENCES IN TEXT

Section 3 of the National Archives Act, approved June 19, 1934, referred to in subsec. (a), was classified to section 300c of former Title 44, Public Printing and Documents, and was repealed by act June 30, 1949, ch. 288, title VI, § 602(a)(32), renumbered and added Sept. 5, 1950, ch. 849, § 7(d), 64 Stat. 590.

PRIOR PROVISIONS

A prior section 2108 was renumbered section 2112 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-497, § 107(a)(2), substituted “the Archivist and to the employees of the National Archives and Records Administration” for “the Administrator, the Archivist of the United States, and to the employees of the General Services Administration”, struck out “and in consultation with the Archivist of the United States” before “impose such restrictions” in third sentence, struck out “the Archivist and” after “having consulted with” in fifth sentence, substituted “Archivist” for “Administrator of General Services” wherever appearing, and substituted “Archivist” for “Administrator” wherever appearing.

Subsec. (b). Pub. L. 98-497, § 107(a)(2)(D), substituted “Archivist” for “Administrator of General Services”.

1978—Pub. L. 95-416 designated existing provisions as subsec. (a), inserted provisions permitting the Administrator to relax, remove, or impose restrictions in the public interest of records of agencies which have been terminated and requiring the Administrator with regard to duration of restrictions to consult with the Archivist and the head of the transferring Federal agency or his successor in function, and substituted “thirty years” for “fifty years”, and added subsec. (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES

Pub. L. 113-187, § 6, Nov. 26, 2014, 128 Stat. 2010, provided that:

“(a) CLASSIFIED RECORDS.—Not later than 90 days after the date of the enactment of this Act [Nov. 26, 2014], the Archivist shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. Such procedures shall include, at a minimum, the following prohibitions:

“(1) An individual, other than covered personnel, may not view classified records in any room that is not secure, except in the presence of National Archives and Records Administration personnel or under video surveillance.

“(2) An individual, other than covered personnel, may not be left alone with classified records, unless that individual is under video surveillance.

“(3) An individual, other than covered personnel, may not review classified records while possessing any cellular phone, electronic personal communication device, or any other devices capable of photographing, recording, or transferring images or content.

“(4) An individual seeking access to review classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.

“(5) All notes and other writings prepared by an individual, other than covered personnel, during the course of a review of classified records shall be retained by the National Archives and Records Administration in a secure facility until such notes and other writings are determined to be unclassified, are declassified, or are securely transferred to another secure facility.

“(b) DEFINITIONS.—In this section:

“(1) COVERED PERSONNEL.—The term ‘covered personnel’ means any individual—

“(A) who has an appropriate and necessary reason for accessing classified records, as determined by the Archivist; and

“(B) who is either—

“(i) an officer or employee of the United States Government with appropriate security clearances; or

“(ii) any personnel with appropriate security clearances of a Federal contractor authorized in writing to act for purposes of this section by an officer or employee of the United States Government.

“(2) RECORDS.—The term ‘records’ has the meaning given that term under section 3301 of title 44, United States Code.”

§ 2109. Preservation, arrangement, duplication, exhibition of records

The Archivist shall provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microcopy publications), description, and exhibition of records or other documentary material transferred to him as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides to facilitate their use. He may also prepare guides and other finding aids to Federal records and, when approved by the National Historical Publications and Records Commission, publish such historical works and collections of sources as seem appropriate for printing or otherwise recording at the public expense.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1288, § 2105; renumbered § 2109 and amended Pub. L. 98–497, title I, § 102(a)(1), 107(a)(3), Oct. 19, 1984, 98 Stat. 2280, 2285.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., § 397(c) (June 30, 1949, ch. 288, title V, § 507, as added Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583; July 12, 1952, ch. 703, § 1(o), 66 Stat. 594).

Editorial Notes

PRIOR PROVISIONS

A prior section 2109 was renumbered section 2113 of this title.

AMENDMENTS

1984—Pub. L. 98–497, § 107(a)(3), substituted “Archivist” for “Administrator of General Services” and inserted “and Records” after “National Historical Publications”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of this title.

Executive Documents

EX. ORD. NO. 11440. SUPPLEMENTAL USE OF EXHIBITS AND DISPLAYS CREATED IN FURTHERANCE OF AUTHORIZED PROGRAMS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Ex. Ord. No. 11440, Dec. 11, 1968, 33 F.R. 18475, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

WHEREAS the executive departments and agencies of the Government, in discharging their various responsibilities, create a large volume of materials (including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects of historical or commemorative value) which from time to time are incorporated into or reproduced for use in exhibits or other types of visual displays needed for use in carrying out their programs; and

WHEREAS under Chapter 21 of Title 44, United States Code, the Archivist of the United States is authorized to accept for deposit in the National Archives of the United States the records of any Federal agency or of the Congress of the United States that are determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government, as well as the papers and other historical materials of any official or former official of the Government, and to make provisions for the exhibition of materials transferred to him; and

WHEREAS many of the exhibits and displays so prepared, produced, or otherwise created by the executive departments and agencies possess historical significance which warrants their preservation and exhibition as part of the archival and cultural heritage of the United States:

NOW, THEREFORE, by virtue of the authority vested in me, as President of the United States, it is hereby ordered as follows:

SECTION 1. The heads of all executive departments and agencies are directed—

(a) when initiating plans for the preparation, production, or other creation of exhibits and displays in furtherance of their program missions, to confer with the Archivist of the United States, or his designee, for the purpose of assuring that any such exhibits or displays which the Archivist finds appropriate for supplemental exhibition as part of the archival and cultural heritage of the United States are prepared, produced, or otherwise created in a manner which assures, to the maximum possible extent, their appropriateness, after they have served their primary program purpose, for such supplemental exhibition, and

(b) to transfer to the Archivist, without reimbursement, such exhibits or displays as he determines are appropriate for such supplemental exhibition after they have served their primary program purpose, subject to such conditions requiring return to the department or agency of all or any of the materials incorporated in the exhibits or displays as may be mutually agreeable.

SEC. 2. The Archivist of the United States is directed to—

(a) provide advice, counsel, and assistance to the heads of executive departments and agencies in the preparation, production, or other creation of exhibits and displays which he finds will have future value for exhibition as part of the archival and cultural heritage of the United States; and

(b) accept any such exhibit or display when it has served its primary program purpose and (1) arrange for its supplemental exhibition as appropriate, (2) preserve any such exhibit or display which possesses sufficient historical or other value to warrant continued preservation, or (3) dispose of any such exhibit or display when, in his judgment, the reasons for its continued preservation or exhibition cease to exist, all subject to the conditions agreed upon incident to transfer to the Archivist of the United States of the exhibit or display.