

Act. In the December 2022 Memorandum, consistent with that advice, I directed agencies to continue to work with NARA to review these records to determine if additional information proposed for redaction could be disclosed.

(b) On May 1, 2023, the Acting Archivist informed me that the review process was complete and recommended that I postpone the public release of certain redacted information in the records certified for temporary postponement of public release in the December 2022 Memorandum.

SEC. 3. *Certification.* In light of the recommendation for continued postponement of public release of information in the records identified in section 2(b) of this memorandum under the statutory standard, I hereby certify, 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, that continued postponement of public disclosure of that information is necessary to protect against identifiable harms to the military defense, intelligence operations, law enforcement, and the conduct of foreign relations that are of such gravity that they outweigh the public interest in disclosure. All information within these records that has been proposed for continued postponement under section 5(g)(2)(D) of the Act shall accordingly be withheld from public disclosure. Future release of the information in these records shall occur in a manner consistent with the Transparency Plans described in section 5 of this memorandum.

SEC. 4. *Release.* Any information currently withheld from public disclosure under section 4 of the December 2022 Memorandum that is not subject to the certification in section 3 of this memorandum shall be released to the public by June 30, 2023.

SEC. 5. *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 were reviewed by NARA, and the Acting Archivist previously advised me that use of the Transparency Plans by the NDC will ensure appropriate continued release of information covered by the Act. In the December 2022 Memorandum, I directed 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. On May 1, 2023, the Acting Archivist recommended continued use of agencies' Transparency Plans to release information covered by the Act. Therefore, I direct the NDC to continue to use the Transparency Plans to conduct future reviews of any information covered by the Act that has been postponed from public disclosure. The Transparency Plans will ensure that the public will have access to the maximum amount of information while continuing to protect against identifiable harms to the military defense, intelligence operations, law enforcement, and the conduct of foreign relations under the standards of the Act.

SEC. 6. *Publication.* The Archivist of the United States 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 transferred 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 ex-

amination 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,<sup>1</sup> 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.)

#### **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).

<sup>1</sup> So in original.

**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.