

**Editorial Notes**

## CODIFICATION

Section was formerly classified to section 425 of this title prior to editorial reclassification and renumbering as this section.

## PRIOR PROVISIONS

A prior section 604 of act July 26, 1947, was renumbered section 603 and is classified to section 3124 of this title.

**§ 3126. Definitions**

For the purposes of this subchapter:

(1) The term “classified information” means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

(2) The term “authorized”, when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

(3) The term “disclose” means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

(4) The term “covert agent” means—

(A) a present or retired officer or employee of an intelligence agency or a present or retired member of the Armed Forces assigned to duty with an intelligence agency whose identity as such an officer, employee, or member is classified information; or

(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

(i) who acts as an agent of, or informant or source of operational assistance to, an intelligence agency, or

(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

(5) The term “intelligence agency” means the elements of the intelligence community, as that term is defined in section 3003(4) of this title.

(6) The term “informant” means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

(7) The terms “officer” and “employee” have the meanings given such terms by section 2104 and 2105, respectively, of title 5.

(8) The term “Armed Forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(9) The term “United States”, when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(10) The term “pattern of activities” requires a series of acts with a common purpose or objective.

(July 26, 1947, ch. 343, title VI, §605, formerly §606, as added Pub. L. 97–200, §2(a), June 23, 1982, 96 Stat. 123; amended Pub. L. 106–120, title III, §304(a), Dec. 3, 1999, 113 Stat. 1611; renumbered §605 and amended Pub. L. 112–277, title III, §310(a)(4)(B), title V, §506, Jan. 14, 2013, 126 Stat. 2475, 2478; Pub. L. 113–126, title VII, §703(a), July 7, 2014, 128 Stat. 1422; Pub. L. 116–92, div. E, title LIII, §5303, Dec. 20, 2019, 133 Stat. 2119.)

**Editorial Notes**

## CODIFICATION

Section was formerly classified to section 426 of this title prior to editorial reclassification and renumbering as this section.

## PRIOR PROVISIONS

A prior section 605 of act July 26, 1947, was renumbered section 604 and is classified to section 3125 of this title.

## AMENDMENTS

2019—Par. (4)(A). Pub. L. 116–92, §5303(1), struck out cl. (i) designation before “whose identity”, substituted “agency” for “agency—” and “; or” for “, and”, and struck out cl. (ii) which read as follows: “who is serving outside the United States or has within the last five years served outside the United States; or”.

Par. (4)(B)(i). Pub. L. 116–92, §5303(2), substituted “acts” for “resides and acts outside the United States”.

2014—Pub. L. 113–126, §703(a), made technical amendments to directory language of Pub. L. 112–277, §506. See 2013 Amendment note below.

2013—Par. (5). Pub. L. 112–277, §506, as amended by Pub. L. 113–126, §703(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The term ‘intelligence agency’ means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.”

1999—Par. (4)(A). Pub. L. 106–120 substituted “a present or retired officer or employee” for “an officer or employee” and “a present or retired member” for “a member”.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–126, title VII, §703(b), July 7, 2014, 128 Stat. 1423, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Intelligence Authorization Act for Fiscal Year 2013 (Public Law 112–277).”

## TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relat-

ing thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### Executive Documents

##### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

##### SUBCHAPTER V—PROTECTION OF OPERATIONAL FILES

#### § 3141. Operational files of the Central Intelligence Agency

##### (a) Exemption by Director of Central Intelligence Agency

The Director of the Central Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the Central Intelligence Agency from the provisions of section 552 of title 5 (Freedom of Information Act) which require publication or disclosure, or search or review in connection therewith.

##### (b) "Operational files" defined

In this section, the term "operational files" means—

- (1) files of the National Clandestine Service 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 Personnel 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) Search and review for information

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 (Freedom of Information Act) or section 552a of title 5 (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 (Freedom of Information Act); or
- (3) the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight 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 National Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

##### (d) Information derived or disseminated from exempted operational files

(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) Supersedure of prior law

The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after October 15, 1984, and which specifically cites and repeals or modifies its provisions.

##### (f) Allegation; improper withholding of records; judicial review

Whenever any person who has requested agency records under section 552 of title 5 (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, 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 by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records cur-