

104TH CONGRESS
2D SESSION

S. 2048

To amend section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 1996

Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, 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 “War Crimes Disclosure
5 Act”.

1 **SEC. 2 REQUIREMENT FOR DISCLOSURE UNDER FOIA OF**
2 **INFORMATION RELATING TO INDIVIDUALS**
3 **WHO COMMITTED NAZI WAR CRIMES.**

4 (a) IN GENERAL.—Section 552 of title 5, United
5 States Code, is amended—

6 (1) by redesignating subsections (d), (e), and
7 (f) as subsections (e), (f), and (g), respectively; and

8 (2) by inserting after subsection (c) the follow-
9 ing new subsection:

10 “(d)(1)(A) Notwithstanding subsection (b), this sec-
11 tion shall apply to any matter in the possession of a speci-
12 fied agency, that relates to any individual as to whom
13 there exists reasonable grounds to believe that such indi-
14 vidual, during the period beginning on March 23, 1933,
15 and ending on May 8, 1945, under the direction of or in
16 association with—

17 “(i) the Nazi government of Germany,

18 “(ii) any government in any area occupied by
19 the military forces of the Nazi government of Ger-
20 many,

21 “(iii) any government established with the as-
22 sistance or cooperation of the Nazi government of
23 Germany, or

24 “(iv) any government that was an ally of the
25 Nazi government of Germany,

1 ordered, incited, assisted or otherwise participated in the
2 persecution of any person because of race, religion, na-
3 tional origin, or political opinion.

4 “(B) For purposes of subparagraph (A), the term
5 ‘specified agency’ means the following entities, any prede-
6 cessors of such an entity, and any component of such an
7 entity (or of such a predecessor):

8 “(i) The Central Intelligence Agency.

9 “(ii) The Department of Defense.

10 “(iii) The National Security Agency.

11 “(iv) The National Security Council.

12 “(v) The Department of State.

13 “(vi) The Federal Bureau of Investigation.

14 “(vii) The United States Information Agency.

15 “(2)(A) Except as provided in subparagraph (B),
16 Paragraph (1) shall not apply to the disclosure of any
17 matter when there is clear and convincing evidence that
18 such disclosure would—

19 “(i) reasonably be expected to constitute an un-
20 warranted invasion of personal privacy;

21 “(ii) pose a current threat to military defense,
22 intelligence operations, or the conduct of foreign re-
23 lations of the United States;

24 “(iii) reveal an intelligence agent whose identity
25 currently requires protection;

1 “(iv) compromise an understanding of confiden-
2 tiality currently requiring protection between an
3 agent of the Government and a cooperating individ-
4 ual or a foreign government;

5 “(v) constitute a substantial risk of physical
6 harm to a living person who provided confidential in-
7 formation to the United States; or

8 “(vi) compromise an enforcement investigation,
9 inquiry, or prosecution by the Office of Special In-
10 vestigations of the Department of Justice.

11 “(B) Subparagraph (A) shall only apply to records,
12 information, or other relevant matter which is—

13 “(i) properly classified; and

14 “(ii) the protection of which outweighs the pub-
15 lic interest in disclosure.

16 “(3) Any reasonably segregable portion of a matter
17 referred to in paragraph (2) shall be provided, after dele-
18 tion of all portions of the matter that are referred to in
19 such subparagraph, to any person requesting the matter
20 under this section if the reasonably segregable portion of
21 the matter would otherwise be required to be disclosed
22 under this section.

23 “(4) In the case of a request under this section for
24 any matter required to be disclosed under this subsection,
25 if the agency receiving such request is unable to locate

1 the records so requested, such agency shall promptly sup-
2 ply, to the person making such a request, a description
3 of the steps which were taken by such agency to search
4 the indices and other locator systems of the agency to de-
5 termine whether such records are in the possession or con-
6 trol of the agency.”.

7 (b) INAPPLICABILITY OF NATIONAL SECURITY ACT
8 OF 1947 EXEMPTION.—Section 701 of the National Secu-
9 rity Act of 1947 (50 U.S.C. 431) is amended—

10 (1) by redesignating subsections (e) and (f) as
11 subsections (f) and (g), respectively; and

12 (2) by inserting after subsection (d) the follow-
13 ing new subsection:

14 “(e) Subsection (a) shall not apply to any operational
15 file, or any portion of any operational file, described under
16 section 552(d) of title 5, United States Code (Freedom
17 of Information Act).”.

18 **SEC. 3. EFFECTIVE DATE.**

19 The amendments made by this Act shall apply to re-
20 quests made after the expiration of the 180-day period be-
21 ginning on the date of the enactment of this Act.

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