104TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 104–819 Part 1

WAR CRIMES DISCLOSURE ACT

SEPTEMBER 24, 1996.—Ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

REPORT

[To accompany H.R. 1281]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 1281) to amend title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act of information regarding certain individuals who participated in Nazi war crimes during the period in which the United States was involved in World War II, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "War Crimes Disclosure Act".

SEC. 2. REQUIREMENT OF DISCLOSURE UNDER FOIA OF INFORMATION REGARDING INDIVIDUALS WHO COMMITTED NAZI WAR CRIMES.

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

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

(2) by inserting after subsection (c) the following new subsection:

"(d)(1)(A) Notwithstanding subsection (b), this section shall apply to any matter, in the possession or control of a specified agency, that relates to any individual as to whom there exist reasonable grounds to believe that such individual, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

"(i) the Nazi government of Germany,

"(ii) any government in any area occupied by the military forces of the Nazi government of Germany,

"(iii) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(iv) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

"(B) For purposes of subparagraph (A), the term 'specified agency' means the following entities, any predecessor of such an entity, and any component of such an entity (or of such a predecessor):

"(i) The Central Intelligence Agency.

"(ii) The Department of Defense.

"(iii) The National Security Agency.

"(iv) The National Security Council.

"(v) The Department of State.

"(vi) The Federal Bureau of Investigation.

"(vii) The United States Information Agency.

"(2) Paragraph (1) shall not apply to—

"(A) any matter that is referred to in subsection (b)(6);

"(B) any matter the disclosure of which would—

"(i) reveal an intelligence agent regarding whom there is clear and convincing evidence that the identity of such agent currently requires protection;

"(ii) by revealing the name or identity of a living person who provided confidential information to the United States, constitute a substantial risk of harm to such person (as determined by clear and convincing evidence); or

"(iii) compromise the existence of an understanding of confidentiality currently requiring protection between an agent of the Government and a cooperating individual or a foreign government, and (as determined by clear and convincing evidence) cause harm that substantially outweighs the public interest in the disclosure;

"(C) any matter regarding which there is clear and convincing evidence that the current or future threat to national security, military defense, intelligence operations, or the conduct of foreign relations of the United States substantially outweighs the public interest in disclosure of the matter;

"(D) any matter created (by any person) in connection with an investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

"(E) any portion, of any matter, that—

"(i) does not relate to any individual referred to in paragraph (1); and

"(ii) is reasonably segregable from any other portions of the matter that relate to an individual referred to in paragraph (1).

"(3) Any reasonably segregable portion of a matter referred to in subparagraph (A), (B), or (C) of paragraph (2) shall be provided, after deletion of all portions of the matter that are referred to in such subparagraph, to any person requesting the matter under this section if the reasonably segregable portion would otherwise be required to be disclosed under this section.

"(4) In the case of a request under this section for any matter required to be disclosed under this subsection, if the agency receiving such request is unable to locate the records so requested, such agency shall promptly supply, to the person making such request, a description of the steps which were taken by such agency to search the indices and other locator systems of the agency to determine whether such records are in the possession or control of the agency.".

(b) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701 of the National Security Act of 1947 (50 U.S.C. 431) is amended—

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

(2) by inserting after subsection (d) the following new subsection:

"(e) Subsection (a) shall not apply to any operational file, or any portion of any operational file, required to be disclosed under section 552(d) of title 5, United States Code (Freedom of Information Act).".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to requests made after the expiration of the 180-day period beginning on the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act of information regarding certain individuals who participated in Nazi war crimes.

CONTENTS

		Page
I.	Background and need for legislation	3
II.	Legislative Hearings and Committee Action	4
III.	Committee Hearings and Written Testimony	4
IV.	Explanation of the Bill	6
V.	Compliance with Rule XI	9
VI.	Budget Analysis and Projections	9
VII.	Cost Estimate of the Congressional Budget Office	9
VIII.	Inflationary Impact Statement	10
IX.	Changes in Existing Law	10
X.	Committee Recommendation	13
XI.	Congressional Accountability Act; Public Law 104–1	13

I. Background and Need for Legislation

During this session of Congress, we commemorated the 50th anniversary of the conclusion of World War II and the end of the Holocaust. Half a century after the Nazi era, one of the darkest moments in the history of man's inhumanity to man, it is imperative for us to learn all that we can about the Holocaust, so that we can ensure that such a tragic episode never happens again.

With the end of the Cold War, Russia and several other nations that were formally part of the Soviet Union are opening their long secret files on Nazi war crimes. Thanks in part to pressure from Congress, the government of Argentina recently made its war crimes files open to public scrutiny. The Committee believes that our own country should do likewise.

More can still be learned from the Nazi war crimes files in the possession of U.S. government agencies. Some of what we might learn will not be pleasant. Evidence exists, for example, that the U.S. Government actively recruited Nazis and facilitated their entry into our country to pursue early Cold War objectives.

Perhaps the most compelling example of the consequences of keeping U.S. Government files hidden is the case of Kurt Waldheim. For years, the Central Intelligence Agency was keeping its information on Waldheim a secret. This occurred even as the Department of Justice was placing Waldheim on the "watch list" of individuals forbidden to enter the United States. Imagining the consequences if Waldheim's Nazi past had become public is not difficult. Most notably, Waldheim would probably not have been elected to the post of Secretary General of the United Nations.

Waldheim continues to deny that he has a Nazi past and casts himself as a victim. Not only does he deny any involvement in any war crimes, but he blames the American Jewish community for his problems. The Committee hopes that the passage of H.R. 1281 will facilitate the full disclosure of the Waldheim file and ensure that all the facts relating to Waldheim are available.

The U.S. Government's material on Waldheim, and other alleged Nazi war criminals, has remained secret although many researchers have filed Freedom of Information Act ("FOIA") requests to secure copies of these files. However, Federal Government agencies have routinely denied these requests, citing exemptions for national defense, foreign relations, and intelligence reasons. The Committee recognizes that there may be information in these files the disclosure of which would indeed harm U.S. interests. However, more than half a century after the Second World War, it is time

to end the near blanket exemption of Nazi war crimes information from FOIA requests.

The Committee understands that the FOIA must always be applied with a sensitive balance of the public's right to know and the Government's right to preserve national security. Therefore, the bill as reported represents a carefully crafted approach to handling FOIA requests about Nazi war criminals. H.R. 1281 recognizes the need to change current FOIA policy with respect to these records, while protecting the legitimate national security requirements of the Government.

The Committee notes that Executive Order 12958, dated April 17, 1995, provides for the declassification of national security information older than 25 years.[1] The Committee concurs with the sentiment expressed in the Executive Order which states:

> Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national interest has required that certain information be maintained in confidence to protect citizens, our democratic institutions, and our participation within the community of nations. Protecting information critical to our Nation's security remains a priority. In recent years, however, dramatic changes have altered, although not eliminated the national security threats we confront. These changes provide a greater opportunity to emphasize our commitment to open government.

In this spirit, records in agency archives about Nazi war criminals should finally be made available to the public.

II. Legislative Hearings and Committee Action

Mrs. Maloney introduced H.R. 1281 on March 21, 1995. The bill was referred to the Committee on Government Reform and Oversight. In addition, the Permanent Select Committee on Intelligence and the Committee on the Judiciary also received referrals. On June 14, 1996, the Subcommittee on Government Management, Information and Technology held a legislative hearing on H.R. 1281.

H.R. 1281 was marked up on July 12, 1996 by the Subcommittee on Government Management, Information and Technology. Mrs. Maloney offered an amendment in the nature of a substitute. No additional amendments were offered and the legislation was passed by the subcommittee unanimously.

The Committee on Government Reform and Oversight met on July 25, 1996. No amendments were offered and H.R. 1281 was unanimously reported to the House by voice vote.

III. Committee Hearings and Written Testimony

On June 13th and 14th, 1996, the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, held hearings on Federal infor-

[1] Executive Order 12958 of April 17, 1995, Classified National Security Information. See Federal Register, v. 60, April 20, pp.19825–19843.

mation policy. The Subcommittee devoted the first day of hearings to oversight of information policy. The second day was a legislative hearing which considered related amendments to the Freedom of Information Act: H.R. 1281; "The War Crimes Disclosure Act"; and S. 1090, "The Electronic Freedom of Information Improvement Act of 1995."[2]

In his remarks, Chairman Horn noted his conviction that various administrations had erred opposing the release of information of historical significance. He noted his surprise at learning at the prior day's hearing that some records of the First World War had not yet been made public. Citing the example of the Pentagon Papers, he said: "I never could understand why one administration contests the release of records of historical interest of a prior administration. I thought the day the Pentagon Papers came out, Nixon ought to have said, 'Hey, it isn't our show, Let's print them.'"

Representative Maloney, the ranking member, in her opening statement explained her reasons for sponsoring H.R. 1281, commenting:

> I introduced H.R. 1281 to close what I perceive is a tremendous loophole in the FOIA. Under current law, the FOIA allows Government agencies to block the release of information for a variety of reasons, including outdated "national security" arguments no longer valid in the post Cold War era.

The Subcommittee received testimony concerning H.R. 1281 from Representative Tom Lantos, former Representative Elizabeth Holtzman and Professor Robert Herzstein, a member of the Department of History at the University of South Carolina.

Representative Maloney observed in her introduction of Representative Lantos that he is the only Holocaust survivor in Congress. Representative Lantos supported the bill, noting: "What we are dealing with in this legislation is a desperate race against time, because those who are guilty of the most heinous atrocities against fellow human beings in the history of mankind are rapidly reaching an age where they are passing on and will be no longer with us."

Ms. Holtzman recounted her own legislative efforts as a Member of Congress in strengthening U.S. efforts at tracking down and prosecuting fugitive war criminals. As a result of her legislative initiatives, suspected Nazi war criminals were placed on a "Watch List" of individuals excluded from admission to the United States. In addition the efforts of the Department of Justice to prosecute suspected Nazi war criminals were strengthened. Ms. Holtzman expressed her concern that the bill could unintentionally undermine the work of the Department of Justice's Office of Special Investigations (OSI) in tracking down and expelling Nazi war criminals. She noted that the Committee had received a letter from the Department that detailed their concerns. As an alternative, Ms. Holtzman suggested making subject to the legislation the files only of those agencies, or their successor agencies, that would have had direct

[2] The Subcommittee subsequently considered H.R. 3802, the "Electronic Freedom of Information Amendments of 1996," which was introduced by Representative Tate on July 12, 1996. This legislation passed the House of Representatives on September 17, 1996.

contact with Nazi war criminals. The agencies include: the Department of State, the Department of Defense, the Central Intelligence Agency, the National Security Agency, the National Security Council, and the Federal Bureau of Investigation. Ms. Holtzman also proposed that for alleged Nazi war criminals, a blanket rule be adopted, i.e., any information in the files of any U.S. agency as of 1966 be made available.

Professor Herzstein recounted his experience researching the activities of Kurt Waldheim. Because of agency denials of his FOIA requests, Professor Herzstein maintained that historically valuable information about Waldheim had been kept secret. He relayed his conclusion based on existing records that U.S. agencies were aware of information implicating Waldheim in war crimes. Nevertheless, Professor Herzstein asserted, Waldheim maintained a long-term confidential relationship with both the Department of State and the Central Intelligence Agency.

Representative Maloney expressed her interest in obtaining a full accounting of U.S. government contacts with Waldheim, noting that: "I drafted H.R. 1281 to ensure that the entire Waldheim file is finally made public. It is also my hope that the enactment of this bill would help those who research the horrors of the Holocaust ensure that cases like Waldheim's do not occur in the future."

IV. Explanation of the Bill

A. Overview

The War Crimes Disclosure Act amends the Freedom of Information Act to require specified Government agencies to fulfill FOIA requests about individuals who committed war crimes during the Nazi era.

B. Section-by-Section Analysis

Section 1—Short title

The Act may be cited as the "War Crimes Disclosure Act."

Section 2—Requirement of disclosure under Freedom of Information Act of information regarding individuals who committed Nazi war crimes

Section 2(a)—Nazi War Criminals

The bill makes certain information about individuals reasonably believed to have participated in Nazi war crimes subject to the Freedom of Information Act. The Committee expects that a requestor would present some evidence to support the request. Examples of possible supporting evidence include: press clippings, historical records, scholarly literature, affidavits from credible witnesses, evidence from the files of another country or the appearance of the individual on the Department of Justice's Immigration and Naturalization Service's "Watch List,". The "Watch List" or Automated Visa Lookout System is maintained by the Departments of State and Justice, pursuant to immigration law, and lists aliens who are ineligible for entry into the U.S. As a result of the Holtzman

Amendment, certain suspected Nazi war criminals were added to this watch list.[3]

A mere assertion by the requestor that the subject of a request had been a Nazi war criminal would not be sufficient to trigger the provisions of this bill. A finding by a U.S. agency that the subject of a FOIA request under this bill is a suspected war criminal should be given considerable weight. In absence of strong supporting evidence, broad latitude should be extended to a determination by an agency receiving a FOIA request about whether the subject of the request qualifies under the provisions of this bill.

Section 2(a)—Specified agencies

The bill specifies seven departments and agencies that the Committee understands are likely to be in possession of Nazi war crimes files: The Department of State, the Department of Defense, the Central Intelligence Agency, the National Security Agency, the National Security Council, and the United States Information Agency (USIA). In addition the Federal Bureau of Investigations, within the Department of Justice was included. The bill also specifies that all predecessor agencies and all components of these agencies and departments are also included. For example, Radio Liberty would be covered because it is now a component of the USIA.

This legislation reflects existing legislative policy that each of these agencies are subject to the FOIA. The records of each of these agencies are currently fully subject to FOIA requests, subject to the enumerated exemptions. This legislation affects the application of the FOIA exemptions regarding records held by these agencies.

Section 2(a)—Exemptions

The bill incorporates several exemptions to the disclosure requirements of the bill. Records that do not relate to an alleged Nazi criminal, and which are reasonably segreable from other records would be subject to all the existing exemption protections of the Freedom of Information Act.

Section 2(a)—Exemptions for intelligence

The Committee believes that there are legitimate reasons for intelligence agencies not to disclose certain files, but that these reasons must have currency and the harm caused by disclosure must substantially outweigh the public benefit. Exemptions include matters the disclosure of which would either: 1) reveal an intelligence agent whose identity currently requires protection; 2) reveal a confidential source thus posing harm to that individual; or 3) compromise an intelligence agreement between the U.S. and a foreign government or individual. In each case, the agency must show clear and convincing evidence that the disclosure of the information would cause harm that substantially outweighs the public good.

As noted above, Executive Order 12958 provides an administrative framework for the declassification of records older than 25 years. The policies in this order express a clear mandate to expedite the declassification of historical records, consistent with continuing national security interests.

[3] 8 U.S.C. 1182(a)(3)(e), P.L. 95–549.

Section 2(a)—Additional national interest exemptions

The intent of this subparagraph is to modernize the traditional national security exemptions. The Committee wishes to end the practice of blocking the release of material because it threatened interests of the United States in the past. In order for an agency to cite national security, military defense, intelligence, or foreign relations exemptions, it must show the current or future threats posed by disclosure. Again, the threat of disclosure must substantially outweigh the public interest that would accrue by the release of the material.

Section 2(a)—Exemption for Office of Special Investigations records

The intention of this bill is to expose Nazi secrets and not, of course, to hinder the prosecution and extradition of Nazi war criminals. For that reason, the bill exempts any records created in connection with an investigation, inquiry, or prosecution by the Government's Nazi-hunting unit, the Office of Special Investigations (OSI).

The Committee was concerned that if OSI files were covered by this bill, the OSI's valuable work would be hampered. Disclosure of OSI material could provide Nazi war criminals with investigation and litigation strategies being used against them. In addition, given OSI's declining resources and increasing time constraints, the Committee does not want to see the office consumed with the task of fulfilling FOIA requests, particularly since these requests are likely to be filed by the families and defense attorneys of the accused Nazi war criminals.

The Committee does want to make it clear that there is ample material in OSI files that originally came, and still exists, in the files of agencies covered by the bill. This material should be disclosed if requested. For example, an original file about a Nazi war criminal might exist in the Department of State. A copy of that material may have been sent to OSI. Since the file was not created in connection with an OSI investigation, it could be obtained from State. However, a State Department copy of a memorandum from OSI to State requesting the file of a war criminal would not be disclosed, because it was created in connection with an OSI investigation.

Section 2(a)—Reasonable segregation of material

The Committee intends that if a portion of a file requested under this legislation is not to be disclosed in accordance with one of the exemptions, this does not mean that the entire file needs to be kept secret. Portions of files that can be reasonably segregated from the exempted material must be disclosed. This provision is intended to ensure that the agencies covered by the bill do not continue the practice of exempting large volumes of material simply because part of a file is excludable. Agencies redacting exempted material should communicate with requestors about the reasons for and the extent of material redacted. If appropriate, agencies should communicate with requestors on alternative avenues to obtaining requested information, so as not to compromise protected interests.

Section 2(a)—Proof of thorough search

This provision mandates that an agency show proof of the steps taken to find a particular file if, in fact, the material was not found.

Section 2(b)—Inapplicability of National Security Act of 1947 exemption

This section amends the National Security Act to ensure that the same disclosure procedures contained in this bill are applied to operation files of the Central Intelligence Agency that are subject to FOIA requests.[4] Any disclosure of the material contained in such files must be carefully balanced to protect the national interest. Some information contained in Government files may be recent enough to raise legitimate issues of concern for national security. The intent of the Committee is to make available information of historical interest, but not to jeopardize national security.

Section 3—Effective date

The bill becomes effective 180 days after enactment.

V. Compliance With Rule XI

Pursuant to rule XI, clause 2(l)(3)(A) of the rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

VI. Budget Analysis and Projections

This Act provides for no new authorizations or budget authority or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act are not applicable.

VII. Cost Estimate of the Congressional Budget Office

The Committee was provided with the following estimate of the cost of H.R. 1281, as prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 10, 1996.

Hon. William F. Clinger, Jr.,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 1281, the War Crimes Disclosure Act, as ordered reported by the House Committee on Government Reform and Oversight on July 25, 1996. CBO estimates that enacting H.R. 1281 would not have a significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

[4] 50 U.S.C. 431.

H.R. 1281 would require that certain agencies disclose information under the Freedom of Information Act (FOIA) on individuals for whom their exists reasonable grounds to believe they participated or assisted in the execution of Nazi war crimes. Specifically, the bill would direct the Central Intelligence Agency, the Department of Defense, the National Security Agency, the National Security Council, the Department of State, and the Federal Bureau of Investigation to disclose such information if its disclosure would not threaten (1) national security or foreign relations interests, (2) the investigation or prosecution of such individuals by the Department of Justice, (3) the safety of a confidential informant to the United States government, or (4) the identify of an intelligence agent who currently requires protection. The bill's provisions would apply to request received 180 days after enactment.

The bill would increase from researchers, citizens, and public interest groups for new information that might become available if it were enacted, but it would also reduce the number of a repeat requests and appeals for information denied to such individuals under current law. For calendar year 1992—the most recent year for which data was available on FOIA activities—the average cost across all agencies to process a FOIA request was $189. For some agencies, such costs are considerably higher. For instance, the average cost reported by the Department of State in 1992 was $1,092. Thus, even assuming the higher cost per request, FOIA costs would still increase by less than $1 million a year as long as any net increase in the number or annual requests is less than about 1,000. Agencies received about 575,000 requests in 1992.

H.R. 1281 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) and would have no impact on the budgets of state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contract is John R. Righter.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

VIII. INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(l)(4) of the Rules of the House of Representative, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 552 OF TITLE 5, UNITED STATES CODE

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) * * *

* * * * * * *

(d)(1)(A) Notwithstanding subsection (b), this section shall apply to any matter, in the possession or control of a specified agency, that relates to any individual as to whom there exist reasonable grounds to believe that such individual, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(i) the Nazi government of Germany,

(ii) any government in any area occupied by the military forces of the Nazi government of Germany,

(iii) any government established with the assistance or cooperation of the Nazi government of Germany, or

(iv) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

(B) For purposes of subparagraph (A), the term "specified agency" means the following entities, any predecessor of such an entity, and any component of such an entity (or of such a predecessor):

(i) The Central Intelligence Agency.

(ii) The Department of Defense.

(iii) The National Security Agency.

(iv) The National Security Council.

(v) The Department of State.

(vi) The Federal Bureau of Investigation.

(vii) The United States Information Agency.

(2) Paragraph (1) shall not apply to—

(A) any matter that is referred to in subsection (b)(6);

(B) any matter the disclosure of which would—

(i) reveal an intelligence agent regarding whom there is clear and convincing evidence that the identity of such agent currently requires protection;

(ii) by revealing the name or identity of a living person who provided confidential information to the United States, constitute a substantial risk of harm to such person (as determined by clear and convincing evidence); or

(iii) compromise the existence of an understanding of confidentiality currently requiring protection between an agent of the Government and a cooperating individual or a foreign government, and (as determined by clear and convincing evidence) cause harm that substantially outweighs the public interest in the disclosure;

(C) any matter regarding which there is clear and convincing evidence that the current or future threat to national security, military defense, intelligence operations, or the conduct of foreign relations of the United States substantially outweighs the public interest in disclosure of the matter;

(D) any matter created (by any person) in connection with an investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(E) any portion, of any matter, that—

(i) does not relate to any individual referred to in paragraph (1); and

(ii) is reasonably segregable from any other portions of the matter that relate to an individual referred to in paragraph (1).

(3) Any reasonably segregable portion of a matter referred to in subparagraph (A), (B), or (C) of paragraph (2) shall be provided, after deletion of all portions of the matter that are referred to in such subparagraph, to any person requesting the matter under this section if the reasonably segregable portion would otherwise be required to be disclosed under this section.

(4) In the case of a request under this section for any matter required to be disclosed under this subsection, if the agency receiving such request is unable to locate the records so requested, such agency shall promptly supply, to the person making such request, a description of the steps which were taken by such agency to search the indices and other locator systems of the agency to determine whether such records are in the possession or control of the agency.

[(d)**]** *(e)* This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

[(e)**]** *(f)* On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) * * *

* * * * * * *

[(f)**]** *(g)* For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

SECTION 701 OF THE NATIONAL SECURITY ACT OF 1947

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

SEC. 701. (a) * * *

* * * * * * *

(e) Subsection (a) shall not apply to any operational file, or any portion of any operational file, required to be disclosed under section 552(d) of title 5, United States Code (Freedom of Information Act).

[(e)**]** *(f)* 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.

[(f)**]** *(g)* 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) * * *

* * * * * * *

X. Committee Recommendations

On July 25, 1996, a quorum being present, the Committee ordered the Committee Print of H.R. 1281, as approved by the Subcommittee on Government Management, Information, and Technology, favorable reported.

Date: July 25, 1996
Final Passage of H.R. 3802
Offered By: Mr. Horn
Voice Vote: Ayes

XI. Congressional Accountability Act; Public Law 104–1; Section 102(b)(3)

This provision applies to the legislative branch in that the Comptroller General is required to review laws and regulations to determine that they do not conflict with the provisions of this bill. It does not relate to any terms or condition of employment or access to public services or accommodations.

○