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98TH CONGRESS
2D SESSION

H. R. 5164

[Report No. 98–726, Parts I and II]

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1984

Mr. MAZZOLI (for himself, Mr. BOLAND, Mr. ROBINSON, and Mr. WHITEHURST) introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

MAY 1, 1984

Reported from the Permanent Select Committee on Intelligence with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 10, 1984

Reported from the Committee on Government Operations with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on March 15, 1984]

A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Information Act".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

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

"SEC. 701. (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

"(b) For the purposes of this title, the term 'operational files' means—

"(1) files of the Directorate of Operations 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;

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1 *"(2) files of the Directorate for Science and Tech-*
2 *nology which document the means by which foreign in-*
3 *telligence or counterintelligence is collected through sci-*
4 *entific and technical systems; and*
5 *"(3) files of the Office of Security which docu-*
6 *ment investigations conducted to determine the suitabil-*
7 *ity of potential foreign intelligence or counterintelli-*
8 *gence sources;*
9 *except that files which are the sole repository of disseminated*
10 *intelligence are not operational files.*
11 *"(c) Notwithstanding subsection (a) of this section, ex-*
12 *empted operational files shall continue to be subject to search*
13 *and review for information concerning—*
14 *"(1) United States citizens or aliens lawfully ad-*
15 *mitted for permanent residence who have requested in-*
16 *formation on themselves pursuant to the provisions of*
17 *section 552 of title 5, United States Code (Freedom of*
18 *Information Act), or section 552a of title 5, United*
19 *States Code (Privacy Act of 1974);*
20 *"(2) any special activity the existence of which is*
21 *not exempt from disclosure under the provisions of sec-*
22 *tion 552 of title 5, United States Code (Freedom of*
23 *Information Act); or*
24 *"(3) the specific subject matter of an investigation*
25 *by the intelligence committees of the Congress, the In-*

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1 *telligence Oversight Board, the Department of Justice,*
2 *the Office of General Counsel of the Central Intelli-*
3 *gence Agency, the Office of Inspector General of the*
4 *Central Intelligence Agency, or the Office of the Direc-*
5 *tor of Central Intelligence for any impropriety, or vio-*
6 *lation of law, Executive order, or Presidential direc-*
7 *tive, in the conduct of an intelligence activity.*
8 *"(d)(1) Files that are not exempted under subsection (a)*
9 *of this section which contain information derived or dissemi-*
10 *nated from exempted operational files shall be subject to*
11 *search and review.*
12 *"(2) The inclusion of information from exempted oper-*
13 *ational files in files that are not exempted under subsection*
14 *(a) of this section shall not affect the exemption under subsec-*
15 *tion (a) of this section of the originating operational files*
16 *from search, review, publication, or disclosure.*
17 *"(3) Records from exempted operational files which*
18 *have been disseminated to and referenced in files that are not*
19 *exempted under subsection (a) of this section and which have*
20 *been returned to exempted operational files for sole retention*
21 *shall be subject to search and review.*
22 *"(e) The provisions of subsection (a) of this section shall*
23 *not be superseded except by a provision of law which is en-*
24 *acted after the date of enactment of subsection (a), and which*
25 *specifically cites and repeals or modifies its provisions.*

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1 *"(f) Whenever any person who has requested Agency*
2 *records under section 552 of title 5, United States Code*
3 *(Freedom of Information Act), alleges that the Central Intel-*
4 *ligence Agency has improperly withheld records because of*
5 *failure to comply with any provision of this section, judicial*
6 *review shall be available under the terms set forth in section*
7 *552(a)(4)(B) of title 5, United States Code, except that—*
8 *"(1) in any case in which information specifically*
9 *authorized under criteria established by an Executive*
10 *order to be kept secret in the interest of national de-*
11 *fense or foreign relations is filed with, or produced for,*
12 *the court by the Central Intelligence Agency, such in-*
13 *formation shall be examined ex parte, in camera by the*
14 *court;*
15 *"(2) the court shall, to the fullest extent practica-*
16 *ble, determine issues of fact based on sworn written*
17 *submissions of the parties;*
18 *"(3) when a complainant alleges that requested*
19 *records were improperly withheld because of improper*
20 *placement solely in exempted operational files, the com-*
21 *plainant shall support such allegation with a sworn*
22 *written submission, based upon personal knowledge or*
23 *otherwise admissible evidence;*
24 *"(4)(A) when a complainant alleges that requested*
25 *records were improperly withheld because of improper*

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1 *exemption of operational files, the Central Intelligence*
2 *Agency shall meet its burden under section*
3 *552(a)(4)(B) of title 5, United States Code, by demon-*
4 *strating to the court by sworn written submission that*
5 *exempted operational files likely to contain responsive*
6 *records currently perform the functions set forth in*
7 *subsection (b) of this section; and*
8 *"(B) the court may not order the Central Intelli-*
9 *gence Agency to review the content of any exempted*
10 *operational file or files in order to make the demonstra-*
11 *tion required under subparagraph (A) of this para-*
12 *graph, unless the complainant disputes the Central In-*
13 *telligence Agency's showing with a sworn written sub-*
14 *mission based on personal knowledge or otherwise ad-*
15 *missible evidence;*
16 *"(5) in proceedings under paragraphs (3) and (4)*
17 *of this subsection the parties shall not obtain discovery*
18 *pursuant to rules 26 through 36 of the Federal Rules*
19 *of Civil Procedure, except that requests for admission*
20 *may be made pursuant to rules 26 and 36;*
21 *"(6) if the court finds under this subsection that*
22 *the Central Intelligence Agency has improperly with-*
23 *held requested records because of failure to comply with*
24 *any provision of this section, the court shall order the*
25 *Central Intelligence Agency to search and review the*

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1 *appropriate exempted operational file or files for the re-*
2 *quested records and make such records, or portions*
3 *thereof, available in accordance with the provisions of*
4 *section 552 of title 5, United States Code (Freedom of*
5 *Information Act), and such order shall be the exclusive*
6 *remedy for failure to comply with this section; and*
7 *"(7) if at any time following the filing of a com-*
8 *plaint pursuant to this subsection the Central Intelli-*
9 *gence Agency agrees to search the appropriate exempted*
10 *operational file or files for the requested records, the*
11 *court shall dismiss the claim based upon such com-*
12 *plaint.*
13 *"DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES*
14 *"SEC. 702. (a) Not less than once every ten years, the*
15 *Director of Central Intelligence shall review the exemptions*
16 *in force under subsection (a) of section 701 of this Act to*
17 *determine whether such exemptions may be removed from*
18 *any category of exempted files or any portion thereof.*
19 *"(b) The review required by subsection (a) of this sec-*
20 *tion shall include consideration of the historical value or*
21 *other public interest in the subject matter of the particular*
22 *category of files or portions thereof and the potential for de-*
23 *classifying a significant part of the information contained*
24 *therein.*

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1 *"(c) A complainant who alleges that the Central Intelli-*
2 *gence Agency has improperly withheld records because of*
3 *failure to comply with this section may seek judicial review*
4 *in the district court of the United States of the district in*
5 *which any of the parties reside, or in the District of Colum-*
6 *bia. In such a proceeding, the court's review shall be limited*
7 *to determining (1) whether the Central Intelligence Agency*
8 *has conducted the review required by subsection (a) of this*
9 *section within ten years of enactment of this title or within*
10 *ten years after the last review, and (2) whether the Central*
11 *Intelligence Agency, in fact, considered the criteria set forth*
12 *in subsection (b) of this section in conducting the required*
13 *review.".*

14 *(b) The table of contents at the beginning of such Act is*
15 *amended by adding at the end thereof the following:*

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.
"Sec. 702. Decennial review of exempted operational files.".

16 *SEC. 3. The Director of Central Intelligence, in consul-*
17 *tation with the Archivist of the United States, the Librarian*
18 *of Congress, and appropriate representatives of the historical*
19 *discipline selected by the Archivist, shall prepare and submit*
20 *by June 1, 1985, to the Permanent Select Committee on In-*
21 *telligence of the House of Representatives and the Select*
22 *Committee on Intelligence of the Senate a report on the feasi-*

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1 *bility of conducting systematic review for declassification and*
2 *release of Central Intelligence Agency information of histori-*
3 *cal value.*

4 *SEC. 4. The amendments made by section 2 shall be*
5 *effective upon enactment of this Act and shall apply with*
6 *respect to any requests for records, whether or not such re-*
7 *quest was made prior to such enactment, and shall apply to*
8 *all civil actions not commenced prior to February 7, 1984.*

9 **That this Act may be cited as the "Central Intelli-**
10 **gence Agency Information Act".**

11 **SEC. 2. (a) The National Security Act of 1947**
12 **is amended by adding at the end thereof the fol-**
13 **lowing new title:**

14 **"TITLE VII—PROTECTION OF OPERATIONAL**
15 **FILES OF THE CENTRAL INTELLIGENCE**
16 **AGENCY**

17 **"EXEMPTION OF CERTAIN OPERATIONAL FILES**
18 **FROM SEARCH, REVIEW, PUBLICATION, OR DIS-**
19 **CLOSURE**

20 **"SEC. 701. (a) Operational files of the Central**
21 **Intelligence Agency may be exempted by the Di-**
22 **rector of Central Intelligence from the provisions**
23 **of section 552 of title 5, United States Code (Free-**
24 **dom of Information Act), which require publica-**

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1 tion or disclosure, or search or review in connec-
2 tion therewith.
3 "(b) For the purposes of this title the term
4 'operational files' means—
5 "(1) files of the Directorate of Operations
6 which document the conduct of foreign intel-
7 ligence or counterintelligence operations or
8 intelligence or security liaison arrangements
9 or information exchanges with foreign gov-
10 ernments or their intelligence or security
11 services;
12 "(2) files of the Directorate for Science
13 and Technology which document the means
14 by which foreign intelligence or counterintel-
15 ligence is collected through scientific and
16 technical systems; and
17 "(3) files of the Office of Security which
18 document investigations conducted to deter-
19 mine the suitability of potential foreign intel-
20 ligence or counterintelligence sources;
21 except that files which are the sole repository of
22 disseminated intelligence are not operational files.
23 "(c) Notwithstanding subsection (a) of this
24 section, exempted operational files shall continue

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1 to be subject to search and review for information
2 concerning—
3 "(1) United States citizens or aliens law-
4 fully admitted for permanent residence who
5 have requested information on themselves
6 pursuant to the provisions of section 552 of
7 title 5, United States Code (Freedom of Infor-
8 mation Act), or section 552a of title 5, United
9 States Code (Privacy Act of 1974);
10 "(2) any special activity the existence of
11 which is not exempt from disclosure under
12 the provisions of section 552 of title 5, United
13 States Code (Freedom of Information Act); or
14 "(3) the specific subject matter of an in-
15 vestigation by the intelligence committees of
16 the Congress, the Intelligence Oversight
17 Board, the Department of Justice, the Office
18 of General Counsel of the Central Intelli-
19 gence Agency, the Office of Inspector Gener-
20 al of the Central Intelligence Agency, or the
21 Office of the Director of Central Intelligence
22 for any impropriety, or violation of law, Ex-
23 ecutive order, or Presidential directive, in the
24 conduct of an intelligence activity.

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1 "(d)(1) Files that are not exempted under sub-
2 section (a) of this section which contain informa-
3 tion derived or disseminated from exempted oper-
4 ational files shall be subject to search and review.
5 "(2) The inclusion of information from ex-
6 empted operational files in files that are not ex-
7 empted under subsection (a) of this section shall
8 not affect the exemption under subsection (a) of
9 this section of the originating operational files
10 from search, review, publication, or disclosure.
11 "(3) Records from exempted operational files
12 which have been disseminated to and referenced
13 in files that are not exempted under subsection (a)
14 of this section and which have been returned to
15 exempted operational files for sole retention shall
16 be subject to search and review.
17 "(e) The provisions of subsection (a) of this
18 section shall not be superseded except by a provi-
19 sion of law which is enacted after the date of en-
20 actment of subsection (a), and which specifically
21 cites and repeals or modifies its provisions.
22 "(f) Whenever any person who has requested
23 agency records under section 552 of title 5, United
24 States Code (Freedom of Information Act), alleges
25 that the Central Intelligence Agency has improp-

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1 erly withheld records because of failure to comply
2 with any provision of this section, judicial review
3 shall be available under the terms set forth in sec-
4 tion 552(a)(4)(B) of title 5, United States Code,
5 except that—
6 "(1) in any case in which information
7 specifically authorized under criteria estab-
8 lished by an Executive order to be kept secret
9 in the interest of national defense or foreign
10 relations which is filed with, or produced for,
11 the court by the Central Intelligence Agency,
12 such information shall be examined ex parte,
13 in camera by the court;
14 "(2) the court shall, to the fullest extent
15 practicable, determine issues of fact based on
16 sworn written submissions of the parties;
17 "(3) when a complaint alleges that re-
18 quested records were improperly withheld be-
19 cause of improper placement solely in ex-
20 empted operational files, the complainant
21 shall support such allegation with a sworn
22 written submission, based upon personal
23 knowledge or otherwise admissible evidence;
24 "(4)(A) when a complainant alleges that
25 requested records were improperly withheld

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1 because of improper exemption of operation-
2 al files, the Central Intelligence Agency shall
3 meet its burden under section 552(a)(4)(B) of
4 title 5, United States Code, by demonstrating
5 to the court by sworn written submission that
6 exempted operational files likely to contain
7 responsive records currently perform the
8 functions set forth in subsection (b) of this
9 section; and
10 "(B) the court may not order the Central
11 Intelligence Agency to review the content of
12 any exempted operational file or files in
13 order to make the demonstration required
14 under subparagraph (A) of this paragraph,
15 unless the complainant disputes the Central
16 Intelligence Agency's showing with a sworn
17 written submission based on personal knowl-
18 edge or otherwise admissible evidence;
19 "(5) in proceedings under paragraphs (3)
20 and (4) of this subsection, the parties shall
21 not obtain discovery pursuant to rules 26
22 through 36 of the Federal Rules of Civil Pro-
23 cedure, except that requests for admission
24 may be made pursuant to rules 26 and 36;

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1 "(6) if the court finds under this subsec-
2 tion that the Central Intelligence Agency has
3 improperly withheld requested records be-
4 cause of failure to comply with any provision
5 of this section, the court shall order the Cen-
6 tral Intelligence Agency to search and review
7 the appropriate exempted operational file or
8 files for the requested records and make such
9 records, or portions thereof, available in ac-
10 cordance with the provisions of section 552 of
11 title 5, United States Code (Freedom of Infor-
12 mation Act), and such order shall be the ex-
13 clusive remedy for failure to comply with this
14 section; and
15 "(7) if at any time following the filing of
16 a complaint pursuant to this subsection the
17 Central Intelligence Agency agrees to search
18 the appropriate exempted operational file or
19 files for the requested records, the court shall
20 dismiss the claim based upon such complaint.
21 "DECENNIAL REVIEW OF EXEMPTED OPERATIONAL
22 FILES
23 "SEC. 702. (a) Not less than once every ten
24 years, the Director of Central Intelligence shall
25 review the exemptions in force under subsection

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1 (a) of section 701 of this Act to determine whether
2 such exemptions may be removed from any cate-
3 gory of exempted files or any portion thereof.
4 "(b) The review required by subsection (a) of
5 this section shall include consideration of the his-
6 torical value or other public interest in the subject
7 matter of the particular category of files or por-
8 tions thereof and the potential for declassifying a
9 significant part of the information contained
10 therein.
11 "(c) A complainant who alleges that the Cen-
12 tral Intelligence Agency has improperly withheld
13 records because of failure to comply with this sec-
14 tion may seek judicial review in the district court
15 of the United States of the district in which any of
16 the parties reside, or in the District of Columbia.
17 In such a proceeding, the court's review shall be
18 limited to determining (1) whether the Central In-
19 telligence Agency has conducted the review re-
20 quired by subsection (a) of this section within ten
21 years of enactment of this title or within ten years
22 after the last review, and (2) whether the Central
23 Intelligence Agency, in fact, considered the crite-
24 ria set forth in subsection (b) of this section in
25 conducting the required review.".

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1 (b) The table of contents at the beginning of
2 such Act is amended by adding at the end thereof
3 the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.
"Sec. 702. Decennial review of exempted operational files.".

4 (c) Subsection (q) of section 552a of title 5,
5 United States Code, is amended—
6 (1) by inserting "(1)" after "(q)"; and
7 (2) by adding at the end thereof the fol-
8 lowing:
9 "(2) No agency shall rely on any exemption in
10 this section to withhold from an individual any
11 record which is otherwise accessible to such indi-
12 vidual under the provisions of section 552 of this
13 title.".
14 SEC. 3. (a) The Director of Central Intelli-
15 gence, in consultation with the Archivist of the
16 United States, the Librarian of Congress, and ap-
17 propriate representatives of the historical disci-
18 pline selected by the Archivist, shall prepare and
19 submit by June 1, 1985, a report on the feasibility
20 of conducting systematic review for declassifica-
21 tion and release of Central Intelligence Agency in-
22 formation of historical value.

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1 (b)(1) The Director shall, once each six
2 months, prepare and submit an unclassified report
3 which includes—
4 (A) a description of the specific measures
5 established by the Director to improve the
6 processing of requests under section 552 of
7 title 5, United States Code;
8 (B) the current budgetary and personnel
9 allocations for such processing;
10 (C) the number of such requests (i) re-
11 ceived and processed during the preceding six
12 months, and (ii) pending at the time of sub-
13 mission of such report; and
14 (D) an estimate of the current average
15 response time for completing the processing
16 of such requests.
17 (2) The first report required by paragraph (1)
18 shall be submitted by a date which is six months
19 after the date of enactment of this Act. The re-
20 quirements of such paragraph shall cease to apply
21 after the submission of the fourth such report.
22 (c) Each of the reports required by subsec-
23 tions (a) and (b) shall be submitted to the Perma-
24 nent Select Committee on Intelligence and the
25 Committee on Government Operations of the

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1 House of Representatives and the Select Commit-
2 tee on Intelligence and the Committee on the Judi-
3 ciary of the Senate.

4 SEC. 4. The amendments made by subsections
5 (a) and (b) of section 2 shall be effective upon en-
6 actment of this Act and shall apply with respect to
7 any requests for records, whether or not such re-
8 quest was made prior to such enactment, and shall
9 apply to all civil actions not commenced prior to
10 February 7, 1984.

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