

Calendar No. 323

105TH CONGRESS
2D SESSION

S. 1379

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1997

Mr. DEWINE (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. D'AMATO, Mr. DODD, Mr. KOHL, Mr. COVERDELL, Mr. KENNEDY, Mr. INOUYE, Mr. LIEBERMAN, Ms. SNOWE, Mr. HUTCHINSON, Mr. THURMOND, Mr. McCAIN, Mr. SHELBY, Mr. CAMPBELL, Mr. WYDEN, Mr. TORRICELLI, Mr. KERREY, Mr. DURBIN, Mr. SPECTER, Mr. ABRAHAM, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 5, 1998

Reported by Mr. HATCH, with an amendment

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

A BILL

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without im-

pairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, 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 "Nazi War Crimes Dis-
5 closure Act".

6 SEC. 2. REQUIREMENT OF DISCLOSURE UNDER FREEDOM
7 OF INFORMATION REGARDING PERSONS
8 WHO COMMITTED NAZI WAR CRIMES.

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

11 (1) in subsection (a)(4)(B) in the second sen-
12 tence, by inserting “or subsection (h)” after “sub-
13 section (b)”; and

14 (2) by inserting after subsection (g) the follow-
15 ing:

16 “(h)(1) For the purposes of this subsection, the term
17 ‘Nazi war criminal records’ means records or portions of
18 records that—

19 “(A) pertain to any person as to whom the
20 United States Government, in its sole discretion, has
21 determined there exists reasonable grounds to be-
22 lieve that such person, during the period beginning

1 on March 23, 1933, and ending on May 8, 1945,
2 under the direction of, or in association with—

3 “(i) the Nazi government of Germany;

4 “(ii) any government in any area occupied
5 by the military forces of the Nazi government
6 of Germany;

7 “(iii) any government established with the
8 assistance or cooperation of the Nazi govern-
9 ment of Germany; or

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

12 ordered, incited, assisted, or otherwise participated
13 in the persecution of any person because of race, re-
14 ligion, national origin, or political opinion; or

15 “(B) pertain to any transaction as to which the
16 United States Government, in its sole discretion, has
17 determined there exists reasonable grounds to be-
18 lieve—

19 “(i) involved assets taken from persecuted
20 persons during the period beginning on March
21 23, 1933, and ending on May 8, 1945, by,
22 under the direction of, on behalf of, or under
23 authority granted by the Nazi government of
24 Germany or any nation then allied with that
25 government; and

1 “(ii) such transaction was completed without
2 the assent of the owners of those assets or
3 their heirs or assigns or other legitimate rep-
4 resentatives.

5 “(2)(A) Notwithstanding subsection (b), this sub-
6 section shall apply to Nazi war criminal records.

7 “(B) Subject to subparagraphs (C), (D), and (E),
8 Nazi war criminal records that are responsive to a request
9 for records made in accordance with subsection (a) shall
10 be released in their entirety.

11 “(C) An agency head may exempt from release under
12 subparagraph (B) specific information, the release of
13 which should be expected to—

14 “(i) constitute a clearly unwarranted invasion of
15 personal privacy;

16 “(ii) reveal the identity of a confidential human
17 source, or reveal information about the application
18 of an intelligence source or method, or reveal the
19 identity of a human intelligence source when the un-
20 authorized disclosure of that source would clearly
21 and demonstrably damage the national security in-
22 terests of the United States;

23 “(iii) reveal information that would assist in the
24 development or use of weapons of mass destruction;

1 “(iv) reveal information that would impair
2 United States cryptologic systems or activities;

3 “(v) reveal information that would impair the
4 application of state-of-the-art technology within a
5 United States weapon system;

6 “(vi) reveal actual United States military war
7 plans that remain in effect;

8 “(vii) reveal information that would seriously
9 and demonstrably impair relations between the
10 United States and a foreign government, or seriously
11 and demonstrably undermine ongoing diplomatic ac-
12 tivities of the United States;

13 “(viii) reveal information that would clearly and
14 demonstrably impair the current ability of United
15 States Government officials to protect the President,
16 Vice President, and other officials for whom protec-
17 tion services, in the interest of national security, are
18 authorized;

19 “(ix) reveal information that would seriously
20 and demonstrably impair current national security
21 emergency preparedness plans; or

22 “(x) violate a statute, treaty, or international
23 agreement.

24 “(D) In applying exemptions (ii) through (x) of sub-
25 paragraph (C), there shall be a presumption that the pub-

1 lie interest in the release of Nazi war criminal records out-
2 weighs the damage to national security that might reason-
3 ably be expected to result from disclosure. The agency
4 head, as an exercise of discretion, may rebut this presump-
5 tion with respect to a Nazi war criminal record, or portion
6 thereof, based on an exemption listed in subparagraph (C).
7 The exercise of this discretion shall be promptly reported
8 to the committees of Congress with appropriate jurisdi-
9 tion.

10 “(E) This subsection shall not apply to records—
11 “(i) related to or supporting any active or inac-
12 tive investigation, inquiry, or prosecution by the Of-
13 fice of Special Investigations of the Department of
14 Justice; or

15 “(ii) in the possession, custody or control of
16 that office.”.

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

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

22 (2) by inserting after subsection (d) the follow-
23 ing:

24 “(e) Subsection (a) shall not apply to any operational
25 file, or any portion of any operational file, that constitutes

1 a Nazi war criminal record under section 552(h) of title
2 5, United States Code.”.

3 **SEC. 3. INTERAGENCY INVENTORY OF NAZI WAR CRIMINAL**
4 **RECORDS.**

5 (a) **DEFINITIONS.**—In this section the term—

6 (1) “agency” has the meaning given such term
7 under section 551 of title 5, United States Code;

8 (2) “Interagency Group” means the Nazi War
9 Criminal Records Interagency Working Group estab-
10 lished under subsection (b);

11 (3) “Nazi war criminal records” has the mean-
12 ing given such term under section 552(h)(1) of title
13 5, United States Code (as added by section 2(a)(2)
14 of this Act); and

15 (4) “record” means a Nazi war criminal record.

16 (b) **ESTABLISHMENT OF INTERAGENCY GROUP.**—

17 (1) **IN GENERAL.**—Not later than 30 days after
18 the date of enactment of this Act, the President
19 shall establish the Nazi War Criminal Records Inter-
20 agency Working Group.

21 (2) **MEMBERSHIP.**—The President shall appoint
22 to the Interagency Group the heads of agencies who
23 the President determines will most completely and
24 effectively carry out the functions of the Interagency
25 Group within the time limitations provided in this

1 section. The head of an agency appointed by the
2 President may designate an appropriate officer to
3 serve on the Interagency Group in lieu of the head
4 of such agency.

5 (3) INITIAL MEETING.—Not later than 90 days
6 after the date of enactment of this Act, the Inter-
7 agency Group shall hold an initial meeting and begin
8 the functions required under this section.

9 (e) FUNCTIONS.—Not later than 1 year after the date
10 of enactment of this Act, the Interagency Group shall, to
11 the greatest extent possible consistent with section
12 552(h)(2) of title 5, United States Code (as added by sec-
13 tion 2(a)(2) of this Act)—

14 (1) locate, identify, inventory, recommend for
15 declassification, and make available to the public at
16 the National Archives and Records Administration,
17 all Nazi war criminal records of the United States;

18 (2) coordinate with agencies and take such ac-
19 tions as necessary to expedite the release of such
20 records to the public; and

21 (3) submit a report to Congress describing all
22 such records, the disposition of such records, and
23 the activities of the Interagency Group and agencies
24 under this section.

1 **SEC. 4. EXPEDITED PROCESSING OF REQUESTS FOR NAZI**2 **WAR CRIMINAL RECORDS.**3 (a) **DEFINITIONS.**—In this section, the term—4 (1) “**Nazi war criminal record**” has the mean-
5 ing given the term under section 552(h)(1) of title
6 5, United States Code (as added by section 2(a)(2)
7 of this Act); and8 (2) “**requester**” means any person who was per-
9secuted in the manner described under section
10 552(h)(1)(A) of title 5, United States Code (as
11 added by section 2(a)(2) of this Act), who requests
12 a Nazi war criminal record.13 (b) **EXPEDITED PROCESSING.**—For purposes of expe-
14 dited processing under section 552(a)(6)(E) of title 5,
15 United States Code, any requester of a Nazi war criminal
16 record shall be deemed to have a compelling need for such
17 record.18 **SEC. 5. EFFECTIVE DATE.**19 The amendments made by this Act shall apply to re-
20 quests under section 552 of title 5, United States Code
21 (known as Freedom of Information Act requests) received
22 by an agency after the expiration of the 90-day period be-
23 ginning on the date of enactment of this Act.24 **SECTION 1. SHORT TITLE.**25 *This Act may be cited as the “Nazi War Crimes Disclo-*
26 *sure Act”.*

1 **SEC. 2. ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS**2 **INTERAGENCY WORKING GROUP.**3 (a) **DEFINITIONS.**—*In this section the term—*4 (1) “*agency*” has the meaning given such term
5 under section 551 of title 5, *United States Code*;6 (2) “*Interagency Group*” means the *Nazi War*
7 *Criminal Records Interagency Working Group* estab-
8 *lished under subsection (b);*9 (3) “*Nazi war criminal records*” has the mean-
10 ing given such term under section 3 of this *Act*; and11 (4) “*record*” means a *Nazi war criminal record*.12 (b) **ESTABLISHMENT OF INTERAGENCY GROUP.**—13 (1) **IN GENERAL.**—*Not later than 30 days after*
14 *the date of enactment of this Act, the President shall*
15 *establish the Nazi War Criminal Records Interagency*
16 *Working Group.*17 (2) **MEMBERSHIP.**—*The President shall appoint*
18 *to the Interagency Group the heads of agencies who*
19 *the President determines will most completely and ef-*
20 *fectively carry out the functions of the Interagency*
21 *Group within the time limitations provided in this*
22 *section. The head of an agency appointed by the*
23 *President may designate an appropriate officer to*
24 *serve on the Interagency Group in lieu of the head of*
25 *such agency.*

5 (c) FUNCTIONS.—Not later than 1 year after the date
6 of enactment of this Act, the Interagency Group shall, to
7 the greatest extent possible consistent with section 3 of this
8 Act—

20 SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS RE-
21 GARDING PERSONS WHO COMMITTED NAZI
22 WAR CRIMES

23 (a) NAZI WAR CRIMINAL RECORDS.—For purposes of
24 this Act, the term “Nazi war criminal records” means
25 records or portions of records that—

7 (i) the Nazi government of Germany;

14 (iv) any government which was an ally
15 of the Nazi government of Germany; and

(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on May 8, 1945, by, under

1 *the direction of, on behalf of, or under authority*
2 *granted by the Nazi government of Germany or*
3 *any nation then allied with that government;*
4 *and*

5 *(B) such transaction was completed without*
6 *the assent of the owners of those assets or their*
7 *heirs or assigns or other legitimate representa-*
8 *tives.*

9 *(b) RELEASE OF RECORDS.—*

10 *(1) IN GENERAL.—Subject to paragraphs (2),*
11 *(3), and (4), the Nazi War Criminal Records Inter-*
12 *agency Working Group shall release in their entirety*
13 *Nazi war criminal records that are described in sub-*
14 *section (a).*

15 *(2) EXCEPTION FOR PRIVACY, ETC.—An agency*
16 *head may exempt from release under paragraph (1)*
17 *specific information, that would—*

18 *(A) constitute a clearly unwarranted inva-*
19 *sion of personal privacy;*

20 *(B) reveal the identity of a confidential*
21 *human source, or reveal information about the*
22 *application of an intelligence source or method,*
23 *or reveal the identity of a human intelligence*
24 *source when the unauthorized disclosure of that*
25 *source would clearly and demonstrably damage*

1 *the national security interests of the United*
2 *States;*

3 *(C) reveal information that would assist in*
4 *the development or use of weapons of mass de-*
5 *struction;*

6 *(D) reveal information that would impair*
7 *United States cryptologic systems or activities;*

8 *(E) reveal information that would impair*
9 *the application of state-of-the-art technology*
10 *within a United States weapon system;*

11 *(F) reveal actual United States military*
12 *war plans that remain in effect;*

13 *(G) reveal information that would seriously*
14 *and demonstrably impair relations between the*
15 *United States and a foreign government, or seri-*
16 *ously and demonstrably undermine ongoing dip-*
17 *lomatic activities of the United States;*

18 *(H) reveal information that would clearly*
19 *and demonstrably impair the current ability of*
20 *United States Government officials to protect the*
21 *President, Vice President, and other officials for*
22 *whom protection services, in the interest of na-*
23 *tional security, are authorized;*

19 (4) *LIMITATION ON APPLICATION.—This sub-*
20 *section shall not apply to records—*

(B) solely in the possession, custody, or control of that office.

10 “(e) Subsection (a) shall not apply to any operational
11 file, or any portion of any operational file, that constitutes
12 a Nazi war criminal record under section 3 of the Nazi
13 War Crimes Disclosure Act.”.

14 SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR
15 NAZI WAR CRIMINAL RECORDS.

16 (a) EXPEDITED PROCESSING.—For purposes of expe-
17 dited processing under section 552(a)(6)(E) of title 5,
18 United States Code, any requester of a Nazi war criminal
19 record shall be deemed to have a compelling need for such
20 record.

21 (b) REQUESTER.—For purposes of this section, the
22 term “requester” means any person who was persecuted in
23 the manner described under section 3(a)(1)(B) of this Act
24 who requests a Nazi war criminal record.

1 **SEC. 5. EFFECTIVE DATE.**

2 *This Act and the amendments made by this Act shall*
3 *take effect on the date that is 90 days after the date of enact-*
4 *ment of this Act.*

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To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

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