

107TH CONGRESS  
1ST SESSION

# H. R. 1152

To promote human rights, democracy, and the rule of law by providing a process for executive agencies for declassifying on an expedited basis and disclosing certain documents relating to human rights abuses in countries other than the United States.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2001

Mr. LANTOS (for himself, Mrs. MORELLA, Mr. WAXMAN, Mr. GILMAN, Mr. SHAYS, Mr. HORN, Mr. KUCINICH, Mr. TOM DAVIS of Virginia, Mr. OWENS, Mr. SMITH of New Jersey, Ms. PELOSI, Mr. LAHOOD, Mr. TOWNS, Mr. UPTON, Mr. KANJORSKI, Mrs. MINK of Hawaii, Mrs. MALONEY of New York, Ms. NORTON, Mr. CUMMINGS, Mr. BLAGOJEVICH, Mr. DAVIS of Illinois, Mr. TIERNEY, Mr. TURNER, Mr. ALLEN, Ms. SCHAKOWSKY, Mr. CLAY, Mr. SANDERS, Mr. DELAHUNT, Mr. HALL of Ohio, Mr. OBERSTAR, Mr. OLVER, Mr. WEXLER, Mr. ABERCROMBIE, Mr. NADLER, Mr. TRAFICANT, Mr. MOAKLEY, Mr. McDERMOTT, Mr. PETERSON of Minnesota, Ms. BROWN of Florida, Ms. MCCARTHY of Missouri, Mr. CAPUANO, Mr. ENGEL, Mr. GEORGE MILLER of California, Mr. FILNER, Ms. KAPTUR, Mr. LEWIS of Georgia, Mr. COSTELLO, Mr. PHELPS, Mr. MATSUI, Mr. EVANS, Mr. SERRANO, Mr. McNULTY, Mr. LUTHER, Mr. BARRETT, Mr. HOLT, Mr. DOYLE, Mr. STARK, Ms. RIVERS, Ms. WATERS, Ms. ESHOO, Mrs. LOWEY, Ms. VELÁZQUEZ, Mr. UNDERWOOD, and Mr. SANDLIN) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To promote human rights, democracy, and the rule of law by providing a process for executive agencies for declassifying on an expedited basis and disclosing certain documents relating to human rights abuses in countries other than the United States.

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 “Human Rights Infor-

5 mation Act”.

6 **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8           (1) The commitment to the promotion and pro-

9           tection of human rights, democracy, and the rule of

10          law around the world has led the United States to

11          undertake tremendous diplomatic, economic, and

12          military efforts to end systematic gross human

13          rights violations abroad, consistent with the national

14          interests and international leadership role of the

15          United States. Such efforts are thwarted if the cycle

16          of impunity for human rights violations in countries

17          other than the United States is not broken, and the

18          likelihood of the need for renewed United States en-

19          gagements in those countries remains.

20          (2) The United States has a significant interest

21          that newly established or reestablished democratic

22          societies take credible steps to fully investigate and

23          prosecute human rights violations. Such steps could

24          include the creation of a national or international

25          truth commission or tribunal, the appointment of a

1 human rights officer, or the leading of official na-  
2 tional investigations by credible sections of the civil  
3 society, including churches and nongovernmental or-  
4 ganizations.

5 (3) Executive agencies are in possession of doc-  
6 uments pertaining to gross human rights violations  
7 abroad that are needed by foreign authorities to doc-  
8 ument, investigate, and subsequently prosecute in-  
9 stances of continued and systematic gross human  
10 rights violations, including those directed against  
11 citizens of the United States.

12 (4) The overwhelming importance to the United  
13 States of investigations by foreign authorities of  
14 gross human rights violations and the urgency of re-  
15 quests for legal assistance which the United States  
16 will continue to receive from foreign entities require  
17 a systematic process of expedited declassification  
18 and disclosure of documents pertaining to such gross  
19 human rights violations.

20 (5) Only an expedited systematic process can  
21 help ensure timely investigations of perpetrators of  
22 gross and systematic human rights violations and  
23 provide families with urgently needed information  
24 regarding the fate of relatives, including information  
25 making possible the location, identification, and bur-

1       ial of the remains of family members who have been  
2       killed, bringing closure for those families and begin-  
3       ning the process of national reconciliation.

4 **SEC. 3. DEFINITIONS.**

5       In this Act:

6           (1) **HUMAN RIGHTS RECORD.**—The term  
7       “human rights record” means a record in the pos-  
8       session, custody, or control of the United States  
9       Government containing information about gross vio-  
10      lations of internationally recognized human rights  
11      committed in a country other than the United  
12      States.

13          (2) **AGENCY.**—The term “agency” means the  
14      National Archives and Records Administration (and  
15      all the Presidential libraries it maintains), the Na-  
16      tional Security Council, the Office of National Drug  
17      Control Policy, and any executive agency of the  
18      United States Government charged with the conduct  
19      of foreign policy or foreign intelligence, including,  
20      but not limited to, the Department of State, the De-  
21      partment of Justice, the Department of Defense, the  
22      Central Intelligence Agency, the Agency for Inter-  
23      national Development, and the National Reconnaissance Office.  
24

1           (3) GROSS VIOLATIONS OF INTERNATIONALLY  
2 RECOGNIZED HUMAN RIGHTS.—The term “gross vio-  
3 lations of internationally recognized human rights”  
4 has the meaning given that term in section  
5 502B(d)(1) of the Foreign Assistance Act of 1961  
6 (22 U.S.C. 2304(d)(1)).

7           (4) INTERNATIONAL BONA FIDE REQUEST.—  
8 The term “international bona fide request” means a  
9 request for a human rights record from an indi-  
10 vidual or entity (such as an entity created by the  
11 United Nations, a regional international organiza-  
12 tion, a national truth commission, or the principal  
13 justice or human rights official of a country) that is  
14 carrying out an official mandate to investigate a pat-  
15 tern of gross violations of internationally recognized  
16 human rights, pursuant to a proceeding that—

17                   (A) is a credible examination or investiga-  
18 tion conducted in accordance with the mandate  
19 of the entity or official;

20                   (B) is carried out in accordance with inter-  
21 national law, including laws regarding appro-  
22 priate jurisdiction of the person or entity car-  
23 rying out the proceeding; and

1 (C) does not threaten to violate due proc-  
2 ess or other internationally recognized human  
3 rights.

4 **SEC. 4. DETERMINATIONS REQUIRED REGARDING RE-**  
5 **QUESTS FOR HUMAN RIGHTS RECORDS.**

6 (a) DETERMINATION REQUIRED.—If the President  
7 or the head of an agency receives a request for a human  
8 rights record from an individual or entity (such as an enti-  
9 ty created by the United Nations, a regional international  
10 organization, a national truth commission, or the principal  
11 justice or human rights official of a country) that is car-  
12 rying out an official mandate to investigate a pattern of  
13 gross violations of internationally recognized human  
14 rights, not later than 60 days after the receipt of such  
15 request the President (or the Attorney General on behalf  
16 of the President) shall make a determination whether such  
17 request is an international bona fide request.

18 (b) PROCEDURES IN CASE OF POSITIVE DETERMINA-  
19 TION.—If the President or Attorney General makes a de-  
20 termination that a request under subsection (a) is an  
21 international bona fide request, not later than 120 days  
22 after the date that the President or Attorney General  
23 makes such determination, the heads of the appropriate  
24 agencies shall identify, review, and organize all human  
25 rights records with respect to such request for the purpose

1 of declassifying and disclosing the records to the public.  
2 Except as provided in section 5 and subsection (d), all  
3 records described in the preceding sentence shall be made  
4 available to the public not later than 30 days after the  
5 date that a review under this subsection is completed.

6 (c) PROCEDURES IN CASE OF NEGATIVE DETER-  
7 MINATION.—If the President or Attorney General makes  
8 a determination that a request under subsection (a) is not  
9 an international bona fide request, such determination,  
10 and a detailed explanation regarding such determination,  
11 shall be published in the Federal Register not later than  
12 90 days after the date that such request is received.

13 (d) REQUESTS FOR DISCLOSURE OF RECORDS ON  
14 CONFIDENTIAL BASIS.—The head of an agency disclosing  
15 human rights records as a result of a positive determina-  
16 tion under subsection (b) shall honor a request of the indi-  
17 vidual or entity that submitted the request for the  
18 records—

19 (1) to disclose such records to the individual or  
20 entity on a confidential basis; and

21 (2) to not disclose such records to the public  
22 until 30 days after the date that the individual or  
23 entity notifies the agency that the confidentiality of  
24 such records is no longer required.

1 **SEC. 5. GROUNDS FOR POSTPONEMENT OF DISCLOSURE OF**  
2 **RECORDS.**

3 (a) IN GENERAL.—The head of an agency may post-  
4 pone disclosure of a human rights record or particular in-  
5 formation in a human rights record under this Act only  
6 if the head of the agency determines that there is clear  
7 and convincing evidence that—

8 (1) the threat to the military defense, intel-  
9 ligence operations, or conduct of foreign relations of  
10 the United States that would result from disclosure  
11 of the human rights record is of such gravity that  
12 it outweighs the public interest, and such disclosure  
13 would reveal—

14 (A) an intelligence agent whose identity re-  
15 quires protection;

16 (B) an intelligence source or method—

17 (i) which is being utilized, or reason-  
18 ably expected to be utilized, by the United  
19 States Government;

20 (ii) which has not been officially dis-  
21 closed; and

22 (iii) the disclosure of which would  
23 interfere with the conduct of intelligence  
24 activities; or

25 (C) any other matter currently relating to  
26 the military defense, intelligence operations, or



1           conduct of foreign relations of the United  
2           States, the disclosure of which would demon-  
3           strably impair the national security of the  
4           United States;

5           (2) the disclosure of the human rights record—

6                 (A) would reveal the name or identity of a  
7                 living individual who provided confidential in-  
8                 formation to the United States; and

9                 (B) would pose a substantial risk of harm  
10                to such individual;

11           (3) the disclosure of the human rights record  
12           could reasonably be expected to constitute an unwar-  
13           ranted invasion of personal privacy, and that inva-  
14           sion of privacy would be so substantial that it out-  
15           weighs the public interest; or

16           (4) the disclosure of the human rights record  
17           would compromise the existence of an understanding  
18           of confidentiality requiring protection between a  
19           United States Government agent and a cooperating  
20           individual or a foreign government, and disclosure  
21           would be so harmful that it outweighs the public in-  
22           terest.

23           (b) SPECIAL TREATMENT OF CERTAIN INFORMA-  
24           TION.—It shall not be grounds for postponement of dislo-  
25           sure of a human rights record that an individual named

1 in the human rights record was an intelligence asset of  
2 the United States Government, although the existence of  
3 such relationship may be withheld if any of the criteria  
4 set forth in subsection (a) are met. For purposes of the  
5 preceding sentence, the term “intelligence asset” means  
6 a covert agent as defined in section 606(4) of the National  
7 Security Act of 1947 (50 U.S.C. 426(4)).

8 **SEC. 6. REVIEW OF DETERMINATIONS TO WITHHOLD**  
9 **RECORDS.**

10 (a) DUTIES OF THE APPEALS PANEL.—The Inter-  
11 agency Security Classification Appeals Panel (referred to  
12 in this Act as the “Appeals Panel”), or any successor or-  
13 ganization, shall review all determinations by the head of  
14 an agency to postpone disclosure of a record under this  
15 Act.

16 (b) DETERMINATIONS OF THE APPEALS PANEL.—

17 (1) IN GENERAL.—The Appeals Panel may up-  
18 hold a determination by the head of an agency to  
19 postpone disclosure of a record under this Act only  
20 if the Appeals Panel determines that there is clear  
21 and convincing evidence that—

22 (A) the record is not a human rights  
23 record; or

1 (B) the record or particular information in  
2 the record qualifies for postponement of disclo-  
3 sure under section 5.

4 (2) TREATMENT IN CASES OF NONDISCLO-  
5 SURE.—If the Appeals Panel concurs with an agency  
6 decision to postpone disclosure of a record under  
7 this Act, the Appeals Panel shall determine, in con-  
8 sultation with the head of the agency and consistent  
9 with the standards set forth in this Act, which, if  
10 any, of the alternative forms of disclosure described  
11 in paragraph (3) shall be made by the agency.

12 (3) ALTERNATIVE FORMS OF DISCLOSURE.—  
13 The forms of disclosure under this paragraph are  
14 the following:

15 (A) Disclosure of any reasonably seg-  
16 regable portion of the human rights record  
17 after deletion of the portions described in para-  
18 graph (1)(B).

19 (B) Disclosure of a record that is a sub-  
20 stitute for information that is not disclosed.

21 (C) Disclosure of a summary of the infor-  
22 mation in the human rights record.

23 (4) NOTIFICATION OF DETERMINATION.—

24 (A) IN GENERAL.—Upon completion of a  
25 review under this section, the Appeals Panel

1 shall notify the head of the agency in control or  
2 possession of the record that was the subject of  
3 the review of its determination and shall, not  
4 later than 14 days after the determination, pub-  
5 lish the determination in the Federal Register.

6 (B) NOTICE TO PRESIDENT.—The Appeals  
7 Panel shall notify the President of a determina-  
8 tion under this section. The notice shall contain  
9 a written unclassified justification for the deter-  
10 mination, including an explanation of the appli-  
11 cation of the criteria set forth in section 5.

12 (5) GENERAL PROCEDURES.—The Appeals  
13 Panel shall publish in the Federal Register guide-  
14 lines regarding its policy and procedures for adjudi-  
15 cating appeals under this section.

16 (c) PRESIDENTIAL REVIEW OF APPEALS PANEL DE-  
17 TERMINATIONS.—

18 (1) DISCLOSURE OR POSTPONEMENT OF DIS-  
19 CLOSURE.—The President shall have the sole and  
20 nondelegable authority to review any determination  
21 of the Appeals Panel under this Act, and such re-  
22 view shall be based on the criteria set forth in sec-  
23 tion 5. If the Appeals Panel overturns the deter-  
24 mination of the head of an agency to withhold  
25 records from declassification, not later than 30 days

1 after the Appeals Panel's determination and notifi-  
2 cation to the head of the agency under subsection  
3 (b)(4), the President shall provide the Appeals Panel  
4 with an unclassified written certification specifying  
5 the President's determination and stating the rea-  
6 sons for the decision, including, in the case of a de-  
7 termination to postpone disclosure, the criteria set  
8 forth in section 5 that are the basis for the Presi-  
9 dent's determination.

10 (2) RECORD OF PRESIDENTIAL POSTPONE-  
11 MENT.—The Appeals Panel shall, upon receipt of  
12 the President's determination, publish in the Federal  
13 Register a copy of any unclassified written certifi-  
14 cation, statement, and other materials transmitted  
15 by or on behalf of the President with regard to the  
16 postponement of disclosure of a record under this  
17 Act.

18 **SEC. 7. IDENTIFICATION, REVIEW, AND PUBLIC DISCLO-**  
19 **SURE OF CERTAIN HUMAN RIGHTS RECORDS.**

20 (a) IN GENERAL.—Not later than 120 days after the  
21 date of the enactment of this Act, the head of each agency  
22 shall identify, review, and organize all human rights  
23 records regarding activities occurring in Guatemala and  
24 Honduras for the purpose of declassifying and disclosing  
25 such records to the public. Except as provided in section

1 5, all records described in the preceding sentence shall be  
2 made available to the public not later than 30 days after  
3 the date that a review under this section is completed.

4 (b) REPORT TO CONGRESS.—Not later than 150 days  
5 after the date of the enactment of this Act, the President  
6 shall report to Congress regarding each agency’s compli-  
7 ance with the provisions of this section.

8 **SEC. 8. RULES OF CONSTRUCTION.**

9 (a) IN GENERAL.—Notwithstanding any other provi-  
10 sion of law, the provisions of this Act shall govern the de-  
11 classification and disclosure of human rights records by  
12 executive agencies.

13 (b) FREEDOM OF INFORMATION ACT.—Nothing in  
14 this Act shall be construed to limit any right to file a re-  
15 quest with any executive agency or seek judicial review of  
16 a decision pursuant to section 552 of title 5, United States  
17 Code.

18 (c) JUDICIAL REVIEW.—Nothing in this Act shall be  
19 construed to preclude judicial review, under chapter 7 of  
20 title 5, United States Code, of final actions taken or re-  
21 quired to be taken under this Act.

22 **SEC. 9. CREATION OF ADDITIONAL POSITIONS FOR AP-**  
23 **PEALS PANEL.**

24 Two additional positions shall be created for the Ap-  
25 peals Panel (or any successor organization) solely for pur-

1 poses of carrying out the provisions of this Act. In filling  
2 such positions, the President—

3           (1) shall appoint individuals who are not em-  
4 ployees of the United States who have demonstrated  
5 substantial human rights expertise and who are able  
6 to meet the security requirements for such positions;  
7 and

8           (2) shall seek recommendations with respect to  
9 such positions from nongovernmental human rights  
10 organizations.

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