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H. R. 2534

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2003

Mr. LANTOS (for himself, Mr. SHAYS, Mr. TOM DAVIS of Virginia, Mr. WAXMAN, Mr. SMITH of New Jersey, Mrs. MALONEY, Mr. LAHOOD, Mr. KUCINICH, Ms. NORTON, Mr. LYNCH, Mr. COOPER, Ms. SCHAKOWSKY, Mr. MCGOVERN, Mr. DEFAZIO, Ms. BALDWIN, Mr. BLUMENAUER, Mr. ABERCROMBIE, Mr. MCNULTY, Mr. LEWIS of Georgia, Mr. SANDLIN, Mr. BROWN of Ohio, Mr. DELAHUNT, Mr. McDERMOTT, Mr. STARK, Mr. OLVER, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Government Reform

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Human Rights Infor-
3 mation Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The commitment to the promotion and pro-
7 tection of human rights, democracy, and the rule of
8 law around the world has led the United States to
9 undertake tremendous diplomatic, economic, and
10 military efforts to end systematic gross human
11 rights violations abroad, consistent with the national
12 interests and international leadership role of the
13 United States. Such efforts are thwarted if the cycle
14 of impunity for human rights violations in countries
15 other than the United States is not broken, and the
16 likelihood of the need for renewed United States en-
17 engagements in those countries remains.

18 (2) The United States has a significant interest
19 that newly established or reestablished democratic
20 societies take credible steps to fully investigate and
21 prosecute human rights violations. Such steps could
22 include the creation of a national or international
23 truth commission or tribunal, the appointment of a
24 human rights officer, or the leading of official na-
25 tional investigations by credible sections of the civil

1 society, including religious institutions and non-
2 governmental organizations.

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

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

18 (5) After a 36-year history of being open to for-
19 eign requesters, the Freedom of Information Act
20 (section 552 of title 5, United States Code) was
21 amended in the 107th Congress by the Intelligence
22 Authorization Act for Fiscal Year 2003 (Public Law
23 107–306) to prohibit agencies within the intelligence
24 community from making records available to foreign
25 entities or their representatives.

1 (6) Only an expedited systematic process can
2 help ensure timely investigations of perpetrators of
3 gross and systematic human rights violations and
4 provide families with urgently needed information
5 regarding the fate of relatives, including information
6 making possible the location, identification, and bur-
7 ial of the remains of family members who have been
8 killed, helping to bring closure for those families and
9 beginning the process of national reconciliation.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) HUMAN RIGHTS RECORD.—The term
13 “human rights record” means a record in the pos-
14 session, custody, or control of the United States
15 Government containing information about gross vio-
16 lations of internationally recognized human rights
17 committed in a country other than the United
18 States, except that such term does not include any
19 record submitted to or compiled by the Immigration
20 and Naturalization Service or its successors (includ-
21 ing the Bureau of Border Security and the Bureau
22 of Citizenship and Immigration Services).

23 (2) AGENCY.—The term “agency” means the
24 National Archives and Records Administration (and
25 all the Presidential libraries it maintains), the Na-

1 tional Security Council, the Office of National Drug
2 Control Policy, and any executive agency of the
3 United States Government charged with the conduct
4 of foreign policy or foreign intelligence, including,
5 but not limited to, the Department of State, the De-
6 partment of Justice, the Department of Defense, the
7 Central Intelligence Agency, the Agency for Inter-
8 national Development, and the National Reconnaissance
9 Office, except that such term does not include
10 the Immigration and Naturalization Service or its
11 successors (including the Bureau of Border Security
12 and the Bureau of Citizenship and Immigration
13 Services).

14 (3) APPEALS PANEL.—The term “Appeals
15 Panel” means the Interagency Security Classifica-
16 tion Appeals Panel created by Executive Order num-
17 ber 12958 (or any successor entity or review proce-
18 dure).

19 (4) GROSS VIOLATIONS OF INTERNATIONALLY
20 RECOGNIZED HUMAN RIGHTS.—The term “gross vio-
21 lations of internationally recognized human rights”
22 has the meaning given that term in section
23 502B(d)(1) of the Foreign Assistance Act of 1961
24 (22 U.S.C. 2304(d)(1)).

1 (5) INTERNATIONAL BONA FIDE REQUEST.—

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

11 (A) is a credible examination or investiga-
12 tion conducted in accordance with the mandate
13 of the entity or official;

14 (B) is carried out in accordance with inter-
15 national law, including laws regarding appro-
16 priate jurisdiction of the person or entity car-
17 rying out the proceeding; and

18 (C) does not threaten to violate due proc-
19 ess or other internationally recognized human
20 rights.

21 (6) INTERNATIONAL LAW.—The term “inter-
22 national law” means the rules and principles of gen-
23 eral application dealing with the conduct and rela-
24 tions of nations and international organizations.

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

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

15 (b) PROCEDURES IN CASE OF POSITIVE DETERMINA-
16 TION.—If the President (or the Attorney General on be-
17 half of the President) makes a determination that a re-
18 quest under subsection (a) is an international bona fide
19 request, not later than 120 days after the date that the
20 President or Attorney General makes such determination,
21 the heads of the appropriate agencies shall identify, re-
22 view, and organize all human rights records with respect
23 to such request for the purpose of declassifying and dis-
24 closing the records to the public. Except as provided in
25 section 5 and subsection (d), all records described in the
26 preceding sentence shall be made available to the public

1 not later than 30 days after the date that a review under
2 this subsection is completed.

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

11 (d) CONFIDENTIALITY TO PROTECT ONGOING IN-
12 VESTIGATIONS.—

13 (1) DISCLOSURE OF RECORDS ON CONFIDEN-
14 TIAL BASIS.—The head of an agency disclosing
15 human rights records as a result of a positive deter-
16 mination under subsection (b) may, at the agency
17 head's initiative or at the request of the individual
18 or entity that submitted the request for records, dis-
19 close such records to the individual or entity on a
20 confidential basis if the agency head determines that
21 confidential disclosure is necessary to avoid jeopard-
22 izing an ongoing investigation.

23 (2) DELAYED PUBLIC DISCLOSURE OF
24 RECORDS.—If the agency head determines that con-
25 fidential disclosure of records under paragraph (1) is

1 necessary, the agency head may withhold such
2 records from public disclosure until the agency head
3 determines, in consultation with the individual or en-
4 tity that submitted the request, that the need for
5 confidentiality no longer exists.

6 **SEC. 5. GROUNDS FOR POSTPONEMENT OF DISCLOSURE OF**
7 **RECORDS.**

8 (a) IN GENERAL.—The head of an agency may post-
9 pone disclosure of a human rights record or particular in-
10 formation in a human rights record under this Act only
11 if the head of the agency determines that there is clear
12 and convincing evidence that—

13 (1) the threat to the military defense, intel-
14 ligence operations, or conduct of foreign relations of
15 the United States that would result from disclosure
16 of the human rights record is of such gravity that
17 it outweighs the public interest, and such disclosure
18 would reveal—

19 (A) an intelligence agent whose identity re-
20 quires protection;

21 (B) an intelligence source or method—

22 (i) which is being utilized, or reason-
23 ably expected to be utilized, by the United
24 States Government;

1 (ii) which has not been officially dis-
2 closed; and

3 (iii) the disclosure of which would
4 interfere with the conduct of intelligence
5 activities; or

6 (C) any other matter currently relating to
7 the military defense, intelligence operations, or
8 conduct of foreign relations of the United
9 States, the disclosure of which would demon-
10 strably impair the national security of the
11 United States;

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

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

16 (B) would pose a substantial risk of harm
17 to such individual or to any member of the fam-
18 ily, friend, or associate of such individual;

19 (3) the disclosure of the human rights record
20 could reasonably be expected to constitute an unwar-
21 ranted invasion of personal privacy, and that inva-
22 sion of privacy would be so substantial that it out-
23 weighs the public interest; or

24 (4) the disclosure of the human rights record
25 would compromise the existence of an understanding

1 of confidentiality requiring protection between a
2 United States Government agent and a cooperating
3 individual or a foreign government, and disclosure
4 would be so harmful that it outweighs the public in-
5 terest.

6 (b) SPECIAL TREATMENT OF CERTAIN INFORMA-
7 TION.—It shall not be grounds for postponement of disclo-
8 sure of a human rights record that an individual named
9 in the human rights record was an intelligence asset of
10 the United States Government, although the existence of
11 such relationship may be withheld if any of the criteria
12 set forth in subsection (a) are met. For purposes of the
13 preceding sentence, the term “intelligence asset” means
14 a covert agent as defined in section 606(4) of the National
15 Security Act of 1947 (50 U.S.C. 426(4)).

16 **SEC. 6. REVIEW OF DETERMINATIONS TO WITHHOLD**
17 **RECORDS.**

18 (a) DUTIES OF THE APPEALS PANEL.—The Appeals
19 Panel shall review all determinations by the head of an
20 agency to postpone disclosure of a record under this Act.

21 (b) DETERMINATIONS OF THE APPEALS PANEL.—

22 (1) IN GENERAL.—The Appeals Panel may up-
23 hold a determination by the head of an agency to
24 postpone disclosure of a record under this Act only

1 if the Appeals Panel determines that there is clear
2 and convincing evidence that—

3 (A) the record is not a human rights
4 record; or

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

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

16 (3) ALTERNATIVE FORMS OF DISCLOSURE.—
17 The forms of disclosure under this paragraph are
18 the following:

19 (A) Disclosure of any reasonably seg-
20 regable portion of the human rights record
21 after deletion of the portions described in para-
22 graph (1)(B).

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

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

3 (4) NOTIFICATION OF DETERMINATION.—

4 (A) IN GENERAL.—Upon completion of a
5 review under this section, the Appeals Panel
6 shall notify the head of the agency in control or
7 possession of the record that was the subject of
8 the review of its determination and shall, not
9 later than 14 days after the determination, pub-
10 lish the determination in the Federal Register.

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

17 (5) GENERAL PROCEDURES.—The Appeals
18 Panel shall publish in the Federal Register guide-
19 lines regarding its policy and procedures for adjudi-
20 cating appeals under this section.

21 (c) PRESIDENTIAL REVIEW OF APPEALS PANEL DE-
22 TERMINATIONS.—

23 (1) DISCLOSURE OR POSTPONEMENT OF DIS-
24 CLOSURE.—The President shall have the sole and
25 nondelegable authority to review any determination

1 of the Appeals Panel under this Act, and such re-
2 view shall be based on the criteria set forth in sec-
3 tion 5. If the Appeals Panel overturns the deter-
4 mination of the head of an agency to withhold
5 records from declassification, not later than 30 days
6 after the Appeals Panel's determination and notifi-
7 cation to the head of the agency under subsection
8 (b)(4), the President shall provide the Appeals Panel
9 with an unclassified written certification specifying
10 the President's determination and stating the rea-
11 sons for the decision, including, in the case of a de-
12 termination to postpone disclosure, the criteria set
13 forth in section 5 that are the basis for the Presi-
14 dent's determination.

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

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

3 (a) **IN GENERAL.**—Not later than 120 days after the
4 date of the enactment of this Act, the head of each agency
5 shall identify, review, and organize all human rights
6 records regarding activities occurring in Guatemala and
7 Honduras for the purpose of declassifying and disclosing
8 such records to the public. Except as provided in section
9 5, all records described in the preceding sentence shall be
10 made available to the public not later than 30 days after
11 the date that a review under this section is completed.

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

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

17 (a) **IN GENERAL.**—Notwithstanding any other provi-
18 sion of law, the provisions of this Act shall govern the de-
19 classification and public disclosure of human rights
20 records by executive agencies.

21 (b) **JUDICIAL REVIEW.**—Nothing in this Act shall be
22 construed to preclude judicial review, under chapter 7 of
23 title 5, United States Code, of final actions taken or re-
24 quired to be taken under this Act. For purposes of this
25 Act, determinations by the Attorney General made on be-
26 half of the President under section 4(a) shall be subject

1 to the same standard of judicial review as determinations
2 by the President.

3 **SEC. 9. CREATION OF ADDITIONAL POSITIONS FOR AP-**
4 **PEALS PANEL.**

5 Two additional positions shall be created for the Ap-
6 peals Panel solely for purposes of carrying out the provi-
7 sions of this Act. In filling such positions, the President—

8 (1) shall appoint individuals who—

9 (A) were not involved in making deter-
10 minations that could be reviewed by the Ap-
11 peals Panel;

12 (B) have demonstrated substantial human
13 rights expertise; and

14 (C) are able to meet the security require-
15 ments for such positions; and

16 (2) shall seek recommendations with respect to
17 such positions from nongovernmental human rights
18 organizations.

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