H. R. 4210

To provide for the expeditious disclosure of records relevant to the life and death of Tupac Amaru Shakur.

IN THE HOUSE OF REPRESENTATIVES

November 2, 2005

Ms. McKinney introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To provide for the expeditious disclosure of records relevant to the life and death of Tupac Amaru Shakur.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Tupac Amaru Shakur Records Collection Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings, declarations, and purposes.
Sec. 3. Definitions.
Sec. 4. Tupac Amaru Shakur records collection at the National Archives.
Sec. 5. Citizens Advisory Committee.
Sec. 6. Review, identification, transmission to the National Archives, and public disclosure of related records by Government offices.
Sec. 7. Postponement of public disclosure of records.
Sec. 8. Review of records.
Sec. 9. Disclosure of materials under seal of court.
Sec. 10. Private right of action.
Sec. 11. Rules of construction.
Sec. 12. Termination of effect of Act.
Sec. 13. Authorization of appropriations.
Sec. 15. Whistleblower protection.
Sec. 16. Severability.

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.

(a) FINDINGS AND DECLARATIONS.—The Congress finds and declares that—

(1) all Government records related to the life and death of Tupac Amaru Shakur should be preserved for historical and governmental purposes;

(2) all Government records concerning the life and death of Tupac Amaru Shakur should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding his life and death;

(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

(4) legislation is necessary because Government records related to the life and death of Tupac Amaru Shakur would not otherwise be subject to public disclosure;
(5) legislation is necessary because the Freedom
of Information Act, as implemented by the executive
branch, is not sufficient to insure the timely public
disclosure of records relating to the life and death
of Tupac Amaru Shakur; and

(6) only in the rarest cases is there any legiti-
mate need for continued protection of such records.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the creation of the Tupac
Amaru Shakur Records Collection at the National
Archives; and a second repository at the Tupac
Amaru Shakur Center for the Arts in Stone Moun-
tain, Georgia; and

(2) to require the expeditious public trans-
mission to the Archivist and public disclosure (in-
cluding by electronic means) of such records.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) The term “Archivist” means the Archivist
of the United States.

(2) The term “related record” includes all
records, public and private, regardless of how labeled
or identified, that document, describe, report on,
analyze or interpret activities, persons, or events
reasonably related to the life and death of Tupac
Amaru Shakur and investigations of or inquiries into his life or death, including a record—

(A) that was created or made available for use by, obtained by, or otherwise came into the possession of—

(i) any Executive agency;

(ii) any independent agency;

(iii) any Government office; or

(iv) any State or local law enforcement office that provided support or assistance or performed work in connection with any Government inquiry into the life and death of Tupac Amaru Shakur; or

(B) that is any of the following:

(i) A record created in the course of a Federal, State, or local governmental investigation that is no longer in possession of the Federal, State, or local government.

(ii) A record located at, or under the control of—

(I) record repositories and archives of a Federal, State, or local government;
(II) an individual who possesses the record by virtue of service with a Government office;

(III) a person, including an individual or corporation, who obtained such record from Government sources or individuals identified in this Act; or

(IV) a person, including an individual or corporation, who created or has obtained such record from sources other than those identified in this clause.

(iii) A record of a Federal or State criminal or civil court, including a record under seal released in accordance with section 8.

(iv) A record generated by a foreign government.

(v) A record in possession of a contractor of the Federal Government.

(vi) All records collected by or segregated by all Federal, State, and local government agencies in conjunction with any investigation or analysis of or inquiry into the life and death of Tupac Amaru
Shakur, including any intra-agency investigation or analysis, any interagency communications, or any intra-agency collection or segregation of documents and other materials regarding the life and death of Tupac Amaru Shakur.

(vii) All documents used by Government offices and agencies during their declassification review of related records as well as all other documents, indices, and other material, including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in related records that would reasonably constitute a related record or would assist in the identification, evaluation, or interpretation of a related record, including—

(I) with respect to records that are identified with respect to a particular person, all records relating to that person that use or reflect the true name or any other name, pseudonym, codeword, symbol, number, cryptonym, or alias used to identify that person;
(II) with respect to records that are identified with respect to a particular operation or program, all records pertaining to that program by any other name, pseudonym, codeword, symbol, number, or cryptonym; and

(III) any other record that does not fall within the scope of a related record as described in the Act, but which has the potential to enhance, enrich, and broaden the historical record of the life and death of Tupac Amaru Shakur.

(3) The term “Collection” means the Tupac Amaru Shakur Records Collection established under section 4.

(4) The term “Executive agency” means an Executive agency as defined in subsection 552(f) of title 5, United States Code, and 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.
(5) The term “Government office” includes—

(A) all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any Federal, State, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the life and death of Tupac Amaru Shakur; and

(B) any office of the Federal Government that has possession or control of related records, including any other executive branch office or agency, and any independent agency.

(6) The term “identification aid” means the written description prepared by the Archivist for each record as required by section 5.

(7) The term “National Archives” means the National Archives and all components thereof, including Presidential archival depositories established under section 2112 of title 44, United States Code.

(8) The term “official investigation” means the reviews of the activities or death of Tupac Amaru Shakur conducted by any Federal, state or local agency either independently, or at the request of any Government official.
(9) The term “originating body” means the Executive agency, or other governmental entity that created a record or particular information within a record.

(10) The term “public interest” means the compelling interest in the prompt public disclosure of related records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding the life and death of Tupac Amaru Shakur.

(11) The term “record” includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material or physical evidence or artifact regardless of its physical form or characteristics.

(12) The term “third agency” means a Government agency that originated a related record that is in the possession of another agency.

(13) The term “Citizens Advisory Committee” means an independent body of qualified and concerned citizens, scholars, legal experts and immediate family members of Tupac Amaru Shakur to advise and assist in the implementation of this Act.
SEC. 4. TUPAC AMARU SHAKUR RECORDS COLLECTION AT THE NATIONAL ARCHIVES.

(a) IN GENERAL.—(1) Not later than 60 days after the date of enactment of this Act, the National Archives shall commence establishment of a collection of records to be known as the “Tupac Amaru Shakur Records Collection.” In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of originals or record copies of all Government records relating to the life and death of Tupac Amaru Shakur, which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code. The Archivist shall prepare and publish a subject guidebook and index to the collection, including the central directory described in paragraph (2)(B), which shall be available to the public and searchable electronically.

(2) The Collection shall include—

(A) all related records—

(i) that have been transmitted to the National Archives or disclosed to the public in an un-redacted form prior to the date of enactment of this Act, or were so transmitted or disclosed and reclassified prior to such date of enactment;
(ii) that are required to be transmitted to
the National Archives;

(iii) the disclosure of which is postponed
under this Act; or

(iv) that meets the definition of a related
record discovered after termination of the
record review; and

(B) a central directory comprised of identifica-
tion aids created for each record transmitted to the
Archivist under section 5; and

(b) USE OF SECONDARY LOCATION FOR PORTION OF
COLLECTION.—

(1) IN GENERAL.—The Archivist shall enter
into an agreement with the Tupac Amaru Shakur
Center for the Arts in Stone Mountain, Georgia for
the establishment of a secondary location for a com-
plete copy of the appropriate portion of the Collect-
ion, not to include physical artifacts—

(A) which will provide a maximum level of
public access to copies of the portion of the Col-
lection involved; and

(B) which will encourage continuing study
and education regarding the life and death of
Tupac Amaru Shakur.
(2) **TREATMENT OF COLLECTION AT SECONDARY LOCATION.**—The copies of the portion of the Collection maintained at the secondary location pursuant to this subsection, and the entity responsible for maintaining such copies of the collection under the agreement under this subsection, shall be subject to the same terms, conditions, and requirements as apply under this Act to the portion of the Collection maintained at the National Archives and the Archivist.

(c) **AVAILABILITY OF COLLECTION AT ARCHIVES AND ELECTRONICALLY.**—Each item in the Collection (as described in subsection (a)(2)), other than an artifact or a record the disclosure of which is postponed under this Act, shall be available to the public for inspection and copying at the National Archives and through an electronic format within 30 days after its transmission to the National Archives.

(d) **FEES FOR COPYING.**—The Archivist shall—

(1) charge fees for copying such records; and

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.
(e) **ADDITIONAL REQUIREMENTS.**—(1) The Collection shall be preserved, protected, archived, and made available to the public at the National Archives.

(2) Whenever artifacts are included in the Collection at the National Archives, it shall be sufficient to comply with this Act if the public is provided with access to photographs, drawings, or similar materials depicting the artifacts. Additional display, examination, or testing by the public of artifacts in the Collection shall occur if there is a reasonable claim that such examination or testing will reveal aspects of the artifact that cannot be determined from such photographs or depictions, and shall occur under the terms and conditions established by the National Archives to ensure their preservation and protection for prosperity.

(3) The National Archives, in consultation with its Information Security Oversight Office, shall ensure the security of the records in the Collection that qualify for postponement of public disclosure pursuant to section 6.

**SEC. 5. CITIZENS ADVISORY COMMITTEE.**

(a) Not later than 60 days after the date of enactment of this Act, the National Archives shall appoint an independent Citizens Advisory Committee, subject to the Federal Advisory Committee Act (5 U.S.C., App.), as defined in App. 2, from candidates solicited from and nomi-
nated not later than 30 days after the date of the enactment of this Act by non-governmental organizations from the Society of American Archivists, the National Bar Association, the Black Caucus of the American Library Association, Inc., and the National Conference of Black Political Scientists, the civil rights, civil liberties, entertainment and African American community, which will consist of appointees—

(1) who have not had any previous involvement with any official investigations into the life and death of Tupac Amaru Shakur,

(2) who were never employed or engaged by any Federal, state or local intelligence or law enforcement agency which is covered in the scope of this Act’s search for records related to the life and death of Tupac Amaru Shakur,

(3) who shall be impartial private citizens, none of whom is presently employed by any branch of the Government, and

(4) who shall be distinguished persons of high national professional reputation in their respective fields who are capable of exercising the independent and objective judgment necessary to the fulfillment of their role in ensuring and facilitating the review, transmission to the public, and public disclosure of
records related to the life and death of Tupak Shakur,

(A) who possess an appreciation of the value of such material to the public, scholars, and government, and

(B) who include at least three scholars in current history, at least 3 members of the civil rights community, at least 3 experts on civil liberties, and at least one member of the immediate family of Tupac Amaru Shakur.

(b) If an organization described in subsection (a) does not recommend at least 2 nominees meeting the qualifications stated, by the date that is 45 days after the date of enactment of this Act, the Archivist shall consider for nomination the persons recommended by the other organizations or communities described in subsection (a).

(c) The Archivist may request an organization described in subsection (a) to submit additional nominations.

(d) This Citizens Advisory Committee will not be compensated, but will meet at its discretion at least twice each year to advise and assist the archivist in the full implementation of this act, including—

(1) suggestions assisting in the location of all related records,
(2) review of the public reasons for postpone-
ment decisions and appeals regarding related
records,
(3) recommendations for subpoena of records or
enforcement of the Act,
(4) evaluations regarding cooperation of Gov-
ernment agencies and entities, and
(5) participation in annual reviews and reports
by the Archivist.
(e) VACANCY.—A vacancy on the Citizens Advisory
Committee shall be filled in the same manner as specified
for original appointment within 30 days of the occurrence
of the vacancy. Nominations for a vacancy shall be made
by the organizations and communities described in sub-
section (a).
(f) CHAIRPERSON.—The Members of the Citizens Ad-
visory Committee shall elect one of its members as chair-
person at its initial meeting.
(g) REMOVAL OF CITIZENS ADVISORY COMMITTEE
MEMBER.—
(1) IN GENERAL.—No member of the Citizens
Advisory Committee shall be removed from office,
other than—
(A) by impeachment and conviction; or
(B) by the action of the Archivist for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, failure to meet or falsification of any qualifications under subsection (a)(1), or any other condition that substantially impairs the performance of the member’s duties.

(2) REPORT.—

(A) FACTS AND GROUNDS.—If a member of the Citizens Advisory Committee is removed from office, and that removal is by the Archivist, not later than 10 days after the removal the Archivist shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) PUBLICATION.—The Archivist shall publish in the Federal Register a report submitted under subsection (g)(2), except that the Archivist may, if necessary to protect the rights of a person named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or
all of the report until the completion of such pending cases or pursuant to privacy protection requirements in law.

(3) **JUDICIAL REVIEW.**—

(A) **CIVIL ACTION.**—A member of the Citizens Advisory Committee removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia.

(B) **REINSTATEMENT.**—The member may be reinstated or granted other appropriate relief by order of the court.

**SEC. 6. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF RELATED RECORDS BY GOVERNMENT OFFICES.**

(a) **IN GENERAL.**—

(1) **PREPARATION FOR REVIEW.**—As soon as practicable after the date of enactment of this Act, each Government office shall identify and organize its records relating to the life and death of Tupac Amaru Shakur, and prepare them for transmission to the Archivist for inclusion in the Collection.

(2) **DETERMINATION OF USE OF ORIGINALS OR COPIES.**—
(A) For purposes of determining whether originals or copies of related records are to be made part of the Collection established under this Act, the following shall apply:

(i) In the case of papers, maps, and other documentary materials, the Archivist may determine that record copies of Government records, either the signed original, original production, or a reproduction that has been treated as the official record maintained to chronicle government functions or activities may be placed in the Collection.

(ii) In the case of other papers, maps, and other documentary material, the Archivist may determine that a true and accurate copy of a record in lieu of the original may be placed in the Collection.

(iii) In the case of photographs, the original negative, whenever available (otherwise the nearest generation print that is a true and accurate copy), may be placed in the Collection.

(iv) In the case of motion pictures, the camera original, whenever available
(otherwise the earliest generation print
that is a true and accurate copy) may be
placed in the Collection.

(v) In the case of sound and video re-
cordings, the original recording, whenever
available (otherwise the earliest generation
copy that is a true and accurate copy) may
be placed in the Collection.

(vi) In the case of machine-readable
information, a true and accurate copy of
the original (duplicating all information
contained in the original and in a format
that permits retrieval of the information)
may be placed in the Collection.

(vii) In the case of artifacts, the origi-
nal objects themselves shall be placed in
the Collection at the National Archives.

(B) To the extent records from foreign
governments are included in the Collection, cop-
ies of the original records shall be sufficient for
inclusion in the Collection.

(C) In cases where a copy, as defined in
subparagraph (D), is authorized by the Act to
be included in the Collection, the Archivist may
require that a copy be certified if, in its discre-
tion, it determines a certification to be necessary to ensure the integrity of the Collection.

In cases where an original, as defined in subparagraph (A), is required for inclusion in the Collection, the National Archives may, at its discretion, accept the best available copy. In such cases that records included in the Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(D) For purposes of implementing this Act, the term “copy” means true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(E) Nothing in this paragraph shall be interpreted to suggest that additional copies of any related records contained in the Collection are not also related records that, may also be placed in the Collection.

(F) Nothing in this paragraph shall be interpreted to prevent or to preclude copies of any electronic related records from being refor-
matted electronically in order to conform to differ-
ent hardware or software requirements of
audiovisual or machine-readable formats if such
is the professional judgment of the National Ar-
chives.

(3) RELATED RECORDS.—In carrying out this
section, a Government office may not destroy, alter,
or mutilate in any way a related record.

(4) PRIOR DISCLOSURE.—

(A) Except as provided in subparagraph
(B), in carrying out this section, a Government
office may not withhold, redact, postpone for
public disclosure, or reclassify a related record
that was made available or disclosed to the pub-
lic prior to the date of enactment of this Act.

(B) For purposes of subparagraph (A), a
Government office may withhold names or iden-
tifies, consistent with the requirements of sec-
tion 6, in a related record created by a person
or entity outside government.

(b) CUSTODY OF RELATED RECORDS PENDING RE-
VIEW.—During the review by a Government office, the
Government office shall retain custody of its related
records for purposes of preservation, security, and effi-
ciency, unless—
(1) any oversight Committee requires the physical transfer of records for purposes of conducting an independent and impartial review;

(2) it is a third agency record described in subsection (c)(2)(C); or

(3) any other records are transferred to the Archives for public disclosure.

(c) Review.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, each Government office shall review each related record in its custody or possession in accordance with paragraph (2).

(2) Related records.—In carrying out paragraph (1), a Government office shall—

(A) determine which of its records are related records;

(B) determine which of its related records have been officially disclosed or publicly available in a complete and un-redacted form;

(C)(i) determine which of its related records, or particular information contained in such a record, was created by a third agency or by another Government office; and
(ii) transmit to a third agency or other Government office those records, or particular information contained in those records, or complete and accurate copies thereof;

(D)(i) determine whether its related records or particular information in related records are covered by the standards for postponement of public disclosure under this Act; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 6;

(E) organize and make available to the Archivist all related records identified under subparagraph (D) the public disclosure of which in whole or in part may be postponed under this Act;

(F) organize and make available to the Archivist any record concerning which the office has any uncertainty as to whether the record is a related record governed by this Act;

(G) give priority to—

(i) the identification, review, and transmission of all related records publicly available or disclosed as of the date of en-
actment of this Act in a redacted or edited form; and

(ii) the identification, review, and transmission, under the standards for postponement set forth in this Act, of related records that on the date of enactment of this Act are the subject of litigation under section 552 of title 5, United States Code; and

(H) make available to the National Archives any additional information and records that the Archivist has reason to believe it requires for conducting a review under this Act, including the following:

(i) All training manuals, instructional materials and guidelines created or used by the Government office in furtherance of its review of related records.

(ii) All records, lists, and documents describing the procedure by which the office identified or selected related records for review.

(iii) Organizational charts of the office.
(iv) Records necessary and sufficient to describe the office’s—

(I) records policies and schedules;

(II) filing systems and organization;

(III) storage facilities and locations;

(IV) indexing symbols, marks, codes, instructions, guidelines, methods, and procedures; and

(V) search methods and procedures used in the performance of the duties of the office under this Act.

(v) Reclassification to a higher level, transfer, destruction, or other information (e.g., theft) regarding the status of related records.

(d) IDENTIFICATION AIDS.—

(1) IN GENERAL.—

(A) STANDARD FORM.—Not later than 45 days after the date of enactment of this Act, the Archivist, in consultation with the appropriate Government offices, shall prepare and make available to all Government offices a standard form of identification or finding aid
for use with each related record subject to re-
view under this Act.

(B) U N I F O R M S Y S T E M .—The Archivist
shall ensure that the identification aid program
is established in such a manner as to result in
the creation of a uniform system of electronic
records by Government offices that are compat-
ible with each other and which shall be made
publicly available and searchable electronically.

(2) PRINTED COPIES.—Upon completion of an
identification aid by the Archivist, a Government of-
face shall—

(A) attach a printed copy to the record it
describes;

(B) transmit to the Archivist a printed
copy; and

(C) attach a printed copy to each related
record it describes when it is transmitted to the
Archivist.

(3) P U B L I C L Y A V A I L A B L E R E C O R D S .—Related
records which are in the possession of the National
Archives on the date of enactment of this Act, and
which have been publicly available in their entirety
without redaction, shall be made available in the
Collection without any additional review by any other authorized office under this Act.

(c) TRANSMISSION TO THE NATIONAL ARCHIVES.—

Each Government office shall—

(1) transmit to the Archivist, and make immediately available to the public, all related records that can be publicly disclosed, including those that are publicly available on the date of enactment of this Act, without any redaction, adjustment, or withholding under the standards of this Act; and

(2) transmit to the Archivist upon approval for postponement or upon completion of other action authorized by this Act, all related records the public disclosure of which has been postponed, in whole or in part, under the standards of this Act, to become part of the protected Collection.

(f) RECORD AVAILABILITY.—The National Archives and Executive branch agencies shall—

(1) charge fees for copying related records;

(2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code;

(3) permit, when not deemed a risk by the Archivist, the use of personal copying devices, includ-
ing, but not limited to portable scanners, digital cameras, and the like; and

(4) make available to the public electronic versions of related records, identification aids, and indexes.

SEC. 7. POSTPONEMENT OF PUBLIC DISCLOSURE OF RECORDS.

(a) GROUNDS FOR POSTPONEMENT.—Disclosure of related records or particular information in related records to the public may be postponed subject to the limitations of this Act if there is clear and convincing evidence that—

(1) the threat, as of the time the postponement decision is made, to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the related record is of such gravity that it outweighs the public interest, and such public disclosure would reveal—

(A) a living intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the
disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations, or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States;

(2) the public disclosure of the related record would reveal the name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person;

(3) the public disclosure of the related record could reasonably be expected to constitute an unwarranted invasion of a living person’s personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest; or

(4) the public disclosure of the related record would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a living cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest.
(b) Custody of Postponed Related Records.—

A related record the public disclosure of which has been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the National Archives as required by section 4(e)(2).

(c) Annual Review of Postponed Related Records.—(1) All postponed or redacted records shall be reviewed annually by the originating agency and the Archivist consistent with the recommendations of the Act.

(2) An annual review shall address the public disclosure of additional related records in the Collection. Any related records discovered since the preceding annual review in possession of any Federal, State, or local agency, Government office, organization, or person shall be added to the Collection, and the annual review also shall address the public disclosure of such records under the standard of this Act.

(3) All postponed related records determined to require continued postponement shall require an unclassified written description of the record and the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.
(4) The annual review of postponed related records shall serve to downgrade and declassify security-classified information and implement the presumption of release required by section 15.

(d) Requirement to Disclose Postponed Records.—Each related record shall be publicly disclosed in full, and available in the Collection no later than 1 year after the termination of the initial review, or the date that is 3 years after the date of enactment of this Act, whichever is earlier, unless the President certifies, as required by this Act, that continued postponement is made necessary by—

(1) a current and identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

(2) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

SEC. 8. REVIEW OF RECORDS.

(a) Startup Requirements.—The Government agencies and entities in possession of related records shall—

(1) not later than 90 days after the date of its appointment, publish a schedule for review of all related records in the Federal Register; and
(2) not later than 180 days after the date of its appointment, begin its review of related records under this Act.

(b) Determinations of the Archivist Relating to Public Disclosure and Postponement.—

(1) Transmittal.—The National Archives shall direct that all related records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that—

(A) a Government record is not a related record; or

(B) a Government record or particular information within a related record qualifies for postponement of public disclosure under this Act.

(2) Powers.—

(A) Archivist.—The Archivist shall have the authority to act in a manner prescribed under this Act including authority to—

(i) direct Government offices to complete identification aids and organize related records;

(ii) direct Government offices to transmit to the National Archives related
records as required under this Act, including segregable portions of related records, and substitutes and summaries of related records that can be publicly disclosed to the fullest extent;

(iii) obtain access to related records that have been identified and organized by a Government office;

(iv) receive information from the public regarding the identification and public disclosure of related records;

(v) hold hearings, administer oaths, and subpoena witnesses and documents; and

(vi) appoint liaisons to all Federal agencies that have created related records, or have related records in their possession.

(B) C ITIZENS ADVISORY COMMITTEE.—
The Citizens Advisory Committee shall have the authority to act in a manner prescribed under this Act including authority to—

(i) direct a Government office to make available to the Citizens Advisory Committee, and if necessary investigate the facts surrounding, additional information,
records, or testimony from individuals, which the Citizens Advisory Committee has reason to believe is required to insure full disclosure of related records and fulfill its functions and responsibilities under this Act;

(ii) request the Attorney General to subpoena private persons and State and Federal employees to compel testimony, and other information relevant to its responsibilities under this Act;

(iii) require any Government office to account in writing for the previous destruction of any records relating to the life or death of Tupac Amaru Shakur;

(iv) receive information from the public regarding the identification and public disclosure of related records; and

(v) hold hearings, administer oaths, and subpoena witnesses.

(C) ENFORCEMENT.—Any subpoena issued under provisions of this Act, by the Archivist or the Citizens Advisory Committee, may be enforced by any appropriate Federal court acting pursuant to a lawful request.
(3) Notice of related record designation.—

(A) In determining to designate related records, the Archivist must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the life and death of Tupac Amaru Shakur.

(B) A Notice or Related Record Designation (NRRD) shall be the mechanism for the Archivist to announce publicly its determination that a record or group of records meets the definition of related records.

(4) Postponement.—

(A) The Archivist shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of related records. In carrying out this subparagraph, the Archivist shall—

(i) consider and render decisions on whether a record constitutes a related record;

(ii) consider and render decisions on whether a related record or particular in-
formation in a record qualifies for postponement of disclosure under this Act; and

(iii) in the case of a related record that qualifies for such postponement, set specific conditions and dates for public disclosure of the record, related to events or specific dates when the reasons for postponement will end.

(B) A related record shall be released in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in section 6(a), and no portion of any related record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Archivist’s sole discretion, release of a part of a record is sufficient to comply with the intent and purposes of this Act.

(C) In approving postponement of public disclosure of a related record, the Archivist shall seek to—

(i) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and
(ii) determine, in consultation with
the originating body and consistent with
the standards for postponement under this
Act, which of the following alternative
forms of disclosure shall be made by the
originating body:

(I) Any reasonably segregable
particular information in a related
record.

(II) A substitute record for that
information which is postponed.

(III) A summary of a related
record.

(5) REPORT.—With respect to each related
record or particular information in related records
the public disclosure of which is postponed pursuant
to section 6, or for which only substitutions or sum-
maries have been disclosed to the public, the Govern-
ment agency or entity shall create and transmit to
the Archivist a report containing—

(A) a description of actions by the Archi-
vist, the originating body, the President, or any
Government office (including a justification of
any such action to postpone disclosure of any
record or part of any record) and of any official
proceedings conducted by the Archivist with regard to specific related records; and

(B) a statement of the specific conditions and dates for the public disclosure of the record as set by the Archivist under paragraph (3)(A)(iii).

(6) NOTICE.—

(A) IN GENERAL.—Following its review and a determination that a related record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Archivist shall notify the head of the originating body of its determination, publish a copy of the determination in the Federal Register within 14 days after the determination is made, and provide that the determination is searchable electronically.

(B) CONTEMPORANEOUS NOTICE TO EXECUTIVE AND LEGISLATIVE BRANCHES.—Contemporaneous notice shall be made to the President for Archivist determinations regarding executive branch related records, and to the oversight committees designated in this Act in the case of legislative branch records. Such notice shall contain a written unclassified justification for
public disclosure or postponement of disclosure,
including an explanation of the application of
any standards contained in section 6.

(c) **Presidential Authority Over Archivist Determination.**—

(1) **Public disclosure or postponement of disclosure.**—After the Archivist has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch related record or information within such a record, or of any information contained in a related record, obtained or developed solely within the executive branch, and upon a written appeal to the President by the originating agency, the Citizens Advisory Committee, or third agency within 30 days after such determination, the President shall have the sole and non-delegable authority to require the disclosure or postponement of such record or information under the standards set forth in section 6, and the President shall provide the Archivist with an unclassified written certification specifying the President’s decision within 30 days after the Archivist’s determination and notice to the executive branch agency as required under this Act, stating the justification for the President’s decision, including the
applicable grounds for postponement under section 6, accompanied by a copy of the identification aid required under section 4. If, after 30 days, the President has not transmitted such written certification to the Archivist, the Archivist may proceed according to the previous formal determination.

(2) **Annual Review.**—Any executive branch related record postponed by the President shall be subject to the requirements of annual review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 6.

(3) **Record of Presidential Postponement.**—The Archivist shall, upon its receipt, publish in the Federal Register a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of related records and provide that such copies are searchable electronically.

(A) **Notice to Public.**—Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Archivist first approves the postponement of disclosure of a related record, the Archivist shall publish in the Federal Register a notice that
summarizes the postponements approved by the Archivist or initiated by the President, the House of Representatives, or the Senate, including a description of the subject, originating agency, length or other physical description, and each ground for postponement that is relied upon, and provide that the notice is searchable electronically.

(B) REPORTS BY THE ARCHIVIST.—The Archivist shall report such activities to the leadership of the Congress, the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the President, the head of any Government office whose records have been the subject of Archivist activity, and the Citizens Advisory Committee.

(4) ANNUAL REPORTS.—

(A) The first annual report shall be issued on the date that is 1 year after the date of enactment of this Act, and subsequent reports every 12 months thereafter until termination of each annual review.

(B) A report under paragraph (1) shall include the following information:
(i) A financial report of the expenses for all official activities and requirements of the National Archives and its personnel.

(ii) The progress made on review, transmission to the Archivist, and public disclosure of related records.

(iii) The estimated time and volume of related records involved in the completion of the Archivist’s performance under this Act.

(iv) Any special problems, including requests and the level of cooperation of Government offices, with regard to the ability of the Archivist to operate as required by this Act.

(v) A record of review activities, including a record of postponement decisions by the Archivist or other related actions authorized by this Act, and a record of the volume of records reviewed and postponed.

(vi) Suggestions and requests to Congress for additional legislative authority needs.

(vii) An appendix containing copies of reports of postponed records to the Archi-
vist required under section 7(c)(3) made since the date of the preceding report under this subsection.

(viii) Any recommendations made by the Citizens Advisory Committee, appointed by the National Archives.

(ix) Any recommendations of the Archivist.

(5) At least 90 calendar days before completing work relative to this Act, the Archivist shall provide written notice to the President and Congress of its intention to terminate operations at a specified date.

(6) OVERSIGHT.—The Committee on Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Archivist and the Citizens Advisory Committee, and the disposition of postponed or newly discovered records after termination of the Act, and shall conduct periodic hearings on the conduct of the board not less than every year for a period ending 3 years after enactment, or one year after the Archivist certifies that all related records have been fully released to the public.
SEC. 9. DISCLOSURE OF MATERIALS UNDER SEAL OF COURT.

(a) REQUESTS TO ATTORNEY GENERAL.—

(1) REQUESTS FOR INFORMATION OR EVIDENCE UNDER SEAL.—The Archivist may request the Attorney General—

(A) to petition any court in the United States or abroad to release any information or physical evidence relevant to the life or death of Tupac Amaru Shakur that is held under seal of the court; or

(B) to subpoena any such information or evidence if such information or evidence is no longer in the possession of the Government.

(2) REQUESTS FOR INFORMATION UNDER INJUNCTION OF SECRECY OF A GRAND JURY.—

(A) The Archivist may request the Attorney General to petition any court in the United States to release any information relevant to the life or death of Tupac Amaru Shakur that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of related materials under this Act shall be deemed to constitute a showing of particularized need under

(b) Sense of Congress.—It is the sense of the Congress that—

(1) the Attorney General should assist the Archivist in good faith to unseal any records that the Archivist determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) the Secretary of State should contact any other foreign government that may hold information relevant to the life and death of Tupac Amaru Shakur to seek the disclosure of such information, and report on progress on these matters to the Archivist in a timely fashion; and

(3) all Executive agencies should cooperate in full with the Archivist to seek the disclosure of all information relevant to the life and death of Tupac Amaru Shakur, consistent with the public interest.

Sec. 10. Private Right of Action.

(a) In General.—Any person who is aggrieved by a violation of this Act may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.
(b) ATTORNEY’S FEES.—In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

SEC. 11. RULES OF CONSTRUCTION.

(a) PRECEDENCE OVER OTHER LAW.—When this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law (except section 6103 of the Internal Revenue Code), judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this Act shall be construed to eliminate or limit any right to file requests with any executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code, except that any related record discovered after termination of the Act shall be considered for postponement or public disclosure under the standards of this Act, not such section 552.

(c) JUDICIAL REVIEW.—Nothing in this Act shall be construed to preclude judicial review, under chapter 7 of title 5, United States Code, of final actions taken or required to be taken under this Act.
(d) EXISTING AUTHORITY.—Nothing in this Act revokes or limits the existing authority of the President, any executive agency, the Senate, or the House of Representa-
tives, or any other entity of the Government to publicly disclose records in its possession.

(e) RULES OF THE SENATE AND HOUSE OF RE-
PRESENTATIVES.—To the extent that any provision of this Act establishes a procedure to be followed in the Senate or the House of Representatives, such provision is adopt-
ed—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respec-
tively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 12. TERMINATION OF EFFECT OF ACT.

(a) PROVISIONS PERTAINING TO THE ARCHIVIST.—
The provisions of this Act that pertain to the Archivist
shall cease to be effective when the annual reviews terminate, or full disclosure is effected within 3 years of enactment of this Act.

(b) OTHER PROVISIONS.—The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all related records, including any related record subsequently discovered as described in section 6(c)(2), have been made available to the public in accordance with this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.

SEC. 14. RECORDS PENDING.

Upon termination of the annual reviews, all records that are still pending postponement determinations shall be presumed to be available for release. Any related record discovered in the possession of any Government agency or entity after termination of this Act will be released to the Archivist for public disclosure under the provisions of this Act.

SEC. 15. WHISTLEBLOWER PROTECTION.

All members of the Archivist’s staff, the Archivist, the National Archives, and all Federal agencies covered...
under this Act shall treat relevant employees in accordance with the provisions of chapter 23 of title 5, United States Code, prohibiting certain personnel practices (commonly referred to as whistleblower protection provisions), particularly relating to the disclosure of improper document retention, release, and disclosure.

SEC. 16. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.