To amend section 552 of title 5, United States Code, to apply the requirements of the Freedom of Information Act to the National Security Council, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2016

Mrs. WALORSKI introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend section 552 of title 5, United States Code, to apply the requirements of the Freedom of Information Act to the National Security Council, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Transparency in National Security Act of 2016”.

SECTION 2. FINDINGS.

The Congress finds the following:
(1) The Obama Administration has frequently stated their commitment to transparency and published a Transparency and Open Government memo stating “Transparency promotes accountability and provides information for citizens about what their Government is doing.”

(2) The National Security Council (NSC) is mandated by statute to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security and to perform such other functions as the President may direct.

(3) The NSC maintained an active Freedom of Information Act (FOIA) program and responded to requests under Presidents Ford, Carter, Reagan, and George H.W. Bush.

(4) The 1996 case that eliminated the FOIA requirement for the NSC, Armstrong vs Executive Office of the President, concluded that the NSC does not exercise sufficiently independent authority.

(5) In the 20 years since the Armstrong case, former Secretaries and Cabinet officials, including Leon Panetta and Robert Gates, have spoken out concerning the increasing centralization of power at the White House, and the NSC in particular.
(6) The Obama Administration issued Presidential Policy Directive 1 on February 13, 2009, which established the roles and responsibilities for the NSC and established the National Security Advisor as the principal advisor to the President.

(7) The NSC has grown 20 times in size since the 1960s and now has approximately 400 employees.

(8) The NSC’s growth has accelerated in the recent administrations, the NSC doubled in size to approximately 100 under President Clinton, the NSC doubled in size again to approximately 200 under President George W. Bush, and has doubled again under President Obama to nearly 400 employees.

(9) Successive administrations have shifted the NSC’s role beyond coordinating and advising as was intended by the National Security Act of 1947 and now use the NSC as the final approval for military operations as well.

(10) General Norton Schwartz, former Chief of Staff of the Air Force stated, “The NSC should not be activists. They should have a limited, if any role, in execution.”.
(11) Brent Scowcroft, National Security Advisor to Presidents Ford and George H.W. Bush stated, “The basic rule is that you shouldn’t have so many people that you can duplicate the work of the departments.”.

(12) The Presidential Records Act has been applied to the NSC, given the NSC’s growing autonomy and level of responsibilities, the NSC should instead follow the disclosure requirements of the FOIA and be obligated to preserve its records in accordance with the Federal Records Act.

SEC. 3. APPLICATION OF THE FREEDOM OF INFORMATION ACT TO THE NATIONAL SECURITY COUNCIL.

Section 552(f)(1) of title 5, United States Code (commonly referred to as the Freedom of Information Act), is amended by inserting “and the National Security Council” after the “Executive Office of the President”.

SEC. 4. APPLICATION.

The amendment made by section 3 shall apply with respect to any record created by the National Security Council before, on, or after the date of the enactment of this Act.

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