

115TH CONGRESS
2D SESSION

S. 3191

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2018

Mr. JONES (for himself, Mrs. McCASKILL, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Rights Cold Case
5 Records Collection Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) All Government records related to civil
9 rights cold cases shall be preserved for historical and
10 Governmental purposes.

1 (2) All Government records concerning civil
2 rights cold cases shall carry a presumption of imme-
3 diate disclosure, and all records shall be eventually
4 disclosed to enable the public to become fully in-
5 formed about the history surrounding the cases.

6 (3) Legislation is necessary to create an en-
7 forceable, independent, and accountable process for
8 the public disclosure of such records.

9 (4) Legislation is necessary because congres-
10 sional records related to civil rights cold cases would
11 not otherwise be subject to public disclosure.

12 (5) Legislation is necessary because section 552
13 of title 5, United States Code (commonly known as
14 the Freedom of Information Act), as implemented by
15 the executive branch, has prevented the timely and
16 adequate public disclosure of records relating to civil
17 rights cold cases.

18 (6) Legislation is necessary because Executive
19 Order 13526 (75 Fed. Reg. 707; relating to classi-
20 fied national security information) has not resulted
21 in the timely and adequate public disclosure of
22 records relating to civil rights cold cases.

23 (7) Most of the records related to the civil
24 rights cold cases are almost 50 years old and only

1 in the rarest cases is there any legitimate need for
2 continued protection of such records.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ARCHIVIST.—The term “Archivist” means
6 the Archivist of the United States.

7 (2) CIVIL RIGHTS COLD CASE.—The term “civil
8 rights cold case” means any unsolved case—

9 (A) arising out of events which occurred
10 during the period beginning on January 1,
11 1940 and ending on December 31, 1979; and

12 (B) related to—

13 (i) section 241 of title 18, United
14 States Code (relating to conspiracy against
15 rights);

16 (ii) section 242 of title 18, United
17 States Code (relating to deprivation of
18 rights under color of law);

19 (iii) section 245 of title 18, United
20 States Code (relating to federally protected
21 activities);

22 (iv) sections 1581 and 1584 of title
23 18, United States Code (relating to peon-
24 age and involuntary servitude);

1 (v) section 901 of the Fair Housing
2 Act (42 U.S.C. 3631); or

3 (vi) any other Federal law that was—
4 (I) in effect on or before Decem-
5 ber 31, 1979; and

6 (II) enforced by the criminal sec-
7 tion of the Civil Rights Division of the
8 Department of Justice before the date
9 of enactment of this Act.

10 (3) CIVIL RIGHTS COLD CASE RECORD.—The
11 term “civil rights cold case record” means a record
12 that—

13 (A) is related to a civil rights cold case;
14 and

15 (B) was created or made available for use
16 by, obtained by, or otherwise came into the pos-
17 session of—

18 (i) the Library of Congress;

19 (ii) the National Archives and Records
20 Administration;

21 (iii) any executive agency;

22 (iv) any independent agency;

23 (v) any other entity of the Federal
24 Government; and

1 (vi) any State or local government, or
2 component thereof, that provided support
3 or assistance or performed work in connec-
4 tion with a Federal inquiry into a civil
5 rights cold case.

6 (4) COLLECTION.—The term “Collection”
7 means the Civil Rights Cold Cases Collection estab-
8 lished under section 4.

9 (5) EXECUTIVE AGENCY.—The term “executive
10 agency” means an agency, as defined in subsection
11 552(f) of title 5, United States Code.

12 (6) GOVERNMENT OFFICE.—The term “Govern-
13 ment office” means any office of the Federal Gov-
14 ernment that has possession or control of 1 or more
15 civil rights cold case records.

16 (7) GOVERNMENT OFFICIAL.—The term “Gov-
17 ernment official” means any officer or employee of
18 the United States, including elected and appointed
19 officials.

20 (8) NATIONAL ARCHIVES.—The term “National
21 Archives” means the National Archives and Records
22 Administration and all components thereof, includ-
23 ing Presidential archival depositories established
24 under section 2112 of title 44, United States Code.

1 (9) OFFICIAL INVESTIGATION.—The term “offi-
2 cial investigation” means the reviews of civil rights
3 cold cases conducted by any entity of the Federal
4 Government either independently, at the request of
5 any Presidential commission or congressional com-
6 mittee, or at the request of any Government official.

7 (10) ORIGINATING BODY.—The term “origi-
8 nating body” means the executive agency, Govern-
9 ment commission, congressional committee, or other
10 Governmental entity that created a record or par-
11 ticular information within a record.

12 (11) PUBLIC INTEREST.—The term “public in-
13 terest” means the compelling interest in the prompt
14 public disclosure of civil rights cold case records for
15 historical and Governmental purposes and for the
16 purpose of fully informing the people of the United
17 States about the history surrounding all civil rights
18 cold cases in the United States.

19 (12) RECORD.—The term “record” has the
20 meaning given the term in section 3301 of title 44,
21 United States Code.

22 (13) REVIEW BOARD.—The term “Review
23 Board” means the Civil Rights Cold Case Records
24 Review Board established under section 6.

1 **SEC. 4. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**
2 **AT THE NATIONAL ARCHIVES AND RECORD**
3 **ADMINISTRATION.**

4 (a) IN GENERAL.—

5 (1) ESTABLISHMENT OF THE CIVIL RIGHTS
6 COLD CASE RECORDS COLLECTION.—Not later than
7 60 days after the date of enactment of this Act, the
8 Archivist shall—

9 (A) commence establishing a collection of
10 civil rights cold case records to be known as the
11 “Civil Rights Cold Case Records Collection”
12 that ensures the physical integrity and original
13 provenance of all records in the Collection; and

14 (B) commence preparing and publishing
15 the subject guidebook and index to the Collec-
16 tion; and

17 (C) establish criteria for Government of-
18 fices to follow when transmitting copies of civil
19 rights cold case records to the Archivist, to in-
20 clude required metadata.

21 (2) CONTENTS OF COLLECTION.—The Collec-
22 tion shall include—

23 (A) a copy of each civil rights cold case
24 record—

25 (i) that has not been transmitted to
26 the Archivist, which shall be transmitted

by the entity described in section 3(3) in possession of the civil rights cold case record to the Archivist in accordance with section 2107 of title 44, United States Code; or

(ii) that has been transmitted to the Archivist or disclosed to the public in an unredacted form before the date of the enactment of this Act;

(iii) that is required to be transmitted to the Archivist; or

(iv) the disclosure of which is postponed under this Act; and

(B) all Review Board records, as required under this Act.

(b) DISCLOSURE OF RECORDS.—All civil rights cold case records transmitted to the Archivist for disclosure to the public—

(1) shall be included in the Collection;

(2) not later than 60 days after the transmission of the record to the Archivist, shall be available to the public for inspection and copying at the National Archives; and

(3) shall be prioritized for digitization by the National Archives.

1 (c) FEES FOR COPYING.—The Archivist shall—

2 (1) use efficient electronic means when possible;

3 (2) charge fees for copying civil rights cold case
4 records; and

5 (3) grant waivers of such fees pursuant to the
6 standard established under section 552(a)(4) of title
7 5, United States Code.

8 (d) ADDITIONAL REQUIREMENTS.—The Archivist
9 shall ensure the security of civil rights cold case records
10 in the Collection for which disclosure is postponed.

11 (e) TRANSMISSION TO THE NATIONAL ARCHIVES.—
12 Each Government office shall, in accordance with the cri-
13 teria established by the Archivist under subsection
14 (a)(1)(C)—

15 (1) not later than 300 days after the date of
16 the enactment of this Act, transmit to the Archivist,
17 for the Archivist to make available to the public in
18 accordance with subsection (b), a copy of each civil
19 rights cold case record that can be publicly disclosed,
20 including any such record that is publicly available
21 on the date of enactment of this Act, without any re-
22 daction, adjustment, or withholding under the stand-
23 ards of this Act; and

24 (2) transmit to the Archivist upon approval for
25 postponement by the Review Board or upon comple-

1 tion of other action authorized by this Act, a copy
 2 of each civil rights cold case record for which public
 3 disclosure has been postponed, in whole or in part,
 4 under the standards of this Act, to become part of
 5 the protected Collection.

6 (f) PERIODIC REVIEW OF POSTPONED CIVIL RIGHTS
 7 COLD CASE RECORDS.—

8 (1) IN GENERAL.—Each civil rights cold case
 9 record that is redacted or for which public disclosure
 10 is postponed shall be reviewed not later than Decem-
 11 ber 31 each year by the entity submitting the record
 12 and the Archivist, consistent with the recommenda-
 13 tions of the Review Board under section 8(c)(3)(B).

14 (2) REQUIREMENTS OF PERIODIC REVIEW.—
 15 The periodic review under paragraph (1) shall—

16 (A) address the public disclosure of addi-
 17 tional civil rights cold case records in the Col-
 18 lection under the standards of this Act; and

19 (B) serve to declassify classified informa-
 20 tion, with the presumption of providing public
 21 disclosure.

22 (3) UNCLASSIFIED WRITTEN DESCRIPTION.—
 23 Any civil rights cold case record for which postpone-
 24 ment of public disclosure is continued shall include
 25 an unclassified written description of the reason for

1 such continued postponement, which shall be pro-
2 vided to the Archivist and made available on a pub-
3 licly accessible website upon the determination to
4 continue the postponement.

5 (4) FULL DISCLOSURE OF CIVIL RIGHTS COLD
6 CASE RECORD REQUIRED.—

7 (A) IN GENERAL.—Each civil rights cold
8 case record that is not publicly disclosed in full
9 as of the date on which the Review Board ter-
10 minates under section 6(n) shall be publicly dis-
11 closed in full and available in the Collection not
12 later than 25 years after the date of enactment
13 of this Act unless—

14 (i) the head of the originating body,
15 an executive agency, or other Government
16 office recommends in writing that contin-
17 ued postponement is made necessary by an
18 identifiable harm to military defense, law
19 enforcement, intelligence operations, or the
20 conduct of foreign relations that is of such
21 gravity that it outweighs the public inter-
22 est in disclosure;

23 (ii) the written recommendation de-
24 scribed in clause (i)—

1 (I) is provided to the Archivist
2 not later than 180 days before the
3 date that is 25 years after the date of
4 enactment of this Act; and

5 (II) includes—

6 (aa) a justification of the
7 recommendation to postpone dis-
8 closure; and

9 (bb) a recommended speci-
10 fied time at which or a specified
11 occurrence following which the
12 material may be appropriately
13 disclosed to the public under this
14 Act; and

15 (iii) the Archivist agrees with the
16 written recommendation described in
17 clause (i).

18 (B) NOTIFICATION.—If the Archivist does
19 not agree with the recommendation described in
20 subparagraph (A)(1), the Archivist shall notify
21 the head of the originating body, executive
22 agency, or other Government office making the
23 recommendation not later than 90 days before
24 the date that is 25 years after the date of en-
25 actment of this Act.

1 (g) DIGITIZATION OF RECORDS.—Each executive
 2 agency shall make text searchable documents available to
 3 the Review Board pursuant to standards established under
 4 section 552(a)(3) of title 5, United States Code.

5 **SEC. 5. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
 6 **SURE OF RECORDS.**

7 Disclosure of civil rights cold case records or par-
 8 ticular information within a civil rights cold case record
 9 to the public may be postponed subject to the limitations
 10 of this Act if there is clear and convincing evidence of any
 11 of the following:

12 (1) The threat to the military defense, law en-
 13 forcement, intelligence operations, or the conduct of
 14 domestic affairs of the United States posed by the
 15 public disclosure of the civil rights cold case record
 16 is of such gravity that the disclosure outweighs the
 17 public interest and would reveal information de-
 18 scribed in paragraphs (1) through (9) of section
 19 3.3(b) of Executive Order 13526 (75 Fed. Reg. 707;
 20 relating to classified national security information).

21 (2) The public disclosure of the civil rights cold
 22 case record would reveal the name or identity of a
 23 living individual who provided confidential informa-
 24 tion to the United States and would pose a substan-
 25 tial risk of harm to that individual.

1 (3) The public disclosure of the civil rights cold
 2 case record could reasonably be expected to con-
 3 stitute an unwarranted invasion of personal privacy,
 4 and that invasion of privacy is so substantial that
 5 the protection of privacy outweighs the public inter-
 6 est.

7 (4) The public disclosure of the civil rights cold
 8 case record would compromise the existence of an
 9 understanding of confidentiality currently requiring
 10 protection between a Government agent and a co-
 11 operating individual or group and public disclosure
 12 would be so harmful that the understanding of con-
 13 fidentiality outweighs the public interest.

14 **SEC. 6. ESTABLISHMENT AND POWERS OF THE CIVIL**
 15 **RIGHTS COLD CASE RECORDS REVIEW**
 16 **BOARD.**

17 (a) ESTABLISHMENT.—There is established, as an
 18 independent agency, a board to be known as the Civil
 19 Rights Cold Case Records Review Board.

20 (b) APPOINTMENT.—

21 (1) IN GENERAL.—The President shall appoint,
 22 by and with the advice and consent of the Senate,
 23 5 individuals to serve as members of the Review
 24 Board to ensure and facilitate the review, trans-

mission to the Archivist, and public disclosure of
civil rights cold case records.

(2) INITIAL APPOINTMENT.—

(A) IN GENERAL.—Initial appointments to
the Review Board shall, so far as practicable,
be made not later than 60 days after the enact-
ment of this Act.

(B) RECOMMENDATIONS.—In making ap-
pointments to the Review Board, the President
shall consider any individuals recommended by
the American Historical Association, the Orga-
nization of American Historians, the Society of
American Archivists, and the American Bar As-
sociation.

(C) EXTENSION.—If an organization de-
scribed in subparagraph (B) does not rec-
ommend at least 2 nominees meeting the quali-
fications stated in paragraph (3) within 60 days
after the date of enactment of this Act, the
deadline under subparagraph (A) shall be ex-
tended until the earlier of 60 days after the
date on which such recommendations are made
or 120 days after the date of enactment of this
Act.

1 (D) ADDITIONAL RECOMMENDATIONS.—

2 The President may request that any organiza-
3 tion described in subparagraph (B) submit ad-
4 ditional recommended nominees.

5 (3) QUALIFICATIONS.—Individuals nominated
6 to the Review Board shall—

7 (A) not have had any previous involvement
8 with any official investigation or inquiry con-
9 ducted by the Federal Government, or any
10 State or local government, relating to any civil
11 rights cold case;

12 (B) be distinguished individuals of high
13 national professional reputation in their respec-
14 tive fields who are capable of exercising the
15 independent and objective judgment necessary
16 to fulfill their role in ensuring and facilitating
17 the review, transmission to the public, and pub-
18 lic disclosure of files related to civil rights cold
19 cases and who possess an appreciation of the
20 value of such material to the public, scholars,
21 and government; and

22 (C) include at least 1 professional historian
23 and 1 attorney.

24 (c) SECURITY CLEARANCES.—All Review Board
25 nominees shall be processed for the necessary security

1 clearances in an accelerated manner by the appropriate
2 Federal agencies and subject to the standard procedures
3 for granting such clearances.

4 (d) VACANCY.—A vacancy on the Review Board shall
5 be filled in the same manner as the original appointment
6 within 60 days of the occurrence of the vacancy.

7 (e) CHAIRPERSON.—The members of the Review
8 Board shall elect 1 of the members as chairperson.

9 (f) REMOVAL OF REVIEW BOARD MEMBER.—

10 (1) IN GENERAL.—No member of the Review
11 Board shall be removed from office, other than—

12 (A) by impeachment and conviction; or

13 (B) by the action of the President for inef-
14 ficiency, neglect of duty, malfeasance in office,
15 physical disability, mental incapacity, or any
16 other condition that substantially impairs the
17 performance of the member's duties.

18 (2) REPORT.—

19 (A) IN GENERAL.—If a member of the Re-
20 view Board is removed from office, and that re-
21 moval is by the President, not later than 10
22 days after the removal, the President shall sub-
23 mit to the Committee on Oversight and Govern-
24 ment Reform of the House of Representatives
25 and the Committee on Homeland Security and

1 Governmental Affairs of the Senate a report
 2 specifying the facts found and the grounds for
 3 the removal.

4 (B) PUBLICATION.—The President shall
 5 publish in the Federal Register a report sub-
 6 mitted under subparagraph (A), except that the
 7 President may, if necessary to protect the
 8 rights of a person named in the report or to
 9 prevent undue interference with any pending
 10 prosecution, postpone or refrain from pub-
 11 lishing any or all of the report until the comple-
 12 tion of such pending cases or pursuant to pri-
 13 vacy protection requirements in law.

14 (3) JUDICIAL REVIEW.—

15 (A) IN GENERAL.—A member of the Re-
 16 view Board removed from office may obtain ju-
 17 dicial review of the removal in a civil action
 18 commenced in the United States District Court
 19 for the District of Columbia.

20 (B) RELIEF.—The member may be rein-
 21 stated or granted other appropriate relief by
 22 order of the court.

23 (g) COMPENSATION OF MEMBERS.—

24 (1) IN GENERAL.—A member of the Review
 25 Board shall be compensated at a rate equal to the

1 daily equivalent of the annual rate of basic pay pre-
 2 scribed for level IV of the Executive Schedule under
 3 section 5315 of title 5, United States Code, for each
 4 day (including travel time) during which the member
 5 is engaged in the performance of the duties of the
 6 Review Board.

7 (2) TRAVEL EXPENSES.—A member of the Re-
 8 view Board shall be allowed reasonable travel ex-
 9 penses, including per diem in lieu of subsistence, at
 10 rates for employees of agencies under subchapter I
 11 of chapter 57 of title 5, United States Code, while
 12 away from the member's home or regular place of
 13 business in the performance of services for the Re-
 14 view Board.

15 (h) DUTIES OF THE REVIEW BOARD.—

16 (1) IN GENERAL.—The Review Board shall con-
 17 sider and render decisions on a determination by a
 18 Government office to seek to postpone the disclosure
 19 of civil rights cold case records.

20 (2) DECISIONS.—In carrying out paragraph
 21 (1), the Review Board shall consider and render de-
 22 cisions—

23 (A) whether a record constitutes a civil
 24 rights cold case record; and

1 (B) whether a civil rights cold case record
2 or particular information in a record qualifies
3 for postponement of disclosure under this Act.

4 (i) POWERS.—

5 (1) IN GENERAL.—The Review Board shall
6 have the authority to act in a manner prescribed
7 under this Act including the authority to—

8 (A) obtain access to civil rights cold case
9 records that have been identified and organized
10 by a Government office;

11 (B) direct a Government office to make
12 available to the Review Board, and if necessary
13 investigate the facts surrounding, additional in-
14 formation, records, or testimony from individ-
15 uals, which the Review Board has reason to be-
16 lieve is required to fulfill its functions and re-
17 sponsibilities under this Act;

18 (C) subpoena private persons to compel
19 testimony, records, and other information rel-
20 evant to its responsibilities under this Act;

21 (D) require any Government office to ac-
22 count in writing for the destruction of any
23 records relating to civil rights cold cases;

1 (E) receive information from the public re-
2 garding the identification and public disclosure
3 of civil rights cold case records; and

4 (F) hold hearings, administer oaths, and
5 subpoena witnesses and documents.

6 (2) ENFORCEMENT OF SUBPOENAS.—Any sub-
7 poena issued under this subsection may be enforced
8 by any appropriate Federal court acting pursuant to
9 a lawful request of the Review Board.

10 (j) WITNESS IMMUNITY.—The Review Board shall be
11 considered to be an agency of the United States for pur-
12 poses of chapter 601 of title 18, United States Code.

13 (k) OVERSIGHT.—

14 (1) IN GENERAL.—The Committee on Oversight
15 and Government Reform of the House of Represent-
16 atives and the Committee on Homeland Security and
17 Governmental Affairs of the Senate shall have con-
18 tinuing oversight jurisdiction with respect to the offi-
19 cial conduct of the Review Board and the disposition
20 of postponed records after termination of the Review
21 Board, and shall have access to any records held or
22 created by the Review Board.

23 (2) COOPERATION OF REVIEW BOARD.—The
24 Review Board shall have a duty to cooperate with

1 the exercised of the oversight jurisdiction described
2 in paragraph (1).

3 (l) SUPPORT SERVICES.—The Administrator of Gen-
4 eral Services shall provide administrative services for the
5 Review Board on a reimbursable basis.

6 (m) INTERPRETIVE REGULATIONS.—The Review
7 Board may issue interpretive regulations.

8 (n) TERMINATION.—

9 (1) IN GENERAL.—The Review Board shall ter-
10 minate not later than 3 years after the enactment of
11 this Act, except that the Review Board may, by ma-
12 jority vote, extend its term for an additional 1-year
13 period if the Review Board has not completed its
14 work within that 3-year period.

15 (2) REPORTS.—Before its termination, the Re-
16 view Board shall submit reports to the President
17 and the Congress, including a complete and accurate
18 accounting of expenditures during its existence, and
19 shall complete all other reporting requirements
20 under this Act.

21 (3) TRANSFER OF RECORDS.—

22 (A) IN GENERAL.—Upon termination, the
23 Review Board shall transfer all of its records to
24 the Archivist for inclusion in the Collection.

1 (B) PRESERVATION OF RECORDS.—The
 2 records of the Review Board shall not be de-
 3 stroyed, except that the Archivist may destroy
 4 routine administrative records covered by a gen-
 5 eral records schedule following notification in
 6 the Federal Register and after considering com-
 7 ments.

8 **SEC. 7. REVIEW BOARD PERSONNEL.**

9 (a) CHIEF OF STAFF.—

10 (1) APPOINTMENT.—Not later than 45 days
 11 after the initial meeting of the Review Board, and
 12 without regard to political affiliation, the Review
 13 Board shall appoint an individual to the position of
 14 Chief of Staff of the Review Board.

15 (2) REQUIREMENTS.—The individual appointed
 16 as Chief of Staff—

17 (A) shall be a citizen of the United States
 18 of integrity and impartiality who is a distin-
 19 guished professional; and

20 (B) shall have had no previous involvement
 21 with any official investigation or inquiry relat-
 22 ing to civil rights cold cases.

23 (3) CANDIDATE TO HAVE CLEARANCES.—A
 24 candidate for Chief of Staff shall be granted the nec-
 25 essary security clearances in an accelerated manner

1 subject to the standard procedures for granting such
2 clearances.

3 (4) APPROVAL CONTINGENT ON PRIOR CLEAR-
4 ANCE.—A candidate shall qualify for the necessary
5 security clearance prior to being appointed by the
6 Review Board.

7 (5) DUTIES.—The Chief of Staff shall—

8 (A) serve as principal liaison to Govern-
9 ment offices;

10 (B) be responsible for the administration
11 and coordination of the Review Board's review
12 of records;

13 (C) be responsible for the administration
14 of all official activities conducted by the Review
15 Board; and

16 (D) have no authority to decide or deter-
17 mine whether any record shall be disclosed to
18 the public or postponed for disclosure.

19 (6) REMOVAL.—The Chief of Staff shall not be
20 removed except upon a majority vote of the Review
21 Board to remove the Chief of Staff for cause on the
22 grounds of inefficiency, neglect of duty, malfeasance
23 in office, physical disability, mental incapacity, or
24 any other condition that substantially impairs the

1 performance of the responsibilities of the Chief of
2 Staff or the employees of the Review Board.

3 (b) STAFF.—

4 (1) ADDITIONAL PERSONNEL.—The Review
5 Board may, in accordance with the civil service laws
6 but without regard to civil service laws and regula-
7 tions for appointments in the competitive service
8 under subchapter I of chapter 33 of title 5, United
9 States Code, appoint and terminate additional em-
10 ployees as are necessary to enable the Review Board
11 and its Chief of Staff to perform its duties.

12 (2) REQUIREMENTS.—An individual appointed
13 as an employee of the Review Board—

14 (A) shall be a private citizen of integrity
15 and impartiality; and

16 (B) shall have had no previous involvement
17 with any official investigation or inquiry relat-
18 ing to the civil rights cold cases.

19 (3) NOMINATIONS.—Before making an appoint-
20 ment pursuant to paragraph (1), the Review Board
21 shall consider individuals recommended by the
22 American Historical Association, the Organization of
23 American Historians, the Society of American Archi-
24 vists, and the American Bar Association.

1 (4) SECURITY CLEARANCES.—A candidate shall
 2 qualify for the necessary security clearance prior to
 3 being appointed by the Review Board.

4 (c) COMPENSATION.—The Review Board shall fix the
 5 compensation of the Chief of Staff and other employees
 6 in accordance with title 5, United States Code, except that
 7 the rate of pay for the Chief of Staff and other employees
 8 may not exceed the rate payable for level V of the Execu-
 9 tive Schedule under section 5316 of that title.

10 (d) ADVISORY COMMITTEES.—The Review Board
 11 may create advisory committees to assist in fulfilling the
 12 responsibilities of the Review Board under this Act.

13 **SEC. 8. REVIEW OF RECORDS BY THE REVIEW BOARD.**

14 (a) CUSTODY OF RECORDS REVIEWED BY THE
 15 BOARD.—Pending the outcome of the Review Board’s re-
 16 view activity, a Government office shall retain custody of
 17 a civil rights cold case records for purposes of preserva-
 18 tion, security, and efficiency, unless—

19 (1) the Review Board requires the physical
 20 transfer of records for reasons of conducting an
 21 independent and impartial review; or

22 (2) such transfer is necessary for an adminis-
 23 trative hearing or other official Review Board func-
 24 tion.

1 (b) STARTUP REQUIREMENTS.—The Review Board
2 shall—

3 (1) not later than 90 days after the date on
4 which all members of the Review Board are ap-
5 pointed, publish a schedule for review of all civil
6 rights cold case records in the Federal Register; and

7 (2) not later than 180 days after the enactment
8 of this Act, begin its review of civil rights cold case
9 records under this Act.

10 (c) DETERMINATION OF THE REVIEW BOARD.—

11 (1) IN GENERAL.—The Review Board shall di-
12 rect that copies of all civil rights cold case records
13 be transmitted to the Archivist and disclosed to the
14 public in the Collection in the absence of clear and
15 convincing evidence that—

16 (A) a Government record is not a civil
17 rights cold case record; or

18 (B) a Government record or particular in-
19 formation within a civil rights cold case record
20 qualifies for postponement of public disclosure
21 under this Act.

22 (2) POSTPONEMENT.—In approving postpone-
23 ment of public disclosure of a civil rights cold case
24 record, the Review Board shall work to—

1 (A) provide for the disclosure of segregable
 2 parts, substitutes, or summaries of such a
 3 record; and

4 (B) determine, in consultation with the
 5 originating body and consistent with the stand-
 6 ards for postponement under this Act, which of
 7 the following alternative forms of disclosure
 8 shall be made by the originating body:

9 (i) Any reasonably segregable par-
 10 ticular information in a civil rights cold
 11 case record.

12 (ii) A substitute record for that infor-
 13 mation which is postponed.

14 (iii) A summary of a civil rights cold
 15 case record.

16 (3) REPORT.—With respect to each civil rights
 17 cold case record or particular information in civil
 18 rights cold case records the public disclosure of
 19 which is postponed under section 5, or for which
 20 only substitutions or summaries have been disclosed
 21 to the public, the Review Board shall create and
 22 transmit to the Archivist a report containing—

23 (A) a description of actions by the Review
 24 Board, the originating body, the President, or
 25 any Government office (including a justification

1 of any such action to postpone disclosure of any
2 record or part of any record) and of any official
3 proceedings conducted by the Review Board
4 with regard to specific civil rights cold case
5 records; and

6 (B) a statement, based on a review of the
7 proceedings and in conformity with the deci-
8 sions reflected therein, designating a rec-
9 ommended specified time at which or a specified
10 occurrence following which the material may be
11 appropriately disclosed to the public under this
12 Act.

13 (4) NOTICE.—Not later than 14 days after the
14 Review Board makes a determination that a civil
15 rights cold case record shall be publicly disclosed in
16 the Collection or postponed for disclosure and held
17 in the protected Collection, the Review Board shall
18 notify the head of the originating body of its deter-
19 mination and publish a copy of the determination in
20 the Federal Register.

21 (5) OTHER NOTICE.—Contemporaneous notice
22 shall be made to the President of Review Board de-
23 terminations regarding executive branch civil rights
24 cold case records, and to the oversight committees
25 designated in this Act in the case of legislative

1 branch records. Such notice shall contain a written
 2 unclassified justification for public disclosure or
 3 postponement of disclosure, including an explanation
 4 of the application of any standards under section 5.

5 (d) PRESIDENTIAL AUTHORITY OVER REVIEW
 6 BOARD DETERMINATION.—

7 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
 8 OF DISCLOSURE.—After the Review Board has made
 9 a formal determination concerning the public disclo-
 10 sure or postponement of disclosure of an executive
 11 branch civil rights cold case record or information
 12 contained in a civil rights cold case record, obtained
 13 or developed solely within the executive branch, the
 14 President shall have the sole and nondelegable au-
 15 thority to require the disclosure or postponement of
 16 such record or information under the standards set
 17 forth in section 5, and the President shall provide
 18 the Review Board with an unclassified written cer-
 19 tification specifying the President’s decision within
 20 30 days after the Review Board’s determination and
 21 notice to the executive agency as required under this
 22 Act, stating the justification for the President’s deci-
 23 sion, including the applicable grounds for postpone-
 24 ment under section 5.

1 (2) PERIODIC REVIEW.—Any executive branch
2 civil rights cold case record for which public disclo-
3 sure is postponed by the President shall be subject
4 to the requirements of periodic review and declas-
5 sification of classified information and public disclo-
6 sure in the Collection set forth in section 4.

7 (3) RECORD OF PRESIDENTIAL POSTPONE-
8 MENT.—The Review Board shall, upon its receipt,
9 publish in the Federal Register a copy of any unclas-
10 sified written certification, statement, and other ma-
11 terials transmitted by or on behalf of the President
12 with regard to postponement of the public disclosure
13 of civil rights cold case records.

14 (e) NOTICE TO THE PUBLIC.—On each day that is
15 on or after the date that is 60 days after the Review Board
16 first approves the postponement of disclosure of a civil
17 rights cold case record, the Review Board shall publish
18 on a publicly available website a notice that summarizes
19 the postponements approved by the Review Board or initi-
20 ated by the President, including a description of the sub-
21 ject, originating agency, length or other physical descrip-
22 tion, and each ground for postponement that is relied
23 upon.

24 (f) REPORTS BY THE REVIEW BOARD.—

1 (1) IN GENERAL.—The Review Board shall re-
2 port its activities to the Speaker of the House of
3 Representatives, the Minority Leader of the House
4 of Representatives, the Committee on Oversight and
5 Government Reform of the House of Representa-
6 tives, the Majority Leader of the Senate, the Minor-
7 ity Leader of the Senate, the Committee on Home-
8 land Security and Governmental Affairs of the Sen-
9 ate, the President, the Archivist, and the head of
10 any Government office whose records have been the
11 subject of Review Board activity.

12 (2) DEADLINES.—Not later than 1 year after
13 the date of enactment of this Act, and every year
14 thereafter until termination of the Review Board,
15 the Review Board shall issue a report under para-
16 graph (1).

17 (3) CONTENTS.—Each report under paragraph
18 (1) shall include the following information:

19 (A) A financial report of the expenses for
20 all official activities and requirements of the
21 Review Board and its employees.

22 (B) The progress made on review, trans-
23 mission to the Archivist, and public disclosure
24 of civil rights cold case records.

1 (C) The estimated time and volume of civil
2 rights cold case records involved in the comple-
3 tion of the Review Board's performance under
4 this Act.

5 (D) Any special problems, including re-
6 quests and the level of cooperation of Govern-
7 ment offices, with regard to the ability of the
8 Review Board to operate as required by this
9 Act.

10 (E) A record of review activities, including
11 a record of postponement decisions by the Re-
12 view Board or other related actions authorized
13 by this Act, and a record of the volume of
14 records reviewed and postponed.

15 (F) Recommendations and requests to
16 Congress for additional authorization.

17 (G) An appendix containing copies of re-
18 ports of postponed records to the Archivist re-
19 quired under section subsection (c)(3) made
20 since the date of the preceding report under
21 this subsection.

22 (4) NOTICE OF TERMINATION.—Not later than
23 90 days before terminating, the Review Board shall
24 provide written notice to the President and the Con-

1 gress of its intention to terminate its operations at
2 a specified date.

3 **SEC. 9. DISCLOSURE OF OTHER INFORMATION AND ADDI-**
4 **TIONAL STUDY.**

5 (a) MATERIALS UNDER THE SEAL OF THE COURT.—

6 (1) IN GENERAL.—The Review Board may re-
7 quest the Attorney General to petition any court in
8 the United States or abroad to release any informa-
9 tion relevant to civil rights cold cases that is held
10 under seal of court.

11 (2) GRAND JURY MATERIALS.—

12 (A) IN GENERAL.—The Review Board may
13 request the Attorney General to petition any
14 court in the United States to release any infor-
15 mation relevant to civil rights cold cases that is
16 held under the injunction of secrecy of a grand
17 jury.

18 (B) PARTICULARIZED NEED.—A request
19 for disclosure of civil rights cold case records
20 under this Act shall be deemed to constitute a
21 showing of particularized need under rule 6 of
22 the Federal Rules of Criminal Procedure.

23 (3) DEADLINE.—The Attorney General shall
24 comply with any request that is subject to this sub-
25 section within 45 days.

1 (b) COOPERATION WITH AGENCIES.—It is the sense
2 of Congress that—

3 (1) the Attorney General should assist the Re-
4 view Board in good faith to unseal any records that
5 the Review Board determines to be relevant and held
6 under the seal by a court or under the injunction of
7 secrecy of a grand jury; and

8 (2) all departments and agencies of the United
9 States Government should cooperate in full with the
10 Review Board to seek the disclosure of all informa-
11 tion relevant to civil rights cold cases consistent with
12 the public interest.

13 **SEC. 10. RULES OF CONSTRUCTION.**

14 (a) PRECEDENCE OVER OTHER LAW.—When this
15 Act requires transmission of a record to the Archivist or
16 public disclosure, it shall take precedence over any other
17 law (except section 6103 of the Internal Revenue Code of
18 1986), judicial decisions construing such law, or common
19 law doctrine that would otherwise prohibit such trans-
20 mission or disclosure with the exception of deeds governing
21 access to or transfer or release of gifts and donations of
22 records to the United States Government.

23 (b) FREEDOM OF INFORMATION ACT.—Nothing in
24 this Act shall be construed to eliminate or limit any right
25 to file any requests with any executive agency or seek judi-

1 cial review of the decisions under section 552 of title 5,
2 United States Code.

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

7 (d) EXISTING AUTHORITY.—Nothing in this Act re-
8 vokes or limits the existing authority of the President, any
9 executive agency, the Senate, the House of Representa-
10 tives, or any other entity of the Government to publicly
11 disclose records in its possession.

12 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—There are authorized to be appro-
14 priated such sums as are necessary to carry out this Act,
15 to remain available until expended.

16 (b) INTERIM PROVISIONS.—Until such time as funds
17 are appropriated pursuant to subsection (a), the President
18 shall use such sums as are available for discretionary use
19 to carry out this Act.

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