

*July 25 approved by Subcommittee
July 31 Committee*

[COMMITTEE PRINT]

JULY 28, 1984

**[Showing the Amendment in the Nature of a Substitute to H.R.
5164 Adopted by the Subcommittee on Information, Justice,
and Agriculture]**

Strike out all after the enacting clause and insert in lieu thereof the following:

1 That this Act may be cited as the "Central Intelligence
2 Agency Information Act".

3 SEC. 2. (a) The National Security Act of 1947 is
4 amended by adding at the end thereof the following new title:

5 "TITLE VII—PROTECTION OF OPERATIONAL
6 FILES OF THE CENTRAL INTELLIGENCE
7 AGENCY

8 "EXEMPTION OF CERTAIN OPERATIONAL FILES FROM
9 SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

10 "SEC. 701. (a) Operational files of the Central Intelli-
11 gence Agency may be exempted by the Director of Central
12 Intelligence from the provisions of section 552 of title 5,
13 United States Code (Freedom of Information Act), which re-
14 quire publication or disclosure, or search or review in connec-
15 tion therewith.

J. 37-001—0

1 “(b) For the purposes of this title the term ‘operational
2 files’ means—

3 “(1) files of the Directorate of Operations which
4 document the conduct of foreign intelligence or coun-
5 terintelligence operations or intelligence or security li-
6 aison arrangements or information exchanges with for-
7 eign governments or their intelligence or security serv-
8 ices;

9 “(2) files of the Directorate for Science and Tech-
10 nology which document the means by which foreign in-
11 telligence or counterintelligence is collected through
12 scientific and technical systems; and

13 “(3) files of the Office of Security which document
14 investigations conducted to determine the suitability of
15 potential foreign intelligence or counterintelligence
16 sources;

17 except that files which are the sole repository of disseminated
18 intelligence are not operational files.

19 “(c) Notwithstanding subsection (a) of this section, ex-
20 empted operational files shall continue to be subject to search
21 and review for information concerning—

22 “(1) United States citizens or aliens lawfully ad-
23 mitted for permanent residence who have requested in-
24 formation on themselves pursuant to the provisions of
25 section 552 of title 5, United States Code (Freedom of

1 Information Act), or section 552a of title 5, United
2 States Code (Privacy Act of 1974);

3 “(2) any special activity the existence of which is
4 not exempt from disclosure under the provisions of sec-
5 tion 552 of title 5, United States Code (Freedom of In-
6 formation Act); or

7 “(3) the specific subject matter of an investigation
8 by the intelligence committees of the Congress, the In-
9 telligence Oversight Board, the Department of Justice,
10 the Office of General Counsel of the Central Intelli-
11 gence Agency, the Office of Inspector General of the
12 Central Intelligence Agency, or the Office of the Di-
13 rector of Central Intelligence for any impropriety, or
14 violation of law, Executive order, or Presidential direc-
15 tive, in the conduct of an intelligence activity.

16 “(d)(1) Files that are not exempted under subsection (a)
17 of this section which contain information derived or dissemi-
18 nated from exempted operational files shall be subject to
19 search and review.

20 “(2) The inclusion of information from exempted oper-
21 ational files in files that are not exempted under subsection
22 (a) of this section shall not affect the exemption under subsec-
23 tion (a) of this section of the originating operational files from
24 search, review, publication, or disclosure.

1 “(3) Records from exempted operational files which
2 have been disseminated to and referenced in files that are not
3 exempted under subsection (a) of this section and which have
4 been returned to exempted operational files for sole retention
5 shall be subject to search and review.

6 “(e) The provisions of subsection (a) of this section shall
7 not be superseded except by a provision of law which is en-
8 acted after the date of enactment of subsection (a), and which
9 specifically cites and repeals or modifies its provisions.

10 “(f) Whenever any person who has requested agency
11 records under section 552 of title 5, United States Code
12 (Freedom of Information Act), alleges that the Central Intel-
13 ligence Agency has improperly withheld records because of
14 failure to comply with any provision of this section, judicial
15 review shall be available under the terms set forth in section
16 552(a)(4)(B) of title 5, United States Code, except that—

17 “(1) in any case in which information specifically
18 authorized under criteria established by an Executive
19 order to be kept secret in the interest of national de-
20 fense or foreign relations is filed with, or produced for,
21 the court by the Central Intelligence Agency, such in-
22 formation shall be examined ex parte, in camera by the
23 court;

1 “(2) the court shall, to the fullest extent practica-
2 ble, determine issues of fact based on sworn written
3 submissions of the parties;

4 “(3) when a complainant alleges that requested
5 records were improperly withheld because of improper
6 placement solely in exempted operational files, the
7 complainant shall support such allegation with a sworn
8 written submission, based upon personal knowledge or
9 otherwise admissible evidence;

10 “(4)(A) when a complainant alleges that requested
11 records were improperly withheld because of improper
12 exemption of operational files, the Central Intelligence
13 Agency shall meet its burden under section
14 552(a)(4)(B) of title 5, United States Code, by demon-
15 strating to the court by sworn written submission that
16 exempted operational files likely to contain responsive
17 records currently perform the functions set forth in
18 subsection (b) of this section; and

19 “(B) the court may not order the Central Intelli-
20 gence Agency to review the content of any exempted
21 operational file or files in order to make the demonstra-
22 tion required under subparagraph (A) of this paragraph,
23 unless the complainant disputes the Central Intelli-
24 gence Agency’s showing with a sworn written submis-

1 sion based on personal knowledge or otherwise admis-
2 sible evidence;

3 “(5) in proceedings under paragraphs (3) and (4)
4 of this subsection, the parties shall not obtain discovery
5 pursuant to rules 26 through 36 of the Federal Rules
6 of Civil Procedure, except that requests for admission
7 may be made pursuant to rules 26 and 36;

8 “(6) if the court finds under this subsection that
9 the Central Intelligence Agency has improperly with-
10 held requested records because of failure to comply
11 with any provision of this section, the court shall order
12 the Central Intelligence Agency to search and review
13 the appropriate exempted operational file or files for
14 the requested records and make such records, or por-
15 tions thereof, available in accordance with the provi-
16 sions of section 552 of title 5, United States Code
17 (Freedom of Information Act), and such order shall be
18 the exclusive remedy for failure to comply with this
19 section; and

20 “(7) if at any time following the filing of a com-
21 plaint pursuant to this subsection the Central Intelli-
22 gence Agency agrees to search the appropriate ex-
23 empted operational file or files for the requested
24 records, the court shall dismiss the claim based upon
25 such complaint.

1 "DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

2 "SEC. 702. (a) Not less than once every ten years, the
3 Director of Central Intelligence shall review the exemptions
4 in force under subsection (a) of section 701 of this Act to
5 determine whether such exemptions may be removed from
6 any category of exempted operational files or any portion
7 thereof.

8 "(b) The review required by subsection (a) of this section
9 shall include consideration of the historical value or other
10 public interest in the subject matter of the particular category
11 of files or portions thereof and the potential for declassifying
12 a significant part of the information contained therein.

13 "(c) A complainant who alleges that the Central Intelli-
14 gence Agency has improperly withheld records because of
15 failure to comply with this section may seek judicial review in
16 the district court of the United States of the district in which
17 any of the parties reside, or in the District of Columbia. In
18 such a proceeding, the court's review shall be limited to de-
19 termining (1) whether the Central Intelligence Agency has
20 conducted the review required by subsection (a) of this sec-
21 tion within ten years of enactment of this title or within ten
22 years after the last review, and (2) whether the Central Intel-
23 ligence Agency, in fact, considered the criteria set forth in
24 subsection (b) of this section in conducting the required
25 review."

1 (b) The table of contents at the beginning of such Act is
2 amended by adding at the end thereof the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE
CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication,
or disclosure.

"Sec. 702. Decennial review of exempted operational files."

3 (c) Subsection (q) of section 552a of title 5, United
4 States Code, is amended—

5 (1) by inserting "(1)" after "(q)"; and

6 (2) by adding at the end thereof the following:

7 "(2) No agency shall rely on any exemption in this sec-
8 tion to withhold from an individual any record which is other-
9 wise accessible to such individual under the provisions of sec-
10 tion 552 of this title."

11 SEC. 3. (a) The Director of Central Intelligence, in con-
12 sultation with the Archivist of the United States, the Librari-
13 an of Congress, and appropriate representatives of the histor-
14 ical discipline selected by the Archivist, shall prepare and
15 submit by June 1, 1985, a report on the feasibility of con-
16 ducting systematic review for declassification and release of
17 Central Intelligence Agency information of historical value.

18 (b)(1) The Director shall, once each six months, prepare
19 and submit an unclassified report which includes—

20 (A) a description of the specific measures estab-
21 lished by the Director to improve the processing of re-

1 requests under section 552 of title 5, United States
2 Code;

3 (B) the current budgetary and personnel alloca-
4 tions for such processing;

5 (C) the number of such requests (i) received and
6 processed during the preceding six months, and (ii)
7 pending at the time of issuance of such report; and

8 (D) an estimate of the current average response
9 time for completing the processing of such requests.

10 (2) The first report required by paragraph (1) shall be
11 submitted a date which is six months after the date of enact-
12 ment of this Act. The requirements of such paragraph shall
13 cease to apply after the issuance of the fourth such report.

14 (c) Each of the reports required by subsections (a) and
15 (b) shall be submitted to the Permanent Select Committee on
16 Intelligence and the Committee on Government Operations
17 of the House of Representatives and the Select Committee
18 on Intelligence and the Committee on the Judiciary of the
19 Senate.

20 SEC. 4. The amendments made by subsections (a) and
21 (b) of section 2 shall be effective upon enactment of this Act
22 and shall apply with respect to any requests for records,
23 whether or not such request was made prior to such enact-
24 ment, and shall apply to all civil actions not commenced prior
25 to February 7, 1984.

○