

The Civil Rights Cold Case Records Collection Act

A BILL

To provide for the expeditious disclosure of records related to civil rights cold cases.

Section 1. Short Title

This Act may be cited as the “Cold Case Records Collection Act of 2016.”

Section 2. Findings, Declarations, and Purposes

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

- (1) All government records related to Civil Rights Cold Cases should be preserved for historical and governmental purposes;
- (2) all government records concerning Civil Rights Cold Cases 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 the cases;
- (3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;
- (4) legislation is necessary because congressional records related to Civil Rights Cold Cases would not otherwise be subject to public disclosure
- (5) legislation is necessary because the Freedom of Information Act, as implemented by the executive branch, has prevented the timely or adequate public disclosure of records relating to Civil Rights Cold Cases
- (6) legislation is necessary because Executive Order No. 13526, entitled "Classified National Security Information" while eliminating the declassification and downgrading schedules relating to classified information across government has not resulted in the timely or adequate public disclosure of records relating to Civil Rights Cold Cases; and
- (7) most of the records related to the Civil Rights Cold Cases are almost 50 years old and only in the rarest cases is there any legitimate need for continued protection of such records.

(b) PURPOSES -- The purposes of this Act are --

- (1) to provide for the creation of the Civil Rights Cold Cases Collection to the public at the National Archives and Records Administration; and

(2) to require the expeditious public transmission to the Archivist and public disclosure of such records.

Section 3. Definitions

In this Act:

- (1) "Archivist" means Archivist of the United States.
- (2) "Civil Rights Cold Case" means any unsolved case related to criminal civil rights statutes specifically:
 - (A) section 241 of title 18, United States Code (relating to conspiracy against rights);
 - (B) section 242 of title 18, United States Code (relating to deprivation of rights under color of law);
 - (C) section 245 of title 18, United States Code (relating to federally protected activities);
 - (D) sections 1581 and 1584 of title 18, United States Code (relating to involuntary servitude and peonage);
 - (E) section 901 of the Fair Housing Act (42 U.S.C. 3631); and
 - (F) any other Federal law that—
 - (i) was in effect on or before December 31, 1969; and
 - (ii) the Criminal Section of the Civil Rights Division of the Department of Justice enforced, prior to the date of enactment of this Act.
- (3) "Record" means a record that is related to Civil Rights Cold Cases, that was created or made available for use by, obtained by, or otherwise came into the possession of --
 - (A) the Library of Congress;
 - (B) the National Archives and Records Administration;
 - (C) any Executive agency; especially the Department of Justice and its constituent divisions and agencies.
 - (D) any independent agency;
 - (E) any other office of the Federal Government; and
 - (F) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into Civil Rights Cold Cases
- (4) "Collection" means the Civil Rights Cold Cases Collection established under Section 4.
- (5) "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.

(6) "Government office" means any office of the Federal Government that has possession or control of civil rights Cold Cases records, including --

(A) the Library of Congress;

(B) the National Archives as custodian of Civil Rights Cold Cases records that it has obtained or possesses, including all 157 ("Civil Unrest") and 174 ("Bombing Matters") files transferred by the Federal Bureau of Investigation;

(C) the Department of Justice and the Federal Bureau of Investigation;

(D) the Office of the Clerk of the House of Representatives which serves as the custodian of sealed material related to Congressional investigations into civil rights violence;

(E) any other executive branch office or agency, and any independent agency.

"Identification aid" means the written description prepared for each record as required in Section 4.

(7) "National Archives" means the National Archives and Records Administration and all components thereof, including Presidential archival depositories established under section 2112 of Title 44, United States Code.

(8) "Official Investigation" means the reviews of Civil Rights Cold Cases conducted by a any Presidential commission, any authorized congressional committee, and any Government agency either independently, at the request of any Presidential commission or congressional committee, or at the request of any Government official.

(9) "Originating body" means the Executive agency, government commission, congressional committee, or other governmental entity that created a record or particular information within a record.

(10) "Public interest" means the compelling interest in the prompt public disclosure of civil rights Cold Cases records for historical and governmental purposes and for the purpose of fully informing the American people about the history surrounding all Civil Rights Cold Cases in the United States.

(11) "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, regardless of its physical form or characteristics.

(12) "Review Board" means the Civil Rights Cold Cases Records Review Board established by Section 7.

(13) "Third agency" means a Government agency that originated a civil rights Cold Case record that is in the possession of another agency.

Section 4. Civil Rights Cold Case Records Collection at the National Archives and Records Administration

(a) IN GENERAL --

(1) Not later than 60 days after the date of enactment of this Act, the National Archives and Records Administration shall commence establishment of a collection of records to be known as the Cold Case Records Collection. In so doing, the Archivist shall ensure the physical integrity and original provenance of all records. The Collection shall consist of record copies of all Government records relating to the Civil Rights Cold Cases, 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.

(2) The Collection shall include --

(A) all civil rights Cold Case records --

- (i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of enactment of this Act;
- (ii) that are required to be transmitted to the National Archives; or
- (iii) the disclosure of which is postponed under this Act;

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

(C) all Review Board records as required by this Act.

(b) **DISCLOSURE OF RECORDS** -- All Cold Case records transmitted to the National Archives for disclosure to the public shall be included in the Collection and shall be available to the public for inspection and copying at the National Archives within 30 days after their transmission to the National Archives.

(c) **FEEES FOR COPYING** -- The Archivist shall --

- (1) use efficient electronic means when possible,
- (2) charge fees for copying Cold Case records; and
- (2) grant waivers of such fees pursuant to the standards established by section 552(a)(4) of Title 5, United States Code.

(d) **ADDITIONAL REQUIREMENTS** --

- (1) The Collection shall be preserved, protected, archived, and made available to the public at the National Archives using appropriations authorized, specified, and restricted for use under the terms of this Act.

(2) The National Archives, in consultation with the Information Security Oversight Office, shall ensure the security of the postponed Cold Case records in the Collection.

Section 5. Review, Identification, Transmission to the National Archives, and Public Disclosure of Classified Cold Case Records by Government Offices

(a) IN GENERAL --

(1) As soon as practicable after the date of enactment of this Act, each Government office shall identify and organize its records of classified Cold Case documents and prepare them for transmission to the Archivist for inclusion in the Collection.

(2) No Cold Case record shall be destroyed, altered, or mutilated in any way.

(3) No Cold Case record made available or disclosed to the public prior to the date of enactment of this Act may be withheld, redacted, postponed for public disclosure, or reclassified.

(4) No Cold Case record created by a person or entity outside government (excluding names or identities consistent with the requirements of section 6) shall be withheld, redacted, postponed for public disclosure, or reclassified.

(b) CUSTODY OF CLASSIFIED Cold Case RECORDS PENDING REVIEW -- During the review by Government offices and pending review activity by the Review Board, each Government office shall retain custody of its Cold Case records for purposes of preservation, security, and efficiency, unless --

(1) the Review Board requires the physical transfer of records for purposes of conducting an independent and impartial review;

(2) transfer is necessary for an administrative hearing or other Review Board function; or

(3) it is a third agency record described in subsection (c)(2)(C).

(c) REVIEW --

(1) Not later than 300 days after the enactment of this Act, each Government office shall review, identify and organize each Cold Case record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist.

(2) In carrying out paragraph (1), a Government office shall --

(A) determine which of its records are Cold Case records;

(B) determine which of its Cold Case records have been officially disclosed or made publicly available in a complete and unredacted form;

(C) (i) determine which of its Cold Case 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 Cold Case Records or particular information in Cold Case 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 Review Board all Cold Case 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 Review Board any record concerning which the office has any uncertainty as to whether the record is a Cold Case record governed by this Act;

(G) give priority to the identification, review, and transmission, under the standards for postponement set forth in this Act, of Cold Case 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 Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act.

(3) The Director of each archival depository established under section 2112 of Title 44, United States Code, shall have as a priority the expedited review for public disclosure of Cold Case records in the possession and custody of the depository, and shall make such records available to the Review Board as required by this Act.

(d) IDENTIFICATION AIDS --

(1)

(A) 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 Cold Case record subject to review under this Act.

(B) 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 compatible with each other.

(2) Upon completion of an identification aid, a Government office shall --

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

- (B) transmit to the Review Board a printed copy; and
- (C) attach a printed copy to each Cold Case record it describes when it is transmitted to the Archivist.

(3) Cold Case 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 the Review Board or another authorized office under this Act, and shall not be required to have such an identification aid unless required by the Archivist.

(e) TRANSMISSION TO THE NATIONAL ARCHIVES -- Each Government office shall --

- (1) transmit to the Archivist, and make available to the public no later than 300 days after the date of enactment of this Act, all Cold Case 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 by the Review Board or upon completion of other action authorized by this Act, all Cold Case 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) CUSTODY OF POSTPONED COLD CASE RECORDS -- A Cold Case 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 in section 4(c)(2).

(g) PERIODIC REVIEW OF POSTPONED COLD CASE RECORDS -- (1) All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist consistent with the recommendations of the Review Board under section 9(c)(3)(B).

(2)(A) A periodic review shall address the public disclosure of additional Cold Case records in the Collection under the standards of this Act.

(B) All postponed Cold Case records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) The periodic review of postponed Cold Case records shall serve to downgrade and declassify security classified information.

(D) Each Cold Case record shall be publicly disclosed in full, and available in the Collection no later than the date that is 25 years after the date of enactment of enactment of this Act, unless the President certifies, as required by this Act, that --

- (i) continued postponement is made necessary by an identifiable harm to military defense, intelligence operations, or conduct of foreign relations; and
- (ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

(h) DIGITIZATION OF RECORDS -- Executive branch agencies shall --

- (1) Make electronic records available to review board pursuant to standards established by section 552(a)(3) of title 5, United States Code
- (2) grant waivers of fees pursuant to the standards established by section 552(a)(4) of title 5, United States Code.

Section 6. Grounds for Postponement of Public Disclosure of Records

Disclosure of civil rights Cold Case records or particular information within Cold Case 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 to the military defense, intelligence operations, or conduct of domestic affairs of the United States posed by the public disclosure of the Cold Case record is of such gravity that it outweighs the public interest, and such public disclosure would reveal --

(A) 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

(B) 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 Cold Case records 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 Cold Case Record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest;
- (4) the public disclosure of the Cold Case Record would compromise the existence of an understanding of confidentiality currently requiring protection between a government agent and a cooperating individual or group, and public disclosure would be so harmful that it outweighs the public interest; or
- (5) the public disclosure of the Cold Case Record would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another Government agency responsible for protecting Government officials, and public disclosure would be so harmful that it outweighs the public interest.

Section 7. Establishment and Powers of the Cold Case Records Review Board

(a) ESTABLISHMENT -- There is established as an independent agency a board to be known as the Cold Case Records Review Board.

(b) APPOINTMENT -- (1) The President, by and with the advice and consent of the Senate, shall appoint, without regard to political affiliation, 5 citizens to serve as members of the Review Board to ensure and facilitate the review, transmission to the Archivist, and public disclosure of government records related to civil rights cold cases.

(2) The President shall make nominations to the Review Board not later than 30 calendar days after the date of enactment of this Act.

(3) If the Senate votes not to confirm a nomination to the Review Board, the President shall make an additional nomination not later than 30 days thereafter.

(4)(A) The President shall make nominations to the Review Board after considering persons recommended by the American Historical Association, the Organization of American Historians, the Society of American Archivists, and the American Bar Association.

(B) If an organization described in subparagraph (A) does not recommend at least 2 nominees meeting the qualifications stated in paragraph (5) by the date that is 45 days after the date of enactment of this Act, the President shall consider for nomination the persons recommended by the other organizations described in subparagraph (A).

(C) The President may request an organization described in subparagraph (A) to submit additional nominations.

(5) Persons nominated to the Review Board --

(A) shall be impartial private citizens, none of whom is presently employed by any branch of the Government, and none of whom shall have had any previous involvement with any official investigation or inquiry conducted by a Federal, State, or local government, relating to any Civil Rights Cold Cases

(B) 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 files related to Cold Cases and who possess an appreciation of the value of such material to the public, scholars, and government; and

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

(e) SECURITY CLEARANCES -- (1) All Review Board nominees shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(2) All nominees shall qualify for the necessary clearance prior to being considered for confirmation by the Committee on Governmental Affairs of the Senate.

(d) CONFIRMATION HEARINGS -- (1) The Committee on Governmental Affairs of the Senate shall hold confirmation hearings within 30 days in which the Senate is in session after the nomination of 3 Review Board members.

(2) The Committee on Governmental Affairs shall vote on the nominations within 14 days in which the Senate is in session after the confirmation hearings, and shall report its results to the full Senate immediately.

(3) The Senate shall vote on each nominee to confirm or reject within 14 days in which the Senate is in session after receiving the report from the Committee on Governmental Affairs.

(e) VACANCY -- A vacancy on the Review Board shall be filled in the same manner as specified for original appointment within 30 days of the occurrence of the vacancy.

(f) CHAIRPERSON -- The Members of the Review Board shall elect one of its members as chairperson at its initial meeting.

(g) REMOVAL OF REVIEW BOARD MEMBER -- (1) No member of the Review Board shall be removed from office, other than --

(A) by impeachment and conviction; or

(B) by the action of the President for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, and that removal is by the President, not later than 10 days after the removal the President shall submit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report specifying the facts found and the grounds for the removal.

(B) The President shall publish in the Federal Register a report submitted under paragraph (2)(A), except that the President 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)(A) A member of the Review Board 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) The member may be reinstated or granted other appropriate relief by order of the court.

(h) **COMPENSATION OF MEMBERS** -- (1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(i) **DUTIES OF THE REVIEW BOARD** -- (1) The Review Board shall consider and render decisions on a determination by a Government office to seek to postpone the disclosure of Cold Case Records.

(2) In carrying out paragraph (1), the Review Board shall consider and render decisions --

(A) whether a record constitutes an Cold Case record; and

(B) whether a Cold Case record or particular information in a record qualifies for postponement of disclosure under this Act.

(j) **POWERS** -- (1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to --

(A) direct Government offices to create identification aids and organize Cold Case records;

(B) direct Government offices to transmit to the Archivist Cold Case records as required under this Act, including segregable portions of Cold Case records, and substitutes and summaries of Cold Case records that can be publicly disclosed to the fullest extent;

(C)(i) obtain access to Cold Case records that have been identified and organized by a Government office;

(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act; and

(iii) subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act;

(D) require any Government office to account in writing for the destruction of any records relating to Civil Rights Cold Cases;

(E) receive information from the public regarding the identification and public disclosure of Cold Case records; and

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

(2) A subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board.

(k) **WITNESS IMMUNITY** -- The Review Board shall be considered to be an agency of the United States for purposes of section 6001 of title 18, United States Code.

(l) **OVERSIGHT** -- (1) The Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate shall have continuing

oversight jurisdiction with respect to the official conduct of the Review Board and the disposition of postponed records after termination of the Review Board; and shall have access to any records held or created by the Review Board.

(2) The Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(m) SUPPORT SERVICES -- The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis.

(n) INTERPRETIVE REGULATIONS -- The Review Board may issue interpretive regulations.

(o) TERMINATION AND WINDING UP -- (1) The Review Board and the terms of its members shall terminate not later than 2 years after the date of enactment of this Act, except that the Review Board may, by majority vote, extend its term for an additional 1-year period if it has not completed its work within that 2-year period.

(2) Upon its termination, the Review Board shall submit reports to the President and the Congress, including a complete and accurate accounting of expenditures during its existence, and shall complete all other reporting requirements under this Act.

(3) Upon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.

Section 8. Cold Case Records Review Board Personnel

(a) EXECUTIVE DIRECTOR -- (1) Not later than 45 days after the initial meeting of the Review Board, the Review Board shall appoint one citizen, without regard to political affiliation, to the position of Executive Director.

(2) The person appointed as Executive Director shall be a private citizen of integrity and impartiality who is a distinguished professional and who is not a present employee of any branch of the Government and has had no previous involvement with any official investigation or inquiry relating to the Civil Rights Cold Cases.

(3)(A) A candidate for Executive Director shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate shall qualify for the necessary security clearance prior to being approved by the Review Board.

(4) The Executive Director shall --

(A) serve as principal liaison to Government offices;

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

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

(D) have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure.

(5) The Executive Director shall not be removed for reasons other than by a majority vote of the Review Board for cause on the grounds of inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the responsibilities of the Executive Director or the staff of the Review Board.

(b) STAFF -- (1) The Review Board may, in accordance with the civil service laws but without regard to civil service law and regulation for competitive service as defined in subchapter 1, chapter 33 of title 5, United States Code, appoint and terminate additional personnel as are necessary to enable the Review Board and its Executive Director to perform its duties.

(2) A person appointed to the staff of the Review Board shall be a private citizen of integrity and impartiality who is not a present employee of any branch of the Government and who has had no previous involvement with any official investigation or inquiry relating to the Civil Rights Cold Cases.

(3)(A) A candidate for staff shall be granted the necessary security clearances in an accelerated manner subject to the standard procedures for granting such clearances.

(B) A candidate for the staff shall qualify for the necessary security clearance prior to being approved by the Review Board.

(c) COMPENSATION -- The Review Board shall fix the compensation of the Executive Director and other personnel in accordance with title 5, United States Code, except that the rate of pay for the Executive Director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(d) ADVISORY COMMITTEES -- (1) The Review Board shall have the authority to create advisory committees to assist in fulfilling the responsibilities of the Review Board under this Act.

(2) Any advisory committee created by the Review Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Section 9. Review of Records by the Cold Case Records Review Board

(a) CUSTODY OF RECORDS REVIEWED BY BOARD -- Pending the outcome of the Review Board's review activity, a Government office shall retain custody of its Cold Case Records for purposes of preservation, security, and efficiency, unless --

- (1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or
- (2) such transfer is necessary for an administrative hearing or other official Review Board function.

(b) STARTUP REQUIREMENTS -- The Review Board shall --

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

(c) DETERMINATION OF THE REVIEW BOARD -- (1) The Review Board shall direct that all Cold Case 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 an Cold Case Record; or
- (B) a Government record or particular information within an Cold Case Record qualifies for postponement of public disclosure under this Act.

(2) In approving postponement of public disclosure of an Cold Case Record, the Review Board shall seek to --

- (A) provide for the disclosure of segregable parts, substitutes, or summaries of such a record; and
- (B) 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 an Cold Case Record.
 - (ii) A substitute record for that information which is postponed.

(iii) A summary of a Cold Case Record.

(3) With respect to each Cold Case Record or particular information in Cold Case Records the public disclosure of which is postponed pursuant to section 6, or for which only substitutions or summaries have been disclosed to the public, the Review Board shall create and transmit to the Archivist a report containing --

(A) a description of actions by the Review Board, 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 Review Board with regard to specific Cold Case Records; and

(B) a statement, based on a review of the proceedings and in conformity with the decisions reflected therein, designating a recommended specified time at which or a specified occurrence following which the material may be appropriately disclosed to the public under this Act.

(4)(A) Following its review and a determination that an Cold Case Record shall be publicly disclosed in the Collection or postponed for disclosure and held in the protected Collection, the Review Board shall notify the head of the originating body of its determination and publish a copy of the determination in the Federal Register within 14 days after the determination is made.

(B) Contemporaneous notice shall be made to the President for Review Board determinations regarding executive branch Cold Case 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 in section 6.

(d) PRESIDENTIAL AUTHORITY OVER REVIEW BOARD DETERMINATION --

(1) PUBLIC DISCLOSURE OR POSTPONEMENT OF DISCLOSURE -- After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch Cold Case Record or information contained in an Cold Case Record, obtained or developed solely within the executive branch, the President shall have the sole and nondelegable 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 Review Board with an unclassified written certification specifying the President's decision within 30 days after the Review Board'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.

(2) PERIODIC REVIEW -- Any executive branch Cold Case Record postponed by the President shall be subject to the requirements of periodic review, downgrading and declassification of classified information, and public disclosure in the collection set forth in section 4.

(3) RECORD OF PRESIDENTIAL POSTPONEMENT -- The Review Board 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 Cold Case Records.

(e) NOTICE TO PUBLIC -- Every 30 calendar days, beginning on the date that is 60 calendar days after the date on which the Review Board first approves the postponement of disclosure of an Cold Case Record, the Review Board shall publish in the Federal Register a notice that summarizes the postponements approved by the Review Board 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.

(f) REPORTS BY THE REVIEW BOARD -- (1) The Review Board shall report its activities to the leadership of the Congress, the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, the President, the Archivist, and the head of any Government office whose records have been the subject of Review Board activity.

(2) The first 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 the Review Board.

(3) A report under paragraph (1) shall include the following information:

(A) A financial report of the expenses for all official activities and requirements of the Review Board and its personnel.

(B) The progress made on review, transmission to the Archivist, and public disclosure of Cold Case Records.

(C) The estimated time and volume of Cold Case Records involved in the completion of the Review Board's performance under this Act.

(D) Any special problems, including requests and the level of cooperation of government offices, with regard to the ability of the Review Board to operate as required by this Act.

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

- (F) Suggestions and requests to Congress for additional legislative authority needs.
- (G) An appendix containing copies of reports of postponed records to the Archivist required under section 9(c)(3) made since the date of the preceding report under this subsection.

(4) At least 90 calendar days before completing its work, the Review Board shall provide written notice to the President and Congress of its intention to terminate its operations at a specified date.

Section 10. Disclosure of Other Materials and Additional Study

(a) MATERIALS UNDER SEAL OF COURT -- (1) The Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to Civil Rights related Cold Cases that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition any court in the United States to release any information relevant to Civil Rights related Cold Cases that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of Civil Rights Cold Case materials under this Act shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(b) SENSE OF CONGRESS -- It is the sense of Congress that --

- (1) the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;
- (2) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to Civil Rights related Cold Cases consistent with the public interest.

Section 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, with the exception of deeds governing access to or transfer or release of gifts and donations of records to the United States Government.

(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.

(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 Representatives, or any other entity of the Government to publicly disclose records in its possession.

(e) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES -- 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 adopted --

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, 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.

Section 12. Termination of Effect of Act

(a) PROVISIONS PERTAINING TO THE REVIEW BOARD -- The provisions of this Act that pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to section 7(o).

(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 Civil Rights Cold Cases records have been made available to the public in accordance with this Act.

Section 13. Authorization of Appropriations

(a) IN GENERAL -- There are authorized to be appropriated such sums as are necessary to carry out this Act, to remain available until expended.

(b) INTERIM FUNDING -- Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Act.

Section 14. 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.