

§ 3145. Omitted

Section, July 26, 1947, ch. 343, title VII, § 705, as added Pub. L. 109-163, div. A, title IX, § 933(a)(1), Jan. 6, 2006, 119 Stat. 3413; amended Pub. L. 111-259, title VIII, § 804(7), Oct. 7, 2010, 124 Stat. 2747, which provided that the Director of the Defense Intelligence Agency could exempt operational files of the Defense Intelligence Agency from provisions of section 552 of title 5, defined “operational files”, authorized certain searches of exempted files and of information from exempted files, provided for judicial review of withholding of records and for decennial review of exempted files, ceased to be effective on Dec. 31, 2007, pursuant to subsec. (g) of section.

CODIFICATION

Section was formerly classified to section 432c of this title and omitted prior to editorial reclassification and renumbering as this section.

§ 3146. Protection of certain files of the Office of the Director of National Intelligence**(a) Inapplicability of FOIA to exempted operational files provided to ODNI**

(1) Subject to paragraph (2), the provisions of section 552 of title 5 that require search, review, publication, or disclosure of a record shall not apply to a record provided to the Office of the Director of National Intelligence by an element of the intelligence community from the exempted operational files of such element.

(2) Paragraph (1) shall not apply with respect to a record of the Office that—

(A) contains information derived or disseminated from an exempted operational file, unless such record is created by the Office for the sole purpose of organizing such exempted operational file for use by the Office;

(B) is disseminated by the Office to a person other than an officer, employee, or contractor of the Office; or

(C) is no longer designated as an exempted operational file in accordance with this subchapter.

(b) Effect of providing files to ODNI

Notwithstanding any other provision of this subchapter, an exempted operational file that is provided to the Office by an element of the intelligence community shall not be subject to the provisions of section 552 of title 5 that require search, review, publication, or disclosure of a record solely because such element provides such exempted operational file to the Office.

(c) Search and review for certain purposes

Notwithstanding subsection (a) or (b), an exempted operational file shall continue to be subject to search and review for information concerning any of the following:

(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5.

(2) Any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5.

(3) The specific subject matter of an investigation for any impropriety or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity by any of the following:

(A) The Select Committee on Intelligence of the Senate.

(B) The Permanent Select Committee on Intelligence of the House of Representatives.

(C) The Intelligence Oversight Board.

(D) The Department of Justice.

(E) The Office of the Director of National Intelligence.

(F) The Office of the Inspector General of the Intelligence Community.

(d) Decennial review of exempted operational files

(1) Not less than once every 10 years, the Director of National Intelligence shall review the exemptions in force under subsection (a) to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that the Director of National Intelligence has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

(A) Whether the Director has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on October 7, 2010, or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether the Director of National Intelligence, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

(e) Supersedure of other laws

The provisions of this section may not be superseded except by a provision of law that is enacted after October 7, 2010, and that specifically cites and repeals or modifies such provisions.

(f) Allegation; improper withholding of records; judicial review

(1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of title 5 alleges that the Office has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5.

(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

(A) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by the Office, such information shall be examined *ex parte*, *in camera* by the court.