

(i), unless the complainant disputes the National Security Agency's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(E) In proceedings under subparagraphs (C) and (D), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(F) If the court finds under this subsection that the National Security Agency has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order the Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, and such order shall be the exclusive remedy for failure to comply with this section (other than subsection (g)).

(G) If at any time following the filing of a complaint pursuant to this paragraph the National Security Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(H) Any information filed with, or produced for the court pursuant to subparagraphs (A) and (D) shall be coordinated with the Director of National Intelligence before submission to the court.

(g) Decennial review of exempted operational files

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

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of a 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 National Security Agency 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 National Security Agency has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on November 24, 2003, or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether the National Security Agency, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

(July 26, 1947, ch. 343, title VII, §704, as added Pub. L. 108-136, div. A, title IX, §922(a), Nov. 24, 2003, 117 Stat. 1570; amended Pub. L. 108-375, div. A, title X, §1084(j), Oct. 28, 2004, 118 Stat. 2064; Pub. L. 108-458, title I, §1071(a)(1)(JJ)-(LL), Dec. 17, 2004, 118 Stat. 3689; Pub. L. 109-163, div. A, title IX, §933(b)(3), Jan. 6, 2006, 119 Stat. 3416.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f)(2)(E), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

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

AMENDMENTS

2006—Subsec. (c)(3)(H). Pub. L. 109-163 added subpar. (H).

2004—Subsec. (a). Pub. L. 108-458, §1071(a)(1)(JJ), which directed amendment of par. (1) of subsec. (a) by substituting "Director of National Intelligence" for "Director of Central Intelligence", was executed to text of subsec. (a), which does not contain any pars., to reflect the probable intent of Congress.

Subsec. (f)(2)(D)(i). Pub. L. 108-375 substituted "responsive records" for "responsible records".

Subsec. (f)(2)(H). Pub. L. 108-458, §1071(a)(1)(KK), substituted "Director of National Intelligence" for "Director of Central Intelligence".

Subsec. (g)(1). Pub. L. 108-458, §1071(a)(1)(LL), substituted "Director of National Intelligence" for "Director of Central Intelligence" in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

§ 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,