

(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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

Editorial Notes

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.