

§ 3355b. Identification, collection, and review for declassification of information of archival value or extraordinary public interest

(a) Briefings on agency declassification programs

(1) As requested by the Board, or by the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives, the head of any agency with the authority under an Executive order to classify information shall provide to the Board, the Select Committee on Intelligence of the Senate, or the Permanent Select Committee on Intelligence of the House of Representatives, on an annual basis, a summary briefing and report on such agency's progress and plans in the declassification of national security information. Such briefing shall cover the declassification goals set by statute, regulation, or policy, the agency's progress with respect to such goals, and the agency's planned goals and priorities for its declassification activities over the next 2 fiscal years. Agency briefings and reports shall give particular attention to progress on the declassification of records and materials that are of archival value or extraordinary public interest to the people of the United States.

(2)(A) The annual briefing and report under paragraph (1) for agencies within the Department of Defense, including the military departments and the elements of the intelligence community, shall be provided on a consolidated basis.

(B) In this paragraph, the term "elements of the intelligence community" means the elements of the intelligence community specified or designated under section 3003(4) of this title.

(b) Recommendations on agency declassification programs

(1) Upon reviewing and discussing declassification plans and progress with an agency, the Board shall provide to the head of the agency the written recommendations of the Board as to how the agency's declassification program could be improved. A copy of each recommendation shall also be submitted to the Assistant to the President for National Security Affairs and the Director of the Office of Management and Budget.

(2) Consistent with the provisions of section 3355a(k) of this title, the Board's recommendations to the head of an agency under paragraph (1) shall become public 60 days after such recommendations are sent to the head of the agency under that paragraph.

(c) Recommendations on special searches for records of extraordinary public interest

(1) The Board shall also make recommendations to the President regarding proposed initiatives to identify, collect, and review for declassification classified records and materials of extraordinary public interest.

(2) In making recommendations under paragraph (1), the Board shall consider the following:

(A) The opinions and requests of Members of Congress, including opinions and requests expressed or embodied in letters or legislative proposals, and also including specific requests

for the declassification of certain records or for the reconsideration of declinations to declassify specific records.

(B) The opinions and requests of the National Security Council, the Director of National Intelligence, and the heads of other agencies.

(C) The opinions of United States citizens.

(D) The opinions of members of the Board.

(E) The impact of special searches on systematic and all other on-going declassification programs.

(F) The costs (including budgetary costs) and the impact that complying with the recommendations would have on agency budgets, programs, and operations.

(G) The benefits of the recommendations.

(H) The impact of compliance with the recommendations on the national security of the United States.

(d) President's declassification priorities

(1) Concurrent with the submission to Congress of the budget of the President each fiscal year under section 1105 of title 31, the Director of the Office of Management and Budget shall publish a description of the President's declassification program and priorities, together with a listing of the funds requested to implement that program.

(2) Nothing in this subchapter shall be construed to substitute or supersede, or establish a funding process for, any declassification program that has been established or may be established by the President by Executive order.

(e) Declassification reviews

(1) In general

If requested by the President, the Board shall review in a timely manner certain records or declinations to declassify specific records, the declassification of which has been the subject of specific congressional request described in section 3355a(b)(5) of this title.

(2) Authority of board

Upon receiving a congressional request described in section 3355a(b)(5) of this title, the Board may conduct the review and make the recommendations described in that section, regardless of whether such a review is requested by the President.

(3) Reporting

Any recommendations submitted to the President by the Board under section 3355a(b)(5) of this title,¹ shall be submitted to the chairman and ranking minority member of the committee of Congress that made the request relating to such recommendations.

(Pub. L. 106-567, title VII, §704, Dec. 27, 2000, 114 Stat. 2859; Pub. L. 108-458, title I, §1102(c), (d), Dec. 17, 2004, 118 Stat. 3699; Pub. L. 110-53, title VI, §602(1), (2), Aug. 3, 2007, 121 Stat. 335.)

Editorial Notes

CODIFICATION

Section was formerly set out in a note under section 3161 of this title.

¹ So in original.

AMENDMENTS

2007—Subsec. (c)(2)(B). Pub. L. 110-53, § 602(1), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

Subsec. (e). Pub. L. 110-53, § 602(2), designated existing provisions as par. (1), inserted par. (1) heading, and added pars. (2) and (3).

2004—Subsec. (c)(2)(A). Pub. L. 108-458, § 1102(c), inserted before period at end “, and also including specific requests for the declassification of certain records or for the reconsideration of declinations to declassify specific records”.

Subsec. (e). Pub. L. 108-458, § 1102(d), added subsec. (e).

§ 3355c. Protection of national security information and other information

(a) In general

Nothing in this subchapter shall be construed to limit the authority of the head of an agency to classify information or to continue the classification of information previously classified by that agency.

(b) Special access programs

Nothing in this subchapter shall be construed to limit the authority of the head of an agency to grant or deny access to a special access program.

(c) Authorities of Director of National Intelligence

Nothing in this subchapter shall be construed to limit the authorities of the Director of National Intelligence as the head of the intelligence community, including the Director's responsibility to protect intelligence sources and methods from unauthorized disclosure as required by section 103(c)(6)¹ of the National Security Act of 1947.

(d) Exemptions to release of information

Nothing in this subchapter shall be construed to limit any exemption or exception to the release to the public under this subchapter of information that is protected under subsection (b) of section 552 of title 5 (commonly referred to as the “Freedom of Information Act”), or section 552a of title 5 (commonly referred to as the “Privacy Act”).

(e) Withholding information from Congress

Nothing in this subchapter shall be construed to authorize the withholding of information from Congress.

(Pub. L. 106-567, title VII, § 705, Dec. 27, 2000, 114 Stat. 2861; Pub. L. 110-53, title VI, § 602(1), (3), Aug. 3, 2007, 121 Stat. 335, 336.)

Editorial Notes

REFERENCES IN TEXT

Section 103 of the National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, title I, § 103, as added Pub. L. 102-496, title VII, § 705(a)(3), Oct. 24, 1992, 106 Stat. 3190, which was repealed by Pub. L. 108-458, title I, §§ 1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698. See section 3024(i) of this title.

CODIFICATION

Section was formerly set out in a note under section 3161 of this title.

¹ See References in Text note below.

AMENDMENTS

2007—Subsec. (c). Pub. L. 110-53 substituted “Director of National Intelligence” for “Director of Central Intelligence” in heading and text.

§ 3355d. Standards and procedures

(a) Liaison

(1) The head of each agency with the authority under an Executive order to classify information and the head of each Federal Presidential library shall designate an employee of such agency or library to act as liaison to the Board for purposes of this subchapter.

(2) The Board may establish liaison and otherwise consult with such other historical and advisory committees as the Board considers appropriate for purposes of this subchapter.

(b) Limitations on access

(1)(A) Except as provided in paragraph (2), if the head of an agency or the head of a Federal Presidential library determines it necessary to deny or restrict access of the Board, or of the agency or library liaison to the Board, to information contained in a record or material, in whole or in part, the head of the agency or the head of the library shall promptly notify the Board in writing of such determination.

(B) Each notice to the Board under subparagraph (A) shall include a description of the nature of the records or materials, and a justification for the determination, covered by such notice.

(2) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

(c) Discretion to disclose

At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the public's interest in the disclosure of records or materials of the agency covered by such review, and still properly classified, outweighs the Government's need to protect such records or materials, and may release such records or materials in accordance with the provisions of Executive Order No. 12958¹ or any successor order to such Executive order.

(d) Discretion to protect

At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the interest of the agency in the protection of records or materials of the agency covered by such review, and still properly classified, outweighs the public's need for access to such records or materials, and may deny release of such records or materials in accordance with the provisions of Executive Order No. 12958¹ or any successor order to such Executive order.

¹ See References in Text note below.