

## 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)<sup>1</sup> 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 L. 102-496, title VII, § 705(a)(3), Oct. 24, 1992, 106 Stat. 3190, which was repealed by Pub.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.

<sup>1</sup> 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. 12958<sup>1</sup> 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. 12958<sup>1</sup> or any successor order to such Executive order.

<sup>1</sup> See References in Text note below.

**(e) Reports**

(1)(A) Except as provided in paragraph (2), the Board shall annually submit to the appropriate congressional committees a report on the activities of the Board under this subchapter, including summary information regarding any denials to the Board by the head of an agency or the head of a Federal Presidential library of access to records or materials under this subchapter.

(B) In this paragraph, the term “appropriate congressional committees” means the Select Committee on Intelligence and the Committee on Governmental Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform of the House of Representatives.

(2) Notwithstanding paragraph (1), notice that the Board has been denied access to records and materials, and a justification for the determination in support of the denial, shall be submitted by the agency denying the access as follows:

(A) In the case of the denial of access to a special access program created by the Secretary of Defense, to the Committees on Armed Services and Appropriations of the Senate and to the Committees on Armed Services and Appropriations of the House of Representatives.

(B) In the case of the denial of access to a special access program created by the Director of National Intelligence, or by the head of any other agency (including the Department of Defense) if the special access program pertains to intelligence activities, or of access to any information and materials relating to intelligence sources and methods, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(C) In the case of the denial of access to a special access program created by the Secretary of Energy or the Administrator for Nuclear Security, to the Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate and to the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

**(f) Notification of review**

In response to a specific congressional request for declassification review described in section 3355a(b)(5) of this title, the Board shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.

(Pub. L. 106–567, title VII, § 706, Dec. 27, 2000, 114 Stat. 2861; Pub. L. 108–458, title I, § 1102(e), Dec. 17, 2004, 118 Stat. 3700; Pub. L. 110–53, title VI, § 602(1), Aug. 3, 2007, 121 Stat. 335.)

**Editorial Notes**

## REFERENCES IN TEXT

Executive Order 12958, referred to in subsecs. (c) and (d), which was formerly set out as a note under section 3161 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

## CODIFICATION

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

## AMENDMENTS

2007—Subsecs. (b)(2), (e)(2)(B). Pub. L. 110–53 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2004—Subsec. (f). Pub. L. 108–458 added subsec. (f).

**Statutory Notes and Related Subsidiaries**

## CHANGE OF NAME

Committee on Governmental Affairs of the Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform of the House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

**§ 3355e. Judicial review**

Nothing in this subchapter limits the protection afforded to any information under any other provision of law. This subchapter is not intended and may not be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or its employees. This subchapter does not modify in any way the substantive criteria or procedures for the classification of information, nor does this subchapter create any right or benefit subject to judicial review.

(Pub. L. 106–567, title VII, § 707, Dec. 27, 2000, 114 Stat. 2862.)

**Editorial Notes**

## CODIFICATION

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

**§ 3355f. Funding****(a) Authorization of appropriations**

There is hereby authorized to be appropriated to carry out the provisions of this subchapter amounts as follows:

(1) For fiscal year 2001, \$650,000.

(2) For each fiscal year after fiscal year 2001, such sums as may be necessary for such fiscal year.

**(b) Funding requests**

The President shall include in the budget submitted to Congress for each fiscal year under section 1105 of title 31 a request for amounts for the activities of the Board under this subchapter during such fiscal year.

(Pub. L. 106–567, title VII, § 708, Dec. 27, 2000, 114 Stat. 2863.)

**Editorial Notes**

## CODIFICATION

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

**§ 3355g. Definitions**

In this subchapter: