

APPENDIX D

BOARD'S AUTHORIZING STATUTE

See: Public Law 106-567 (December 27, 2000), as amended by section 1102 of P.L. 108-458 (Intelligence Reform and Terrorism Prevention Act of 2004) (December 17, 2004), and as further amended by section 602 of P.L. 110-53 (Implementing Recommendations of the 9/11 Commission Act of 2007) (August 3, 2007).

TITLE VII—DECLASSIFICATION OF INFORMATION SEC. 701. SHORT TITLE.

This title may be cited as the “Public Interest Declassification Act of 2000”.

SEC. 702. FINDINGS.

Congress makes the following findings:

(1) It is in the national interest to establish an effective, coordinated, and cost-effective means by which records on specific subjects of extraordinary public interest that do not undermine the national security interests of the United States may be collected, retained, reviewed, and disseminated to Congress, policymakers in the executive branch, and the public.

(2) Ensuring, through such measures, public access to information that does not require continued protection to maintain the national security interests of the United States is a key to striking the balance between secrecy essential to national security and the openness that is central to the proper functioning of the political institutions of the United States.

SEC. 703. PUBLIC INTEREST DECLASSIFICATION BOARD.

(a) ESTABLISHMENT.—

(1) There is established within the executive branch of the United States a board to be known as the “Public Interest Declassification Board” (in this title referred to as the “Board”).

(2) The Board shall report directly to the President or, upon designation by the President, the Vice President, the Attorney General, or other designee of the President. The other designee of the President under this paragraph may not be an agency head or official authorized to classify information under Executive Order 12958, or any successor order.

(b) PURPOSES.—The purposes of the Board are as follows:

(1) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on the

systematic, thorough, coordinated, and comprehensive identification, collection, review for declassification, and release to Congress, interested agencies, and the public of declassified records and materials (including donated historical materials) that are of archival value, including records and materials of extraordinary public interest.

(2) To promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant United States national security decisions and significant United States national security activities in order to—

(A) support the oversight and legislative functions of Congress;

(B) support the policymaking role of the executive branch;

(C) respond to the interest of the public in national security matters; and

(D) promote reliable historical analysis and new avenues of historical study in national security matters.

(3) To provide recommendations to the President for the identification, collection, and review for declassification of information of extraordinary public interest that does not undermine the national security of the United States, to be undertaken in accordance with a declassification program that has been established or may be established by the President by Executive order.

(4) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on policies deriving from the issuance by the President of Executive orders regarding the classification and declassification of national security information.

(5) To review and make recommendations to the President in a timely manner with respect to any congressional request, made by the committee of jurisdiction, to declassify certain records or to reconsider a declination to declassify specific records.

(c) MEMBERSHIP.—

(1) The Board shall be composed of nine individuals

appointed from among citizens of the United States who are preeminent in the fields of history, national security, foreign policy, intelligence policy, social science, law, or archives, including individuals who have served in Congress or otherwise in the Federal Government or have otherwise engaged in research, scholarship, or publication in such fields on matters relating to the national security of the United States, of whom—

- (A) five shall be appointed by the President;
- (B) one shall be appointed by the Speaker of the House of Representatives;
- (C) one shall be appointed by the majority leader of the Senate;
- (D) one shall be appointed by the minority leader of the Senate; and
- (E) one shall be appointed by the minority leader of the House of Representatives.

(2) (A) Of the members initially appointed to the Board by the President—

- (i) three shall be appointed for a term of 4 years;
 - (ii) one shall be appointed for a term of 3 years; and
 - (iii) one shall be appointed for a term of 2 years.
- (B) The members initially appointed to the Board by the Speaker of the House of Representatives or by the majority leader of the Senate shall be appointed for a term of 3 years.
- (C) The members initially appointed to the Board by the minority leader of the House of Representatives or the Senate shall be appointed for a term of 2 years.
- (D) Any subsequent appointment to the Board shall be for a term of 3 years.

(3) A vacancy in the Board shall be filled in the same manner as the original appointment. A member of the Board appointed to fill a vacancy before the expiration of a term shall serve for the remainder of the term.

(4) A member of the Board may be appointed to a new term on the Board upon the expiration of the member's term on the Board, except that no member may serve more than three full terms on the Board.

(d) CHAIRPERSON; EXECUTIVE SECRETARY.—

- (1) (A) The President shall designate one of the members of the Board as the chairperson of the Board.
- (B) The term of service as Chairperson of the Board shall be 2 years.
- (C) A member serving as Chairperson of the Board may be redesignated as Chairperson of the Board upon the

expiration of the member's term as Chairperson of the Board, except that no member shall serve as Chairperson of the Board for more than 6 years.

(2) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Board.

(e) MEETINGS.—The Board shall meet as needed to accomplish its mission, consistent with the availability of funds. A majority of the members of the Board shall constitute a quorum.

(f) STAFF.—Any employee of the Federal Government may be detailed to the Board, with the agreement of and without reimbursement to the detailing agency, and such detail shall be without interruption or loss of civil, military, or foreign service status or privilege.

(g) SECURITY. —

(1) The members and staff of the Board shall, as a condition of appointment to or employment with the Board, hold appropriate security clearances for access to the classified records and materials to be reviewed by the Board or its staff, and shall follow the guidance and practices on security under applicable Executive orders and Presidential or agency directives.

(2) The head of an agency shall, as a condition of granting access to a member of the Board, the Executive Secretary of the Board, or a member of the staff of the Board to classified records or materials of the agency under this title, require the member, the Executive Secretary, or the member of the staff, as the case may be, to—

(A) execute an agreement regarding the security of such records or materials that is approved by the head of the agency; and

(B) hold an appropriate security clearance granted or recognized under the standard procedures and eligibility criteria of the agency, including any special access approval required for access to such records or materials.

(3) The members of the Board, the Executive Secretary of the Board, and the members of the staff of the Board may not use any information acquired in the course of their official activities on the Board for nonofficial purposes.

(4) For purposes of any law or regulation governing access to classified information that pertains to the national security of the United States, and subject to any limitations on access arising under section 706(b), and to facilitate the advisory functions of the Board under this title, a member of the Board seeking access to a record or material under this title shall be deemed for purposes of

this subsection to have a need to know the contents of the record or material.

(h) COMPENSATION. —

(1) Each member of the Board shall receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for positions at ES-1 of the Senior Executive Service under section 5382 of title 5, United States Code, for each day such member is engaged in the actual performance of duties of the Board. 42

(2) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of the duties of the Board.

(i) GUIDANCE; ANNUAL BUDGET. —

(1) On behalf of the President, the Assistant to the President for National Security Affairs shall provide guidance on policy to the Board.

(2) The Executive Secretary of the Board, under the direction of the Chairperson of the Board and the Board, and acting in consultation with the Archivist of the United States, the Assistant to the President for National Security Affairs, and the Director of the Office of Management and Budget, shall prepare the annual budget of the Board.

(j) SUPPORT.—The Information Security Oversight Office may support the activities of the Board under this title. Such support shall be provided on a reimbursable basis.

(k) PUBLIC AVAILABILITY OF RECORDS AND REPORTS. —

(1) The Board shall make available for public inspection records of its proceedings and reports prepared in the course of its activities under this title to the extent such records and reports are not classified and would not be exempt from release under the provisions of section 552 of title 5, United States Code.

(2) In making records and reports available under paragraph (1), the Board shall coordinate the release of such records and reports with appropriate officials from agencies with expertise in classified information in order to ensure that such records and reports do not inadvertently contain classified information.

(l) APPLICABILITY OF CERTAIN ADMINISTRATIVE LAWS.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Board under this title. However, the records

of the Board shall be governed by the provisions of the Federal Records Act of 1950.

SEC. 704. 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 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(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 703(k), 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 Central Intelligence, and the heads of other agencies.

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(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, United States Code, 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 title 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 703(b)(5).

(2) AUTHORITY OF THE BOARD—Upon receiving a congressional request described in section 703(b)(5), 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 703(b)(5), shall be submitted to the chairman and ranking member of the committee of Congress that made the request relating to such recommendations.

SEC. 705. PROTECTION OF NATIONAL SECURITY INFORMATION AND OTHER INFORMATION.

(a) IN GENERAL.—Nothing in this title 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 title 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 CENTRAL INTELLIGENCE.—Nothing in this title shall be construed to limit the authorities of the Director of Central 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) of the National Security Act of 1947 (50 U.S.C. 403– 3(c)(6)).

(d) EXEMPTIONS TO RELEASE OF INFORMATION.—Nothing in this title shall be construed to limit any exemption or exception to the release to the public under this title of information that is protected under subsection (b) of section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), or section 552a of title 5, United States Code (commonly referred to as the "Privacy Act").

(e) WITHHOLDING INFORMATION FROM CONGRESS.—Nothing in this title shall be construed to authorize the withholding of information from Congress.

SEC. 706. 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 title.

(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 title.

(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.

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(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 Central 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 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 or any successor order to such Executive order.

(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 title, 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 title.

(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 Central 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 703(b)(5), the Board shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.

SEC. 707. JUDICIAL REVIEW.

Nothing in this title limits the protection afforded to any information under any other provision of law. This title 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 title does not modify in any way the substantive criteria or procedures for the classification of information, nor does this title create any right or benefit subject to judicial review.

SEC. 708. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to carry out the provisions of this title 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, United States Code, a request for amounts for the activities of the Board under this title during such fiscal year.

SEC. 709. DEFINITIONS.

In this title:

(1) AGENCY.—

(A) Except as provided in subparagraph (B), the term “agency” means the following:

- (i) An Executive agency, as that term is defined in section 105 of title 5, United States Code.
- (ii) A military department, as that term is defined in section 102 of such title.

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(iii) Any other entity in the executive branch that comes into the possession of classified information.

(B) The term does not include the Board.

(2) CLASSIFIED MATERIAL OR RECORD.— The terms “classified material” and “classified record” include any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable records, and other documentary material, regardless of physical form or characteristics, that has been determined pursuant to Executive order to require

protection against unauthorized disclosure in the interests of the national security of the United States.

(3) DECLASSIFICATION.—The term “declassification” means the process by which records or materials that have been classified are determined no longer to require protection from unauthorized disclosure to protect the national security of the United States.

(4) DONATED HISTORICAL MATERIAL.—The term “donated historical material” means collections of personal papers donated or given to a Federal Presidential library or other archival repository under a deed of gift or otherwise.

(5) FEDERAL PRESIDENTIAL LIBRARY.—The term “Federal Presidential library” means a library operated and maintained by the United States Government through the National Archives and Records Administration under the applicable provisions of the Federal Records Act of 1950.

(6) NATIONAL SECURITY.—The term “national security” means the national defense or foreign relations of the United States.

(7) RECORDS OR MATERIALS OF EXTRAORDINARY PUBLIC INTEREST.—The term “records or materials of extraordinary public interest” means records or materials that—

(A) demonstrate and record the national security policies, actions, and decisions of the United States, including—

(i) policies, events, actions, and decisions which led to significant national security outcomes; and

(ii) the development and evolution of significant United States national security policies, actions, and decisions;

(B) will provide a significantly different perspective in general from records and materials publicly available in other historical sources; and

(C) would need to be addressed through ad hoc record searches outside any systematic declassification program established under Executive order.

(8) RECORDS OF ARCHIVAL VALUE.—The term “records of archival value” means records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government.

SEC. 710. EFFECTIVE DATE; SUNSET.

(a) EFFECTIVE DATE.—This title shall take effect on the date that is 120 days after the date of the enactment of this Act.

(b) SUNSET.—The provisions of this title shall expire on December 31, 2012, unless reauthorized by statute.