

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1272**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Civil Rights Cold Case
3 Records Collection Act of 2018”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) All Government records related to civil
7 rights cold cases should be preserved for historical
8 and Governmental purposes.

9 (2) All Government records concerning civil
10 rights cold cases should carry a presumption of im-
11 mediate disclosure, and all records shall be eventu-
12 ally disclosed to enable the public to become fully in-
13 formed about the history surrounding the cases.

14 (3) Legislation is necessary to create an en-
15 forceable, independent, and accountable process for
16 the public disclosure of such records.

17 (4) Legislation is necessary because congres-
18 sional records related to civil rights cold cases would
19 not otherwise be subject to public disclosure.

1 (5) Legislation is necessary because section 552
2 of title 5, United States Code (commonly known as
3 the Freedom of Information Act), as implemented by
4 the executive branch, has prevented the timely and
5 adequate public disclosure of records relating to civil
6 rights cold cases.

7 (6) Legislation is necessary because Executive
8 Order 13526 (75 Fed. Reg. 707; relating to classi-
9 fied national security information) has not resulted
10 in the timely and adequate public disclosure of
11 records relating to civil rights cold cases.

12 (7) Most of the records related to the civil
13 rights cold cases are almost 50 years old and only
14 in the rarest cases is there any legitimate need for
15 continued protection of such records.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) ARCHIVIST.—The term “Archivist” means
19 the Archivist of the United States.

20 (2) CIVIL RIGHTS COLD CASE.—The term “civil
21 rights cold case” means any unsolved case—

22 (A) arising out of events which occurred
23 during the period beginning on January 1,
24 1940, and ending on December 31, 1979; and

25 (B) arising from an alleged violation of—

1 (i) section 241 of title 18, United
2 States Code (relating to conspiracy against
3 rights);

4 (ii) section 242 of title 18, United
5 States Code (relating to deprivation of
6 rights under color of law);

7 (iii) section 245 of title 18, United
8 States Code (relating to federally protected
9 activities);

10 (iv) sections 1581 and 1584 of title
11 18, United States Code (relating to peon-
12 age and involuntary servitude);

13 (v) section 901 of the Fair Housing
14 Act (42 U.S.C. 3631); or

15 (vi) any other Federal law that was—

16 (I) in effect on or before Decem-
17 ber 31, 1979; and

18 (II) enforced by the criminal sec-
19 tion of the Civil Rights Division of the
20 Department of Justice or the equiva-
21 lent thereof before the date of the en-
22 actment of this Act.

23 (3) CIVIL RIGHTS COLD CASE RECORD.—The
24 term “civil rights cold case record” means a record
25 that—

1 (A) is related to a civil rights cold case;
2 and

3 (B) was created by, made available for use
4 by, obtained by, or otherwise came into the pos-
5 session of a Federal agency.

6 (4) COLLECTION.—The term “Collection”
7 means the Civil Rights Cold Cases Collection estab-
8 lished under section 4.

9 (5) EXECUTIVE AGENCY.—The term “executive
10 agency” has the meaning given the term “agency”
11 in subsection 552(f) of title 5, United States Code.

12 (6) FEDERAL AGENCY.—The term “Federal
13 agency” has the meaning given that term in section
14 2901 of title 44, United States Code.

15 (7) GOVERNMENT OFFICE.—The term “Govern-
16 ment office” means any office of the Federal Gov-
17 ernment that has possession or control of 1 or more
18 civil rights cold case record.

19 (8) GOVERNMENT OFFICIAL.—The term “Gov-
20 ernment official” means any officer or employee of
21 the United States, including elected and appointed
22 officials.

23 (9) NATIONAL ARCHIVES.—The term “National
24 Archives” means the National Archives and Records
25 Administration and all components thereof, includ-

1 ing Presidential archival depositories established
2 under section 2112 of title 44, United States Code.

3 (10) OFFICIAL INVESTIGATION.—The term “of-
4 ficial investigation” means the reviews of civil rights
5 cold cases conducted by any entity of the Federal
6 Government either independently, at the request of
7 any Presidential commission or congressional com-
8 mittee, or at the request of any Government official.

9 (11) ORIGINATING BODY.—The term “origi-
10 nating body” means the Federal agency that created
11 the record or particular information within the
12 record.

13 (12) PUBLIC INTEREST.—The term “public in-
14 terest” means the compelling interest in the prompt
15 public disclosure of civil rights cold case records for
16 historical and Governmental purposes and for the
17 purpose of fully informing the people of the United
18 States about the history surrounding all civil rights
19 cold cases in the United States.

20 (13) RECORD.—The term “record” has the
21 meaning given that term in section 3301 of title 44,
22 United States Code, and includes recorded informa-
23 tion made or received by State or local governments.

1 (14) REVIEW BOARD.—The term “Review
2 Board” means the Civil Rights Cold Case Records
3 Review Board established under section 6.

4 **SEC. 4. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**
5 **AT THE NATIONAL ARCHIVES AND RECORD**
6 **ADMINISTRATION.**

7 (a) ESTABLISHMENT OF THE CIVIL RIGHTS COLD
8 CASE RECORDS COLLECTION.—Beginning not later than
9 60 days after the date of the enactment of this Act, the
10 Archivist shall establish a collection of civil rights cold case
11 records to be known as the “Civil Rights Cold Case
12 Records Collection”.

13 (b) CONTENTS OF COLLECTION.—The Collection
14 shall contain—

15 (1) a copy of each civil rights cold case
16 record—

17 (A) that has not been transmitted to the
18 Archivist, which shall be transmitted by the
19 Federal agency in possession of the civil rights
20 cold case record to the Archivist in accordance
21 with section 2107 of title 44, United States
22 Code; or

23 (B) that has been transmitted to the Ar-
24 chivist or disclosed to the public in an

1 unredacted form before the date of the enact-
2 ment of this Act;

3 (C) that is required to be transmitted to
4 the Archivist; or

5 (D) the disclosure of which is postponed
6 under this Act;

7 (2) all Review Board records required to be in-
8 cluded under this Act.

9 (c) DISCLOSURE OF PUBLIC RECORDS.—All civil
10 rights cold case records transmitted to the National Ar-
11 chives for disclosure to the public—

12 (1) shall be included in the Collection;

13 (2) shall be available to the public for inspec-
14 tion and copying at the National Archives not later
15 than 60 days after the date on which the record is
16 transmitted to the Archivist; and

17 (3) shall be prioritized for digitization by the
18 Archivist.

19 (d) FEES FOR COPYING.—The Archivist shall—

20 (1) use efficient electronic means when possible;

21 (2) charge fees for copying civil rights cold case
22 records; and

23 (3) grant waivers of such fees pursuant to the
24 standard established under section 552(a)(4) of title
25 5, United States Code.

1 (e) PHYSICAL INTEGRITY.—The Archivist shall en-
2 sure the physical integrity and original provenance of all
3 civil rights cold case records included in the Collection.

4 (f) SUBJECT GUIDEBOOK AND INDEX.—The Archi-
5 vist shall prepare and publish a subject guidebook and
6 index to the Collection.

7 (g) ADDITIONAL REQUIREMENTS.—The Archivist
8 shall ensure the security of civil rights cold case records
9 in the Collection for which disclosure is postponed.

10 **SEC. 5. TRANSMISSION OF CIVIL RIGHTS COLD CASE**
11 **RECORDS TO THE NATIONAL ARCHIVES.**

12 (a) TRANSMISSION TO THE NATIONAL ARCHIVES.—
13 Each Government office shall, in accordance with the cri-
14 teria established by the Archivist under subsection (b)—

15 (1) not later than 300 days after the date of
16 the enactment of this Act, transmit to the Archivist,
17 for the Archivist to make available to the public in
18 accordance with section 4(c), a copy of each civil
19 rights cold case record that can be publicly disclosed,
20 including any such record that is publicly available
21 on the date of the enactment of this Act, without
22 any redaction, adjustment, or withholding under the
23 standards of this Act; and

24 (2) transmit to the Archivist upon approval for
25 postponement by the Review Board or upon comple-

1 tion of other action authorized by this Act, a copy
2 of each civil rights cold case record for which public
3 disclosure has been postponed, in whole or in part,
4 under the standards of this Act, to become part of
5 the protected Collection.

6 (b) TRANSMISSION CRITERIA.—The Archivist shall
7 establish criteria for Government offices to follow when
8 transmitting copies of civil rights cold case records to the
9 Archivist, including criteria for the maintenance and shar-
10 ing of metadata.

11 (c) PERIODIC REVIEW OF CIVIL RIGHTS COLD CASE
12 RECORDS FOR PUBLIC DISCLOSURE.—

13 (1) IN GENERAL.—Not later than the first De-
14 cember 31 after the date of the enactment of this
15 Act, and each year thereafter, the Government office
16 that transmitted the record, in consultation with the
17 Archivist, shall review each civil rights cold case
18 record that is redacted or for which public disclosure
19 has been postponed under section 8 consistent with
20 the statement of the Review Board under section
21 (8)(k)(1)(B) .

22 (2) REQUIREMENTS OF PERIODIC REVIEW.—
23 The periodic review under paragraph (1) shall—

1 (A) address the public disclosure of addi-
2 tional civil rights cold case records in the Col-
3 lection under the standards of this Act; and

4 (B) serve to declassify classified informa-
5 tion, with the presumption of providing public
6 disclosure.

7 (3) UNCLASSIFIED WRITTEN DESCRIPTION.—
8 Any civil rights cold case record for which postpone-
9 ment of public disclosure is continued shall include
10 an unclassified written description of the reason for
11 such continued postponement, which shall be pro-
12 vided to the Archivist and made available on a pub-
13 licly accessible website upon the determination to
14 continue the postponement.

15 (d) FULL DISCLOSURE OF CIVIL RIGHTS COLD CASE
16 RECORD REQUIRED.—

17 (1) IN GENERAL.—Each civil rights cold case
18 record that is not publicly disclosed in full as of the
19 date on which the Review Board terminates under
20 section 6(n)(1) shall be publicly disclosed in full and
21 available in the Collection not later than 25 years
22 after the date of the enactment of this Act, unless—

23 (A) the head of the originating body, Fed-
24 eral agency, or other Government office rec-
25 ommends in writing that continued postpone-

1 ment is made necessary by an identifiable harm
2 to military defense, law enforcement, intel-
3 ligence operations, or the conduct of foreign re-
4 lations that is of such gravity that the identifi-
5 able harm outweighs the public interest in dis-
6 closure;

7 (B) the written recommendation described
8 in subparagraph (A)—

9 (i) is provided to the Archivist not
10 later than 180 days before the date that is
11 25 years after the date of the enactment of
12 this Act; and

13 (ii) includes—

14 (I) a justification of the rec-
15 ommendation to postpone disclosure;
16 and

17 (II) a recommended specified
18 date on which, or a specified occur-
19 rence following which, the material
20 may be appropriately disclosed to the
21 public; and

22 (C) the Archivist agrees with the written
23 recommendation described in subparagraph (A).

24 (2) NOTIFICATION.—If the Archivist does not
25 agree with the recommendation described in sub-

1 paragraph (A), the Archivist shall notify the head of
2 the originating body, Federal agency, or other Gov-
3 ernment office making the recommendation not later
4 than 90 days before the date that is 25 years after
5 the date of the enactment of this Act.

6 **SEC. 6. ESTABLISHMENT OF THE CIVIL RIGHTS COLD CASE**
7 **RECORDS REVIEW BOARD.**

8 (a) ESTABLISHMENT.—There is established, as an
9 independent agency, a board to be known as the “Civil
10 Rights Cold Case Records Review Board”.

11 (b) DUTIES OF THE REVIEW BOARD.—The Review
12 Board shall consider and render decisions on a determina-
13 tion by a Government office to postpone the public disclo-
14 sure of a civil rights cold case record and shall consider
15 and render decisions on—

16 (1) whether a record constitutes a civil rights
17 cold case record; and

18 (2) whether a civil rights cold case record or
19 particular information in the record qualifies for
20 postponement of public disclosure under section 8(c).

21 (c) POWERS.—The Review Board shall have the au-
22 thority to—

23 (1) obtain access to civil rights cold case
24 records that have been identified and organized by
25 a Government office;

1 (2) direct a Government office to make avail-
2 able to the Review Board, and if necessary inves-
3 tigate the facts surrounding, additional information,
4 records, or testimony from individuals, which the
5 Review Board has reason to believe is required to
6 fulfill its functions and responsibilities under this
7 Act;

8 (3) require any Government office to account in
9 writing for the destruction of any records relating to
10 civil rights cold cases;

11 (4) receive information from the public regard-
12 ing the identification and public disclosure of civil
13 rights cold case records; and

14 (5) hold hearings and administer oaths.

15 (d) APPOINTMENT.—

16 (1) IN GENERAL.—The Review Board shall be
17 composed of 5 members, who shall ensure and facili-
18 tate the review, transmission to the Archivist, and
19 public disclosure of records related to civil rights
20 cold cases. The Review Board members shall be ap-
21 pointed as follows:

22 (A) One member appointed by the Presi-
23 dent.

24 (B) One member appointed by the Speaker
25 of the House of Representatives.

1 (C) One member appointed by the Minor-
2 ity Leader of the House of Representatives.

3 (D) One member appointed by the Major-
4 ity Leader of the Senate.

5 (E) One member appointed by the Minor-
6 ity Leader of the Senate.

7 (2) INITIAL APPOINTMENT.—

8 (A) IN GENERAL.—Initial appointments to
9 the Review Board shall, to the extent prac-
10 ticable, be made not later than 60 days after
11 the date of the enactment of this Act.

12 (B) RECOMMENDATIONS.—In making ap-
13 pointments to the Review Board, the appointing
14 official shall consider any individuals rec-
15 ommended by the American Historical Associa-
16 tion, the Organization of American Historians,
17 the Society of American Archivists, and the
18 American Bar Association.

19 (C) EXTENSION.—If an organization de-
20 scribed in subparagraph (B) does not rec-
21 ommend at least 2 nominees meeting the quali-
22 fications described in paragraph (3) within 60
23 days after the date of the enactment of this
24 Act, the deadline under subparagraph (A) shall
25 be extended until the earlier of 60 days after

1 the date on which such recommendations are
2 made or 120 days after the date of the enact-
3 ment of this Act.

4 (D) ADDITIONAL RECOMMENDATIONS.—
5 The appointing official may request that any
6 organization described in subparagraph (B)
7 submit additional recommended nominees.

8 (3) QUALIFICATIONS.—Individuals nominated
9 to the Review Board shall—

10 (A) not have had any previous involvement
11 with any official investigation or inquiry relat-
12 ing to any civil rights cold case conducted by
13 the Federal Government or any State or local
14 government; and

15 (B) be distinguished individuals of high
16 national professional reputation in their respec-
17 tive fields who are capable of exercising the
18 independent and objective judgment necessary
19 to fulfill their role in ensuring and facilitating
20 the review, transmission to the public, and pub-
21 lic disclosure of files related to civil rights cold
22 cases and who possess an appreciation of the
23 value of such material to the public, scholars,
24 and government.

1 (4) SENSE OF CONGRESS ON MEMBERSHIP.—It
2 is the sense of Congress that the membership of the
3 Review Board should include at least one profes-
4 sional historian and at least one attorney.

5 (e) SECURITY CLEARANCES.—All Review Board
6 nominees shall be processed for the necessary security
7 clearances in an accelerated manner by the appropriate
8 Federal agencies and subject to the standard procedures
9 for granting such clearances.

10 (f) VACANCY.—A vacancy on the Review Board shall
11 be filled in the same manner as the original appointment
12 within 60 days after the occurrence of the vacancy.

13 (g) CHAIRPERSON.—The members of the Review
14 Board shall elect 1 of the members of the Board as chair-
15 person.

16 (h) REMOVAL OF REVIEW BOARD MEMBER.—

17 (1) IN GENERAL.—No member of the Review
18 Board shall be removed from office, other than by—

19 (A) impeachment and conviction; or

20 (B) the action of the President for ineffi-
21 ciency, neglect of duty, or malfeasance in office.

22 (2) REPORT.—

23 (A) IN GENERAL.—If a member of the Re-
24 view Board is removed from office, and that re-
25 moval is by the President, not later than 10

1 days after the removal, the President shall sub-
2 mit to the Committee on Oversight and Govern-
3 ment Reform of the House of Representatives
4 and the Committee on Homeland Security and
5 Governmental Affairs of the Senate a report
6 specifying the facts found and the grounds for
7 the removal.

8 (B) PUBLICATION.—The President shall
9 publish in the Federal Register the report sub-
10 mitted under subparagraph (A), except that the
11 President may, if necessary to protect the
12 rights of a person named in the report or to
13 prevent undue interference with any pending
14 prosecution, postpone or refrain from pub-
15 lishing any or all of the report until the comple-
16 tion of such pending cases or pursuant to pri-
17 vacy protection requirements in law.

18 (3) JUDICIAL REVIEW.—

19 (A) IN GENERAL.—A member of the Re-
20 view Board removed from office may obtain ju-
21 dicial review of the removal in a civil action
22 commenced in the United States District Court
23 for the District of Columbia.

1 (B) RELIEF.—The member may be rein-
2 stated or granted other appropriate relief by
3 order of the court.

4 (i) COMPENSATION OF MEMBERS.—

5 (1) IN GENERAL.—A member of the Review
6 Board shall be compensated at a rate equal to the
7 daily equivalent of the annual rate of basic pay pre-
8 scribed for level IV of the Executive Schedule under
9 section 5315 of title 5, United States Code, for each
10 day (including travel time) during which the member
11 is engaged in the performance of the duties of the
12 Review Board.

13 (2) TRAVEL EXPENSES.—A member of the Re-
14 view Board shall be allowed reasonable travel ex-
15 penses, including per diem in lieu of subsistence, at
16 rates for employees of agencies under subchapter I
17 of chapter 57 of title 5, United States Code, while
18 away from the member's home or regular place of
19 business in the performance of services for the Re-
20 view Board.

21 (j) WITNESS IMMUNITY.—The Review Board shall be
22 considered to be an agency of the United States for pur-
23 poses of chapter 601 of title 18, United States Code.

24 (k) OVERSIGHT.—

1 (1) IN GENERAL.—The Committee on Oversight
2 and Government Reform of the House of Represent-
3 atives and the Committee on Homeland Security and
4 Governmental Affairs of the Senate shall have con-
5 tinuing oversight jurisdiction with respect to the offi-
6 cial conduct of the Review Board and the disposition
7 of postponed records after termination of the Review
8 Board, and shall have access to any records held or
9 created by the Review Board.

10 (2) COOPERATION OF REVIEW BOARD.—The
11 Review Board shall cooperate with the exercise of
12 the oversight jurisdiction described in paragraph (1).

13 (l) SUPPORT SERVICES.—The Administrator of Gen-
14 eral Services shall provide administrative services for the
15 Review Board on a reimbursable basis.

16 (m) INTERPRETIVE REGULATIONS.—The Review
17 Board may issue interpretive regulations.

18 (n) TERMINATION.—

19 (1) TERMINATION DATE.—The Review Board
20 shall terminate not later than 3 years after the date
21 of the enactment of this Act, except that the Review
22 Board may, by majority vote, extend its term for an
23 additional 1-year period if the Review Board has not
24 completed its work within that 3-year period.

1 (2) REPORTS.—Before termination, the Review
2 Board shall submit reports to the President and the
3 Congress, including a complete and accurate ac-
4 counting of expenditures during its existence, and
5 shall complete all other reporting requirements
6 under this Act.

7 (3) TRANSFER OF RECORDS.—

8 (A) IN GENERAL.—Upon termination, the
9 Review Board shall transfer all of its records to
10 the Archivist for inclusion in the Collection.

11 (B) PRESERVATION OF RECORDS.—The
12 records of the Review Board shall not be de-
13 stroyed, except that the Archivist may destroy
14 routine administrative records covered by a gen-
15 eral records schedule following notification in
16 the Federal Register and after considering com-
17 ments.

18 **SEC. 7. CIVIL RIGHTS COLD CASE REVIEW BOARD PER-**

19 **SONNEL.**

20 (a) CHIEF OF STAFF.—

21 (1) APPOINTMENT.—Not later than 45 days
22 after the initial meeting of the Review Board, the
23 Review Board shall appoint an individual, without
24 regard to political affiliation, to the position of Chief
25 of Staff of the Review Board.

1 (2) REQUIREMENTS.—The individual appointed
2 as Chief of Staff—

3 (A) shall be a citizen of the United States
4 of integrity and impartiality who is a distin-
5 guished professional; and

6 (B) shall have had no previous involvement
7 with any official investigation or inquiry relat-
8 ing to civil rights cold cases.

9 (3) APPROVAL CONTINGENT ON PRIOR CLEAR-
10 ANCE.—A candidate shall obtain the necessary secu-
11 rity clearance prior to being appointed by the Review
12 Board.

13 (4) DUTIES.—The Chief of Staff shall—

14 (A) serve as principal liaison to Govern-
15 ment offices;

16 (B) be responsible for the administration
17 and coordination of the Review Board's review
18 of records;

19 (C) be responsible for the administration
20 of all official activities conducted by the Review
21 Board; and

22 (D) have no authority to decide or deter-
23 mine whether any record shall be disclosed to
24 the public or postponed for disclosure.

1 (5) REMOVAL.—The Chief of Staff shall not be
2 removed except upon a majority vote of the Review
3 Board to remove the Chief of Staff for cause on the
4 grounds of inefficiency, neglect of duty, or malfea-
5 sance in office.

6 (b) STAFF.—

7 (1) ADDITIONAL PERSONNEL.—The Review
8 Board may appoint, without regard to chapter 33,
9 subchapter I of title 5, United States Code, other
10 than sections 3303 and 3328 of such title, additional
11 employees as are necessary to enable the Review
12 Board and the Chief of Staff of the Review Board
13 to perform the duties of the Review Board. Any em-
14 ployee shall be an employee in the competitive serv-
15 ice.

16 (2) REQUIREMENTS.—An individual appointed
17 as an employee of the Review Board—

18 (A) shall be a private citizen of integrity
19 and impartiality; and

20 (B) shall have had no previous involvement
21 with any official investigation or inquiry relat-
22 ing to the civil rights cold cases.

23 (3) NOMINATIONS.—Before making an appoint-
24 ment pursuant to paragraph (1), the Review Board
25 shall consider individuals recommended by the

1 American Historical Association, the Organization of
2 American Historians, the Society of American Archi-
3 vists, and the American Bar Association.

4 (4) SECURITY CLEARANCES.—A candidate shall
5 obtain the necessary security clearance prior to
6 being appointed by the Review Board.

7 (c) COMPENSATION.—The Review Board shall fix the
8 compensation of the Chief of Staff and other employees
9 in accordance with title 5, United States Code, except that
10 the rate of pay for the Chief of Staff and other employees
11 may not exceed the rate payable for level V of the Execu-
12 tive Schedule under section 5316 of that title.

13 (d) ADVISORY COMMITTEES.—The Review Board
14 may create advisory committees to assist in fulfilling the
15 responsibilities of the Review Board under this Act.

16 **SEC. 8. REVIEW OF RECORDS BY THE REVIEW BOARD.**

17 (a) IN GENERAL.—The Review Board shall—

18 (1) not later than 90 days after the date on
19 which all members of the Review Board are ap-
20 pointed, publish in the Federal Register a schedule
21 for review of all civil rights cold case records; and

22 (2) not later than 180 days after the date of
23 the enactment of this Act, begin its review of civil
24 rights cold case records under this Act.

25 (b) DETERMINATION OF THE REVIEW BOARD.—

1 (1) SCOPE OF REVIEW.—The Review Board
2 may direct whether—

3 (A) a record shall be transmitted to the
4 Archivist for inclusion in the Collection; or

5 (B) a copy of a civil rights cold case shall
6 be publically disclosed in the Collection.

7 (2) STANDARD.—The Review Board shall make
8 the determination that—

9 (A) a record shall be transmitted to the
10 Archivist in the absence of clear and convincing
11 evidence that the record is not a civil rights
12 cold case record; and

13 (B) a civil rights cold case record shall be
14 publicly disclosed in the absence of clear and
15 convincing evidence that the record or par-
16 ticular information within the civil rights cold
17 case record may have its public disclosure post-
18 poned on the basis of a ground for postpone-
19 ment under subsection (c).

20 (c) GROUNDS FOR POSTPONEMENT OF PUBLIC DIS-
21 CLOSURE OF RECORDS.—Disclosure of civil rights cold
22 case records or particular information within a civil rights
23 cold case record to the public may be postponed if there
24 is clear and convincing evidence of any of the following:

1 (1) The threat to the military defense, law en-
2 forcement, intelligence operations, or the conduct of
3 domestic affairs of the United States posed by the
4 public disclosure of the civil rights cold case record
5 is of such gravity that the disclosure outweighs the
6 public interest and would reveal information de-
7 scribed in section 3.3(b) of Executive Order 13526
8 (75 Fed. Reg. 707; relating to classified national se-
9 curity information).

10 (2) The public disclosure of the civil rights cold
11 case record would reveal the name or identity of a
12 living individual who provided confidential informa-
13 tion to the United States and would pose a substan-
14 tial risk of harm to that individual.

15 (3) The public disclosure of the civil rights cold
16 case record could reasonably be expected to con-
17 stitute an unwarranted invasion of personal privacy,
18 and that invasion of privacy is so substantial that
19 the protection of privacy outweighs the public inter-
20 est.

21 (4) The public disclosure of the civil rights cold
22 case record would compromise the existence of an
23 understanding of confidentiality currently requiring
24 protection between a Government agent and a co-
25 operating individual or group and public disclosure

1 would be so harmful that the understanding of con-
2 fidentiality outweighs the public interest.

3 (d) ALTERNATIVE FORMS OF DISCLOSURE.—In ap-
4 proving postponement of public disclosure of a civil rights
5 cold case record, the Review Board shall—

6 (1) provide for the disclosure of segregable
7 parts, substitutes, or summaries of the record; and

8 (2) determine, in consultation with the origi-
9 nating body and consistent with the grounds for
10 postponement under subsection (c), which of the fol-
11 lowing alternative forms of disclosure shall be made
12 by the originating body:

13 (A) A document containing Any reasonably
14 segregable particular information in a civil
15 rights cold case record.

16 (B) A substitute record for that informa-
17 tion which is postponed.

18 (C) A summary of the civil rights cold case
19 record.

20 (e) CUSTODY OF RECORDS REVIEWED BY THE
21 BOARD.—Pending the outcome of the Review Board's re-
22 view activity, a Government office shall retain custody of
23 a civil rights cold case records for purposes of preserva-
24 tion, security, and efficiency, unless—

1 (1) the Review Board requires the physical
2 transfer of records for reasons of conducting an
3 independent and impartial review; or

4 (2) such transfer is necessary for an adminis-
5 trative hearing or other official Review Board func-
6 tion.

7 (f) DIGITIZATION OF RECORDS.—If a Government of-
8 fice provides a record to the Review Board for review, such
9 record shall be text searchable pursuant to the standards
10 established under section 552(a)(3) of title 5, United
11 States Code

12 (g) PRESIDENTIAL AUTHORITY OVER REVIEW
13 BOARD DETERMINATION.—

14 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
15 OF DISCLOSURE.—After the Review Board has made
16 a determination under subsection (b), obtained or
17 developed solely within the executive branch, the
18 President shall have the sole and nondelegable au-
19 thority to require the disclosure or postponement of
20 such record or information under a ground for post-
21 ponement described in subsection (c).

22 (2) CERTIFICATION.—Not later than 30 days
23 after the Review Board makes a determination
24 under subsection (b), the President shall provide the

1 Review Board with an unclassified written certifi-
2 cation that—

3 (A) specifies the President's decision; and

4 (B) stating the justification for the deci-
5 sion, including the applicable ground or grounds
6 for postponement under subsection (c).

7 (3) RECORD OF PRESIDENTIAL POSTPONE-
8 MENT.—The Review Board shall publish in the Fed-
9 eral Register a copy of any material, including un-
10 classified written certifications or statements, trans-
11 mitted by or on behalf of the President with regard
12 to postponement of the public disclosure of civil
13 rights cold case records upon the receipt of such ma-
14 terial.

15 (4) PERIODIC REVIEW.—Any civil rights cold
16 case record for which public disclosure is postponed
17 by the President shall be subject to the requirements
18 of section 5(d) and declassification of classified in-
19 formation and public disclosure in the Collection.

20 (h) NOTICE AFTER DETERMINATION.—

21 (1) IN GENERAL.—Not later than 14 days after
22 the Review Board makes a determination that a civil
23 rights cold case record shall be publicly disclosed in
24 the Collection or postponed for disclosure and held

1 in the protected Collection, the Review Board
2 shall—

3 (A) submit a notification to the head of the
4 originating body of its determination; and

5 (B) publish a copy of the determination in
6 the Federal Register.

7 (2) CONTEMPORANEOUS NOTICE.—Contempora-
8 neous notice shall be made, and include a written
9 unclassified justification for the determination of the
10 Review Board (including any basis under subsection
11 (b) on which the Review Board relied)—

12 (A) to the President of the determination
13 of the Review Board if the determination is
14 with respect to an a civil rights cold case record
15 created by the executive branch; and

16 (B) to the oversight committees designated
17 in this Act if the determination is with respect
18 to a civil rights cold case record created by the
19 legislative branch.

20 (i) NOTICE TO THE PUBLIC.—On each day that is
21 on or after the date that is 60 days after the Review Board
22 first approves the postponement of disclosure of a civil
23 rights cold case record, the Review Board shall publish
24 on a publicly available website a notice that summarizes
25 the postponements approved by the Review Board or initi-

1 ated by the President, including a description of the
2 record, originating agency, length or other physical de-
3 scription, and each ground for postponement that is relied
4 upon.

5 (j) NOTICE OF TERMINATION.—Not later than 90
6 days before the termination date described in section
7 6(n)(1), the Review Board shall provide written notice to
8 the President and Congress of its intention to terminate
9 its operations at a specified date.

10 (k) REOCCURRING REPORTS BY THE REVIEW
11 BOARD.—

12 (1) REPORT TO ARCHIVIST.—With respect to
13 each civil rights cold case record or particular infor-
14 mation in civil rights cold case record the public dis-
15 closure of which is postponed under subsection (b),
16 or for which substitutions and summaries have been
17 disclosed to the public, the Review Board shall cre-
18 ate and transmit to the Archivist a report con-
19 taining—

20 (A) a description of actions by the Review
21 Board, the originating body, the President, or
22 any Government office (including a justification
23 of any such action to postpone disclosure of any
24 record or part of any record) and of any official
25 proceedings conducted by the Review Board

1 with regard to specific civil rights cold case
2 records; and

3 (B) a statement, based on review of the
4 proceedings and in conformity with the deci-
5 sions reflected therein, designating a rec-
6 ommended specified date on which or specified
7 occurrence following which the material be ap-
8 propriately disclosed to the public.

9 (2) OTHER REPORTS.—Not later than 1 year
10 after the date of the enactment of this Act, and each
11 year thereafter until the termination of the Review
12 Board, the Review Board shall submit to the Speak-
13 er of the House of Representatives, the Minority
14 Leader of the House of Representatives, the Com-
15 mittee on Oversight and Government Reform of the
16 House of Representatives, the Majority Leader of
17 the Senate, the Minority Leader of the Senate, the
18 Committee on Homeland Security and Governmental
19 Affairs of the Senate, the President, the Archivist,
20 and the head of any Government office whose
21 records have been the subject of Review Board activ-
22 ity the report described under paragraph (3).

23 (3) CONTENTS.—The report under paragraph
24 (2) shall include the following information:

1 (A) A financial report of the expenses for
2 all official activities and requirements of the
3 Review Board and its employees.

4 (B) The progress made on review, trans-
5 mission to the Archivist, and public disclosure
6 of civil rights cold case records.

7 (C) The estimated time and volume of civil
8 rights cold case records involved in the comple-
9 tion of the Review Board's performance under
10 this Act.

11 (D) Any special problems, including re-
12 quests and the level of cooperation of Govern-
13 ment offices, with regard to the ability of the
14 Review Board to operate as required by this
15 Act.

16 (E) A record of review activities, including
17 a record of postponement decisions by the Re-
18 view Board or other related actions authorized
19 by this Act, and a record of the volume of
20 records reviewed and postponed.

21 (F) Recommendations and requests to
22 Congress for additional authorization.

23 (G) An appendix containing a copy of each
24 report required under paragraph (1) that was

1 created after the date on which the preceding
2 report under paragraph (2) was submitted.

3 **SEC. 9. DISCLOSURE OF OTHER INFORMATION AND ADDI-**
4 **TIONAL STUDY.**

5 (a) MATERIALS UNDER THE SEAL OF THE COURT.—

6 (1) IN GENERAL.—The Review Board may re-
7 quest the Attorney General to petition any court in
8 the United States or abroad to release any informa-
9 tion relevant to civil rights cold cases that is held
10 under seal of court.

11 (2) GRAND JURY MATERIALS.—

12 (A) IN GENERAL.—The Review Board may
13 request the Attorney General to petition any
14 court in the United States to release any infor-
15 mation relevant to civil rights cold cases that is
16 held under the injunction of secrecy of a grand
17 jury.

18 (B) PARTICULARIZED NEED.—A request
19 for disclosure of civil rights cold case records
20 under this Act shall be deemed to constitute a
21 showing of particularized need under rule 6 of
22 the Federal Rules of Criminal Procedure.

23 (3) DEADLINE.—The Attorney General shall re-
24 spond to any request that is subject to this sub-
25 section within 45 days.

1 (b) SENSE OF CONGRESS ON COOPERATION WITH
2 AGENCIES.—It is the sense of Congress that—

3 (1) the Attorney General should assist the Re-
4 view Board in good faith to unseal any records that
5 the Review Board determines to be relevant and held
6 under the seal by a court or under the injunction of
7 secrecy of a grand jury; and

8 (2) all departments and agencies of the United
9 States Government should cooperate in full with the
10 Review Board to seek the disclosure of all informa-
11 tion relevant to civil rights cold cases consistent with
12 the public interest.

13 **SEC. 10. RULES OF CONSTRUCTION.**

14 (a) PRECEDENCE OVER OTHER LAW.—When this
15 Act requires transmission of a record to the Archivist or
16 public disclosure, it shall take precedence over any other
17 law (except section 6103 of the Internal Revenue Code of
18 1986), judicial decisions construing such law, or common
19 law doctrine that would otherwise prohibit such trans-
20 mission or disclosure with the exception of deeds governing
21 access to or transfer or release of gifts and donations of
22 records to the United States Government.

23 (b) FREEDOM OF INFORMATION ACT.—Nothing in
24 this Act shall be construed to eliminate or limit any right
25 to file any requests with any agency (as defined in section

1 552(f) of title 5, United States Code) or seek judicial re-
2 view of a decision under section 552 of title 5, United
3 States Code.

4 (c) JUDICIAL REVIEW.—Nothing in this Act shall be
5 construed to preclude judicial review, under chapter 7 of
6 title 5, United States Code, of final actions taken or re-
7 quired to be taken under this Act.

8 (d) EXISTING AUTHORITY.—Nothing in this Act re-
9 vokes or limits the authority of the President, any execu-
10 tive agency, the Senate, the House of Representatives, or
11 any other entity of the Government to publicly disclose
12 records in its possession.

