

115TH CONGRESS
1ST SESSION

H. R. 1272

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2017

Mr. RUSH introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To provide for the expeditious disclosure of records related to civil rights cold cases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cold Case Record Col-
5 lections Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) All government records related to civil
9 rights cold cases shall be preserved for historical and
10 governmental purposes.

1 (2) All government records concerning civil
2 rights cold cases shall carry a presumption of imme-
3 diate disclosure, and all records shall be eventually
4 disclosed to enable the public to become fully in-
5 formed about the history surrounding the cases.

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

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

12 (5) Legislation is necessary because section 552
13 of title 5, United States Code (commonly known as
14 the Freedom of Information Act), as implemented by
15 the executive branch, has prevented the timely and
16 adequate public disclosure of records relating to civil
17 rights cold cases.

18 (6) Legislation is necessary because Executive
19 Order 13526 (75 Fed. Reg. 707; relating to classi-
20 fied national security information), while eliminating
21 the declassification and downgrading of schedules re-
22 lating to classified information across government,
23 has not resulted in the timely and adequate public
24 disclosure of records relating to civil rights cold
25 cases.

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

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

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

9 (2) CIVIL RIGHTS COLD CASE.—The term “Civil
10 Rights Cold Case” means any unsolved case related
11 to criminal civil rights statutes specifically—

12 (A) section 241 of title 18, United States
13 Code (relating to conspiracy against rights);

14 (B) section 242 of title 18, United States
15 Code (relating to deprivation of rights under
16 color of law);

17 (C) section 245 of title 18, United States
18 Code (relating to federally protected activities);

19 (D) sections 1581 and 1584 of title 18,
20 United States Code (relating to involuntary ser-
21 vitude and peonage);

22 (E) section 901 of the Fair Housing Act
23 (42 U.S.C. 3631); and

24 (F) any other Federal law that—

1 (i) was in effect on or before Decem-
2 ber 31, 1969; and

3 (ii) the criminal section of the Civil
4 Rights Division of the Department of Jus-
5 tice enforced, prior to the date of enact-
6 ment of this Act.

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

10 (4) EXECUTIVE AGENCY.—The term “Executive
11 Agency” means an executive agency as defined in
12 subsection 552(f) of title 5, United States Code, and
13 includes any executive department, military depart-
14 ment, Government Corporation, government con-
15 trolled corporation, or other establishment in the ex-
16 ecutive branch of the government, including the Ex-
17 ecutive Office of the President, or any independent
18 regulatory agency.

19 (5) GOVERNMENT OFFICE.—The term “Govern-
20 ment office” means any office of the Federal Gov-
21 ernment that has possession or control of civil rights
22 cold cases records.

23 (6) GOVERNMENT OFFICIAL.—The term “Gov-
24 ernment official” means any officer or employee of

1 the United States, including elected and appointed
2 officials.

3 (7) IDENTIFICATION AID.—The term “Identi-
4 fication aid” means the written description prepared
5 for each record as required in section 224.

6 (8) NATIONAL ARCHIVES.—The term “National
7 Archives” means the National Archives and Records
8 Administration and all components thereof, includ-
9 ing Presidential archival depositories established
10 under section 2112 of title 44, United States Code.

11 (9) OFFICIAL INVESTIGATION.—The term “Of-
12 ficial Investigation” means the reviews of Civil
13 Rights Cold Cases conducted by any entity of the
14 Federal Government either independently, at the re-
15 quest of any Presidential commission or congres-
16 sional committee, or at the request of any govern-
17 ment official.

18 (10) ORIGINATING BODY.—The term “Orig-
19 inating body” means the executive agency, govern-
20 ment commission, congressional committee, or other
21 governmental entity that created a record or par-
22 ticular information within a record.

23 (11) PUBLIC INTEREST.—The term “Public in-
24 terest” means the compelling interest in the prompt
25 public disclosure of Civil Rights Cold Cases records

1 for historical and governmental purposes and for the
2 purpose of fully informing the American people
3 about the history surrounding all Civil Rights Cold
4 Cases in the United States.

5 (12) RECORD.—The term “Record” includes a
6 book, paper, map, photograph, sound or video re-
7 cording, machine readable material, computerized,
8 digitized, or electronic information, regardless of the
9 medium on which it is stored, or other documentary
10 material, regardless of its physical form or charac-
11 teristics.

12 (13) CIVIL RIGHTS COLD CASE RECORD.—The
13 term “Civil Rights Cold Case Record” means a
14 record that is related to Civil Rights Cold Cases,
15 that was created or made available for use by, ob-
16 tained by, or otherwise came into the possession
17 of—

18 (A) the Library of Congress;

19 (B) the National Archives and Records Ad-
20 ministration;

21 (C) any executive agency;

22 (D) any independent agency;

23 (E) any other entity of the Federal Gov-
24 ernment; and

1 (F) any State or local government, or com-
 2 ponent thereof, that provided support or assist-
 3 ance or performed work in connection with a
 4 Federal inquiry into Civil Rights Cold Cases.

5 (14) REVIEW BOARD.—The term “Review
 6 Board” means the Civil Rights Cold Cases Records
 7 Review Board established by section 6.

8 (15) THIRD AGENCY.—The term “Third agen-
 9 cy” means an executive agency that originated a
 10 Civil Rights Cold Case record that is in the posses-
 11 sion of another agency.

12 (16) WIDELY ACCESSIBLE FORMAT.—The term
 13 “Widely accessible format” refers to an open format
 14 that is platform independent, machine readable, and
 15 made available to the public without restrictions that
 16 would impede the re-use of that information.

17 **SEC. 4. CIVIL RIGHTS COLD CASE RECORDS COLLECTION**
 18 **AT THE NATIONAL ARCHIVES AND RECORD**
 19 **ADMINISTRATION.**

20 (a) IN GENERAL.—

21 (1) ESTABLISHMENT OF THE CIVIL RIGHTS
 22 COLD CASE RECORDS COLLECTION.—Not later than
 23 60 days after the date of the enactment of this Act,
 24 the Archivist shall—

1 (A) establish a collection of cold case
2 records to be known as the “Civil Rights Cold
3 Case Records Collection” that ensures the phys-
4 ical integrity and original provenance of all
5 records in the Collection; and

6 (B) prepare and publish the subject guide-
7 book and index to the Collection.

8 (2) CONTENTS OF COLLECTION.—The Collec-
9 tion shall include—

10 (A) a copy of each cold case record that
11 shall be transmitted to the Archivist in accord-
12 ance with section 2107 of title 44, United
13 States Code;

14 (B) each cold case record—

15 (i) that has been transmitted to the
16 Archivist or disclosed to the public in an
17 unredacted form before the date of the en-
18 actment of this Act;

19 (ii) that is required to be transmitted
20 to the Archivist; and

21 (iii) the disclosure of which is post-
22 poned under this Act;

23 (C) a central directory comprised of identi-
24 fication aids created for each record trans-
25 mitted to the Archivist under section 5; and

1 (D) all Review Board records as required
2 by this Act.

3 (b) DISCLOSURE OF RECORDS.—All cold case records
4 transmitted to the Archivist for disclosure to the public
5 shall be included in the Collection and shall be available
6 to the public for inspection and copying at the National
7 Archives within 30 days after the transmission of such
8 record to the Archivist.

9 (c) FEES FOR COPYING.—The Archivist shall—

10 (1) use efficient electronic means when possible;

11 (2) charge fees for copying cold case records;

12 and

13 (3) grant waivers of such fees pursuant to the
14 standard established by section 552(a)(4) of title 5,
15 United States Code.

16 (d) ADDITIONAL REQUIREMENTS.—The Archivist, in
17 consultation with the Information Security Oversight Of-
18 fice, shall ensure the security of the postponed cold case
19 records in the Collection.

20 (e) TRANSMISSION TO THE NATIONAL ARCHIVES.—
21 Each Government office shall—

22 (1) transmit to the Archivist and make avail-
23 able to the public not later than 300 days after the
24 date of the enactment of this Act, each cold case
25 record that can be publicly disclosed including any

1 such record that is publicly available on the date of
2 enactment of this Act, without any redaction, adjust-
3 ment, or withholding under the standards of this
4 Act; and

5 (2) transmit to the Archivist upon approval for
6 postponement by the Review Board or upon comple-
7 tion of other action authorized by this Act, each cold
8 case record for which public disclosure has been
9 postponed, in whole or in part, under the standards
10 of this Act, to become part of the protected Collec-
11 tion.

12 (f) CUSTODY OF POSTPONED COLD CASE
13 RECORDS.—A cold case record for which public disclosure
14 has been postponed shall, pending transmission to the Ar-
15 chivist, be held for reasons of security and preservation
16 by the originating body until such time as the information
17 security program has been established at the National Ar-
18 chives as required in section 4(c)(2).

19 (g) PERIODIC REVIEW OF POSTPONED COLD CASE
20 RECORDS.—

21 (1) IN GENERAL.—Each postponed or redacted
22 record shall be reviewed every 180 days by the origi-
23 nating agency and the Archivist consistent with the
24 recommendations of the Review Board under section
25 8(c)(3)(B).

1 (2) REQUIREMENTS OF PERIODIC REVIEW.—

2 The periodic review shall—

3 (A) address the public disclosure of addi-
4 tional cold case records in the Collection under
5 the standards of this Act; and

6 (B) serve to downgrade and declassify clas-
7 sified information, with the presumption of pro-
8 viding public disclosure.

9 (3) UNCLASSIFIED WRITTEN DESCRIPTION.—

10 Any postponed cold case record that is determined
11 to require continued postponement shall include an
12 unclassified written description of the reason for
13 such continued postponement. Such description shall
14 be provided to the Archivist and published in the
15 Federal Register upon determination.

16 (4) FULL DISCLOSURE OF COLD CASE RECORD
17 REQUIRED.—Each cold case record shall be publicly
18 disclosed in full, and available in the Collection not
19 later than 25 years after the date of enactment of
20 this Act unless—

21 (A) continued postponement is made nec-
22 essary by an identifiable harm to military de-
23 fense, intelligence operations, or the conduct of
24 foreign relations; and

1 (B) the identifiable harm is of such gravity
2 that it outweighs the public interest in disclo-
3 sure.

4 (h) DIGITIZATION OF RECORDS.—Executive branch
5 agencies shall make text searchable documents available
6 to the Review Board pursuant to standards established by
7 section 552(a)(3) of title 5, United States Code.

8 **SEC. 5. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLO-**
9 **SURE OF RECORDS.**

10 Disclosure of Civil Rights Cold Case records or par-
11 ticular information within a cold case record to the public
12 may be postponed subject to the limitations of this Act
13 if there is clear and convincing evidence that:

14 (1) The threat to the military defense, intel-
15 ligence operations, or the conduct of domestic affairs
16 of the United States posed by the public disclosure
17 of the cold case record is of such gravity that the
18 disclosure outweighs the public interest and would
19 reveal—

20 (A) an intelligence source or method that
21 is currently used, or reasonably expected to be
22 used, by the United States Government and
23 which has not been officially disclosed, the dis-
24 closure of which would interfere with the con-
25 duct of intelligence activities; or

1 (B) any other matter relating to the mili-
2 tary defense, intelligence operations, or conduct
3 of foreign relations with the United States, the
4 disclosure of which would demonstrably impair
5 the national security of the United States.

6 (2) The public disclosure of the cold case record
7 would reveal the name or identity of a living person
8 who provided confidential information to the United
9 States and would pose a substantial risk of harm to
10 that person.

11 (3) The public disclosure of the cold case record
12 could reasonably be expected to constitute an unwar-
13 ranted invasion of personal privacy, and that inva-
14 sion of privacy is so substantial that the protection
15 of privacy outweighs the public interest.

16 (4) The public disclosure of the cold case record
17 would compromise the existence of an understanding
18 of confidentiality currently requiring protection be-
19 tween a Government agent and a cooperating indi-
20 vidual or group and public disclosure would be so
21 harmful that the understanding of confidentiality
22 outweighs the public interest.

23 (5) The public record of the cold case record
24 would reveal a security or protective procedure used,
25 or reasonably expected to be used, by the United

1 States Secret Service or another executive agency re-
2 sponsible for protecting Government officials, and
3 public disclosure would be so harmful that protective
4 procedure outweighs the public interest.

5 **SEC. 6. ESTABLISHMENT AND POWERS OF THE COLD CASE**
6 **RECORDS REVIEW BOARD.**

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

10 (b) APPOINTMENT.—(1) The President shall appoint
11 5 persons to serve as members of the Review Board to
12 ensure and facilitate the review, transmission to the Archi-
13 vist, and public disclosure of government records related
14 to civil rights cold cases.

15 (2) Initial appointments to the Review Board shall,
16 so far as practicable, be made not later than 30 days after
17 the enactment of this Act.

18 (3) In making appointments to the Review Board the
19 President shall consider any persons recommended by the
20 American Historical Association, the Organization of
21 American Historians, the Society of American Archivists,
22 and the American Bar Association.

23 (4) If an organization described in paragraph (3)
24 does not recommend at least two nominees meeting the
25 qualifications stated in paragraph (4) within 30 days after

1 the enactment of this Act, the requirements of paragraph
2 (2) shall be extended until such recommendations are
3 made or 60 days, whichever comes first.

4 (5) The President may request any organization de-
5 scribed in paragraph (2) to submit additional nominations.

6 (6) Persons nominated to the Review Board shall—

7 (A) be impartial private citizens, none of whom
8 is presently employed by any branch of the Govern-
9 ment, and none of whom shall have had any previous
10 involvement with any official investigation or inquiry
11 conducted by the Federal Government, or any State
12 or local government, relating to any Civil Rights
13 Cold Cases;

14 (B) be distinguished persons of high national
15 professional reputation in their respective fields who
16 are capable of exercising the independent and objec-
17 tive judgment necessary to fulfill their role in ensur-
18 ing and facilitating the review, transmission to the
19 public, and public disclosure of files related to Cold
20 Cases and who possess an appreciation of the value
21 of such material to the public, scholars, and govern-
22 ment; and

23 (C) include at least one professional historian
24 and one attorney.

1 (c) SECURITY CLEARANCES.—All Review Board
2 nominees shall be processed for the necessary security
3 clearances in an accelerated manner subject to the stand-
4 ard procedures for granting such clearances.

5 (d) VACANCY.—A vacancy on the Review Board shall
6 be filled in the same manner as the original appointment
7 within 30 days of the occurrence of the vacancy.

8 (e) CHAIRPERSON.—The members of the Review
9 Board shall elect one of its members as chairperson.

10 (f) REMOVAL OF REVIEW BOARD MEMBER.—

11 (1) No member of the Review Board shall be
12 removed from office, other than—

13 (A) by impeachment and conviction; or

14 (B) by the action of the President for inef-
15 ficiency, neglect of duty, malfeasance in office,
16 physical disability, mental incapacity, or any
17 other condition that substantially impairs the
18 performance of the member's duties.

19 (2)(A) If a member of the Review Board is re-
20 moved from office, and that removal is by the Presi-
21 dent, not later than 10 days after the removal the
22 President shall submit to the Committee on Over-
23 sight and Government Reform of the House of Rep-
24 resentatives and the Committee on Homeland Secu-
25 rity and Governmental Affairs of the Senate a report

1 specifying the facts found and the grounds for the
2 removal.

3 (B) The President shall publish in the Federal
4 Register a report submitted under subparagraph
5 (A), except that the President may, if necessary to
6 protect the rights of a person named in the report
7 or to prevent undue interference with any pending
8 prosecution, postpone or refrain from publishing any
9 or all of the report until the completion of such
10 pending cases or pursuant to privacy protection re-
11 quirements in law.

12 (3)(A) A member of the Review Board removed
13 from office may obtain judicial review of the removal
14 in a civil action commenced in the United States
15 District Court for the District of Columbia.

16 (B) The member may be reinstated or granted
17 other appropriate relief by order of the court.

18 (g) COMPENSATION OF MEMBERS.—

19 (1) A member of the Review Board shall be
20 compensated at a rate equal to the daily equivalent
21 of the annual rate of basic pay prescribed for Level
22 IV of the Executive Schedule under section 5315 of
23 title 5, United States Code, for each day (including
24 travel time) during which the member is engaged in
25 the performance of the duties of the Review Board.

1 (2) A member of the Review Board shall be al-
2 lowed reasonable travel expenses, including per diem
3 in lieu of subsistence, at rates for employees of agen-
4 cies under subchapter I of chapter 57 of title 5,
5 United States Code, while away from the member's
6 home or regular place of business in the perform-
7 ance of services for the Review Board.

8 (h) DUTIES OF THE REVIEW BOARD.—

9 (1) The Review Board shall consider and render
10 decisions on a determination by a Government office
11 to seek to postpone the disclosure of Cold Case
12 Records.

13 (2) In carrying out paragraph (1), the Review
14 Board shall consider and render decisions—

15 (A) whether a record constitutes a Cold
16 Case Record; and

17 (B) whether a Cold Case Record or par-
18 ticular information in a record qualifies for
19 postponement of disclosure under this Act.

20 (i) POWERS.—The Review Board shall have the au-
21 thority to act in a manner prescribed under this Act in-
22 cluding the authority to—

23 (1) obtain access to Cold Case records that
24 have been identified and organized by a Government
25 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) subpoena private persons to compel testi-
9 mony, records, and other information relevant to its
10 responsibilities under this Act;

11 (4) require any Government office to account in
12 writing for the destruction of any records relating to
13 Civil Rights Cold Cases;

14 (5) receive information from the public regard-
15 ing the identification and public disclosure of Cold
16 Case records; and

17 (6) hold hearings, administer oaths, and sub-
18 poena witnesses and documents. Any subpoena
19 issued under this paragraph may be enforced by any
20 appropriate Federal court acting pursuant to a law-
21 ful request of the Review Board.

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

1 (k) OVERSIGHT.—The Committee on Oversight and
2 Government Reform of the House of Representatives and
3 the Committee on Homeland Security and Governmental
4 Affairs of the Senate shall be responsible for the disposi-
5 tion of postponed records after termination of the Review
6 Board; and shall have access to any records held or cre-
7 ated by the Review Board.

8 (l) SUPPORT SERVICES.—The Administrator of the
9 General Services Administration shall provide administra-
10 tive services for the Review Board on a reimbursable basis.

11 (m) INTERPRETIVE REGULATIONS.—The Review
12 Board may issue interpretive regulations.

13 (n) TERMINATION.—

14 (1) The Review Board shall terminate not later
15 than 2 years after the enactment of this Act, except
16 that the Review Board may, by majority vote, extend
17 its term for an additional 1-year period if it has not
18 completed its work within that 2-year period.

19 (2) Upon its termination, the Review Board
20 shall submit reports to the President and the Con-
21 gress, including a complete and accurate accounting
22 of expenditures during its existence, and shall com-
23 plete all other reporting requirements under this
24 Act.

1 (3) Upon termination, the Review Board shall
2 transfer all of its records to the Archivist for inclu-
3 sion in the Collection, and the records of the Review
4 Board shall not be destroyed.

5 **SEC. 7. COLD CASE RECORDS REVIEW BOARD PERSONNEL.**

6 (a) CHIEF OF STAFF.—

7 (1) APPOINTMENT.—Not later than 45 days
8 after the initial meeting of the Review Board, the
9 Review Board shall appoint one United States cit-
10 izen, without regard to political affiliation, to the po-
11 sition of Chief of Staff.

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

14 (A) shall be a private citizen of integrity
15 and impartiality who is a distinguished profes-
16 sional;

17 (B) may not be a present employee of the
18 Federal Government; and

19 (C) shall have had no previous involvement
20 with any official investigation or inquiry relat-
21 ing to Civil Rights Cold Cases.

22 (3) CANDIDATE TO HAVE CLEARANCES.—A
23 candidate for Chief of Staff shall be granted the nec-
24 essary security clearances in an accelerated manner

1 subject to the standard procedures for granting such
2 clearances.

3 (4) APPROVAL CONTINGENT ON PRIOR CLEAR-
4 ANCE.—A candidate shall qualify for the necessary
5 security clearance prior to being approved by the Re-
6 view Board.

7 (5) DUTIES.—The Chief of Staff shall—

8 (A) serve as principal liaison to Govern-
9 ment offices;

10 (B) be responsible for the administration
11 and coordination of the Review Board’s review
12 of records;

13 (C) be responsible for the administration
14 of all official activities conducted by the Review
15 Board; and

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

19 (6) REMOVAL.—The Chief of Staff shall not be
20 removed for reasons other than by a majority vote
21 of the Review Board for cause on the grounds of in-
22 efficiency, neglect of duty, malfeasance in office,
23 physical disability, mental incapacity, or any other
24 condition that substantially impairs the performance

1 of the responsibilities of the Chief of Staff or the
2 staff of the Review Board.

3 (b) STAFF.—

4 (1) ADDITIONAL PERSONNEL.—The Review
5 Board may, in accordance with the civil service laws
6 but without regard to civil service law and regulation
7 for competitive service as defined in subchapter 1 of
8 chapter 33 of title 5, United States Code, appoint
9 and terminate additional personnel as are necessary
10 to enable the Review Board and its Chief of Staff
11 to perform its duties.

12 (2) REQUIREMENTS.—A person appointed to
13 the staff of the Review Board—

14 (A) shall be a private citizen of integrity
15 and impartiality;

16 (B) may not be an employee of the Federal
17 Government; and

18 (C) shall have had no previous involvement
19 with any official investigation or inquiry relat-
20 ing to the Civil Rights Cold Cases.

21 (3) NOMINATIONS.—Before making an appoint-
22 ment pursuant to paragraph (1), the Review Board
23 shall consider individuals recommended by the
24 American Historical Association, the Organization of

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

3 (4) SECURITY CLEARANCES.—A candidate shall
4 qualify for the necessary security clearance prior to
5 being approved by the Review Board.

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

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

16 **SEC. 8. REVIEW OF RECORDS BY THE COLD CASE RECORDS**
17 **REVIEW BOARD.**

18 (a) CUSTODY OF RECORDS REVIEWED BY THE
19 BOARD.—Pending the outcome of the Review Board’s re-
20 view activity, a Government office shall retain custody of
21 its cold case records for purposes of preservation, security,
22 and efficiency, unless—

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

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

4 (b) STARTUP REQUIREMENTS.—The Review Board
5 shall—

6 (1) not later than 90 days after the date of its
7 appointment, publish a schedule for review of all
8 cold case records in the Federal Register; and

9 (2) not later than 180 days after the enactment
10 of this Act, begin its review of cold case records
11 under this Act.

12 (c) DETERMINATION OF THE REVIEW BOARD.—

13 (1) The Review Board shall direct that all cold
14 case records be transmitted to the Archivist and dis-
15 closed to the public in the Collection in the absence
16 of clear and convincing evidence that—

17 (A) a Government record is not a cold case
18 record; or

19 (B) a Government record or particular in-
20 formation within a cold case record qualifies for
21 postponement of public disclosure under this
22 Act.

23 (2) In approving postponement of public disclo-
24 sure of a cold case record, the Review Board shall
25 work to—

1 (A) provide for the disclosure of segregable
2 parts, substitutes, or summaries of such a
3 record; and

4 (B) determine, in consultation with the
5 originating body and consistent with the stand-
6 ards for postponement under this Act, which of
7 the following alternative forms of disclosure
8 shall be made by the originating body:

9 (i) Any reasonably segregable par-
10 ticular information in a cold case record.

11 (ii) A substitute record for that infor-
12 mation which is postponed.

13 (iii) A summary of a cold case record.

14 (3) With respect to each cold case record or
15 particular information in cold case records the public
16 disclosure of which is postponed pursuant to section
17 5, or for which only substitutions or summaries have
18 been disclosed to the public, the Review Board shall
19 create and transmit to the Archivist a report con-
20 taining—

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

1 proceedings conducted by the Review Board
2 with regard to specific cold case records; and

3 (B) a statement, based on a review of the
4 proceedings and in conformity with the deci-
5 sions reflected therein, designating a rec-
6 ommended specified time at which or a specified
7 occurrence following which the material may be
8 appropriately disclosed to the public under this
9 Act.

10 (4) Following its review and a determination
11 that a cold case record shall be publicly disclosed in
12 the Collection or postponed for disclosure and held
13 in the protected Collection, the Review Board shall
14 notify the head of the originating body of its deter-
15 mination and publish a copy of the determination in
16 the Federal Register within 14 days after the deter-
17 mination is made.

18 (5) Contemporaneous notice shall be made to
19 the President for Review Board determinations re-
20 garding executive branch cold case records, and to
21 the oversight committees designated in this Act in
22 the case of legislative branch records. Such notice
23 shall contain a written unclassified justification for
24 public disclosure or postponement of disclosure, in-

1 including an explanation of the application of any
2 standards in section 5.

3 (d) PRESIDENTIAL AUTHORITY OVER REVIEW
4 BOARD DETERMINATION.—

5 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
6 OF DISCLOSURE.—After the Review Board has made
7 a formal determination concerning the public disclo-
8 sure or postponement of disclosure of an executive
9 branch cold case record or information contained in
10 an cold case record, obtained or developed solely
11 within the executive branch, the President shall have
12 the sole and nondelegable authority to require the
13 disclosure or postponement of such record or infor-
14 mation under the standards set forth in section 5,
15 and the President shall provide the Review Board
16 with an unclassified written certification specifying
17 the President's decision within 30 days after the Re-
18 view Board's determination and notice to the execu-
19 tive branch agency as required under this Act, stat-
20 ing the justification for the President's decision, in-
21 cluding the applicable grounds for postponement
22 under section 5, accompanied by a copy of the iden-
23 tification aid required under section 4.

24 (2) PERIODIC REVIEW.—Any executive branch
25 cold case record postponed by the President shall be

1 subject to the requirements of periodic review, down-
2 grading, and declassification of classified informa-
3 tion, and public disclosure in the Collection set forth
4 in section 4.

5 (3) RECORD OF PRESIDENTIAL POSTPONE-
6 MENT.—The Review Board shall, upon its receipt,
7 publish in the Federal Register a copy of any unclas-
8 sified written certification, statement, and other ma-
9 terials transmitted by or on behalf of the President
10 with regard to postponement of cold case records.

11 (e) NOTICE TO THE PUBLIC.—Every calendar day,
12 beginning 60 days after the Review Board first approves
13 the postponement of disclosure of an cold case record, the
14 Review Board shall publish in the Federal Register a no-
15 tice that summarizes the postponements approved by the
16 Review Board or initiated by the President, the House of
17 Representatives, or the Senate, including a description of
18 the subject, originating agency, length or other physical
19 description, and each ground for postponement that is re-
20 lied upon.

21 (f) REPORTS BY THE REVIEW BOARD.—

22 (1) The Review Board shall report its activities
23 to the Speaker, Minority Leader and the Committee
24 on Oversight and Government Reform of the House
25 of Representatives, and the Majority Leader, Minor-

1 ity Leader, and the Committee on Homeland Secu-
2 rity and Governmental Affairs of the Senate, the
3 President, the Archivist, and the head of any Gov-
4 ernment office whose records have been the subject
5 of Review Board activity.

6 (2) The first report shall be issued 1 year after
7 the enactment of this Act, and subsequent reports
8 shall be issued every 12 months thereafter until ter-
9 mination of the Review Board.

10 (3) A report under paragraph (1) shall include
11 the following information:

12 (A) A financial report of the expenses for
13 all official activities and requirements of the
14 Review Board and its personnel.

15 (B) The progress made on review, trans-
16 mission to the Archivist, and public disclosure
17 of cold case records.

18 (C) The estimated time and volume of cold
19 case records involved in the completion of the
20 Review Board's performance under this Act.

21 (D) Any special problems, including re-
22 quests and the level of cooperation of Govern-
23 ment offices, with regard to the ability of the
24 Review Board to operate as required by this
25 Act.

1 (E) A record of review activities, including
2 a record of postponement decisions by the Re-
3 view Board or other related actions authorized
4 by this Act, and a record of the volume of
5 records reviewed and postponed.

6 (F) Recommendations and requests to
7 Congress for additional authorization.

8 (G) An appendix containing copies of re-
9 ports of postponed records to the Archivist re-
10 quired under section 8(c)(3) made since the
11 date of the preceding report under this sub-
12 section.

13 (4) At least 90 calendar days before completing
14 its work, the Review Board shall provide written no-
15 tice to the President and the Congress of its inten-
16 tion to terminate its operations at a specified date.

17 **SEC. 9. DISCLOSURE OF OTHER INFORMATION AND ADDI-**
18 **TIONAL STUDY.**

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

20 (1) The review board may request the Attorney
21 General to petition any court in the United States
22 or abroad to release any information relevant to
23 Civil Rights related cold cases that is held under
24 seal of court.

1 (2) The Review Board may request the Attor-
2 ney General to petition any court in the United
3 States to release any information relevant to Civil
4 Rights related cold cases that is held under the in-
5 junction of secrecy of a grand jury.

6 (3) A request for disclosure of Civil Rights cold
7 case materials under this Act shall be deemed to
8 constitute a showing of particularized need under
9 Rule 6 of the Federal Rules of Criminal Procedure.

10 (4) The Attorney General shall comply with any
11 request made subject to provisions of the section
12 within 45 days.

13 (b) COOPERATION WITH AGENCIES.—It is the sense
14 of Congress that—

15 (1) the Attorney General shall assist the Review
16 Board in good faith to unseal any records that the
17 Review Board determines to be relevant and held
18 under the seal by a court or under the injunction of
19 secrecy of a grand jury; and

20 (2) all departments and agencies of the United
21 States Government shall cooperate in full with the
22 Review Board to seek the disclosure of all informa-
23 tion relevant to civil rights related cold cases con-
24 sistent with the public interest.

1 **SEC. 10. RULES OF CONSTRUCTION.**

2 (a) **PRECEDENCE OVER OTHER LAW.**—When this
3 Act requires transmission of a record to the Archivist or
4 public disclosure, it shall take precedence over any other
5 law (except section 6103 of the Internal Revenue Code),
6 judicial decisions construing such law, or common law doc-
7 trine that would otherwise prohibit such transgression or
8 disclosure with the exception of deeds governing access to
9 or transfer or release of gifts and donations of records
10 to the United States Government.

11 (b) **FREEDOM OF INFORMATION ACT.**—Nothing in
12 this Act shall be construed to eliminate or limit any right
13 to file any requests with any executive agency or seek judi-
14 cial review of the decisions pursuant to section 552 of title
15 5, United States Code.

16 (c) **JUDICIAL REVIEW.**—Nothing in this Act shall be
17 construed to preclude judicial review, under chapter 7 of
18 title 5, United States Code, of final sections taken or re-
19 quired to be taken under this Act.

20 (d) **EXISTING AUTHORITY.**—Nothing in this Act re-
21 vokes or limits the existing authority of the President, any
22 executive agency, the Senate, the House of Representa-
23 tives, or any other entity of the Government to publicly
24 disclose records in its possession.

25 (e) **RULES OF THE SENATE AND HOUSE OF REP-**
26 **RESENTATIVES.**—To the extent that any provision of this

1 Act establishes a procedure to be followed in the Senate
2 or the House of Representatives, such provision is adopt-
3 ed—

4 (1) as an exercise of the rulemaking power of
5 the Senate and House of Representatives, respec-
6 tively, and is deemed to be part of the rules of each
7 House, respectively, but applicable only with respect
8 to the procedure to be followed in that House, and
9 it supersedes other rules only to the extent that it
10 is inconsistent with such rules; and

11 (2) with full recognition of the constitutional
12 right of either House to change the rules (so far as
13 they relate to the procedure of that House) at any
14 time, in the same manner, and to the same extent
15 as in the case of any other rule of that House.

16 **SEC. 11. TERMINATION OF EFFECT OF ACT.**

17 (a) PROVISIONS PERTAINING TO THE REVIEW
18 BOARD.—The provisions of this Act that pertain to the
19 appointment and operation of the Review Board shall
20 cease to be effective when the Review Board and the terms
21 of its members have terminated pursuant to section 6(n).

22 (b) OTHER PROVISIONS.—The remaining provisions
23 of this Act shall continue in effect until such time as the
24 Archivist certifies to the President and the Congress that

1 all Civil Rights Cold Cases records have been made avail-
2 able to the public in accordance with this Act.

3 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) IN GENERAL.—There are authorized to be appro-
5 priated such sums as are necessary to carry out this Act,
6 to remain available until expended.

7 (b) INTERIM PROVISIONS.—Until such time as funds
8 are appropriated pursuant to subsection (a), the President
9 shall use such sums as are available for discretionary use
10 to carry out this Act.

○