AMENDMENT TO RULES COMMITTEE PRINT 117–13

OFFERED BY MR. AUCHINCLOSS OF MASSACHUSETTS

Add at the end of subtitle G of title X the following new section:

1 SEC. 10. PUBLIC DISCLOSURE OF INTELLIGENCE RECORDS RELATING TO COUNTERINSURGENCY OPERATIONS IN AFGHANISTAN.

(a) REQUIREMENT.—Except as provided by subsection (b), not later than 180 days after the date of the enactment of this Act, each Official concerned shall fully disclose to the public each covered intelligence record in possession or control of the Official concerned.

(b) EXCEPTION.—The requirement under subsection (a) shall not apply to a covered intelligence record if the Official concerned determines that the full disclosure of such record, or particular information within such record, would clearly and demonstrably be expected to cause harm.

(c) PARTIAL DISCLOSURE.—If an Official concerned determines in accordance with subsection (b) that the requirements of subsection (a) do not apply with respect to
a covered intelligence record, the Official concerned shall
disclose to the public, in consultation with the head of the
element of the United States Government that created
such record, and to the extent doing so would not clearly
and demonstrably be expected to cause harm—

(1) any reasonably segregable particular infor-
mation in the record;

(2) a substitute record for that information; or

(3) a summary of the record.

(d) REVIEW BY BOARD.—If an Official concerned de-
termines that the requirements of subsection (a) do not
apply with respect to a covered intelligence record, such
record shall be transmitted to the Public Interest Declass-
sification Board for the Board to conduct a review pursu-
ant to section 703(b)(5) of the Public Interest Declass-
sification Act of 2000 (50 U.S.C. 3355a(b)(5)).

(e) FULL DISCLOSURE OF COVERED INTELLIGENCE
RECORD REQUIRED.—

(1) IN GENERAL.—Notwithstanding section
552a of title 5, United States Code, each covered in-
telligence record that is not fully disclosed to the
public pursuant to the review conducted by the Pub-
lic Interest Declassification Board under subsection
(d) shall be fully disclosed to the public and made
available by not later than one year after the date of the enactment of this Act unless—

(A) the Official concerned or the head of the element of the United States Government that created the record recommends in writing the exemption of the record or particular information within the record, because the disclosure of which would clearly and demonstrably be expected to—

(i) cause identifiable or describable damage to national security, military defense, law enforcement, intelligence operations, or the conduct of foreign relations that is of such gravity that further postponing the disclosure of the record outweighs the public interest in disclosure; or

(ii) reveal information described in paragraphs (1) through (9) of section 3.3(b) of Executive Order 13526 (75 Fed. Reg. 707; relating to classified national security information);

(B) the written recommendation described in subparagraph (A)—
(i) not later than 180 days before the
date that is 25 years after the date of the
enactment of this Act, is provided to—

(I) the Archivist of the United
States;

(II) the President, if the record
is in the possession or control of an
agency in the executive branch of the
Federal Government;

(III) the Chief Justice of the Su-
preme Court, if the record is in the
possession or control of an agency in
the judicial branch of the Federal
Government;

(IV) the Speaker of the House of
Representatives, if the record is in the
possession or control of an office of
the House of Representatives;

(V) the President Pro Tempore
of the Senate, if the record is in the
possession or control of an office of
the Senate; and

(VI) the Speaker of the House of
Representatives and the President Pro
Tempore of the Senate, if the record
is in the possession or control of an
office of the legislative branch of the
Federal Government not described
under subclauses (IV) and (V); and
(ii) includes—

(I) a justification of the rec-
ommendation to exempt the record, or
particular information within the
record; and

(II) a recommended date on
which, or a specified occurrence fol-
lowing which, the record, or particular
information within the record may be
appropriately disclosed to the public
under this Act; and

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

(2) NOTIFICATION.—If the Archivist does not
agree with the recommendation described in para-
graph (1)(A), the Archivist shall notify the person
making the recommendation not later than 90 days
before the date that is one year after the date of en-
actment of this Act.

(3) OVERRIDE OF DECISION BY ARCHIVIST.—
(A) Authority to override decision
by archivist.—The following individuals may
override a decision of the Archivist regarding a
written recommendation under paragraph (1):

(i) The President, if the record is in
the possession or control of an agency in
the executive branch of the Federal Gov-
ernment.

(ii) The Chief Justice of the Supreme
Court, if the record is in the possession or
control of an agency in the judicial branch
of the Federal Government.

(iii) The Speaker of the House of Rep-
resentatives, if the record is in the pos-
session or control of an office of the House
of Representatives.

(iv) The President Pro Tempore of
the Senate, if the record is in the posses-
sion or control of an office of the Senate.

(v) The Speaker of the House of Rep-
resentatives and the President Pro Tem-
pare of the Senate acting jointly, if the
record is in the possession or control of an
agency in the legislative branch of the Fed-
eral Government.
(B) NOTICE.—If an individual overrides a decision described under subparagraph (A), the individual shall notify the person making the recommendation not later than 90 days before the date that is one year after the date of enactment of this Act.

(f) DEFINITIONS.—In this section:

(1) COVERED INTELLIGENCE RECORDS.—The term “covered intelligence records” means intelligence records relating to counterinsurgency operations conducted by the United States in Afghanistan as part of Operation Enduring Freedom or Operation Freedom’s Sentinel.

(2) OFFICIAL CONCERNED.—The term “Official concerned” means the following:

(A) The Director of the Central Intelligence Agency, with respect to matters concerning the Central Intelligence Agency.

(B) The Director of the Defense Intelligence Agency, with respect to matters concerning the Defense Intelligence Agency.

(C) The Director of the National Reconnaissance Office, with respect to matters concerning the National Reconnaissance Office.
(D) The Director of the National Geospatial-Intelligence Agency, with respect to matters concerning the National Geospatial-Intelligence Agency.

(E) The Director of the National Security Agency, with respect to matters concerning the National Security Agency.

(F) The Secretary of Defense, with respect to matters concerning elements of the Department of Defense not specified in this paragraph.

(3) RECORD.—The term “record” has the meaning given the term in section 3301 of title 44, United States Code.