

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**
2 **RECORDS RELATING TO COUNTERINSUR-**
3 **GENCY OPERATIONS IN AFGHANISTAN.**

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

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

15 (c) PARTIAL DISCLOSURE.—If an Official concerned
16 determines in accordance with subsection (b) that the re-
17 quirements of subsection (a) do not apply with respect to

1 a covered intelligence record, the Official concerned shall
2 disclose to the public, in consultation with the head of the
3 element of the United States Government that created
4 such record, and to the extent doing so would not clearly
5 and demonstrably be expected to cause harm—

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

8 (2) a substitute record for that information; or

9 (3) a summary of the record.

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

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

19 (1) IN GENERAL.—Notwithstanding section
20 552a of title 5, United States Code, each covered in-
21 telligence record that is not fully disclosed to the
22 public pursuant to the review conducted by the Pub-
23 lic Interest Declassification Board under subsection
24 (d) shall be fully disclosed to the public and made

1 available by not later than one year after the date
2 of the enactment of this Act unless—

3 (A) the Official concerned or the head of
4 the element of the United States Government
5 that created the record recommends in writing
6 the exemption of the record or particular infor-
7 mation within the record, because the disclosure
8 of which would clearly and demonstrably be ex-
9 pected to—

10 (i) cause identifiable or describable
11 damage to national security, military de-
12 fense, law enforcement, intelligence oper-
13 ations, or the conduct of foreign relations
14 that is of such gravity that further post-
15 poning the disclosure of the record out-
16 weighs the public interest in disclosure; or

17 (ii) reveal information described in
18 paragraphs (1) through (9) of section
19 3.3(b) of Executive Order 13526 (75 Fed.
20 Reg. 707; relating to classified national se-
21 curity information);

22 (B) the written recommendation described
23 in subparagraph (A)—

1 (i) not later than 180 days before the
2 date that is 25 years after the date of the
3 enactment of this Act, is provided to—

4 (I) the Archivist of the United
5 States;

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

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

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

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

23 (VI) the Speaker of the House of
24 Representatives and the President Pro
25 Tempore of the Senate, if the record

1 is in the possession or control of an
2 office of the legislative branch of the
3 Federal Government not described
4 under subclauses (IV) and (V); and
5 (ii) includes—

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

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

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

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

24 (3) OVERRIDE OF DECISION BY ARCHIVIST.—

1 (A) AUTHORITY TO OVERRIDE DECISION
2 BY ARCHIVIST.—The following individuals may
3 override a decision of the Archivist regarding a
4 written recommendation under paragraph (1):

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

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

13 (iii) The Speaker of the House of
14 Representatives, if the record is in the pos-
15 session or control of an office of the House
16 of Representatives.

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

20 (v) The Speaker of the House of Rep-
21 resentatives and the President Pro Tem-
22 pore of the Senate acting jointly, if the
23 record is in the possession or control of an
24 agency in the legislative branch of the Fed-
25 eral Government.

1 (B) NOTICE.—If an individual overrides a
2 decision described under subparagraph (A), the
3 individual shall notify the person making the
4 recommendation not later than 90 days before
5 the date that is one year after the date of en-
6 actment of this Act.

7 (f) DEFINITIONS.—In this section:

8 (1) COVERED INTELLIGENCE RECORDS.—The
9 term “covered intelligence records” means intel-
10 ligence records relating to counterinsurgency oper-
11 ations conducted by the United States in Afghani-
12 stan as part of Operation Enduring Freedom or Op-
13 eration Freedom’s Sentinel.

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

16 (A) The Director of the Central Intel-
17 ligence Agency, with respect to matters con-
18 cerning the Central Intelligence Agency.

19 (B) The Director of the Defense Intel-
20 ligence Agency, with respect to matters con-
21 cerning the Defense Intelligence Agency.

22 (C) The Director of the National Recon-
23 naissance Office, with respect to matters con-
24 cerning the National Reconnaissance Office.

1 (D) The Director of the National
2 Geospatial-Intelligence Agency, with respect to
3 matters concerning the National Geospatial-In-
4 telligence Agency.

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

8 (F) The Secretary of Defense, with respect
9 to matters concerning elements of the Depart-
10 ment of Defense not specified in this para-
11 graph.

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

