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Nazi War Crimes Records Disclosure: Public Law No. 105-246

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Summary

Public Law No. 105-246, amends the Freedom of Information Act (5 U.S.C. §552) to establish a presumption that Nazi war criminal records are to be made available to the public. This in effect requires all materials to be released in their entirety unless a Federal agency head concludes that the release of all or part of the records would compromise privacy or national security interests. The agency head must notify Congress of any decision to not release the records.

In order to help expedite the process, the law establishes the Nazi War Criminal Records Interagency Working Group. This group will to the greatest extent possible locate, identify, inventory, declassify, and make available to the public all Nazi war records held by the United States. The law targets two classes of Nazi-related information¹: (1) war crimes information regarding Nazi persecutions; and (2) any information related to transactions involving assets of Holocaust and other Nazi victims. This report provides a section-by-section summary of its provisions and will not be updated.

Section-by-section summary. Section 1. Short Title. This section provides that the Act may be cited as the “Nazi War Crimes Disclosure Act.”

Section 2 establishes the Nazi War Criminal Records Interagency Working Group which will be made up of agency heads selected by the President whose functions will be to: (1) “locate, identify, inventory, recommend for declassification, and make available to the National Archives and Records Administration, all Nazi war criminal records; (2) coordinate with agencies and take such actions as necessary to expedite the release of such

¹ The Freedom of Information Act (FOIA) would be amended by proposed section 4(a) of the bill which provides for expedited processing for these two classes of information. In effect, it would appear that this would suspend the existing requirements under FOIA that restrict disclosure of information by creating its own special category of rules for two classes of Nazi-related material which would be released pursuant to an implied *compelling need*.

records to the public; and (3) submit a report to Congress describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.”

Section 3, subsection (a) provides that two classes of materials would be released: (1) war crimes information about Nazi persecutions; and (2) information concerning transactions involving assets stolen from Holocaust victims during the period beginning on March 23, 1933, and ending on May 8, 1945.²

Subsection (b) provides that the Nazi War Criminal Records Interagency Working Group shall release all records that are described in subsection (a) except for those records whose release would either “constitute a clearly unwarranted invasion of personal privacy”; compromise intelligence sources and methods as well as the national security interests of the United States; violate a treaty or international agreement.

In applying the exceptions to compelled disclosure, it is presumed that the public interest will be served by the records’ release. The only allowable condition of non-compliance would be if releasing the records compromised the narrowly drawn set of privacy and national security interests set out in subsection 3(b). The release of Nazi war criminal records would not be required, however, if the records were among those “related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice” or those unrelated to and nonsupportive of such official purposes but nevertheless in sole “possession, custody, or control of that office.”

Section 4 provides that for purposes of expedited processing under the Freedom of Information Act (5 U.S.C. §552(a)(6)(E)), any person who had been subject to Nazi persecution, as defined in the Act, who requests a Nazi war criminal record shall be deemed to have a compelling need for the record.

Section 5 provides that the amendment made by this Act to the Freedom of Information Act shall take effect 90 days after the date of enactment of the Act.

On May 5, 1998, S. 1379 was reported to the Senate by the Senate Judiciary Committee and placed on its calendar.

On June 19, 1998, S. 1379 passed the Senate with amendments added since the bill was unanimously reported out by the full Senate Judiciary Committee on March 5, 1998. The following amendments were made: (1) Section 3(B)(3) was revised to make clear that the standard of judicial deference currently accorded to agency classification decisions under Exemption (b)(1) of the Freedom of Information Act applies to exemption decisions provided by agency heads making a withholding decision under section 3(b).³ This will ensure that the agency head's decision that disclosure and release of a Nazi War Record would be harmful to a specific interest identified in an exemption will be accorded

² The two classes include persecution and transactions by governments allied or collaborating with the Nazis during that period.

³ 144 Cong. Rec. S6727 (daily ed. June 19, 1998) (statement of Sen. DeWine).

substantial weight pursuant to the agency's affidavit by the federal courts;⁴ and (2) section 2(b)(1) was amended to extend the life of the Interagency Group from one to three years in recognition of the fact that more time may be needed to review the extensive document holdings.⁵

On October 8, 1998, S. 1379 was signed by President Clinton and became Public Law No. 105-246.

⁴ *Id.*

⁵ *Id.*

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