

109TH CONGRESS
1ST SESSION

H. R. 4210

To provide for the expeditious disclosure of records relevant to the life
and death of Tupac Amaru Shakur.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2005

Ms. MCKINNEY introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the expeditious disclosure of records relevant
to the life and death of Tupac Amaru Shakur.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Tupac Amaru Shakur Records Collection Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings, declarations, and purposes.
- Sec. 3. Definitions.
- Sec. 4. Tupac Amaru Shakur records collection at the National Archives.

- Sec. 5. Citizens Advisory Committee.
- Sec. 6. Review, identification, transmission to the National Archives, and public disclosure of related records by Government offices.
- Sec. 7. Postponement of public disclosure of records.
- Sec. 8. Review of records.
- Sec. 9. Disclosure of materials under seal of court.
- Sec. 10. Private right of action.
- Sec. 11. Rules of construction.
- Sec. 12. Termination of effect of Act.
- Sec. 13. Authorization of appropriations.
- Sec. 14. Records pending.
- Sec. 15. Whistleblower protection.
- Sec. 16. Severability.

1 **SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSES.**

2 (a) FINDINGS AND DECLARATIONS.—The Congress
3 finds and declares that—

4 (1) all Government records related to the life
5 and death of Tupac Amaru Shakur should be pre-
6 served for historical and governmental purposes;

7 (2) all Government records concerning the life
8 and death of Tupac Amaru Shakur should carry a
9 presumption of immediate disclosure, and all records
10 should be eventually disclosed to enable the public to
11 become fully informed about the history surrounding
12 his life and death;

13 (3) legislation is necessary to create an enforce-
14 able, independent, and accountable process for the
15 public disclosure of such records;

16 (4) legislation is necessary because Government
17 records related to the life and death of Tupac
18 Amaru Shakur would not otherwise be subject to
19 public disclosure;

1 (5) legislation is necessary because the Freedom
2 of Information Act, as implemented by the executive
3 branch, is not sufficient to insure the timely public
4 disclosure of records relating to the life and death
5 of Tupac Amaru Shakur; and

6 (6) only in the rarest cases is there any legiti-
7 mate need for continued protection of such records.

8 (b) PURPOSES.—The purposes of this Act are—

9 (1) to provide for the creation of the Tupac
10 Amaru Shakur Records Collection at the National
11 Archives; and a second repository at the Tupac
12 Amaru Shakur Center for the Arts in Stone Moun-
13 tain, Georgia; and

14 (2) to require the expeditious public trans-
15 mission to the Archivist and public disclosure (in-
16 cluding by electronic means) of such records.

17 **SEC. 3. DEFINITIONS.**

18 In this Act, the following definitions apply:

19 (1) The term “Archivist” means the Archivist
20 of the United States.

21 (2) The term “related record” includes all
22 records, public and private, regardless of how labeled
23 or identified, that document, describe, report on,
24 analyze or interpret activities, persons, or events
25 reasonably related to the life and death of Tupac

1 Amaru Shakur and investigations of or inquiries into
2 his life or death, including a record—

3 (A) that was created or made available for
4 use by, obtained by, or otherwise came into the
5 possession of—

6 (i) any Executive agency;

7 (ii) any independent agency;

8 (iii) any Government office; or

9 (iv) any State or local law enforce-
10 ment office that provided support or assist-
11 ance or performed work in connection with
12 any Government inquiry into the life and
13 death of Tupac Amaru Shakur; or

14 (B) that is any of the following:

15 (i) A record created in the course of
16 a Federal, State, or local governmental in-
17 vestigation that is no longer in possession
18 of the Federal, State, or local government.

19 (ii) A record located at, or under the
20 control of—

21 (I) record repositories and ar-
22 chives of a Federal, State, or local
23 government;

1 (II) an individual who possesses
2 the record by virtue of service with a
3 Government office;

4 (III) a person, including an indi-
5 vidual or corporation, who obtained
6 such record from Government sources
7 or individuals identified in this Act; or

8 (IV) a person, including an indi-
9 vidual or corporation, who created or
10 has obtained such record from sources
11 other than those identified in this
12 clause.

13 (iii) A record of a Federal or State
14 criminal or civil court, including a record
15 under seal released in accordance with sec-
16 tion 8.

17 (iv) A record generated by a foreign
18 government.

19 (v) A record in possession of a con-
20 tractor of the Federal Government.

21 (vi) All records collected by or seg-
22 regated by all Federal, State, and local
23 government agencies in conjunction with
24 any investigation or analysis of or inquiry
25 into the life and death of Tupac Amaru

1 Shakur, including any intra-agency inves-
2 tigation or analysis, any interagency com-
3 munications, or any intra-agency collection
4 or segregation of documents and other ma-
5 terials regarding the life and death of
6 Tupac Amaru Shakur.

7 (vii) All documents used by Govern-
8 ment offices and agencies during their de-
9 classification review of related records as
10 well as all other documents, indices, and
11 other material, including but not limited to
12 those that disclose cryptonyms, code
13 names, or other identifiers that appear in
14 related records that would reasonably con-
15 stitute a related record or would assist in
16 the identification, evaluation, or interpreta-
17 tion of a related record, including—

18 (I) with respect to records that
19 are identified with respect to a par-
20 ticular person, all records relating to
21 that person that use or reflect the
22 true name or any other name, pseu-
23 donym, codeword, symbol, number,
24 cryptonym, or alias used to identify
25 that person;

1 (II) with respect to records that
2 are identified with respect to a par-
3 ticular operation or program, all
4 records pertaining to that program by
5 any other name, pseudonym,
6 codeword, symbol, number, or
7 cryptonym; and

8 (III) any other record that does
9 not fall within the scope of a related
10 record as described in the Act, but
11 which has the potential to enhance,
12 enrich, and broaden the historical
13 record of the life and death of Tupac
14 Amaru Shakur.

15 (3) The term “Collection” means the Tupac
16 Amaru Shakur Records Collection established under
17 section 4.

18 (4) The term “Executive agency” means an Ex-
19 ecutive agency as defined in subsection 552(f) of
20 title 5, United States Code, and includes any Execu-
21 tive department, military department, Government
22 corporation, Government controlled corporation, or
23 other establishment in the executive branch of the
24 Government, including the Executive Office of the
25 President, or any independent regulatory agency.

1 (5) The term “Government office” includes—

2 (A) all current, past, and former depart-
3 ments, agencies, offices, divisions, foreign of-
4 fices, bureaus, and deliberative bodies of any
5 Federal, State, or local government and in-
6 cludes all inter- or intra-agency working groups,
7 committees, and meetings that possess or cre-
8 ated records relating to the life and death of
9 Tupac Amaru Shakur; and

10 (B) any office of the Federal Government
11 that has possession or control of related
12 records, including any other executive branch
13 office or agency, and any independent agency.

14 (6) The term “identification aid” means the
15 written description prepared by the Archivist for
16 each record as required by section 5.

17 (7) The term “National Archives” means the
18 National Archives and all components thereof, in-
19 cluding Presidential archival depositories established
20 under section 2112 of title 44, United States Code.

21 (8) The term “official investigation” means the
22 reviews of the activities or death of Tupac Amaru
23 Shakur conducted by any Federal, state or local
24 agency either independently, or at the request of any
25 Government official.

1 (9) The term “originating body” means the Ex-
2 ecutive agency, or other governmental entity that
3 created a record or particular information within a
4 record.

5 (10) The term “public interest” means the
6 compelling interest in the prompt public disclosure
7 of related records for historical and governmental
8 purposes and for the purpose of fully informing the
9 American people about the history surrounding the
10 life and death of Tupac Amaru Shakur

11 (11) The term “record” includes a book, paper,
12 map, photograph, sound or video recording, machine
13 readable material, computerized, digitized, or elec-
14 tronic information, regardless of the medium on
15 which it is stored, or other documentary material or
16 physical evidence or artifact regardless of its phys-
17 ical form or characteristics.

18 (12) The term “third agency” means a Govern-
19 ment agency that originated a related record that is
20 in the possession of another agency.

21 (13) The term “Citizens Advisory Committee”
22 means an independent body of qualified and con-
23 cerned citizens, scholars, legal experts and imme-
24 diate family members of Tupac Amaru Shakur to
25 advise and assist in the implementation of this Act.

1 **SEC. 4. TUPAC AMARU SHAKUR RECORDS COLLECTION AT**
2 **THE NATIONAL ARCHIVES.**

3 (a) IN GENERAL.—(1) Not later than 60 days after
4 the date of enactment of this Act, the National Archives
5 shall commence establishment of a collection of records to
6 be known as the “Tupac Amaru Shakur Records Collec-
7 tion.” In so doing, the Archivist shall ensure the physical
8 integrity and original provenance of all records. The Col-
9 lection shall consist of originals or record copies of all Gov-
10 ernment records relating to the life and death of Tupac
11 Amaru Shakur, which shall be transmitted to the National
12 Archives in accordance with section 2107 of title 44,
13 United States Code. The Archivist shall prepare and pub-
14 lish a subject guidebook and index to the collection, includ-
15 ing the central directory described in paragraph (2)(B),
16 which shall be available to the public and searchable elec-
17 tronically.

18 (2) The Collection shall include—

19 (A) all related records—

20 (i) that have been transmitted to the Na-
21 tional Archives or disclosed to the public in an
22 un-redacted form prior to the date of enactment
23 of this Act, or were so transmitted or disclosed
24 and reclassified prior to such date of enact-
25 ment;

1 (ii) that are required to be transmitted to
2 the National Archives;

3 (iii) the disclosure of which is postponed
4 under this Act; or

5 (iv) that meets the definition of a related
6 record discovered after termination of the
7 record review; and

8 (B) a central directory comprised of identifica-
9 tion aids created for each record transmitted to the
10 Archivist under section 5; and

11 (b) USE OF SECONDARY LOCATION FOR PORTION OF
12 COLLECTION.—

13 (1) IN GENERAL.—The Archivist shall enter
14 into an agreement with the Tupac Amaru Shakur
15 Center for the Arts in Stone Mountain, Georgia for
16 the establishment of a secondary location for a com-
17 plete copy of the appropriate portion of the Collec-
18 tion, not to include physical artifacts—

19 (A) which will provide a maximum level of
20 public access to copies of the portion of the Col-
21 lection involved; and

22 (B) which will encourage continuing study
23 and education regarding the life and death of
24 Tupac Amaru Shakur.

1 (2) TREATMENT OF COLLECTION AT SEC-
2 ONDARY LOCATION.—The copies of the portion of
3 the Collection maintained at the secondary location
4 pursuant to this subsection, and the entity respon-
5 sible for maintaining such copies of the collection
6 under the agreement under this subsection, shall be
7 subject to the same terms, conditions, and require-
8 ments as apply under this Act to the portion of the
9 Collection maintained at the National Archives and
10 the Archivist.

11 (c) AVAILABILITY OF COLLECTION AT ARCHIVES AND
12 ELECTRONICALLY.—Each item in the Collection (as de-
13 scribed in subsection (a)(2)), other than an artifact or a
14 record the disclosure of which is postponed under this Act,
15 shall be available to the public for inspection and copying
16 at the National Archives and through an electronic format
17 within 30 days after its transmission to the National Ar-
18 chives.

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

20 (1) charge fees for copying such records; and

21 (2) grant waivers of such fees pursuant to the
22 standards established by section 552(a)(4) of title 5,
23 United States Code.

1 (e) ADDITIONAL REQUIREMENTS.—(1) The Collec-
2 tion shall be preserved, protected, archived, and made
3 available to the public at the National Archives.

4 (2) Whenever artifacts are included in the Collection
5 at the National Archives, it shall be sufficient to comply
6 with this Act if the public is provided with access to photo-
7 graphs, drawings, or similar materials depicting the arti-
8 facts. Additional display, examination, or testing by the
9 public of artifacts in the Collection shall occur if there is
10 a reasonable claim that such examination or testing will
11 reveal aspects of the artifact that cannot be determined
12 from such photographs or depictions, and shall occur
13 under the terms and conditions established by the Na-
14 tional Archives to ensure their preservation and protection
15 for prosperity.

16 (3) The National Archives, in consultation with its
17 Information Security Oversight Office, shall ensure the se-
18 curity of the records in the Collection that qualify for post-
19 ponement of public disclosure pursuant to section 6.

20 **SEC. 5. CITIZENS ADVISORY COMMITTEE.**

21 (a) Not later than 60 days after the date of enact-
22 ment of this Act, the National Archives shall appoint an
23 independent Citizens Advisory Committee, subject to the
24 Federal Advisory Committee Act (5 U.S.C., App.), as de-
25 fined in App. 2, from candidates solicited from and nomi-

1 nated not later than 30 days after the date of the enact-
2 ment of this Act by non-governmental organizations from
3 the Society of American Archivists, the National Bar As-
4 sociation, the Black Caucus of the American Library Asso-
5 ciation, Inc., and the National Conference of Black Polit-
6 ical Scientists, the civil rights, civil liberties, entertainment
7 and African American community, which will consist of
8 appointees—

9 (1) who have not had any previous involvement
10 with any official investigations into the life and
11 death of Tupac Amaru Shakur,

12 (2) who were never employed or engaged by any
13 Federal, state or local intelligence or law enforce-
14 ment agency which is covered in the scope of this
15 Act's search for records related to the life and death
16 of Tupac Amaru Shakur,

17 (3) who shall be impartial private citizens, none
18 of whom is presently employed by any branch of the
19 Government, and

20 (4) who shall be distinguished persons of high
21 national professional reputation in their respective
22 fields who are capable of exercising the independent
23 and objective judgment necessary to the fulfillment
24 of their role in ensuring and facilitating the review,
25 transmission to the public, and public disclosure of

1 records related to the life and death of Tupak
2 Shakur,

3 (A) who possess an appreciation of the
4 value of such material to the public, scholars,
5 and government, and

6 (B) who include at least three scholars in
7 current history, at least 3 members of the civil
8 rights community, at least 3 experts on civil lib-
9 erties, and at least one member of the imme-
10 diate family of Tupac Amaru Shakur.

11 (b) If an organization described in subsection (a) does
12 not recommend at least 2 nominees meeting the qualifica-
13 tions stated, by the date that is 45 days after the date
14 of enactment of this Act, the Archivist shall consider for
15 nomination the persons recommended by the other organi-
16 zations or communities described in subsection (a).

17 (c) The Archivist may request an organization de-
18 scribed in subsection (a) to submit additional nominations.

19 (d) This Citizens Advisory Committee will not be
20 compensated, but will meet at its discretion at least twice
21 each year to advise and assist the archivist in the full im-
22 plementation of this act, including—

23 (1) suggestions assisting in the location of all
24 related records,

1 (2) review of the public reasons for postpone-
2 ment decisions and appeals regarding related
3 records,

4 (3) recommendations for subpoena of records or
5 enforcement of the Act,

6 (4) evaluations regarding cooperation of Gov-
7 ernment agencies and entities, and

8 (5) participation in annual reviews and reports
9 by the Archivist.

10 (e) VACANCY.—A vacancy on the Citizens Advisory
11 Committee shall be filled in the same manner as specified
12 for original appointment within 30 days of the occurrence
13 of the vacancy. Nominations for a vacancy shall be made
14 by the organizations and communities described in sub-
15 section (a).

16 (f) CHAIRPERSON.—The Members of the Citizens Ad-
17 visory Committee shall elect one of its members as chair-
18 person at its initial meeting.

19 (g) REMOVAL OF CITIZENS ADVISORY COMMITTEE
20 MEMBER.—

21 (1) IN GENERAL.—No member of the Citizens
22 Advisory Committee shall be removed from office,
23 other than—

24 (A) by impeachment and conviction; or

1 (B) by the action of the Archivist for inef-
2 ficiency, neglect of duty, malfeasance in office,
3 physical disability, mental incapacity, failure to
4 meet or falsification of any qualifications under
5 subsection (a)(1), or any other condition that
6 substantially impairs the performance of the
7 member's duties.

8 (2) REPORT.—

9 (A) FACTS AND GROUNDS.—If a member
10 of the Citizens Advisory Committee is removed
11 from office, and that removal is by the Archi-
12 vist, not later than 10 days after the removal
13 the Archivist shall submit to the Committee on
14 Government Reform of the House of Represent-
15 atives and the Committee on Homeland Secu-
16 rity and Governmental Affairs of the Senate a
17 report specifying the facts found and the
18 grounds for the removal.

19 (B) PUBLICATION.—The Archivist shall
20 publish in the Federal Register a report sub-
21 mitted under subsection (g)(2), except that the
22 Archivist may, if necessary to protect the rights
23 of a person named in the report or to prevent
24 undue interference with any pending prosecu-
25 tion, postpone or refrain from publishing any or

1 all of the report until the completion of such
2 pending cases or pursuant to privacy protection
3 requirements in law.

4 (3) JUDICIAL REVIEW.—

5 (A) CIVIL ACTION.—A member of the Citi-
6 zens Advisory Committee removed from office
7 may obtain judicial review of the removal in a
8 civil action commenced in the United States
9 District Court for the District of Columbia.

10 (B) REINSTATEMENT.—The member may
11 be reinstated or granted other appropriate relief
12 by order of the court.

13 **SEC. 6. REVIEW, IDENTIFICATION, TRANSMISSION TO THE**
14 **NATIONAL ARCHIVES, AND PUBLIC DISCLO-**
15 **SURE OF RELATED RECORDS BY GOVERN-**
16 **MENT OFFICES.**

17 (a) IN GENERAL.—

18 (1) PREPARATION FOR REVIEW.—As soon as
19 practicable after the date of enactment of this Act,
20 each Government office shall identify and organize
21 its records relating to the life and death of Tupac
22 Amaru Shakur, and prepare them for transmission
23 to the Archivist for inclusion in the Collection.

24 (2) DETERMINATION OF USE OF ORIGINALS OR
25 COPIES.—

1 (A) For purposes of determining whether
2 originals or copies of related records are to be
3 made part of the Collection established under
4 this Act, the following shall apply:

5 (i) In the case of papers, maps, and
6 other documentary materials, the Archivist
7 may determine that record copies of Gov-
8 ernment records, either the signed original,
9 original production, or a reproduction that
10 has been treated as the official record
11 maintained to chronicle government func-
12 tions or activities may be placed in the
13 Collection.

14 (ii) In the case of other papers, maps,
15 and other documentary material, the Ar-
16 chivist may determine that a true and ac-
17 curate copy of a record in lieu of the origi-
18 nal may be placed in the Collection.

19 (iii) In the case of photographs, the
20 original negative, whenever available (oth-
21 erwise the nearest generation print that is
22 a true and accurate copy), may be placed
23 in the Collection.

24 (iv) In the case of motion pictures,
25 the camera original, whenever available

1 (otherwise the earliest generation print
2 that is a true and accurate copy) may be
3 placed in the Collection.

4 (v) In the case of sound and video re-
5 cordings, the original recording, whenever
6 available (otherwise the earliest generation
7 copy that is a true and accurate copy) may
8 be placed in the Collection.

9 (vi) In the case of machine-readable
10 information, a true and accurate copy of
11 the original (duplicating all information
12 contained in the original and in a format
13 that permits retrieval of the information)
14 may be placed in the Collection.

15 (vii) In the case of artifacts, the origi-
16 nal objects themselves shall be placed in
17 the Collection at the National Archives.

18 (B) To the extent records from foreign
19 governments are included in the Collection, cop-
20 ies of the original records shall be sufficient for
21 inclusion in the Collection.

22 (C) In cases where a copy, as defined in
23 subparagraph (D), is authorized by the Act to
24 be included in the Collection, the Archivist may
25 require that a copy be certified if, in its discre-

1 tion, it determines a certification to be nec-
2 essary to ensure the integrity of the Collection.
3 In cases where an original, as defined in sub-
4 paragraph (A), is required for inclusion in the
5 Collection, the National Archives may, at its
6 discretion, accept the best available copy. In
7 such cases that records included in the Collec-
8 tion, whether originals or copies, contain illegi-
9 ble portions, such records shall have attached
10 thereto a certified transcription of the illegible
11 language to the extent practicable.

12 (D) For purposes of implementing this
13 Act, the term “copy” means true and accurate
14 photocopy duplication by a means appropriate
15 to the medium of the original record that pre-
16 serves and displays the integrity of the record
17 and the information contained in it.

18 (E) Nothing in this paragraph shall be in-
19 terpreted to suggest that additional copies of
20 any related records contained in the Collection
21 are not also related records that, may also be
22 placed in the Collection.

23 (F) Nothing in this paragraph shall be in-
24 terpreted to prevent or to preclude copies of any
25 electronic related records from being refor-

1 matted electronically in order to conform to dif-
2 ferent hardware or software requirements of
3 audiovisual or machine-readable formats if such
4 is the professional judgment of the National Ar-
5 chives.

6 (3) RELATED RECORDS.—In carrying out this
7 section, a Government office may not destroy, alter,
8 or mutilate in any way a related record.

9 (4) PRIOR DISCLOSURE.—

10 (A) Except as provided in subparagraph
11 (B), in carrying out this section, a Government
12 office may not withhold, redact, postpone for
13 public disclosure, or reclassify a related record
14 that was made available or disclosed to the pub-
15 lic prior to the date of enactment of this Act.

16 (B) For purposes of subparagraph (A), a
17 Government office may withhold names or iden-
18 tifies, consistent with the requirements of sec-
19 tion 6, in a related record created by a person
20 or entity outside government.

21 (b) CUSTODY OF RELATED RECORDS PENDING RE-
22 VIEW.—During the review by a Government office, the
23 Government office shall retain custody of its related
24 records for purposes of preservation, security, and effi-
25 ciency, unless—

1 (1) any oversight Committee requires the phys-
2 ical transfer of records for purposes of conducting
3 an independent and impartial review;

4 (2) it is a third agency record described in sub-
5 section (c)(2)(C); or

6 (3) any other records are transferred to the Ar-
7 chives for public disclosure.

8 (c) REVIEW.—

9 (1) IN GENERAL.—Not later than 180 days
10 after the date of enactment of this Act, each Gov-
11 ernment office shall review each related record in its
12 custody or possession in accordance with paragraph
13 (2).

14 (2) RELATED RECORDS.—In carrying out para-
15 graph (1), a Government office shall—

16 (A) determine which of its records are re-
17 lated records;

18 (B) determine which of its related records
19 have been officially disclosed or publicly avail-
20 able in a complete and un-redacted form;

21 (C)(i) determine which of its related
22 records, or particular information contained in
23 such a record, was created by a third agency or
24 by another Government office; and

1 (ii) transmit to a third agency or other
2 Government office those records, or particular
3 information contained in those records, or com-
4 plete and accurate copies thereof;

5 (D)(i) determine whether its related
6 records or particular information in related
7 records are covered by the standards for post-
8 ponement of public disclosure under this Act;
9 and

10 (ii) specify on the identification aid re-
11 quired by subsection (d) the applicable post-
12 ponement provision contained in section 6;

13 (E) organize and make available to the Ar-
14 chivist all related records identified under sub-
15 paragraph (D) the public disclosure of which in
16 whole or in part may be postponed under this
17 Act;

18 (F) organize and make available to the Ar-
19 chivist any record concerning which the office
20 has any uncertainty as to whether the record is
21 a related record governed by this Act;

22 (G) give priority to—

23 (i) the identification, review, and
24 transmission of all related records publicly
25 available or disclosed as of the date of en-

1 actment of this Act in a redacted or edited
2 form; and

3 (ii) the identification, review, and
4 transmission, under the standards for post-
5 ponement set forth in this Act, of related
6 records that on the date of enactment of
7 this Act are the subject of litigation under
8 section 552 of title 5, United States Code;
9 and

10 (H) make available to the National Ar-
11 chives any additional information and records
12 that the Archivist has reason to believe it re-
13 quires for conducting a review under this Act,
14 including the following:

15 (i) All training manuals, instructional
16 materials and guidelines created or used by
17 the Government office in furtherance of its
18 review of related records.

19 (ii) All records, lists, and documents
20 describing the procedure by which the of-
21 fice identified or selected related records
22 for review.

23 (iii) Organizational charts of the of-
24 fice.

1 (iv) Records necessary and sufficient
2 to describe the office's—

3 (I) records policies and schedules;

4 (II) filing systems and organiza-
5 tion;

6 (III) storage facilities and loca-
7 tions;

8 (IV) indexing symbols, marks,
9 codes, instructions, guidelines, meth-
10 ods, and procedures; and

11 (V) search methods and proce-
12 dures used in the performance of the
13 duties of the office under this Act.

14 (v) Reclassification to a higher level,
15 transfer, destruction, or other information
16 (e.g., theft) regarding the status of related
17 records.

18 (d) IDENTIFICATION AIDS.—

19 (1) IN GENERAL.—

20 (A) STANDARD FORM.—Not later than 45
21 days after the date of enactment of this Act,
22 the Archivist, in consultation with the appro-
23 priate Government offices, shall prepare and
24 make available to all Government offices a
25 standard form of identification or finding aid

1 for use with each related record subject to re-
2 view under this Act.

3 (B) UNIFORM SYSTEM.—The Archivist
4 shall ensure that the identification aid program
5 is established in such a manner as to result in
6 the creation of a uniform system of electronic
7 records by Government offices that are compat-
8 ible with each other and which shall be made
9 publicly available and searchable electronically.

10 (2) PRINTED COPIES.—Upon completion of an
11 identification aid by the Archivist, a Government of-
12 fice shall—

13 (A) attach a printed copy to the record it
14 describes;

15 (B) transmit to the Archivist a printed
16 copy; and

17 (C) attach a printed copy to each related
18 record it describes when it is transmitted to the
19 Archivist.

20 (3) PUBLICLY AVAILABLE RECORDS.—Related
21 records which are in the possession of the National
22 Archives on the date of enactment of this Act, and
23 which have been publicly available in their entirety
24 without redaction, shall be made available in the

1 Collection without any additional review by any
2 other authorized office under this Act.

3 (e) TRANSMISSION TO THE NATIONAL ARCHIVES.—

4 Each Government office shall—

5 (1) transmit to the Archivist, and make imme-
6 diately available to the public, all related records
7 that can be publicly disclosed, including those that
8 are publicly available on the date of enactment of
9 this Act, without any redaction, adjustment, or with-
10 holding under the standards of this Act; and

11 (2) transmit to the Archivist upon approval for
12 postponement or upon completion of other action au-
13 thorized by this Act, all related records the public
14 disclosure of which has been postponed, in whole or
15 in part, under the standards of this Act, to become
16 part of the protected Collection.

17 (f) RECORD AVAILABILITY.—The National Archives
18 and Executive branch agencies shall—

19 (1) charge fees for copying related records;

20 (2) grant waivers of such fees pursuant to the
21 standards established by section 552(a)(4) of title 5,
22 United States Code;

23 (3) permit, when not deemed a risk by the Ar-
24 chivist, the use of personal copying devices, includ-

1 ing, but not limited to portable scanners, digital
2 cameras, and the like; and

3 (4) make available to the public electronic
4 versions of related records, identification aids, and
5 indexes.

6 **SEC. 7. POSTPONEMENT OF PUBLIC DISCLOSURE OF**
7 **RECORDS.**

8 (a) **GROUND FOR POSTPONEMENT.**—Disclosure of
9 related records or particular information in related records
10 to the public may be postponed subject to the limitations
11 of this Act if there is clear and convincing evidence that—

12 (1) the threat, as of the time the postponement
13 decision is made, to the military defense, intelligence
14 operations, or conduct of foreign relations of the
15 United States posed by the public disclosure of the
16 related record is of such gravity that it outweighs
17 the public interest, and such public disclosure would
18 reveal—

19 (A) a living intelligence agent whose iden-
20 tity currently requires protection;

21 (B) an intelligence source or method which
22 is currently utilized, or reasonably expected to
23 be utilized, by the United States Government
24 and which has not been officially disclosed, the

1 disclosure of which would interfere with the
2 conduct of intelligence activities; or

3 (C) any other matter currently relating to
4 the military defense, intelligence operations, or
5 conduct of foreign relations of the United
6 States, the disclosure of which would demon-
7 strably impair the national security of the
8 United States;

9 (2) the public disclosure of the related record
10 would reveal the name or identity of a living person
11 who provided confidential information to the United
12 States and would pose a substantial risk of harm to
13 that person;

14 (3) the public disclosure of the related record
15 could reasonably be expected to constitute an unwar-
16 ranted invasion of a living person's personal privacy,
17 and that invasion of privacy is so substantial that it
18 outweighs the public interest; or

19 (4) the public disclosure of the related record
20 would compromise the existence of an understanding
21 of confidentiality currently requiring protection be-
22 tween a Government agent and a living cooperating
23 individual or a foreign government, and public dis-
24 closure would be so harmful that it outweighs the
25 public interest.

1 (b) CUSTODY OF POSTPONED RELATED RECORDS.—
2 A related record the public disclosure of which has been
3 postponed shall, pending transmission to the Archivist, be
4 held for reasons of security and preservation by the origi-
5 nating body until such time as the information security
6 program has been established at the National Archives as
7 required by section 4(e)(2).

8 (c) ANNUAL REVIEW OF POSTPONED RELATED
9 RECORDS.—(1) All postponed or redacted records shall be
10 reviewed annually by the originating agency and the Ar-
11 chivist consistent with the recommendations of the Act.

12 (2) An annual review shall address the public dislo-
13 sure of additional related records in the Collection. Any
14 related records discovered since the preceding annual re-
15 view in possession of any Federal, State, or local agency,
16 Government office, organization, or person shall be added
17 to the Collection, and the annual review also shall address
18 the public disclosure of such records under the standard
19 of this Act.

20 (3) All postponed related records determined to re-
21 quire continued postponement shall require an unclassified
22 written description of the record and the reason for such
23 continued postponement. Such description shall be pro-
24 vided to the Archivist and published in the Federal Reg-
25 ister upon determination.

1 (4) The annual review of postponed related records
2 shall serve to downgrade and declassify security-classified
3 information and implement the presumption of release re-
4 quired by section 15.

5 (d) REQUIREMENT TO DISCLOSE POSTPONED
6 RECORDS.—Each related record shall be publicly disclosed
7 in full, and available in the Collection no later than 1 year
8 after the termination of the initial review, or the date that
9 is 3 years after the date of enactment of this Act, which-
10 ever is earlier, unless the President certifies, as required
11 by this Act, that continued postponement is made nec-
12 essary by—

13 (1) a current and identifiable harm to the mili-
14 tary defense, intelligence operations, law enforce-
15 ment, or conduct of foreign relations; and

16 (2) the identifiable harm is of such gravity that
17 it outweighs the public interest in disclosure.

18 **SEC. 8. REVIEW OF RECORDS.**

19 (a) STARTUP REQUIREMENTS.—The Government
20 agencies and entities in possession of related records
21 shall—

22 (1) not later than 90 days after the date of its
23 appointment, publish a schedule for review of all re-
24 lated records in the Federal Register; and

1 (2) not later than 180 days after the date of its
2 appointment, begin its review of related records
3 under this Act.

4 (b) DETERMINATIONS OF THE ARCHIVIST RELATING
5 TO PUBLIC DISCLOSURE AND POSTPONEMENT.—

6 (1) TRANSMITTAL.—The National Archives
7 shall direct that all related records be transmitted to
8 the Archivist and disclosed to the public in the Col-
9 lection in the absence of clear and convincing evi-
10 dence that—

11 (A) a Government record is not a related
12 record; or

13 (B) a Government record or particular in-
14 formation within a related record qualifies for
15 postponement of public disclosure under this
16 Act.

17 (2) POWERS.—

18 (A) ARCHIVIST.—The Archivist shall have
19 the authority to act in a manner prescribed
20 under this Act including authority to—

21 (i) direct Government offices to com-
22 plete identification aids and organize re-
23 lated records;

24 (ii) direct Government offices to
25 transmit to the National Archives related

1 records as required under this Act, includ-
2 ing segregable portions of related records,
3 and substitutes and summaries of related
4 records that can be publicly disclosed to
5 the fullest extent;

6 (iii) obtain access to related records
7 that have been identified and organized by
8 a Government office;

9 (iv) receive information from the pub-
10 lic regarding the identification and public
11 disclosure of related records;

12 (v) hold hearings, administer oaths,
13 and subpoena witnesses and documents;
14 and

15 (vi) appoint liaisons to all Federal
16 agencies that have created related records,
17 or have related records in their possession.

18 (B) CITIZENS ADVISORY COMMITTEE.—

19 The Citizens Advisory Committee shall have the
20 authority to act in a manner prescribed under
21 this Act including authority to—

22 (i) direct a Government office to make
23 available to the Citizens Advisory Com-
24 mittee, and if necessary investigate the
25 facts surrounding, additional information,

1 records, or testimony from individuals,
2 which the Citizens Advisory Committee has
3 reason to believe is required to insure full
4 disclosure of related records and fulfill its
5 functions and responsibilities under this
6 Act;

7 (ii) request the Attorney General to
8 subpoena private persons and State and
9 Federal employees to compel testimony,
10 and other information relevant to its re-
11 sponsibilities under this Act;

12 (iii) require any Government office to
13 account in writing for the previous destruc-
14 tion of any records relating to the life or
15 death of Tupac Amaru Shakur;

16 (iv) receive information from the pub-
17 lic regarding the identification and public
18 disclosure of related records; and

19 (v) hold hearings, administer oaths,
20 and subpoena witnesses.

21 (C) ENFORCEMENT.—Any subpoena issued
22 under provisions of this Act, by the Archivist or
23 the Citizens Advisory Committee, may be en-
24 forced by any appropriate Federal court acting
25 pursuant to a lawful request.

1 (3) NOTICE OF RELATED RECORD DESIGNA-
2 TION.—

3 (A) In determining to designate related
4 records, the Archivist must determine that the
5 record or group of records will more likely than
6 not enhance, enrich, and broaden the historical
7 record of the life and death of Tupac Amaru
8 Shakur.

9 (B) A Notice or Related Record Designa-
10 tion (NRRD) shall be the mechanism for the
11 Archivist to announce publicly its determination
12 that a record or group of records meets the def-
13 inition of related records.

14 (4) POSTPONEMENT.—

15 (A) The Archivist shall consider and
16 render decisions on a determination by a Gov-
17 ernment office to seek to postpone the disclo-
18 sure of related records. In carrying out this
19 subparagraph, the Archivist shall—

20 (i) consider and render decisions on
21 whether a record constitutes a related
22 record;

23 (ii) consider and render decisions on
24 whether a related record or particular in-

1 formation in a record qualifies for post-
2 ponement of disclosure under this Act; and

3 (iii) in the case of a related record
4 that qualifies for such postponement, set
5 specific conditions and dates for public dis-
6 closure of the record, related to events or
7 specific dates when the reasons for post-
8 ponement will end.

9 (B) A related record shall be released in its
10 entirety except for portions specifically post-
11 poned pursuant to the grounds for postpone-
12 ment of public disclosure of records established
13 in section 6(a), and no portion of any related
14 record shall be withheld from public disclosure
15 solely on grounds of non-relevance unless, in
16 the Archivist's sole discretion, release of a part
17 of a record is sufficient to comply with the in-
18 tent and purposes of this Act.

19 (C) In approving postponement of public
20 disclosure of a related record, the Archivist
21 shall seek to—

22 (i) provide for the disclosure of seg-
23 regable parts, substitutes, or summaries of
24 such a record; and

1 (ii) determine, in consultation with
2 the originating body and consistent with
3 the standards for postponement under this
4 Act, which of the following alternative
5 forms of disclosure shall be made by the
6 originating body:

7 (I) Any reasonably segregable
8 particular information in a related
9 record.

10 (II) A substitute record for that
11 information which is postponed.

12 (III) A summary of a related
13 record.

14 (5) REPORT.—With respect to each related
15 record or particular information in related records
16 the public disclosure of which is postponed pursuant
17 to section 6, or for which only substitutions or sum-
18 maries have been disclosed to the public, the Govern-
19 ment agency or entity shall create and transmit to
20 the Archivist a report containing—

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

1 proceedings conducted by the Archivist with re-
2 gard to specific related records; and

3 (B) a statement of the specific conditions
4 and dates for the public disclosure of the record
5 as set by the Archivist under paragraph
6 (3)(A)(iii).

7 (6) NOTICE.—

8 (A) IN GENERAL.—Following its review
9 and a determination that a related record shall
10 be publicly disclosed in the Collection or post-
11 poned for disclosure and held in the protected
12 Collection, the Archivist shall notify the head of
13 the originating body of its determination, pub-
14 lish a copy of the determination in the Federal
15 Register within 14 days after the determination
16 is made, and provide that the determination is
17 searchable electronically.

18 (B) CONTEMPORANEOUS NOTICE TO EXEC-
19 UTIVE AND LEGISLATIVE BRANCHES.—Contem-
20 poraneous notice shall be made to the President
21 for Archivist determinations regarding executive
22 branch related records, and to the oversight
23 committees designated in this Act in the case of
24 legislative branch records. Such notice shall
25 contain a written unclassified justification for

1 public disclosure or postponement of disclosure,
2 including an explanation of the application of
3 any standards contained in section 6.

4 (c) PRESIDENTIAL AUTHORITY OVER ARCHIVIST DE-
5 TERMINATION.—

6 (1) PUBLIC DISCLOSURE OR POSTPONEMENT
7 OF DISCLOSURE.—After the Archivist has made a
8 formal determination concerning the public disclo-
9 sure or postponement of disclosure of an executive
10 branch related record or information within such a
11 record, or of any information contained in a related
12 record, obtained or developed solely within the exec-
13 utive branch, and upon a written appeal to the
14 President by the originating agency, the Citizens Ad-
15 visory Committee, or third agency within 30 days
16 after such determination, the President shall have
17 the sole and non-delegable authority to require the
18 disclosure or postponement of such record or infor-
19 mation under the standards set forth in section 6,
20 and the President shall provide the Archivist with an
21 unclassified written certification specifying the Presi-
22 dent's decision within 30 days after the Archivist's
23 determination and notice to the executive branch
24 agency as required under this Act, stating the jus-
25 tification for the President's decision, including the

1 applicable grounds for postponement under section
2 6, accompanied by a copy of the identification aid
3 required under section 4. If, after 30 days, the
4 President has not transmitted such written certifi-
5 cation to the Archivist, the Archivist may proceed
6 according to the previous formal determination.

7 (2) ANNUAL REVIEW.—Any executive branch
8 related record postponed by the President shall be
9 subject to the requirements of annual review, down-
10 grading and declassification of classified informa-
11 tion, and public disclosure in the collection set forth
12 in section 6.

13 (3) RECORD OF PRESIDENTIAL POSTPONE-
14 MENT.—The Archivist shall, upon its receipt, publish
15 in the Federal Register a copy of any unclassified
16 written certification, statement, and other materials
17 transmitted by or on behalf of the President with re-
18 gard to postponement of related records and provide
19 that such copies are searchable electronically.

20 (A) NOTICE TO PUBLIC.—Every 30 cal-
21 endar days, beginning on the date that is 60
22 calendar days after the date on which the Ar-
23 chivist first approves the postponement of dis-
24 closure of a related record, the Archivist shall
25 publish in the Federal Register a notice that

1 summarizes the postponements approved by the
2 Archivist or initiated by the President, the
3 House of Representatives, or the Senate, in-
4 cluding a description of the subject, originating
5 agency, length or other physical description,
6 and each ground for postponement that is relied
7 upon, and provide that the notice is searchable
8 electronically.

9 (B) REPORTS BY THE ARCHIVIST.—The
10 Archivist shall report such activities to the lead-
11 ership of the Congress, the Committee on Gov-
12 ernment Reform of the House of Representa-
13 tives, the Committee on Homeland Security and
14 Governmental Affairs of the Senate, the Presi-
15 dent, the head of any Government office whose
16 records have been the subject of Archivist activ-
17 ity, and the Citizens Advisory Committee.

18 (4) ANNUAL REPORTS.—

19 (A) The first annual report shall be issued
20 on the date that is 1 year after the date of en-
21 actment of this Act, and subsequent reports
22 every 12 months thereafter until termination of
23 each annual review.

24 (B) A report under paragraph (1) shall in-
25 clude the following information:

1 (i) A financial report of the expenses
2 for all official activities and requirements
3 of the National Archives and its personnel.

4 (ii) The progress made on review,
5 transmission to the Archivist, and public
6 disclosure of related records.

7 (iii) The estimated time and volume of
8 related records involved in the completion
9 of the Archivist's performance under this
10 Act.

11 (iv) Any special problems, including
12 requests and the level of cooperation of
13 Government offices, with regard to the
14 ability of the Archivist to operate as re-
15 quired by this Act.

16 (v) A record of review activities, in-
17 cluding a record of postponement decisions
18 by the Archivist or other related actions
19 authorized by this Act, and a record of the
20 volume of records reviewed and postponed.

21 (vi) Suggestions and requests to Con-
22 gress for additional legislative authority
23 needs.

24 (vii) An appendix containing copies of
25 reports of postponed records to the Archi-

1 vist required under section 7(c)(3) made
2 since the date of the preceding report
3 under this subsection.

4 (viii) Any recommendations made by
5 the Citizens Advisory Committee, ap-
6 pointed by the National Archives.

7 (ix) Any recommendations of the Ar-
8 chivist.

9 (5) At least 90 calendar days before completing
10 work relative to this Act, the Archivist shall provide
11 written notice to the President and Congress of its
12 intention to terminate operations at a specified date.

13 (6) OVERSIGHT.—The Committee on Govern-
14 ment Reform of the House of Representatives and
15 the Committee on Homeland Security and Govern-
16 mental Affairs of the Senate shall have continuing
17 oversight jurisdiction with respect to the official con-
18 duct of the Archivist and the Citizens Advisory Com-
19 mittee, and the disposition of postponed or newly
20 discovered records after termination of the Act, and
21 shall conduct periodic hearings on the conduct of the
22 board not less than every year for a period ending
23 3 years after enactment, or one year after the Archi-
24 vist certifies that all related records have been fully
25 released to the public.

1 **SEC. 9. DISCLOSURE OF MATERIALS UNDER SEAL OF**
2 **COURT.**

3 (a) REQUESTS TO ATTORNEY GENERAL.—

4 (1) REQUESTS FOR INFORMATION OR EVIDENCE
5 UNDER SEAL.—The Archivist may request the Attor-
6 ney General—

7 (A) to petition any court in the United
8 States or abroad to release any information or
9 physical evidence relevant to the life or death of
10 Tupac Amaru Shakur that is held under seal of
11 the court; or

12 (B) to subpoena any such information or
13 evidence if such information or evidence is no
14 longer in the possession of the Government.

15 (2) REQUESTS FOR INFORMATION UNDER IN-
16 JUNCTION OF SECRECY OF A GRAND JURY.—

17 (A) The Archivist may request the Attor-
18 ney General to petition any court in the United
19 States to release any information relevant to
20 the life or death of Tupac Amaru Shakur that
21 is held under the injunction of secrecy of a
22 grand jury.

23 (B) A request for disclosure of related ma-
24 terials under this Act shall be deemed to con-
25 stitute a showing of particularized need under

1 Rule 6 of the Federal Rules of Criminal Proce-
2 dure.

3 (b) SENSE OF CONGRESS.—It is the sense of the
4 Congress that—

5 (1) the Attorney General should assist the Ar-
6 chivist in good faith to unseal any records that the
7 Archivist determines to be relevant and held under
8 seal by a court or under the injunction of secrecy of
9 a grand jury;

10 (2) the Secretary of State should contact any
11 other foreign government that may hold information
12 relevant to the life and death of Tupac Amaru
13 Shakur to seek the disclosure of such information,
14 and report on progress on these matters to the Ar-
15 chivist in a timely fashion; and

16 (3) all Executive agencies should cooperate in
17 full with the Archivist to seek the disclosure of all
18 information relevant to the life and death of Tupac
19 Amaru Shakur, consistent with the public interest.

20 **SEC. 10. PRIVATE RIGHT OF ACTION.**

21 (a) IN GENERAL.—Any person who is aggrieved by
22 a violation of this Act may bring a civil action in an appro-
23 priate district court for declaratory or injunctive relief
24 with respect to the violation.

1 (b) ATTORNEY'S FEES.—In a civil action under this
2 section, the court may allow the prevailing party (other
3 than the United States) reasonable attorney fees, includ-
4 ing litigation expenses, and costs.

5 **SEC. 11. RULES OF CONSTRUCTION.**

6 (a) PRECEDENCE OVER OTHER LAW.—When this
7 Act requires transmission of a record to the Archivist or
8 public disclosure, it shall take precedence over any other
9 law (except section 6103 of the Internal Revenue Code),
10 judicial decision construing such law, or common law doc-
11 trine that would otherwise prohibit such transmission or
12 disclosure.

13 (b) FREEDOM OF INFORMATION ACT.—Nothing in
14 this Act shall be construed to eliminate or limit any right
15 to file requests with any executive agency or seek judicial
16 review of the decisions pursuant to section 552 of title 5,
17 United States Code, except that any related record discov-
18 ered after termination of the Act shall be considered for
19 postponement or public disclosure under the standards of
20 this Act, not such section 552.

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

1 (d) EXISTING AUTHORITY.—Nothing in this Act re-
2 vokes or limits the existing authority of the President, any
3 executive agency, the Senate, or the House of Representa-
4 tives, or any other entity of the Government to publicly
5 disclose records in its possession.

6 (e) RULES OF THE SENATE AND HOUSE OF REP-
7 RESENTATIVES.—To the extent that any provision of this
8 Act establishes a procedure to be followed in the Senate
9 or the House of Representatives, such provision is adopt-
10 ed—

11 (1) as an exercise of the rulemaking power of
12 the Senate and House of Representatives, respec-
13 tively, and is deemed to be part of the rules of each
14 House, respectively, but applicable only with respect
15 to the procedure to be followed in that House, and
16 it supersedes other rules only to the extent that it
17 is inconsistent with such rules; and

18 (2) with full recognition of the constitutional
19 right of either House to change the rules (so far as
20 they relate to the procedure of that House) at any
21 time, in the same manner, and to the same extent
22 as in the case of any other rule of that House.

23 **SEC. 12. TERMINATION OF EFFECT OF ACT.**

24 (a) PROVISIONS PERTAINING TO THE ARCHIVIST.—
25 The provisions of this Act that pertain to the Archivist

1 shall cease to be effective when the annual reviews termi-
2 nate, or full disclosure is effected within 3 years of enact-
3 ment of this Act.

4 (b) OTHER PROVISIONS.—The remaining provisions
5 of this Act shall continue in effect until such time as the
6 Archivist certifies to the President and the Congress that
7 all related records, including any related record subse-
8 quently discovered as described in section 6(c)(2), have
9 been made available to the public in accordance with this
10 Act.

11 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated such sums
13 as are necessary to carry out this Act, to remain available
14 until expended.

15 **SEC. 14. RECORDS PENDING.**

16 Upon termination of the annual reviews, all records
17 that are still pending postponement determinations shall
18 be presumed to be available for release. Any related record
19 discovered in the possession of any Government agency or
20 entity after termination of this Act will be released to the
21 Archivist for public disclosure under the provisions of this
22 Act.

23 **SEC. 15. WHISTLEBLOWER PROTECTION.**

24 All members of the Archivist's staff, the Archivist,
25 the National Archives, and all Federal agencies covered

1 under this Act shall treat relevant employees in accord-
2 ance with the provisions of chapter 23 of title 5, United
3 States Code, prohibiting certain personnel practices (com-
4 monly referred to as whistleblower protection provisions),
5 particularly relating to the disclosure of improper docu-
6 ment retention, release, and disclosure.

7 **SEC. 16. SEVERABILITY.**

8 If any provision of this Act or the application thereof
9 to any person or circumstance is held invalid, the remain-
10 der of this Act and the application of that provision to
11 other persons not similarly situated or to other cir-
12 cumstances shall not be affected by the invalidation.

○