

FY2023 NDAA UAP

[Sen. Mark Warner]

SEC. 1687. LIMITATION ON USE OF FUNDS FOR CERTAIN UNREPORTED PROGRAMS.

(a) Limitation on Availability of Funds.--None of the funds authorized to be appropriated or otherwise made available by this Act may be obligated or expended in support of any activities involving unidentified anomalous phenomena protected under any form of special access or restricted access limitations unless the Secretary of Defense has provided the details of the activity to the appropriate congressional committees and congressional leadership, including for any activities described in a report released by the All-Domain Anomaly Resolution Office in fiscal year 2024.

(b) Limitation Regarding Independent Research and Development.--Consistent with Department of Defense Instruction Number 3204.01 (dated August 20, 2014, incorporating change 2, dated July 9, 2020; relating to Department policy for oversight of independent research and development), independent research and development funding relating to unidentified anomalous phenomena shall not be allowable as indirect expenses for purposes of contracts covered by such instruction, unless such material and information is made available the appropriate congressional committees and congressional leadership.

(c) Definitions.--In this section:

(1) The term ``appropriate congressional committees'' means--

(A) the congressional defense committees; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) The term ``congressional leadership'' means--

(A) the majority leader of the Senate;

(B) the minority leader of the Senate;

(C) the Speaker of the House of Representatives; and

(D) the minority leader of the House of Representatives.

(3) The term ``unidentified anomalous phenomena'' has the meaning given such term in section 1683(n) of the National Defense Authorization Act for Fiscal Year 2022 (50 U.S.C. 3373(n)), as amended by section 6802(a) of the Intelligence Authorization Act for Fiscal Year 2023 (Public Law 117-263).

SEC. 1841. UNIDENTIFIED ANOMALOUS PHENOMENA RECORDS COLLECTION AT THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

(a) Records Collection.--

(1) Establishment of collection.--

(A) In general.--Not later than 60 days after the date of

the enactment of this Act, the Archivist shall commence establishment of a collection of unidentified anomalous phenomena, as such term is defined in section 1673(n)(8) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81; 50 U.S.C. 3373), records in the National Archives, to be known as the "Unidentified Anomalous Phenomena Records Collection".

(B) Physical integrity.--In carrying out subparagraph (A), the Archivist shall ensure the physical integrity and original provenance (or if indeterminate, the earliest historical owner) of all records in the Collection.

(C) Record copies.--The Collection shall consist of record copies of all Government, Government-provided, or Government-funded records relating to unidentified anomalous phenomena, technologies of unknown origin, and non-human intelligence (or equivalent subjects by any other name with the specific and sole exclusion of temporarily non-attributed objects), which shall be transmitted to the National Archives in accordance with section 2107 of title 44, United States Code.

(D) Subject guidebook.--The Archivist shall prepare and publish a subject guidebook and index to the Collection.

(2) Contents.--The Collection shall include the following:

(A) Copies of all unidentified anomalous phenomena records, regardless of age or date of creation--

(i) that have been transmitted to the National Archives or disclosed to the public in an unredacted form prior to the date of the enactment of this Act;

(ii) that are otherwise required to have been transmitted to the National Archives after the date of the enactment of this Act; or

(iii) the disclosure of which is postponed under this subtitle.

(B) A central directory comprised of identification aids created for each record transmitted to the Archivist under section 1842(e).

(b) Disclosure of Records.--Copies of all unidentified anomalous phenomena records transmitted to the National Archives for disclosure to the public shall--

(1) be included in the Collection; and

(2) be available to the public--

(A) for inspection and copying at the National Archives within 30 days after their transmission to the National Archives; and

(B) digitally via the National Archives online database within a reasonable amount of time not to exceed 180 days thereafter.

(c) Fees for Copying.--

(1) In general.--The Archivist shall--

(A) charge fees for copying unidentified anomalous phenomena records; and

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

(2) Amount of fees.--The amount of a fee charged by the Archivist pursuant to paragraph (1)(A) for the copying of an unidentified anomalous phenomena record shall be such amount as the Archivist determines appropriate to cover the costs incurred by the National Archives in making and providing such copy, except that in no case may the amount of the fee charged exceed the actual expenses incurred by the National Archives in making and providing such copy.

(d) Additional Requirements.--

(1) Use of funds.--The Collection shall be preserved, protected, archived, digitized, and made available to the public at the National Archives and via the official National Archives online database using appropriations authorized, specified, and restricted for use under the terms of this subtitle.

(2) Security of records.--The National Security Program Office at the National Archives, in consultation with the National Archives Information Security Oversight Office, shall establish a program to ensure the security of the postponed unidentified anomalous phenomena records in the protected, and yet-to-be disclosed or classified portion of the Collection.

(e) Oversight.--

(1) Senate.--The Committee on Homeland Security and Governmental Affairs, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate shall have continuing legislative oversight jurisdiction in the Senate with respect to the Collection.

(2) House of representatives.--The Committee on Oversight and Accountability, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives shall have continuing legislative oversight jurisdiction in the House of Representatives with respect to the Collection.

SEC. 1842. REVIEW, IDENTIFICATION, TRANSMISSION TO THE NATIONAL ARCHIVES, AND PUBLIC DISCLOSURE OF UNIDENTIFIED ANOMALOUS PHENOMENA RECORDS BY GOVERNMENT OFFICES.

(a) Identification, Organization, and Preparation for Transmission.--

(1) In general.--As soon as practicable after the date of the

enactment of this Act, each head of a Government office shall--

(A) identify and organize records in the possession of the Government office or under the control of the Government office relating to unidentified anomalous phenomena; and

(B) prepare such records for transmission to the Archivist for inclusion in the Collection.

(2) Prohibitions.--

(A) Destruction; alteration; mutilation.--No unidentified anomalous phenomena record shall be destroyed, altered, or mutilated in any way.

(B) Withholding; redaction; postponement of disclosure; reclassification.--No unidentified anomalous phenomena record made available or disclosed to the public prior to the date of the enactment of this Act may be withheld, redacted, postponed for public disclosure, or reclassified.

(C) Records created by non-federal persons or entities.--No unidentified anomalous phenomena record created by a person or entity outside the Federal Government (excluding names or identities consistent with the requirements of section 1843) shall be withheld, redacted, postponed for public disclosure, or reclassified.

(b) Custody of Unidentified Anomalous Phenomena Records Pending Review.--During the review by the heads of Government offices under subsection (c), each head of a Government office shall retain custody of the unidentified anomalous phenomena records of the office for purposes of preservation, security, and efficiency, unless it is a third agency record described in subsection (c)(2)(C).

(c) Review by Heads of Government Offices.--

(1) In general.--Not later than 300 days after the date of the enactment of this Act, each head of a Government office shall review, identify, and organize each unidentified anomalous phenomena record in the custody or possession of the office for--

(A) disclosure to the public; and

(B) transmission to the Archivist.

(2) Requirements.--In carrying out paragraph (1), the head of a Government office shall--

(A) determine which of the records of the office are unidentified anomalous phenomena records;

(B) determine which of the unidentified anomalous phenomena records of the office have been officially disclosed or made publicly available in a complete and unredacted form;

(C)(i) determine which of the unidentified anomalous phenomena records of the office, or particular information contained in such a record, was created by a third agency or by another Government office; and

(ii) transmit to a third agency or other Government office

those records, or particular information contained in those records, or complete and accurate copies thereof;

(D)(i) determine whether the unidentified anomalous phenomena records of the office or particular information in unidentified anomalous phenomena records of the office are covered by the standards for postponement of public disclosure under this subtitle; and

(ii) specify on the identification aid required by subsection (d) the applicable postponement provision contained in section 1841;

(E) organize and make available, upon request, to heads of Government offices other than the Government office with custody, including the All-domain Anomaly Resolution Office, all relevant unidentified anomalous records identified under subparagraph (D);

(F) organize and make available to the heads of Government offices other than the Government office with custody, including the All-domain Anomalous Resolution Office, for assistance with any record concerning which the office has any uncertainty as to whether the record is an unidentified anomalous phenomena record governed by this subtitle; and

(G) give precedence of work to--

(i) the identification, review, and transmission of unidentified anomalous phenomena records not already publicly available or disclosed as of the date of the enactment of this Act;

(ii) the identification, review, and transmission of all records that most unambiguously and definitively pertain to unidentified anomalous phenomena, technologies of unknown origin, and non-human intelligence;

(iii) the identification, review, and transmission of unidentified anomalous phenomena records that on the date of the enactment of this Act are the subject of litigation under section 552 of title 5, United States Code; and

(iv) the identification, review, and transmission of unidentified anomalous phenomena records with earliest provenance when not inconsistent with clauses (i) through (iii) and otherwise feasible.

(3) Priority of expedited review for directors of certain archival depositories.--The Director of each archival depository established under section 2112 of title 44, United States Code, shall have as a priority the expedited review for public disclosure of unidentified anomalous phenomena records in the possession and custody of the depository, and shall make copies of such records available to the All-domain Anomaly Resolution Office.

(d) Identification Aids.--

(1) In general.--

(A) Preparation and availability.--Not later than 45 days after the date of the enactment of this Act, the Archivist, in consultation with the heads of such Government offices as the Archivist considers appropriate, shall prepare and make available to all Government offices a standard form of identification, or finding aid, for use with each unidentified anomalous phenomena record subject to review under this subtitle whether in hardcopy (physical), softcopy (electronic), or digitized data format as may be appropriate.

(B) Uniform system.--The Archivist shall ensure that the identification aid program is established in such a manner as to result in the creation of a uniform system for cataloging and finding every unidentified anomalous phenomena record subject to review under this subtitle where ever and how ever stored in hardcopy (physical), softcopy (electronic), or digitized data format.

(2) Requirements for government offices.--Upon completion of an identification aid using the standard form of identification prepared and made available under subparagraph (A) of paragraph (1) for the program established pursuant to subparagraph (B) of such paragraph, the head of a Government office shall--

(A) attach a printed copy to each physical unidentified anomalous phenomena record, and an electronic copy to each softcopy or digitized data unidentified anomalous phenomena record, the identification aid describes; and

(B) attach a printed copy to each physical unidentified anomalous phenomena record, and an electronic copy to each softcopy or digitized data unidentified anomalous phenomena record the identification aid describes, when transmitted to the Archivist.

(3) Records of the national archives that are publicly available.--Unidentified anomalous phenomena records which are in the possession of the National Archives on the date of the enactment of this Act, and which have been publicly available in their entirety without redaction, shall be made available in the Collection without any additional review by another authorized office under this subtitle, and shall not be required to have such an identification aid unless required by the Archivist.

(e) Transmission to the National Archives.--Each head of a Government office shall--

(1) transmit to the Archivist, and, as soon as possible, make available to the public, all unidentified anomalous phenomena records of the Government office that can be publicly disclosed, including those that are publicly available on the date of the enactment of this Act, without any redaction, adjustment, or

withholding under the standards of this subtitle; and

(2) transmit to the Archivist upon approval for postponement by the original classification authority upon completion of other action authorized by this subtitle, all unidentified anomalous phenomena records of the Government office the public disclosure of which has been postponed, in whole or in part, under the standards of this subtitle, to become part of the protected, yet-to-be disclosed, or classified portion of the Collection.

(f) Custody of Postponed Unidentified Anomalous Phenomena Records.--An unidentified anomalous phenomena record the public disclosure of which has been postponed shall, pending transmission to the Archivist, be held for reasons of security and preservation by the originating body until such time as the information security program has been established at the National Archives as required in section 1841(d)(2).

(g) Periodic Review of Postponed Unidentified Anomalous Phenomena Records.--

(1) In general.--All postponed or redacted records shall be reviewed periodically by the originating agency and the Archivist.

(2) Requirements.--

(A) Public disclosure.--A periodic review under paragraph (1) shall address the public disclosure of additional unidentified anomalous phenomena records in the Collection under the standards of this subtitle.

(B) Unclassified written description of reason.--All postponed unidentified anomalous phenomena records determined to require continued postponement shall require an unclassified written description of the reason for such continued postponement relevant to these specific records. Such description shall be provided to the Archivist and published in the Federal Register upon determination.

(C) Periodic review; downgrading and declassification of information.--The Archivist shall establish requirements for periodic review of postponed unidentified anomalous phenomena records that shall serve to downgrade and declassify information.

(D) Deadline for full disclosure.--Each unidentified anomalous phenomena record shall be publicly disclosed in full, and available in the Collection, not later than the date that is 25 years after the date of the first creation of the record by the originating body, unless the President certifies that--

(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

(ii) the identifiable harm is of such gravity that it

outweighs the public interest in disclosure.

(h) Requirements for Executive Agencies.--

(1) In general.--The heads of Executive agencies shall--

(A) transmit digital records electronically in accordance with section 2107 of title 44, United States Code;

(B) charge fees for copying unidentified anomalous phenomena records; and

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

(2) Amount of fees.--The amount of a fee charged by the head of an Executive agency pursuant to paragraph (1)(B) for the copying of an unidentified anomalous phenomena record shall be such amount as the head determines appropriate to cover the costs incurred by the Executive agency in making and providing such copy, except that in no case may the amount of the fee charged exceed the actual expenses incurred by the Executive agency in making and providing such copy.

SEC. 1843. GROUNDS FOR POSTPONEMENT OF PUBLIC DISCLOSURE OF UNIDENTIFIED ANOMALOUS PHENOMENA RECORDS.

(a) Postponement Determination.--In addition to the relevant authorities in Executive Order 13526, disclosure of unidentified anomalous phenomena records or particular information in unidentified anomalous phenomena records to the public may be postponed subject to the limitations of this subtitle if the original classification authority makes a determination that there is clear and convincing evidence that--

(1) the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States posed by the public disclosure of the unidentified anomalous phenomena record is of such gravity that it outweighs the public interest in disclosure, and such public disclosure would reveal--

(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the Federal Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations, or conduct of foreign relations of the United States, the disclosure of which would demonstrably and substantially impair the national security of the United States;

(2) the public disclosure of the unidentified anomalous phenomena record would violate section 552a of title 5, United

States Code (referred to as the "Privacy Act of 1974");

(3) the public disclosure of the unidentified anomalous phenomena record could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the public interest; or

(4) the public disclosure of the unidentified anomalous phenomena record would compromise the existence of an understanding of confidentiality currently requiring protection between a Federal Government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest.

(b) **Withdrawal of Records.**--Senior Agency Officials designated in accordance with Executive Order 13526 or any successor Orders may withdraw records in the Collection that are determined to be both not related to unidentified anomalous phenomena and properly classified. The Senior Agency Official must notify the congressional leadership and the oversight committees of Congress, as identified in section 1841(e), by not later than 60 days before each record is withdrawn.

(c) **Congressional Notification of Postponement of Disclosure.**--In the event that the disclosure of unidentified anomalous phenomena records or particular information in unidentified anomalous phenomena records to the public is postponed by an Executive agency, the head of the Executive agency shall notify congressional leadership and the oversight committees of Congress, as identified in section 1841(e), within 15 days of such decision with a reason for the postponement of disclosure.