

111TH CONGRESS
1ST SESSION

S. 1260

To provide that certain photographic records relating to the treatment of any individual engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside the United States shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mr. LIEBERMAN (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide that certain photographic records relating to the treatment of any individual engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside the United States shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. DETAINEE PHOTOGRAPHIC RECORDS PROTEC-**
2 **TION.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
4 “Detainee Photographic Records Protection Act of 2009”.

5 (b) **DEFINITIONS.**—In this section:

6 (1) **COVERED RECORD.**—The term “covered
7 record” means any record—

8 (A) that is a photograph that—

9 (i) was taken during the period begin-
10 ning on September 11, 2001, through Jan-
11 uary 22, 2009; and

12 (ii) relates to the treatment of individ-
13 uals engaged, captured, or detained after
14 September 11, 2001, by the Armed Forces
15 of the United States in operations outside
16 of the United States; and

17 (B) for which a certification by the Sec-
18 retary of Defense under subsection (c) is in ef-
19 fect.

20 (2) **PHOTOGRAPH.**—The term “photograph” en-
21 compasses all photographic images, whether origi-
22 nals or copies, including still photographs, negatives,
23 digital images, films, video tapes, and motion pic-
24 tures.

25 (c) **CERTIFICATION.**—

1 (1) IN GENERAL.—For any photograph de-
2 scribed under subsection (b)(1)(A), the Secretary of
3 Defense shall submit a certification to the President,
4 if the Secretary of Defense, in consultation with the
5 Chairman of the Joint Chiefs of Staff, determines
6 that the disclosure of that photograph would endan-
7 ger—

8 (A) citizens of the United States; or

9 (B) members of the Armed Forces or em-
10 ployees of the United States Government de-
11 ployed outside the United States.

12 (2) CERTIFICATION EXPIRATION.—A certifi-
13 cation submitted under paragraph (1) and a renewal
14 of a certification submitted under paragraph (3)
15 shall expire 3 years after the date on which the cer-
16 tification or renewal, as the case may be, is sub-
17 mitted to the President.

18 (3) CERTIFICATION RENEWAL.—The Secretary
19 of Defense may submit to the President—

20 (A) a renewal of a certification in accord-
21 ance with paragraph (1) at any time; and

22 (B) more than 1 renewal of a certification.

23 (4) NOTICE TO CONGRESS.—A timely notice of
24 the Secretary's certification shall be submitted to
25 Congress.

1 (d) NONDISCLOSURE OF DETAINEE RECORDS.—A
2 covered record shall not be subject to—

3 (1) disclosure under section 552 of title 5,
4 United States Code (commonly referred to as the
5 Freedom of Information Act); or

6 (2) disclosure under any proceeding under that
7 section.

8 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to preclude the voluntary disclosure
10 of a covered record.

11 (f) EFFECTIVE DATE.—This section shall take effect
12 on the date of enactment of this Act and apply to any
13 photograph created before, on, or after that date that is
14 a covered record.

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