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National Security Watch: Stricter limits on Pentagon records?

An Iraqi man shields the sun from his eyes as he tries to get a better view of the access point to the Abu Ghraib prison.

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To the ire of open government and civil liberties advocates, two bills circulating in Congress would exempt the release of certain Department of Defense records currently available under the Freedom of Information Act. The language forbids the public release of documents related to the conduct of foreign intelligence or counterintelligence operations, which may include some documents on the treatment of detainees in Abu Ghraib prison in Iraq and the U.S. naval facility at Guantanamo Bay, Cuba.

The provision is included in the defense authorization bill, which was approved unanimously by the Senate last week, and the intelligence authorization bill, which was passed unanimously by the Senate Intelligence Committee. It allows the director of the Defense Intelligence Agency to exempt from the Freedom of Information Act any of the agency's operational files dealing with foreign intelligence or counterintelligence operations by the agency's Directorate of Human Intelligence. Currently, under the National Security Act of 1947, the Central Intelligence Agency and National Security Agency have certain FOIA exemptions. The new provision now extends those exemptions to the Defense Intelligence Agency.

Thomas Blanton, director of the National Security Archive, a nonprofit research institute at George Washington University, www.nsarchive.org has dubbed the provision the "Abu Ghraib Protection Act." He argues that it could be used to prohibit the release of government records documenting interrogation and detention abuses.

"The DIA tried this before and failed," says Blanton. "Now it looks like the DIA wants to cover up records about Abu Ghraib."

The American Civil Liberties Union and other organizations have used the Freedom of Information Act to obtain government documents on detention, interrogation, and alleged torture at Abu Ghraib and Guantanamo. Some of these records involve DIA involvement in foreign intelligence operations, Blanton says, and the new provision as written would prohibit their release.

"It's a big deal – it's a fundamental step toward hiding the government's activities, and that's bad for any democracy," says Tim Sparapani, legislative counsel for the ACLU.