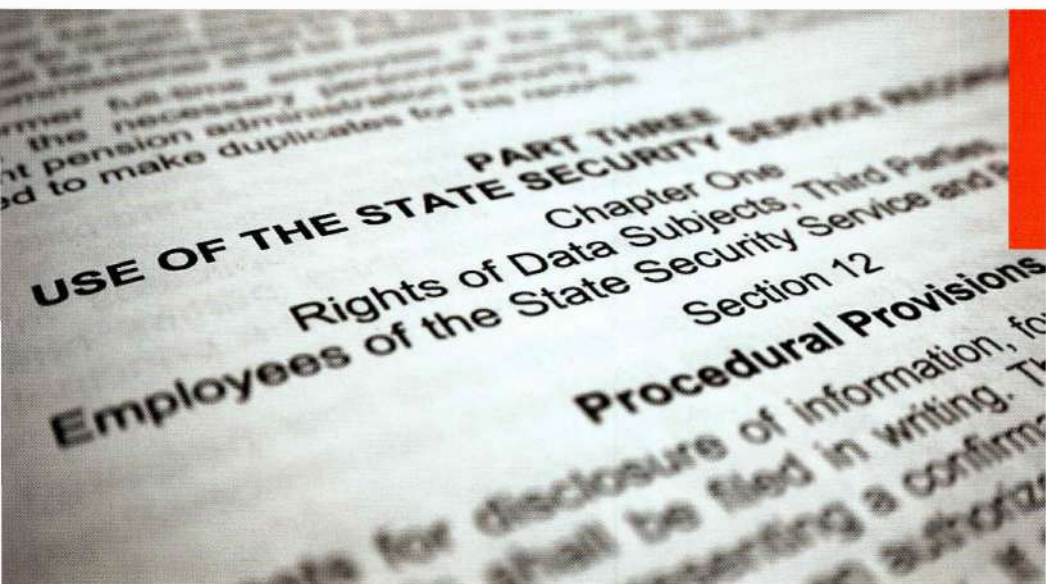




Act

regarding the Records of the
State Security Service of the former
German Democratic Republic
(Stasi Records Act)



**ACT
REGARDING THE RECORDS OF THE
STATE SECURITY SERVICE OF THE FORMER
GERMAN DEMOCRATIC REPUBLIC
(STASI RECORDS ACT)
of 20 December 1991**

**Notice of 18 February 2007
(Federal Law Gazette I, p. 162 pp.)**

Federal Law Gazette I 1991, p. 2272, amended by the First Stasi Records Act Amendment of 22 February, 1994 (Federal Law Gazette I, p. 334); the Second Stasi Records Act Amendment of 26 July, 1994 (Federal Law Gazette I, p. 1748); Article 12, paragraph 22 of the Act of 14 September, 1994 concerning the Reorganisation of the Postal and Telecommunications Administration (Post and Telecommunications Reorganisation Act) (Federal Law Gazette I, p. 2325); the Third Stasi Records Act Amendment of 20 December, 1996 (Federal Law Gazette I, p. 2026); Article 4, paragraph 2 of the Sixth Act concerning the Reform of Criminal Law (6th Criminal Law Reform Act) of 26 January, 1998 (Federal Law Gazette I 1998, p. 164); the Fourth Stasi Records Act Amendment of 19 December, 1998 (Federal Law Gazette I, p. 3778); Article 4, paragraph 2 of the Act concerning the Amendment of Regulations on Parliamentary Bodies of 17 June, 1999 (Federal Law Gazette I, p. 1334); Article 3, number 3 of the Civil Service and Military Pensions Amendment Act of 20 December, 2001 (Federal Law Gazette I, p. 3926); Article 6 of the Act of 26 June, 2002 concerning the Adoption of the International Penal Code (Federal Law Gazette I, p. 2254); the Fifth Stasi Records Act Amendment of 2 September, 2002 (Federal Law Gazette I, p. 3446); Article 4 of the Act concerning the Amendment of the Regulations on Weapons of 11 October, 2002 (Federal Law Gazette I, p. 3970); the Sixth Stasi Records Act Amendment of 14 August, 2003 (Federal Law Gazette I, p. 1654); Seventh law for the Amendment of the Stasi-Documents-Law of 21 December, 2006 (Federal Law Gazette I, p. 3326).

TABLE OF CONTENTS

PART ONE GENERAL PROVISIONS

- Section 1 Purpose and Scope
- Section 2 Custody, Safekeeping and Administration of the Records of the State Security Service
- Section 3 Individual Rights
- Section 4 Admissibility of Use of Records of the State Security Service by Public and Private Bodies
- Section 5 Specific Prohibited Use
- Section 6 Definitions

PART TWO TAKING CUSTODY OF RECORDS

- Section 7 Location of Records – Duty to Report
- Section 8 Duties of Public Bodies to Relinquish Records
- Section 9 Duties of Private Bodies to Relinquish Records
- Section 10 Records of the German Socialist Unity Party and other Organizations
- Section 11 Relinquishment and Return of Records to other Authorities

PART THREE USE OF STATE SECURITY SERVICE RECORDS

Chapter One

The Right of Data Subjects, Third Parties, Employees and Beneficiaries of the State Security Service

- Section 12 Procedural Provisions for Data Subjects, Third Parties, Employees and Beneficiaries of the State Security Service

- Section 13 The Right of Data Subjects and Third Parties to the Disclosure of Information and the Inspection and Delivery of Records
- Section 14 (repealed)
- Section 15 The Right of Close Relatives of Missing and Deceased Persons to the Disclosure of Information and the Inspection and Delivery of Records
- Section 16 The Right of Employees of the State Security Service to the Disclosure of Information and the Inspection and Delivery of Records
- Section 17 The Right of Beneficiaries to the Disclosure of Information and the Inspection and Delivery of Records
- Section 18 The Right to the Disclosure of Information and to the Inspection and Delivery of Records in the Case of Files Submitted to the State Security Service by Courts and Public Prosecutors

Chapter Two

Use of Records by Public and Private Bodies

- Section 19 Access to Records by Public and Private Bodies, Procedural Provisions
- Section 20 Use by Public and Private Bodies of Records not Containing Personal Data
- Section 21 Use by Public and Private Bodies of Records Containing Personal Data of Data Subjects and Third Parties
- Section 22 Use of Records – Parliamentary Investigative Committees
- Section 23 Use of Records for Criminal Prosecution and to Avert Harm
- Section 24 Use of Files Submitted to the State Security Service by Courts and Public Prosecutors
- Section 25 Use of Records by Intelligence Services
- Section 26 Use of Service Regulations and Organizational Plans

- Section 27 Unsolicited Reports to Public Bodies
- Section 28 (repealed)
- Section 29 Limitations of Use
- Section 30 Notification
- Section 31 Judicial Review of Decisions of the Federal Commissioner at the Request of Authorities

Chapter Three

Use of Records for Political and Historical Reappraisal and by Press and Broadcasting Sectors

- Section 32 Use of Documents for Political and Historical Analysis
- Section 32a Notification
- Section 33 Procedure
- Section 34 Use of Records by Press, Broadcasting and Film

PART FOUR

FEDERAL COMMISSIONER FOR THE RECORDS OF THE STATE SECURITY SERVICE

- Section 35 Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic
- Section 36 Legal Status of the Federal Commissioner
- Section 37 Duties and Authority of the Federal Commissioner
- Section 38 Land Commissioner – Relationship to the Federal Commissioner
- Section 39 Advisory Board
- Section 39a Scientific Advisory Board
- Section 40 Measures to Safeguard Records
- Section 41 Automated Retrieval Procedures, Commissioned Data Processing

PART FIVE FINAL PROVISIONS

- Section 42 Costs
- Section 43 Precedence of this Act
- Section 44 Criminal Offences
- Section 45 Administrative Offences
- Section 46 Exemption from Punishment
- Section 46a Limitation of Civil Rights
- Section 47 Repeal of Provisions, Transition of Office
- Section 48 Entry into Force

PART ONE GENERAL PROVISIONS

Section 1

Purpose and Scope

(1) This Act regulates the custody, preparation, administration and use of the records of the Ministry for State Security of the former German Democratic Republic and its preceding and succeeding organizations (State Security Service) in order to

1. facilitate individual access to personal data which the State Security Service has stored regarding them, so that they can clarify what influence the State Security Service has had on their personal destiny;
2. protect the individual from impairment of their right to privacy being caused by use of the personal data stored by the State Security Service;
3. ensure and promote the historical, political, and juridical reappraisal of the activities of the State Security Service;
4. provide public and private bodies with access to the information required to achieve the purposes stated in this Act.

(2) This Act shall be applicable to the records of the State Security Service which can be found in the possession of public bodies of the Federation or the Länder, of private individuals, or of other private bodies.

Section 2

Custody, Safekeeping and Administration of the Records of the State Security Service

(1) The Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic shall take custody of, provide for the safekeeping of, administer, and use the records of the State Security Service as directed by this Act.

(2) The Federal Commissioner can use the following information from the Central Inhabitant Register of the former German Democratic Republic for the fulfilment of their duties and responsibilities in accordance with this law:

1. family name, first name,
2. name at birth, miscellaneous names,

3. place of birth,
4. personal characteristics,
5. last address,
6. note "deceased".

This information is to be conveyed upon request to the courts and law enforcement agencies for the fulfilment of their legal duties and responsibilities.

Section 3

Individual Rights

(1) Each individual shall have the right to enquire of the Federal Commissioner if the records contain personal data regarding them. If this is the case, the individual shall have the right to obtain information, to inspect the records, and to be provided with records as directed by this Act.

(2) Each individual shall have the right to use the information and records which they have obtained from the Federal Commissioner as provided by general law.

(3) It shall not be admissible to impair the legitimate interests of other individuals by disclosing information, permitting inspection of records or providing records.

Section 4

Admissibility of Use of Records of the State Security Service by Public and Private Bodies

(1) Public and private bodies shall have access to the records or use them only as provided by this Act. If data subjects, third parties, close relatives of missing or deceased persons, employees or beneficiaries of the State Security Service submit personal data of their own accord, this data may be used for the purpose for which it was submitted.

(2) If the Federal Commissioner establishes or is informed that personal data in the records is incorrect, or the data subject disputes that the data is correct, a separate remark to this effect shall be made in the records.

(3) If personal data is communicated pursuant to a request according to sections 20 to 25, and after its communication it proves to be incorrect regarding the person about whom it was requested, it shall be corrected vis-à-vis the recipient, unless it is irrelevant to the case under consideration.

(4) The overriding legitimate interests of other persons may not be impaired by use of the records.

Section 5

Specific Prohibited Use

(1) It is inadmissible to use personal data to the detriment of data subjects or third parties if it was collected about them in the course of deliberate, including secret, information-gathering or spying on these persons. This shall not be applicable to cases pursuant to section 21, paragraph 1, sentences 1 and 2 if statements made by the data subjects or third parties are proved to be partially or completely incorrect on the basis of this information.

(2) The use of records shall be inadmissible for a limited time period if the competent public prosecutor or the court declares to the Federal Commissioner that use of the records during this time period could affect the carrying out of criminal prosecution. This shall not apply if it would unreasonably impair individuals in obtaining their rights. In this case, use of the records shall occur in agreement with the public prosecutor or with the court.

Section 6

Definitions

(1) "Records of the State Security Service" means:

1. all information-recording media, irrespective of the form of storage, in particular
 - a) files, data files, documents, cards, plans, films, visual material, audio material, and other recordings;
 - b) machine-produced or handwritten copies and other duplicates of the above;
 - c) evaluation aids, particularly programs for automated data processing,

to the extent that they came into the possession of or originated at the State Security Service or Department 1 of the Criminal Police Division of the Volkspolizei (People's Police) or were given to them for their use;

2. records submitted to the State Security Service by the courts and public prosecutors.

(2) The following shall not be deemed part of the records:

1. written communications and their enclosures which the State Security Service sent to other public or private bodies, if these bodies were not legally or de facto authorized to issue directives vis-à-vis the State Security Service;
2. records which were returned or conveyed to other bodies for reasons of competence and in which no indication can be found that the State Security Service took measures or caused them to be taken;
3. records which were processed before 8 May, 1945 and in which no indications can be found that the State Security Service took any other action than to prepare them for storage in its own archives;
4. objects and records which were unlawfully taken or kept from data subjects or third parties by the State Security Service; if this regards written communication, it is admissible for the Federal Commissioner to make copies for their records.

(3) "Data subjects" means persons about whom the State Security Service collected personal data by deliberate, including secret, information-gathering or spying. Sentence 1 shall not be applicable

1. to employees of the State Security Service if collecting information served only to make contact with and recruit employees for the State Security Service or to monitor the activities of employees of the State Security Service;
2. to beneficiaries, if collecting information only served to make contact with them or to monitor their behaviour with regard to benefits received.

(4) "Employees of the State Security Service" means full-time employees and unofficial informers.

1. "Full-time employees" means persons who had an official employment or service relationship with the State Security Service. The term can also refer to "Special Task Officers".

2. "Unofficial informers" means persons who agreed to supply the State Security Service with information.

(5) The provisions regarding employees of the State Security Service shall be applicable mutatis mutandis to

1. persons who were legally or de facto authorized to issue directives to employees of the State Security Service with respect to their State Security Service-related activities;
2. unofficial informers of Department 1 of the Criminal Police Division of the Volkspolizei (People's Police).

(6) "Beneficiaries" means persons who

1. were substantially assisted by the State Security Service, in particular by being provided with economic advantages;
2. were protected by the State Security Service or at its behest from prosecution for a criminal act;
3. with the knowledge, connivance or assistance of the State Security Service planned or committed criminal acts.

(7) "Third parties" means other persons about whom the State Security Service collected information.

(8) It shall be ascertained for each piece of information if the person involved was an employee of the State Security Service, a beneficiary, a data subject or a third party. The determining factor for ascertaining the above shall be the purpose for which the information was documented in the records.

(9) "Use of the records" means transmission of records, communication of information from the records, as well as other processing and use of the information. If it is not otherwise directed in this provision, the sections 2 and 3 of the Federal Data Protection Act shall be applicable, except that religious societies shall be deemed to be private bodies.

PART TWO TAKING CUSTODY OF RECORDS

Section 7

Location of Records – Duty to Report

(1) All public bodies shall assist the Federal Commissioner in locating and taking custody of the State Security Service records. If they are aware or become aware in the course of their duties that such records of the State Security Service or written or machine-produced copies or other duplicates of such records are in their possession, they shall report this fact to the Federal Commissioner without delay.

(2) The Federal Commissioner, in agreement with a public body, is entitled to inspect the registers, archives, and other information collections of this public body if there is sufficient indication that State Security Service records can be found therein.

(3) As soon as they become aware that they are in possession of State Security Service records or written or machine-produced copies or other duplicates of such records, private individuals and other private bodies are obliged to report this fact to the Federal Commissioner without delay.

Section 8

Duties of Public Bodies to Relinquish Records

(1) At the request of the Federal Commissioner, each public body shall relinquish without delay State Security Service records, including written and machine-produced copies and other duplicates, which are in their possession.

(2) If the public body requires the records for the performance of its duties within the limitations of use pursuant to sections 20 to 23 and 25, it shall be entitled to make duplicates for its records. Original records shall be kept only if they are indispensable for the performance of duties in an individual case. In such a case the Federal Commissioner, at their request, shall be provided with duplicates.

(3) The intelligence services of the Federation and the Länder shall relinquish records regarding data subjects in their entirety and without retaining any part of the records or duplicates thereof.

Section 9

Duties of Private Bodies to Relinquish Records

(1) At the request of the Federal Commissioner, every private individual and every other private body shall relinquish State Security Service records without delay if such records are not the personal property of the private individual or of the private body. Proof of ownership shall be incumbent upon the private individual or other private body. Personal ownership can be assumed to exist if the private individual or other private body personally compiled records as described in section 10, paragraph 4.

(2) If it is obligatory to relinquish records to the Federal Commissioner, then all copies and other duplicates shall also be relinquished to them.

(3) At the request of the Federal Commissioner, every private individual and every other private body shall relinquish records of the state security service which are their personal property to the Federal Commissioner, in order that written or machine-produced copies or other duplicates of these records can be made.

Section 10

Records of the German Socialist Unity Party and other Organizations

(1) In order to perform their duties the Federal Commissioner shall be entitled to request information of the competent bodies regarding the nature, contents, and storage location of records of the German Socialist Unity Party (SED) and other related parties and mass organizations.

(2) The Federal Commissioner shall be entitled to request inspection of such records. They shall be assisted in locating such records.

(3) At their request the Federal Commissioner shall be provided with duplicates of records which are related to the activities of the State Security Service and which they require to perform their duties. The duplicates shall become part of the records pursuant to section 6, paragraph 1.

(4) Paragraphs 1 to 3 shall be applicable mutatis mutandis to records which were recognizably established in cooperation

between the State Security Service and other public or private bodies of the former German Democratic Republic, either at the behest of the former or in order to carry out its orders or directions.

Section 11

Relinquishment and Return of Records to other Authorities

(1) Records which belong to other authorities and contain no indications of measures taken or ordered by the State Security Service shall be returned to the competent bodies by the Federal Commissioner

1. at their request, or
2. if they becomes aware of the existence of such records in the course of their duties.

The Federal Commissioner shall be entitled to make duplicates for their records.

(2) The Federal Commissioner shall relinquish records of the Federation, the Länder, or their intelligence services with a classification of "Confidential" or higher to the Federal Minister of the Interior or the competent Land authority. The Federal Commissioner shall be entitled to make duplicates for their records. Records of international or supranational organizations, and of foreign states, which are classified as "Confidential" or higher and which the Federal Republic of Germany is obligated by international treaty to protect from unauthorized access shall be relinquished to the Federal Minister of the Interior as the authority responsible for national security.

(3) Records relating to plant facilities, technical processes and site environmental contamination of enterprises wholly or partially subordinated to or affiliated with the State Security Service shall be relinquished upon request to the person or persons currently authorized to dispose of such records. The Federal Commissioner shall be entitled to make duplicates for their records.

(4) The Federal Commissioner shall relinquish records relating to properties and other objects, in particular ground plans and plans of plumbing and heating, electricity and telephone installations, to the person or persons currently authorized to dispose of such records. The Federal Commissioner shall be entitled to make duplicates for their records.

(5) If former full-time employees of the State Security Service are to be employed or to remain employed in public service, the necessary personnel records shall be relinquished to the competent body for personnel files. The Federal Commissioner shall be entitled to make duplicates for their records.

(6) If former full-time employees of the State Security Service receive pensions, the necessary personnel records shall be relinquished to the competent pension administration authority. The Federal Commissioner shall be entitled to make duplicates for their records.

PART THREE USE OF THE STATE SECURITY SERVICE RECORDS

Chapter One The Right of Data Subjects, Third Parties, Employees and Beneficiaries of the State Security Service

Section 12

Procedural Provisions for Data Subjects, Third Parties, Employees and Beneficiaries of the State Security Service

(1) Requests for disclosure of information, for inspection of records or for obtaining records shall be filed in writing. The applicant shall be obliged to prove their identity by presenting a confirmation of it from the competent Land authority. If they are acting as an authorized representative, they shall be obliged to present a power of attorney. If the request is made by an authorized representative with power of attorney

1. either the data subjects, third parties, employees or beneficiaries themselves, or
2. their attorney, if they are expressly so authorized, shall be entitled to obtain information, to inspect the records, and to be provided with records.

If an applicant who has the right to inspect the records is dependent on the assistance of others to do so, it shall be permitted for them to be accompanied by a person enjoying their confidence. It shall be required to substantiate the necessity for such assistance. It shall

be admissible for the Federal Commissioner to turn away the accompanying person if particular grounds justify their doing so.

(2) The Federal Commissioner shall disclose information in writing, unless circumstances warrant another form of disclosure. They shall exercise due discretion in this matter.

(3) If a request is to be handled with priority, it shall be required to justify the need for urgency. It can be assumed that the need for urgency is justified if the information is necessary for purposes of rehabilitation, compensation, to avert infringement of personal privacy or to exonerate the data subject from the accusation of cooperation with the State Security Service.

(4) Either the original records or duplicates shall be inspected. If, in addition to the personal data regarding the data subject, the records also contain information regarding other data subjects or third parties, inspection of original records shall be permitted only if

1. the other data subjects or third parties have given their consent and
2. separation of personal data regarding other data subjects or third parties is not possible or is possible only with unreasonable effort, and there is no reason to assume that the other data subjects or the third parties have an overriding legitimate interest in keeping them secret.

Furthermore, the right shall be granted to inspect duplicates in which personal information relating to data subjects or third parties has been depersonalized. Inspection of records shall take place in the principal office or in one of the branch offices.

(5) Duplicates of records shall be provided only after the personal data regarding other data subjects and third parties has been depersonalized.

(6) The right to inspect and be provided with records shall not apply to evaluation aids (section 6, paragraph 1, sentence 1, letter c). If the records cannot be found or can be found only with unreasonable effort, the right to inspect and be provided with records shall extend to duplicates of file cards which are used in the evaluation of the records and in which personal data regarding the applicant is contained.

The Right of Data Subjects and Third Parties to the Disclosure of Information and the Inspection and Delivery of Records

(1) At their request, data subjects shall be provided with information regarding their existing prepared records. In their request they shall supply particulars which make it possible to locate records. The purpose for which information is being requested need not be given.

(2) The information shall consist of a description of the existing prepared records regarding the data subject and their contents. Providing information can at first be limited to a communication that records exist and that the data subject may have the opportunity to inspect such records.

(3) At their request the data subject shall be given the opportunity to inspect the prepared records which regard them.

(4) The data subject shall on request be provided with duplicates of the records. Any personal data contained in these duplicates regarding other data subjects or third parties shall be depersonalized.

(5) Where existing prepared records on the data subject which the latter has inspected or of which they have obtained duplicates contain the code names of State Security Service employees who gathered or evaluated information on them or of officers who handled them, the data subject shall on request be given the names of such employees, along with any further particulars to be found in Stasi records which make it possible to positively identify these persons. The first sentence shall also apply to other persons who informed on the data subject in writing if the contents of such information were likely to be to the disadvantage of the data subject. The interest of employees and informers in keeping their names secret shall not rule out disclosure of their names.

(6) The first and second sentences of paragraph 5 above shall not apply if the employee of the State Security Service or the informer had not yet reached the age of 18 at the time of the activities against the data subject.

(7) Paragraphs 1 to 6 shall be applicable mutatis mutandis to third parties, on condition that the applicant supplies particulars which

make it possible to locate the information. The information shall be provided only if the necessary effort is not disproportionate to the applicant's declared interest in obtaining information.

Section 14

(repealed)

Section 15

The Right of Close Relatives of Missing and Deceased Persons to the Disclosure of Information and the Inspection and Delivery of Records

(1) At their request, close relatives shall be provided with information

1. for the rehabilitation of a missing or deceased person;
2. to protect the right to privacy of a missing or deceased person, particularly to clarify accusations of cooperation with the State Security Service;
3. to clarify the fate of missing or deceased persons.

Persons requesting information shall substantiate the purpose for their request and provide proof of their relationship to the missing or deceased person.

(2) Section 13, paragraph 1, sentence 2, and paragraphs 2 to 6 shall be applicable *mutatis mutandis*.

(3) Near relatives are spouses, children, grandchildren, parents and siblings. Near relatives also include, with regard to biological parents, adopted children as well as the biological parents of adopted children when it can not be excluded that the State Security Service had influence on the adoption or on the fate of the biological parents.

(4) Near relatives also include relatives up to the third degree, when it is plausible that no near relatives in the sense of Clause 3 are available.

(5) Paragraph 1 shall not be applicable if the missing or deceased person has left another disposition or if their wishes to the contrary can be clearly inferred from other circumstances.

Section 16

The Right of Employees of the State Security Service to the Disclosure of Information and the Inspection and Delivery of Records

(1) At their request, employees of the State Security Service shall be provided with information regarding the personal data contained in their personal records.

(2) The information can include a description of the nature and scope of their activities and of the group of persons who were the subjects of their reports, and also remarks about the frequency of their reports.

(3) At their request, the employee shall be permitted to inspect their personal records. Section 12, paragraph 4, sentence 2, number 2 shall not be applicable.

(4) At their request, the employee can be provided with information regarding reports which they prepared and can be permitted to inspect such reports if they can substantiate a legitimate reason for doing so. This shall not be applicable if it is outweighed by the legitimate interests of data subjects or of third parties in maintaining secrecy.

(5) At their request, the employee shall be provided with duplicates of their personal records. Personal data in these records regarding data subjects or third parties shall be depersonalized.

Section 17

The Right of Beneficiaries to the Disclosure of Information and the Inspection and Delivery of Records

(1) Section 16, paragraphs 1, 3 and 5 shall be applicable *mutatis mutandis* to the right of beneficiaries to obtain information, to inspect the records, and to be provided with duplicates of records.

(2) The beneficiary shall supply particulars which make it possible to locate the records.

(3) Paragraph 1 shall not be applicable if the competent supreme federal authority or the competent Land authority declares to the Federal Commissioner that disclosing information, permitting inspection of the records or providing records may not occur due to an overriding public interest.

Section 18

The Right to the Disclosure of Information and to the Inspection and Delivery of Records in the Case of Files Submitted to the State Security Service by Courts and Public Prosecutors

With respect to files of courts and public prosecutors which are in the custody of the Federal Commissioner, the respective Orders of Legal Procedure shall be applicable instead of section 12, paragraphs 4 to 6 and sections 13, 15 to 17 and 43.

Chapter Two

Use of Records by Public and Private Bodies

Section 19

Access to Records by Public and Private Bodies, Procedural Provisions

(1) The Federal Commissioner issues communications to public and private bodies, allowing them access to documents and releases documents to them, in so far as their use is permissible in accordance with §§ 20 to 23, 25 and 26. In the case of § 20 section 1, number 6, letters c to h, number 7, letters b to f and of § 21 section 1, number 6, letters c to h, and number 7, letters b to f, communication, access to documents and release are omitted when there are no indications available that unofficial activity for the State Security Service or a foreign intelligence service was present after 31 December, 1975. Clause 2 does not apply when evidence emerges from the documents that an employee has committed a crime in connection with unofficial activity or has violated the basic principles of humanity or rule of law.

(2) It shall be admissible for the public body competent for the performance of the respective duty to direct its request to the Federal Commissioner. If a request is made for a private body, proof of entitlement shall be established in writing with reference to the legal basis for entitlement.

(3) The Federal Commissioner shall check if a request for disclosure of information, for inspection of records, or for obtaining records is related to an admissible purpose, if it lies within the remit

of the recipient, and to what extent use of the records is necessary for the stated purpose. Regarding requests from courts, public prosecutors, and police authorities, to the extent that they are acting as auxiliary bodies of the Federal Prosecutor, the Federal Commissioner shall check on admissibility only if due cause exists.

(4) The Federal Commissioner shall make declarations in writing, unless individual circumstances warrant another form of declaration. They shall exercise due discretion in this matter.

(5) If the request for a declaration is to be handled with priority, it shall be required to justify the need for urgency. It can be assumed that the need for urgency is justified,

1. if the information is necessary for purposes of rehabilitation, compensation, to avert infringement of personal privacy or to exonerate the data subject from the accusation of cooperation with the State Security Service;
2. for the clarification, taking custody, and safekeeping of assets of the former German Democratic Republic and the former entities with headquarters within its territory, as well as the assets which were assigned to the Commercial Coordination sector;
3. for investigating persons in cases pursuant to section 20, paragraph 1, numbers 6 and 7, and section 21, paragraph 1, numbers 6 and 7;
4. for criminal prosecution and to avert harm in cases pursuant to section 23, paragraph 1, sentence 1, number 1, letters a and b, and number 2.

(6) It shall be permitted to inspect records if declarations are not sufficient. Section 12, paragraph 4 shall be applicable mutatis mutandis except that the person whom the request regards shall be substituted for the applicant.

(7) The records shall be provided if the requesting body can substantiate that declarations and inspection are not sufficient or that inspection would involve unjustifiable effort. Original sources shall be provided only if they are indispensable, particularly as evidence. They shall be returned to the Federal Commissioner without delay as soon as they are no longer required as evidence. Section 12, paragraph 4, sentences 2 and 3 shall be applicable mutatis mutandis if the records also contain personal data regarding

other data subjects and third parties in addition to the personal data regarding the involved person.

(8) Pursuant to sections 20 and 21 respectively, paragraph 1, numbers 6 and 7, no disclosure, opportunity for inspection or release of records shall occur if

1. the information relates to activity while carrying out compulsory military service in the armed forces of the former German Democratic Republic or in another service, outside the State Security Service, corresponding to military service, in which no personal information was supplied and the activity was not continued after the completion of military service or
2. it can be established according to the contents of prepared records that, despite the existence of an agreement of cooperation, no information was supplied.

Paragraph 3, sentence 1 shall remain unaffected.

Section 20

Use by Public and Private Bodies of Records not Containing Personal Data

(1) If records contain no personal data regarding data subjects or third parties, they may be used as necessary by public and private bodies for the following purposes:

1. rehabilitation of data subjects and missing and deceased persons, compensation, payments pursuant to the Prisoners' Act;
2. protection of privacy;
3. clarification of the fate of missing persons and of unexplained deaths;
4. cessation or suspension of pension payments pursuant to the Pension Benefits Act or reduction or disallowance or cessation of payments in other cases for which the Pension Benefits Act is applicable;
5. clarification, taking custody, and safekeeping of assets of the former German Democratic Republic and the former entities within its territory, as well as the assets which were assigned to the Commercial Coordination sector;

6. examination of the following persons in accordance with the requirements of the applicable provisions, and with their knowledge, to determine whether they were employed full-time or unofficially for the State Security Service, in so far as this did not involve activities for the State Security Service before the age of 18:

- a) members of the Federal Government or of a provincial government as well as miscellaneous persons in an official-legal relationship;
- b) representatives, members of local representative bodies as well as local elected officials;
- c) public officials who can be moved into temporary retirement at any time and employees in corresponding functions;
- d) public officials and employees who direct an agency or administer a comparable responsible office;
- e) professional and honorary judges;
- f) soldiers who can be moved to temporary retirement at any time, soldiers from the rank of colonel who direct an agency, as well as staff officers who are deployed on service posts with considerable outside influence in the integrated area (domestic or foreign), in the attaché service or with miscellaneous agencies abroad;
- g) members of the presidium and of the executive committee as well as executive employees of the Deutschen Olympischen Sportbundes (German Olympic Sports Federation), its central associations and of the Olympic subsidiaries, representatives of German sports in international bodies as well as trainers and responsible organizers of members of the German national teams;
- h) persons who in the cases of letters c to g apply for the office, the function or the position.

The determination can also refer to activity for a foreign intelligence service;

7. examination of the following persons in accordance with the applicable provisions, and with their knowledge, to determine whether they were employed full-time or unofficially for the State

Security Service, in as far as this did not involve activities for the State Security Service prior to age 18:

- a) members of the advisory board in accordance with § 39 and of the scientific advisory board in accordance with § 39a;
- b) the Federal Commissioner and their employees;
- c) the Country Commissioners in accordance with § 38 and their employees;
- d) those employees of public positions who deal with the processing of claims in accordance with the German Criminal, Administrative and Professional Rehabilitation Act;
- e) those employees of miscellaneous institutions who deal predominantly with the analysis of the activity of the State Security Service or of the power mechanisms of the former German Democratic Republic or of the former Soviet occupation zone;
- f) persons who apply in the aforementioned cases for the office, the function or the position.

The determination can also refer to activity for a foreign intelligence service;

8. procedures pursuant to granting or denying permission to carry weapons pursuant to the Weapons Act, the Federal Hunting Act, the Explosives Act, the War Weapons Control Act, if indications regarding the personal reliability of the former State Security Service employee can be found in the records;
9. recognition of periods of employment, payment and transfer of pensions of former employees of the State Security Service;
10. matters of order;
11. security inspections of persons in accordance with the security assessment laws of the national government and federal states;
12. inspections of the reliability of persons in accordance with § 7 of the Air Safety Act and § 12b section 2, number 3 of the Atomic Energy Act as well as § 5 section 1, number 6, § 7 section 3, number 3 of the Atomic Reliability Assessment Ordinance;

(2) Section 26 shall remain unaffected.

(3) Use for the purposes named in clause 1, number 6 is prohibited after 31 December, 2011. Documents for information and

communications which have accumulated in connection with earlier examinations at the requesting locations are to be offered to the Federal Archive or to the responsible national archive and/or with members of the German Bundestag (Parliament) to the archive of the German Parliament.

Section 21

Use by Public and Private Bodies of Records Containing Personal Data of Data Subjects and Third Parties

(1) If records contain personal data regarding data subjects or third parties, they may be used as necessary by public and private bodies for the following purposes:

1. rehabilitation of data subjects and missing and deceased persons, compensation, payments pursuant to the Act regarding prisoners;
2. protection of privacy;
3. clarification of the fate of missing persons and of unexplained deaths;
4. cessation or suspension of pension payments according to the Pension Benefits Act or reduction or disallowance or cessation of payments pursuant to the Pension Benefits Act;
5. clarification, taking custody, and safekeeping of assets of the former German Democratic Republic and the former entities within its territory, as well as the assets which were assigned to the Commercial Coordination sector;
6. examination of the following persons in accordance with the applicable provisions, and with their knowledge, to determine whether they were employed full-time or unofficially for the State Security Service, in as far as the determination can not be made with the documents named in § 20 and it did not involve activities for the State Security Service prior to age 18:
 - a) members of the Federal Government or of a provincial government as well as miscellaneous persons in an official-legal relationship;
 - b) representatives, members of local representative bodies as well as local elected officials;

- c) public officials who can be moved into temporary retirement at any time, and employees in corresponding functions;
- d) public officials and employees who direct an agency or administer a comparable responsible office;
- e) professional judges and honorary judges;
- f) soldiers who can be moved into temporary retirement at any time, soldiers from the rank of colonel who direct an agency, as well as staff officers who are employed on service posts with outside influence in the integrated area (domestic or foreign), in the attaché service or with miscellaneous agencies abroad;
- g) members of the presidium and of the executive committee as well as executives of the German Olympic Federation, its central associations and of the Olympic subsidiaries, representatives of the German sport in international bodies as well as trainers and responsible organizers of members of the German national teams;
- h) persons who in the cases of letters c to g apply for the office, the function or the position.

The determination can also refer to the activity for a foreign intelligence service;

- 7. examination of the following persons in accordance with the applicable provisions, and with their knowledge, to determine whether they were employed full-time or unofficially for the State Security Service, in so far as the determination can not be made with the documents named in § 20 and it does not involve activities for the State Security Service before the age of 18:
 - a) members of the advisory board in accordance with § 39 and of the scientific advisory board in accordance with § 39a;
 - b) the Federal Commissioner and their employees;
 - c) the National Commissioners in accordance with § 38 and their employees;
 - d) other employees of public positions who deal with the processing of claims in accordance with the German Criminal, Administrative and Professional Rehabilitation Act;
 - e) other employees of miscellaneous institutions who deal primarily with the analysis of the activity of the State Security

Service or of the power mechanisms of the former German Democratic Republic or of the former Soviet occupation zone;

- f) persons who apply in the aforementioned cases for the office, the function or the position.

The determination can also refer to the activity for a foreign intelligence service;

- 8. security inspections of persons in accordance with the security assessment acts of the national government and federal states;
- 9. reliability assessments of persons in accordance with § 7 of the Air Safety Act and § 12 of the Atomic Energy Act, as well as § 5 section 1, number 6, § 7 section 3, number 3 of the Atomic Reliability Assessment Ordinance.

(2) The special use prohibition in accordance with § 5 section 1 remains inviolate.

(3) Use for the purposes named in clause 1, number 6 is forbidden after 31 December, 2011. Documents for information and communications which have accumulated in connection with earlier examinations at the requesting places are to be offered to the Federal Archive or to the responsible national archive and/or with members of the German Parliament to the archive of the German Parliament.

Section 22

Use of Records – Parliamentary Investigative Committees

(1) The right of parliamentary investigative committees to gather evidence, pursuant to section 44, paragraphs 1 and 2 of the Basic Law, shall extend to the records of the State Security Service.

(2) Paragraph 1 shall be applicable mutatis mutandis to the parliamentary investigative committees of the Länder.

Section 23

Use of Records for Criminal Prosecution and to Avert Harm

(1) If records contain personal data regarding data subjects or third parties, they may be used as necessary

1. for the prosecution of
 - a) criminal acts committed in connection with the regime of the former German Democratic Republic, particularly criminal acts committed in connection with the activities of the State Security Service, other security, prosecuting and penal authorities, as well as courts;
 - b) crimes in the cases of §§ 211, 212, 239a, 239b, 306 to 306c, 307 to 309, 313, 314 and 316c of the criminal code as well as of felonies in accordance with
 - aa) § 6 of the International Criminal Code,
 - bb) §§ 51, 52 section 1, number 1, 2 letters c and d, as well as sections 5 and 6 of the Firearms Act,
 - cc) § 19 sections 1 to 3, § 20 sections 1 and 2, in connection with § 21, and § 22a sections 1 to 3 of the Act for the Control of Military Arms,
 - dd) § 29 section 3, clause 2, number 1, § 29a section 1, number 2, as well as § 30 section 1, numbers 1 and 2 of the Narcotics Law,
 - ee) § 30 section 1, number 4 of the Narcotic Law, in as far as the offender has acted professionally or as member of a gang;
 - c) criminal acts committed in connection with the National Socialist regime;
 - d) criminal acts pursuant to section 44 of this Act.
2. to avert an immediate substantial threat to public safety, in particular to prevent imminent perpetration of criminal acts.

Section 5, paragraph 1 shall not be applicable. Specific prohibited use pursuant to the provisions of the Rules of Criminal Procedure shall remain unaffected.

(2) Other records may be used if necessary for the prosecution of criminal acts, inclusive of providing legal counsel in criminal cases, or to avert a substantial threat to public safety, particularly threatened criminal acts.

Section 24

Use of Files Submitted to the State Security Service by Courts and Public Prosecutors

(1) With respect to the use of files from courts and public prosecutors in the custody of the Federal Commissioner, the respective legal procedures shall be applicable instead of sections 19 to 21, 23, 25 to 30 and 43. Section 5, paragraph 1 shall not be applicable if it is a matter regarding criminal acts pursuant to section 23, paragraph 1, number 1.

(2) The Federal Commissioner shall submit on request records pursuant to paragraph 1, sentence 1, to courts, public prosecutors and police authorities, if these are acting as auxiliary bodies of the public prosecutor. The records shall be returned without delay as soon as they are no longer required for the stated purpose.

Section 25

Use of Records by Intelligence Services

(1) If the records contain personal data regarding data subjects or third parties, they may not be used by or for an intelligence service. Exceptions are records which contain personal data regarding

1. employees of the intelligence services of the Federation, the Länder or their allies, if it is necessary to use the records to avert harm to these employees or to the intelligence services;
2. employees of other intelligence services if use of the records is necessary for counterespionage.

(2) Records, if they contain no personal data regarding data subjects or third parties, may be used by or for the intelligence services of the Federation and the Länder within the framework of their duties as well as by or for intelligence services of allies if they contain information regarding

1. intelligence or counterintelligence;

2. violent extremism or terrorism

as defined by the Federal Constitutional Protection Act.

(3) In cases pursuant to paragraph 1, sentence 2, section 5, paragraph 1 shall remain unaffected.

(4) In cases pursuant to paragraph 1, sentence 2 and to paragraph 2, the Federal Minister of the Interior shall be empowered to order the Federal Commissioner to relinquish records without retaining any part or duplicates thereof, if leaving such records in the custody of the Federal Commissioner would be detrimental to the Federation or a Land. Such an order shall require the consent of the Parliamentary Control Panel pursuant to the Act governing the Parliamentary Control of Intelligence Activities by the Federation.

(5) In addition, records pursuant to section 26 may be used by or for intelligence services within the framework of their legal duties.

Section 26

Use of Service Regulations and Organizational Plans

Guidelines, service regulations, organizational plans and personnel plans of the State Security Service, if they contain no personal data regarding data subjects or third parties, may also be used for other purposes. The same shall be applicable to plans and drawings of property and other objects of the State Security Service, in particular to ground plans and plans of plumbing and heating, electricity and telephone installations.

Section 27

Unsolicited Reports to Public Bodies

(1) If in the course of their duties pursuant to section 37, the Federal Commissioner establishes that one of the following persons has been a full-time employee or unofficial informer of the State Security Service:

1. persons who administer an office or carry out a function in accordance with § 20 section 1, number 6, letters a or b;
2. persons who administer an office in accordance with § 20 section 1, number 7, letter a;
3. to 7. repealed

8. a person who, because of their activities, may use records pursuant to section 20, paragraph 1, number 4, or section 21, paragraph 1, number 4;

they shall report this to the competent body.

(2) If the Federal Commissioner establishes in the course of their duties that there are indications in the records for

1. a criminal act in connection with activities of the State Security Service;
2. one of the criminal acts pursuant to section 23, paragraph 1, number 1;
3. a substantial impairment of public safety;
4. the existence of assets pursuant to section 20, paragraph 1, number 5 and section 21, paragraph 1, number 5;

they shall report this to the competent body.

(3) If the Federal Commissioner establishes in the course of their duties pursuant to section 37 that there is information in the records regarding intelligence, counterintelligence, violent extremism, or terrorism pursuant to the Federal Constitutional Protection Act, they shall report this of their own accord to the Federal Minister of the Interior.

(4) Reports pursuant to paragraphs 1 to 3 shall only be admissible if they may also be made pursuant to a request.

Section 28

(repealed)

Section 29

Limitations of Use

(1) In accordance with §§ 19 to 23, 25 and 27 individual-related information conveyed may only be processed and used for the purposes for which it has been conveyed. It may be used for other purposes only if the requirements pursuant to sections 20 to 23 and 25 have been met.

(2) Consent of the Federal Commissioner shall be required if, pursuant to paragraph 1, sentence 2, personal data regarding data

subjects or third parties is to be processed or used for another purpose.

(3) Paragraphs 1 and 2 shall be applicable mutatis mutandis for personal data in the records which, pursuant to section 8, paragraph 2, remain with public bodies.

Section 30

Notification

(1) If individual-related information on a person concerned is conveyed by the Federal Commissioner in accordance with §§ 21 and 27 section 1, the person concerned is to be notified of the nature of the information conveyed and of the recipients.

(2) Notification shall not be compulsory if the data subject has been otherwise informed of the communication or if notification would require unjustifiable effort.

(3) Notification shall not occur during a particular time period if the competent supreme Federal or Land authority declares to the Federal Commissioner that notification of the communication would be detrimental to the Federation or a Land.

Section 31

Judicial Review of Decisions of the Federal Commissioner at the Request of Authorities

(1) If the Federal Commissioner refuses to honour the request of an authority for a declaration or for inspection or submission of records, the District Administrative Court shall, at the request of this authority, hold a hearing to decide on the legality of the refusal. The decision shall not be contestable. There shall be no pre-trial hearing. The District Administrative Court of the district in which the Federal Commissioner has their headquarters shall have jurisdiction.

(2) It shall be admissible for the presiding judge to deny or limit inspection of the files or parts thereof, as well as to limit the preparation or distribution of excerpts or duplicates, if this is warranted by the particular circumstances. This decision and the decision of the District Administrative Court regarding the obligatory submission of documents pursuant to section 99, paragraph 2 of the

Administrative Court Regulations shall not be contestable. Furthermore, the participants shall maintain secrecy regarding the facts which have become known to them through inspection of the files.

Chapter Three

Use of Records for Political and Historical Reappraisal and by Press and Broadcasting Sectors

Section 32

Use of documents for Political and Historical Analysis

(1) The Federal Commissioner provides the following documents for research on the purposes of the political and historical analysis of the activity of the State Security Service, or of the power mechanisms of the former German Democratic Republic, or of the former Soviet occupation zone as well as for purposes of the political education:

1. records not containing personal data;
2. duplicates of records in which personal data have been depersonalized, unless these personal data are obvious;
3. records containing personal data regarding
 - employees of the State Security Service, unless they were under 18 years old at the time in which their activities for the State Security Service occurred, or
 - beneficiaries of the State Security Service;
4. records containing personal data regarding personages of contemporary history, holders of political functions or a public office, as long as the data concerned refer to their role in contemporary history or the exercise of their functions or office;
5. records containing other personal data if the persons concerned have given their written consent specifying the name of the applicant, the project and the persons who will carry it out;
6. documents with individual-related information on deceased persons whose deaths date back 30 years; if the year of death can not be determined or only determined with unwarranted expense, the retention period ends 110 years after birth; the numbers 1 to 5 remain inviolate;

7. in addition, documents with individual-related information, in as far as

- a) this is required for the execution of scientific research work at universities and other research institutions;
- b) use of anonymous information for this purpose is not possible or the anonymity is connected with a disproportionate expense and
- c) the recipient of the information is a public official or has been formally bound in accordance with the Law on the Commitment of Persons to Secrecy.

Documents with individual-related information in accordance with clause 1, numbers 3, 4 and 7 may only be provided, as far as no preponderant interests worthy of protection of the persons named there are compromised through their use. It should be considered, in particular, whether the ascertainment of information can be seen to be based on a violation of human rights.

(2) Records which, pursuant to section 37, paragraph 1, number 3, letters b to d are subject to special storage, may be used only with the consent of the Federal Minister of the Interior.

(3) Personal data shall not be published unless

- 1. they are obvious;
- 2. they concern
 - employees of the State Security Service, unless they were under 18 years old at the time in which their activities for the State Security Service occurred, or
 - beneficiaries of the State Security Service;
- 3. they concern personages of contemporary history, holders of political functions or a public office, as long as the data concerned refer to their role in contemporary history or the exercise of their functions or office, or
- 4. the persons whose personal data are to be published have given their consent;
- 5. when it involves information on deceased persons whose deaths date back 30 years; if the year of death can not be determined or can only be determined with unwarranted expense, the retention

period ends 110 years after birth; numbers 1 to 4 remain inviolate.

No preponderant interests worthy of protection of the persons named may be compromised by the publication of the individual-related information named in clause 1, numbers 2 and 3. It is important to consider whether the ascertainment of information is based on a violation of human rights. Individual-related information in accordance with clause 1, number 5 may only be published if no preponderant interests worthy of defence of other persons are compromised by the publication.

(4) Paragraphs 1 and 3 shall apply *mutatis mutandis* to purposes of political and historical reappraisal of the National Socialist past.

Section 32a

Notification

(1) Where records are to be made available in accordance with section 32, paragraph 1, 1st sentence, number 4, the persons concerned shall be informed about this and about the content of the data in good time so that objections against such access can be made. The Federal Commissioner shall take these objections into account when weighing the interests according to section 32, paragraph 1 above. If no agreement is reached, the records shall not be made available until two weeks after notification of the result of the weighing of interests.

(2) No such notification is necessary if the interests of the person concerned that warrant protection are not expected to be impaired, if notification is impossible, or if it is possible only with disproportionate effort.

Section 33

Procedure

(1) Inspection of records for purposes of research or political education shall be permitted in the principal office or in one of the branch offices of the Federal Commissioner.

(2) The inspection may be limited to duplicates if this is warranted by the importance or state of preservation of the records.

(3) In as far as inspection of documents is permitted, duplicates of the documents can be issued upon request; this does not apply in the case of § 32 section 1, clause 1, number 7.

(4) It shall be inadmissible to use duplicates which have been provided pursuant to paragraph 3 for other purposes or to pass them on to other bodies.

(5) It shall be inadmissible to inspect unprepared records.

Section 34

Use of Records by Press, Broadcasting and Film

(1) Sections 32 and 33 shall be applicable mutatis mutandis to the use of records by the press, film, or broadcasting sectors or by their auxiliary enterprises or their journalistic-editorial personnel.

(2) If the publication of personal data by broadcasting corporations under Federal law leads to the issue of counter-statements by the data subject, such counter-statements shall be added to and preserved with the stored data. The personal data may only be republished together with the counter-statement.

PART FOUR

FEDERAL COMMISSIONER FOR THE RECORDS OF THE STATE SECURITY SERVICE

Section 35

Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic

(1) The Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic is a Federal authority in the area of the supreme Federal authority responsible for culture and media. They have a central office in Berlin, and can have branches in Berlin, Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia.

(2) On a proposal from the Federal Government, the Bundestag shall elect the Federal Commissioner for the Records of the State

Security Service of the Former German Democratic Republic. The Federal Commissioner must be at least 35 years old at the time of their election. The person elected shall use the name of the authority as their title of office. They shall be appointed by the Federal President.

(3) The Federal Commissioner takes the following oath before the Director of the supreme Federal authority responsible for culture and media:

"I swear to do everything in my power to further the well-being of the German people, to protect it from harm and to defend the Basic Law and the laws of the Federation, to perform my duties conscientiously and to exercise justice in all my dealings, so help me God."

The reference to God may be omitted from the oath.

(4) The term of office of the Federal Commissioner shall be five years. It may be renewed once.

(5) The Federal Commissioner shall, as directed by this Act, have public-law official status with respect to the Federation. They shall be independent in the performance of their duties and subject to the law only. They shall be subject to the legal supervision of the Federal Government. The supreme Federal authority responsible for culture and media directs the supervision.

Section 36

Legal Status of the Federal Commissioner

(1) The mandate of the Federal Commissioner for the Records of the State Security Service shall commence on delivery of the certificate of appointment. It shall end

1. on expiration of their term of office;
2. on their discharge.

The Federal President shall discharge the Federal Commissioner at the latter's request, or on a proposal by the Federal Government, when there are grounds which, in the case of an established judge, justify dismissal from office. In the event of termination of office, the Federal Commissioner shall receive a document signed by the Federal President. Discharge shall be effective on delivery of this document. At the request of the supreme Federal authority

responsible for culture and media, the Federal Commissioner is obligated to carry out the business up to the nomination of their successor.

(2) The Federal Commissioner shall not hold any other paid office or pursue any gainful activity or occupation in addition to their official duties and shall not belong to the management, supervisory board or board of directors of a profit-making enterprise nor to a government or legislative body of the Federation or a Land. They shall not give extrajudicial expert opinions against payment.

(3) The Federal Commissioner must notify the supreme Federal authority responsible for culture and media of gifts that they receive with reference to their office. The supreme Federal authority responsible for culture and media decides on the use of gifts.

(4) The Federal Commissioner shall be obliged, even after termination of office, to maintain secrecy concerning matters of which they have gained knowledge by reason of their duties. This shall not apply to communications made in the normal course of official business or regarding facts which are common knowledge or are not sufficiently important to warrant confidential treatment. The Federal Commissioner may, even when they are no longer in office, neither testify in court or out of court or issue statements on such matters without permission of the supreme Federal authority responsible for culture and media. This provision shall not, however, affect their duty by law to report criminal offences and to take action to uphold the free and democratic fundamental order whenever it is jeopardized.

(5) Permission to give testimony as a witness shall be refused only when such testimony would be to the detriment of the Federation or a Land or seriously jeopardize or impede the performance of public duties. Permission to deliver an opinion may be refused where it would prejudice official interest. Section 28 of the Act on the Federal Constitutional Court, as published on 12 December, 1985 (Federal Law Gazette I, p. 2229) shall remain unaffected.

(6) From the beginning of the calendar month in which they enter office until the end of the calendar month in which they leave office or, if paragraph 1, 6th sentence, applies, until the end of the month in which their activities cease, the Federal Commissioner shall receive remuneration equivalent to that of a Federal civil servant in

pay grade B 9. The Federal Act on Travel Expenses and the Federal Act on Removal Expenses shall apply *mutatis mutandis*. In other respects, sections 13 to 20 and 21a, paragraph 5 of the Federal Ministers Act shall apply, except that the term of office is five years instead of the two-year term of office provided for in section 15, paragraph 1 of the Federal Ministers Act and that the pay grade is B 9 instead of B 11 as provided for in section 21a, paragraph 5 of the Federal Ministers Act. Notwithstanding the third sentence above in conjunction with sections 15 to 17 and 21a, paragraph 5 of the Federal Ministers Act, the Federal Commissioner's pension shall be calculated counting the term in office towards the pensionable period of service, on the basis of the Civil Service Pensions Act if this is more favorable and if the Federal Commissioner, immediately before their election, has served as a civil servant or judge at least in the position which is customarily the last required before reaching pay grade B 9.

Section 37

Duties and Authority of the Federal Commissioner

(1) The Federal commissioner shall, as directed by this Act, have the following duties and authority:

1. they shall take custody of the records of the State Security Service;
2. they shall be responsible for the evaluation, organization, preparation, storage, and administration of the records according to accepted principles for maintaining archives;
3. they shall administer the records in the central archives in the principal office and in the regional archives in the branch offices. The following records shall be stored separately:
 - a) files of courts or of the public prosecutor which were submitted to the State Security Service;
 - b) duplicates pursuant to section 11, paragraph 2, sentence 2;
 - c) records regarding employees of intelligence services of the Federation, the Länder, or their allies;
 - d) records
 - regarding employees of other intelligence services;

- containing technical or other specialized instructions or descriptions regarding deployment of means and methods in the areas of intelligence, counterintelligence, or terrorism,

if the Federal Minister of the Interior declares in an individual case that knowledge of the record contents would impair public safety or would otherwise be detrimental to the Federation or a Land;

for the separate storage according to letters b to d above, the regulations regarding the handling of classified information of the classification "Confidential" or higher shall be applicable;

4. they shall disclose information and make statements regarding the records, permit inspection of the records, and provide records;
5. analysis of the activity of the State Security Service through instruction of the public on structure, methods and mode of operation of the State Security Service; § 32 section 3 applies for the publication of individual-related information; the publication can also take place through an electronic information and communication system. In doing so, appropriate technical and organizational measures should ensure that the information remains intact, complete and current and can neither be copied electronically or altered by a third party and that the publication can be attributed at any time to its origin; the electronic copying can be permitted when this is required in accordance with the purpose of the publication and no preponderant interests worthy of protection of the persons named there are compromised by this;
6. support of research and of political education in the historical and political analysis of the activity of the State Security Service by granting access to documents and the issue of duplicates of documents, as well as support of institutions and memorials on the analysis of the history of the former German Democratic Republic, or of the former Soviet occupation zone with the documentation of the activity of the State Security Service;
7. they shall inform and advise individuals, other private bodies, and public bodies. It shall also be admissible for the branch offices to give information and advice;

8. they shall establish and maintain documentation and exposition centres.

(2) The Federal Commissioner shall ensure that they will apply uniform principles in performing their duties.

(3) At the request of the Bundestag, otherwise at least every two years, and for the first time on 1 July, 1993, the Federal Commissioner shall submit an activity report. Beginning with the second regular activity report, they shall report to what extent and within which period of time they will foreseeable no longer require the records for the performance of their duties. When so requested by the Bundestag or the Federal Government, the Federal Commissioner shall draw up opinions and reports. The Federal Commissioner can consult the Bundestag at any time. In matters related to a legislative body, they shall report directly to this body.

Section 38

Land Commissioner – Relationship to the Federal Commissioner

(1) To support the Federal Commissioner in performing their duties as directed by section 37 of this Act, the office of Land Commissioner for the Records of the State Security of the Former German Democratic Republic can be established in the Länder of Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia. Particulars with respect to this office shall conform *mutatis mutandis* to the laws of the Länder.

(2) The Federal Commissioner shall give the Land Commissioner the opportunity to comment on particulars specific to the respective Land which may arise during the use of the records pursuant to section 3 of this Act.

(3) The laws of each Land can provide that the Land Commissioner shall advise individuals involved in obtaining their rights pursuant to sections 13 to 17 of this Act. This activity can also include psychosocial counselling after the completion of procedures pursuant to section 12 of this Act.

Section 39

Advisory Board

(1) An advisory board to the Federal Commissioner shall be formed. This board shall consist of

1. nine members to be named by the Länder of Berlin, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia and
2. eight members to be named by the German Bundestag.

The members of the advisory board are appointed by the supreme Federal authority responsible for culture and media for the length of five years.

(2) The Federal Commissioner shall inform the advisory board about all fundamental and otherwise important matters and shall discuss them with the committee. The advisory board shall advise the Federal Commissioner, in particular regarding the following matters:

1. taking complete custody of the records of the State Security Service and evaluating these records as directed by section 10 of this Act;
2. designating archive standards to be observed in the evaluation, organization, preparation, storage, and administration of the records;
3. establishing uniform standards for permitting inspection of records and providing records;
4. establishing evaluation criteria in cases pursuant to section 20, paragraph 1, numbers 6 and 7, and section 21, paragraph 1, numbers 6 and 7 of this Act;
5. establishing standards of priority pursuant to individual requests to inspect records and to requests from public and private bodies;
6. establishing the duties of the branch offices pursuant to their advisory functions;
7. planning programs for the reappraisal of the activities of the State Security Service and informing the public thereof;
8. supporting research and political education.

In addition, the advisory board shall advise in the preparation of the activity report required pursuant to section 37, paragraph 3, sentence 1 of this Act.

(3) The advisory board shall establish its own rules of procedure which will require the approval of the Federation.

(4) Members of the advisory board shall be obliged to maintain secrecy regarding facts which become known to them in the course of their duties, unless such facts are public knowledge. Their obligation to maintain secrecy shall continue after their term of office has ended.

(5) The advisory board can turn to the German Parliament at any time in important matters.

Section 39a

Scientific Advisory Board

(1) A scientific advisory board that consists of nine members, is formed for the consultation of the Federal Commissioner on the scientific analysis of the activity of the State Security Service as well as on the conception of its research work. The scientific advisory board accompanies the scientific research work and publication activity of the Federal Commissioner and promotes and supports the collaboration and information exchange of the Federal Commissioner with other scientific institutions.

(2) The German Parliament names nine persons who are distinguished by special knowledge in the area of research on the former German Democratic Republic, on dictatorships, on Communism, on comparative contemporary history or on structure, methods and mode of operation of secret services. The supreme Federal authority responsible for culture and media appoints the members for the length of five years. A non-recurring reappointment is admissible.

(3) Members of the scientific advisory board are sworn to secrecy at their appointment concerning the individual-related information which becomes known to them in their activity, in as far as it is not apparent. The obligation of secrecy exists even after the termination of their membership in the scientific advisory board.

Section 40

Measures to Safeguard Records

(1) The Federal Commissioner shall take the organizational and technical measures necessary for their authority to safeguard the records against unauthorized access.

(2) It shall be particularly ensured that

1. the employees of the Federal Commissioner have access only to the records and data processing systems directly related to their duties. Each case of access to the records and the reason for access shall be documented;
2. no one shall establish unauthorized systems for locating data in the archives; no one shall enter, document, modify, or erase any stored data without authorization;
3. the documents or information from the documents conveyed, the time, and to whom conveyed is documented for a minimum of ten years after conclusion of the processing. After the expiration of the retention period, the documents developed from the documentation are to be offered to the Federal Archive according to § 2 section 1 of the Federal Archive Act;
4. it shall be possible to check and establish which personal data has been entered into data processing systems by whom and at what time;
5. buildings in which the records of the State Security Service are stored shall be protected against unauthorized entry;
6. unauthorized persons shall not have access either to the records or to the data processing systems in which the records are stored;
7. unauthorized persons shall not have the possibility to read, copy, modify, or remove records;
8. records and data carriers shall be protected during transport against unauthorized reading, copying, modification, erasure, or destruction;
9. the internal organization of the authority shall be arranged in such a way that it meets the specific requirements of data protection.

Section 41

Automated Retrieval Procedures, Commissioned Data Processing

(1) The Federal Commissioner may only automate individual-related information from documents of the State Security Service in so far as this is required for the fulfilment of their duties and responsibilities. § 20 of the Federal Data Protection Act is to be applied to information that is automated.

(2) The establishment of automated retrieval procedure for the purpose of conveyance is prohibited. § 37 section 1, number 5 remains inviolate.

(3) The processing of information from the documents by proxy is only permissible when the processing by the Federal Commissioner is not possible with their own means or only possible with disproportionate expense and the contractor has been selected taking into special consideration the suitability for exposure to this information. The contractor may process the information exclusively corresponding to the instructions of the Federal Commissioner.

PART FIVE FINAL PROVISIONS

Section 42

Costs

(1) Costs (fees and expenses) shall be charged for official actions pursuant to sections 13 and 15 to 17 and vis-à-vis private bodies pursuant to sections 20, 21, 32 and 34. Costs shall also be charged in cases of retraction or revocation of an official action, denial or withdrawal of a request for official action, as well as in cases of rejection or withdrawal of a protest. No costs shall be charged to data subjects, third parties, and close relatives of missing or deceased persons for information provided or for the opportunity to examine the records.

(2) The member of the Federal Government responsible for culture and media is authorized to determine the rates and facts of the case subject to charges by statutory regulation.

Section 43

Precedence of this Act

The regulations of this law override provisions on the admissibility of the conveyance of individual-related information in other laws. The Federal Data Protection Act does not apply with the exception of the provisions on data protection control, in as far as nothing else is provided in § 6 section 9 and § 41 section 1, clause 2 of this law.

Section 44

Criminal Offences

Anyone who publicly communicates personal data regarding data subjects or third parties from the original records protected by this Act or from duplicates thereof, shall be punished by imprisonment of up to three years or by a fine. This shall not be applicable if the data subject or third party has given their consent.

Section 45

Administrative Offences

(1) An administrative offence shall be deemed to have been committed by anyone who, either intentionally or through negligence,

1. contrary to section 7, paragraph 3 of this Act does not report possession of records within the proper time;
2. contrary to section 9, paragraph 1, sentence 1 and paragraph 2 does not relinquish records or copies or other duplicates of records to the Federal Commissioner or does not relinquish them within the proper time;
3. contrary to section 9, paragraph 3 does not permit the Federal Commissioner to use records which are their personal property.

(2) The misdemeanour can be sanctioned with a fine of up to two hundred fifty thousand euros.

(3) The administrative agency in the sense of § 36 section 1, number 1 of the law on misdemeanours is the Federal Commissioner.

Section 46

Exemption from Punishment

Anyone who has gained possession of records of the State Security Service by unlawful means shall not be punished if they fulfil their obligation to report possession of records pursuant to section 7, paragraph 3 within a time period of three months after this Act comes into effect.

Section 46a

Limitation of Civil Rights

Postal and Telecommunications Secrecy (Article 10 of the Basic Law) shall be limited in accordance with this Act.

Section 47

Repeal of Provisions, Transition of Office

(1) The regulations in annex I, chapter II, subject area B, section II, number 2, letter b of the Treaty of Unification of 31 August, 1990 (Federal Law Gazette II pp. 885, 921) shall be repealed.

(2) The legal status of the holder of office who was appointed pursuant to paragraph 1 of the abovementioned regulations and who was in office at the time of the passage of this Act shall be based on this Act. The temporary provisions regarding remuneration and benefits, pursuant to the Treaty of Unification, shall apply correspondingly.

Section 48

Entry into Force

(1) This Act shall come into effect on the day after its announcement.

(2) Section 35, paragraph 2, sentence 1 shall first be applicable to the appointment of the new Federal Commissioner of this higher Federal Authority after the expiration of the term of office of the present holder of office.

**Federal Commissioner for the Records
of the State Security Service of the former
German Democratic Republic**

Karl-Liebknecht-Straße 31/33
10178 Berlin

Postal address:
10106 Berlin

Phone: +49 30 2324-50
Fax: +49 30 2324-7799
post@bstu.bund.de
www.bstu.de

Status: June 2009