SEC. 1047. EXEMPTION OF INFORMATION ON MILITARY TACTICS, TECHNIQUES, AND PROCEDURES FROM RELEASE UNDER FREEDOM OF INFORMATION ACT.

(a) EXEMPTION.—Chapter 3 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 130g. Nondisclosure of information: military tactics, techniques, and procedures

"(a) AUTHORITY FOR NONDISCLOSURE.—The Secretary of Defense may withhold from public disclosure otherwise required by law information on military tactics, techniques, and procedures in accordance with this section.

"(b) STANDARD FOR EXEMPTION FROM DISCLOSURE.—For the purposes of this section, information on a military tactic, technique, or procedure may be withheld from public disclosure only if the Secretary makes each of the following determinations with respect to the information:

"(1) That the public disclosure of the information could reasonably be expected to risk impairment of the effective operation of the armed forces.

"(2) That either of the following condition is met:

"(A) The military tactic, technique, or procedure has not been publicly disclosed.

"(B) The use of the military tactic, technique, or procedure in connection with a specific military operation, either planned or executed, or its effectiveness, has not been publicly disclosed.

"(c) CITATION TO FOIA PARAGRAPH.—This section is a statute that specifically exempts certain matters from disclosure under section 552 of title 5 within the meaning of paragraph (3) of subsection (b) of that section.".

1 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is

2 amended by adding at the end the following new item:

"130g. Nondisclosure of information: military tactics, techniques, and procedures.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would allow the Department of Defense (DoD) to withhold information on military tactics, techniques, and procedures from release to the public under section 552 of title 5, United States Code (known as the Freedom of Information Act (FOIA)), even in the case of information that is not classified. The effectiveness of any United States military operation is dependent upon the enemy not having knowledge of how U.S. military forces will be used. Commanders need to have all advantages at their disposal to be successful on the battlefield; if the enemy has knowledge of the tactics, techniques, or procedures that will be used, a crucial advantage is lost and success of the operation and the lives of U.S. military forces are seriously jeopardized.

The decision of the Supreme Court in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), significantly narrowed the long-standing administrative understanding of the scope of Exemption 2 of the Freedom of Information Act (5 U.S.C. 552(b)(2)). Before that decision, DoD was able to withhold information on military tactics, techniques, and procedures from release under FOIA pursuant to Exemption 2, even when the information was not classified. This proposal would reinstate that protection to ensure effective operation of U.S. military forces and to save lives.

Budgetary Implications: None. Review of requests will remain a cost to the various FOIA programs throughout DoD whether a release is made or not. Any potential cost avoidance is minimal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriations From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DoD FOIA Organizations	0.0	0.0	0.0	0.0	0.0	Various	Various	Various	Various
Total	0.0	0.0	0.0	0.0	0.0	--	--	--	--

Changes to Existing Law: The proposal would make the following changes to existing law:

TITLE 10, UNITED STATES CODE

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CHAPTER 3—General Power and Functions

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130. Authority to withhold from public disclosure certain technical data.
[130a. Repealed.]
130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information.
130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations.
130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel.
130e. Treatment under Freedom of Information Act of critical infrastructure security information.
130f. Congressional notification regarding sensitive military operations.
130g. Nondisclosure of information: military tactics, techniques, and procedures.

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§ 130g. Nondisclosure of information: military tactics, techniques, and procedures

(a) AUTHORITY FOR NONDISCLOSURE.—The Secretary of Defense may withhold from public disclosure otherwise required by law information on military tactics, techniques, and procedures in accordance with this section.

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(A) The military tactic, technique, or procedure has not been publicly disclosed.

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(c) CITATION TO FOIA PARAGRAPH.—This section is a statute that specifically exempts certain matters from disclosure under section 552 of title 5 within the meaning of paragraph (3) of subsection (b) of that section.

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