

110TH CONGRESS
2D SESSION

H. R. 6193

To require the Secretary of Homeland Security to develop and administer policies, procedures, and programs to promote the implementation of the Controlled Unclassified Information Framework applicable to unclassified information that is homeland security information, terrorism information, weapons of mass destruction information and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2008

Ms. HARMAN (for herself, Mr. REICHERT, Mr. THOMPSON of Mississippi, Mr. LANGEVIN, Ms. NORTON, Mr. CARNEY, Mr. DICKS, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To require the Secretary of Homeland Security to develop and administer policies, procedures, and programs to promote the implementation of the Controlled Unclassified Information Framework applicable to unclassified information that is homeland security information, terrorism information, weapons of mass destruction information and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Public Ac-
5 cess to Documents Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The proliferation and widespread use of
9 “sensitive but unclassified” (SBU) control markings
10 by the Federal government interferes with accurate,
11 actionable and timely homeland security information
12 sharing, increases the cost of information security,
13 and needlessly limits public access to information.

14 (2) The control markings problem, which has
15 worsened since the 9/11 attacks, causes considerable
16 confusion about what information can be shared
17 with whom both internally at the Department of
18 Homeland Security and with its external partners.
19 This problem negatively impacts the dissemination
20 of homeland security information to the Depart-
21 ment’s State, local, and tribal homeland security,
22 law enforcement, and private sector customers, and
23 the public.

24 (3) Overuse of “sensitive but unclassified”
25 markings stands in the way of a safer and more se-

1 cure homeland. This trend is antithetical to the cre-
2 ation and operation of the information sharing envi-
3 ronment established under section 1016 of the Intel-
4 ligence Reform and Terrorism Prevention Act of
5 2004 (6 U.S.C. 485), and must be halted and re-
6 versed.

7 (4) To do so, the Department should start with
8 the presumption that all homeland security informa-
9 tion that is not properly classified, or marked as
10 controlled unclassified information and otherwise ex-
11 empt from disclosure, should be shared with the
12 public pursuant to section 552 of title 5, United
13 States Code (commonly referred to as the “Freedom
14 of Information Act”).

15 (5) The Department should also develop and
16 administer policies, procedures, and programs that
17 promote compliance with applicable laws, executive
18 orders, and other authorities pertaining to the prop-
19 er use of controlled unclassified information mark-
20 ings and the United States National Archives and
21 Records Administration policies implementing them.

1 **SEC. 3. CONTROLLED UNCLASSIFIED INFORMATION**
2 **FRAMEWORK IMPLEMENTATION WITHIN THE**
3 **DEPARTMENT OF HOMELAND SECURITY.**

4 Subtitle A of title II of the Homeland Security Act
5 of 2002 (6 U.S.C. 121 et seq.) is amended by adding at
6 the end the following new section:

7 **“SEC. 210F. CONTROLLED UNCLASSIFIED INFORMATION**
8 **FRAMEWORK IMPLEMENTATION PROGRAM.**

9 “(a) IN GENERAL.—The Secretary shall develop and
10 administer policies, procedures, and programs within the
11 Department to implement the controlled unclassified infor-
12 mation framework in order to maximize the disclosure to
13 the public of, and to standardize the use of controlled un-
14 classified information control markings on, homeland se-
15 curity information, terrorism information, weapons of
16 mass destruction information, and other information with-
17 in the scope of the information sharing environment estab-
18 lished under section 1016 of the Intelligence Reform and
19 Terrorism Prevention Act of 2004 (6 U.S.C. 485) that
20 must be disseminated to prevent and to collectively re-
21 spond to acts of terrorism. The Secretary shall coordinate
22 with the National Archives and Records Administration
23 and consult with representatives of State, local, and tribal
24 government; organizations with expertise in civil rights,
25 civil liberties, and government oversight; and the private

1 sector, as appropriate, to develop such policies, proce-
2 dures, and programs.

3 “(b) REQUIREMENTS.—Within 180 days of the en-
4 actment of this Act, the Secretary, in administering the
5 policies, procedures, and programs required under sub-
6 section (a), shall—

7 “(1) create a standard format for unclassified
8 finished intelligence products created by the Depart-
9 ment that have been designated as controlled unclas-
10 sified information, consistent with any government-
11 wide standards, practices or procedures for similar
12 products;

13 “(2) require that all unclassified finished intel-
14 ligence products created by the Department that
15 have been designated as controlled unclassified infor-
16 mation be prepared in the standard format, when-
17 ever possible;

18 “(3) ensure that such polices, procedures, and
19 programs protect the information privacy rights and
20 legal rights of United States persons pursuant to all
21 applicable law and policy, including the privacy
22 guidelines for the information sharing environment
23 established pursuant to section 1016 of the Intel-
24 ligence Reform and Terrorism Prevention Act of
25 2004 (6 U.S.C. 485), as appropriate;

1 “(4) establish an ongoing auditing mechanism
2 administered by the Inspector General of the De-
3 partment or other appropriate senior Department of-
4 ficial that randomly selects, on a periodic basis, con-
5 trolled unclassified information from each compo-
6 nent of the Department that generates unclassified
7 finished intelligence products to—

8 “(A) assess, on an individualized basis,
9 whether applicable controlled unclassified infor-
10 mation policies, procedures, rules, and regula-
11 tions have been followed;

12 “(B) describe any problems with the ad-
13 ministration of the applicable controlled unclas-
14 sified information policies, procedures, rules
15 and regulations, including specific non-compli-
16 ance issues with individuals engaged in this
17 work;

18 “(C) recommend improvements in aware-
19 ness and training to address them;

20 “(D) report at least annually to the Com-
21 mittee on Homeland Security of the House of
22 Representatives and the Homeland Security
23 and Government Affairs Committee of the Sen-
24 ate, and the public on the findings of the In-
25 spector General’s audits under this section;

1 “(5) establish a process whereby employees may
2 challenge the use of controlled unclassified informa-
3 tion markings and be rewarded with specific incen-
4 tives for successful challenges resulting in the re-
5 moval of controlled unclassified information mark-
6 ings;

7 “(6) institute a series of penalties, up to and
8 including termination, for employees and contractors
9 who fail to comply with the policies, procedures, and
10 programs established under this section; and

11 “(7) maintain a publicly available list of docu-
12 ments designated and marked, in whole or in part,
13 as controlled unclassified information, indicating
14 which have been withheld in response to a request
15 made pursuant to section 552 of title 5, United
16 States Code (commonly referred to as the ‘Freedom
17 of Information Act’), and create a process through
18 which the public may seek the removal of such a
19 designation and marking.

20 “(c) IMPLEMENTATION.—In furtherance of the re-
21 quirements in paragraphs (a) and (b), the Secretary shall
22 ensure that:

23 “(1) information shall be designated as con-
24 trolled unclassified information and include an au-

1 thorized controlled unclassified information marking
2 only if:

3 “(A) a statute requires or authorizes such
4 a designation and marking; or

5 “(B) the Secretary, through regulations,
6 directives or other specific guidance to the
7 agency that have been submitted to and ap-
8 proved by the Archivist of the United States,
9 determines that the information is controlled
10 unclassified information based on mission re-
11 quirements, business prudence, legal privilege,
12 the protection of personal or commercial rights,
13 safety, or security;

14 “(2) notwithstanding the provisions contained
15 in paragraph (c)(1), information shall not be des-
16 ignated as controlled unclassified information—

17 “(A) to conceal violations of law, ineffi-
18 ciency, or administrative error;

19 “(B) to prevent embarrassment to the
20 Federal Government or any Federal official,
21 any organization, or agency;

22 “(C) to improperly or unlawfully interfere
23 with competition in the private sector;

24 “(D) to prevent or delay the release of in-
25 formation that does not require such protection;

1 “(E) if it is required to be made available
2 to the public; or

3 “(F) if it has already been released to the
4 public under proper authority; and

5 “(3) the controlled unclassified information
6 framework is administered in a manner that ensures
7 that—

8 “(A) controlled unclassified information
9 can be shared within the Department and with
10 State, local, and tribal governments, the private
11 sector, and the public, as appropriate;

12 “(B) all policies and standards for the des-
13 ignation, marking, safeguarding, and dissemina-
14 tion of controlled unclassified information are
15 consistent with the controlled unclassified infor-
16 mation framework and any other policies,
17 guidelines, procedures, instructions, or stand-
18 ards established by the President;

19 “(C) the number of Department employees
20 and contractors with original and derivative
21 controlled unclassified information designation
22 authority is limited appropriately as determined
23 through consultation with the parties identified
24 in paragraph (a);

1 “(D) controlled unclassified information
2 markings are not a determinant of public dis-
3 closure pursuant to section 552 of title 5,
4 United States Code (commonly referred to as
5 the ‘Freedom of Information Act’);

6 “(E) controlled unclassified information
7 markings are placed on archived or legacy ma-
8 terial whenever circulated, consistent with the
9 controlled unclassified information framework
10 and any other policies, guidelines, procedures,
11 instructions, or standards established by the
12 President;

13 “(F) all controlled unclassified information
14 portions of classified documents are marked as
15 controlled unclassified information; and

16 “(G) it supersedes any pre-existing policies
17 and procedures relating to the creation, control,
18 and sharing of sensitive but unclassified infor-
19 mation generated by the Department, except
20 where otherwise provided by law.

21 “(d) PUBLIC ACCESS TO UNCLASSIFIED INFORMA-
22 TION.—The Secretary shall make available to the public,
23 pursuant to an appropriate request under section 552 of
24 title 5, United States Code (commonly referred to as the
25 ‘Freedom of Information Act’), all controlled unclassified

1 information and other unclassified information in its pos-
2 session.”.

3 **SEC. 4. ENFORCEMENT OF CONTROLLED UNCLASSIFIED IN-**
4 **FORMATION FRAMEWORK IMPLEMENTATION**
5 **WITHIN THE DEPARTMENT OF HOMELAND**
6 **SECURITY.**

7 Subtitle A of title II of the Homeland Security Act
8 of 2002 (6 U.S.C. 121 et seq.) is amended by adding at
9 the end the following new section:

10 **“SEC. 210G. ENFORCEMENT OF CONTROLLED UNCLASSI-**
11 **FIED INFORMATION FRAMEWORK IMPL-**
12 **EMENTATION PROGRAMS.**

13 “(a) **PERSONAL IDENTIFIERS.**—The Secretary
14 shall—

15 “(1) assess the technologies available or in use
16 at the Department by which an electronic personal
17 identification number or other electronic identifying
18 marker can be assigned to each Department em-
19 ployee or contractor with controlled unclassified in-
20 formation designation authority in order to—

21 “(A) track which documents have been
22 designated as controlled unclassified informa-
23 tion by a particular employee;

24 “(B) determine the circumstances when
25 such documents have been shared;

1 “(C) identify and address misuse of con-
2 trolled unclassified information markings, in-
3 cluding the misapplication of controlled unclas-
4 sified information markings to documents that
5 do not merit such markings; and

6 “(D) assess the information sharing im-
7 pact of any such problems or misuse;

8 “(2) develop an implementation plan for a De-
9 partment standard for such technology with appro-
10 prium benchmarks, a timetable for its completion,
11 and cost estimate for the creation and implementa-
12 tion of a system of electronic personal identification
13 numbers or other electronic identifying markers for
14 all relevant Department employees and contractors;
15 and

16 “(3) upon completion of the implementation
17 plan described in paragraph (2), or within 180 days
18 of the enactment of this legislation, whichever is
19 sooner, the Secretary shall provide a copy of the
20 plan to the Committee on Homeland Security of the
21 House of Representatives and the Homeland Secu-
22 rity and Government Affairs Committee of the Sen-
23 ate.

24 “(b) TRAINING.—The Secretary, in coordination with
25 the Archivist of the United States, shall—

1 “(1) require annual training for each Depart-
2 ment employee or contractor with controlled unclas-
3 sified information designation authority and who are
4 responsible for analysis, dissemination, preparation,
5 production, receiving, publishing, or otherwise com-
6 municating written controlled unclassified informa-
7 tion. Such training shall:

8 “(A) educate each employee and contractor
9 about—

10 “(i) the Department’s requirement
11 that all unclassified finished intelligence
12 products that they create that have been
13 designated as controlled unclassified infor-
14 mation be prepared in a standard format
15 prescribed by the Department;

16 “(ii) the proper use of controlled un-
17 classified information markings, including
18 portion markings; and

19 “(iii) the consequences of improperly
20 using controlled unclassified information
21 markings, including the misapplication of
22 controlled unclassified information mark-
23 ings to documents that do not merit such
24 markings, and of failing to comply with the
25 Department’s policies and procedures es-

1 tablished under or pursuant to this section,
2 including the negative consequences for the
3 individual’s personnel evaluation, homeland
4 security, information sharing, and the
5 overall success of the Department’s mis-
6 sions;

7 “(B) serve as a prerequisite, once com-
8 pleted successfully, as evidenced by an appro-
9 priate certificate, for:

10 “(i) obtaining controlled unclassified
11 information designation authority; and

12 “(ii) renewing such authority annu-
13 ally; and

14 “(C) count as a positive factor, once com-
15 pleted successfully, in the Department’s employ-
16 ment, evaluation, and promotion decisions; and

17 “(2) ensure that such program is conducted ef-
18 ficiently, in conjunction with any other security, in-
19 telligence, or other training programs required by
20 the Department to reduce the costs and administra-
21 tive burdens associated with the additional training
22 required by this section.

23 “(c) DETAILEE PROGRAM.—The Secretary shall—

24 “(1) implement a Departmental Detailee pro-
25 gram to detail Departmental personnel to the United

1 States National Archives and Records Administra-
2 tion for one year, for the purpose of—

3 “(A) training and educational benefit for
4 the Department personnel assigned so that they
5 may better understand the policies, procedures
6 and laws governing the controlled unclassified
7 information framework;

8 “(B) bolstering the ability of the National
9 Archives and Records Administration to con-
10 duct its oversight authorities over the Depart-
11 ment and other Departments and agencies; and

12 “(C) ensuring that the policies and proce-
13 dures established by the Secretary remain con-
14 sistent with those established by the Archivist
15 of the United States;

16 “(2) ensure that the program established under
17 paragraph (1) includes at least one individual for
18 each Department office with delegated controlled un-
19 classified information designation authority; and

20 “(3) in coordination with the Archivist of the
21 United States, report to Congress no later than 90
22 days after the conclusion of the first year of the pro-
23 gram established under paragraph (1), on the advis-
24 ability of expanding the program on a government-
25 wide basis, whereby other departments and agencies

1 would send detailees to the United States National
2 Archives and Records Administration. Such report
3 shall also include the administrative and monetary
4 costs of full compliance with this section.

5 “(d) IN GENERAL.—Except as otherwise provided by
6 law, subsection (c) shall cease to have effect on December
7 31, 2012.”.

8 **SEC. 5. DEFINITIONS.**

9 Subtitle A of title II of the Homeland Security Act
10 of 2002 (6 U.S.C. 121 et seq.) is further amended by add-
11 ing at the end the following new section:

12 **“SEC. 210H. DEFINITIONS.**

13 “In this Act:

14 “(1) CONTROLLED UNCLASSIFIED INFORMA-
15 TION.—The term ‘controlled unclassified informa-
16 tion’ means a categorical designation that refers to
17 unclassified homeland security information; law en-
18 forcement information relating to terrorism; and in-
19 formation, as defined in the Implementing Rec-
20 ommendations of the 9/11 Commission Act of 2007,
21 Public Law 110–53, section 504; that does not meet
22 the standards of National Security Classification
23 under Executive Order 12958, as amended, but is (i)
24 pertinent to the national interests of the United
25 States or to the important interests of entities out-

1 side the Federal Government, and (ii) under law or
2 United States Archives and Records Administration
3 policy requires safeguarding from unauthorized dis-
4 closure, special handling safeguards, or prescribed
5 limits on exchanges or dissemination.

6 “(2) CONTROLLED UNCLASSIFIED INFORMA-
7 TION FRAMEWORK.—The term ‘controlled unclassi-
8 fied information framework’ means the single set of
9 policies and procedures governing the designation,
10 marking, safeguarding, and dissemination of ter-
11 rorism-related controlled unclassified information
12 that originates in departments and agencies, regard-
13 less of the medium used for the display, storage, or
14 transmittal of such information, as set forth in the
15 President’s May 7, 2008 Memorandum for the
16 Heads of Executive Departments Regarding Des-
17 ignation and Sharing of controlled unclassified infor-
18 mation (CUI).

19 “(3) FINISHED INTELLIGENCE PRODUCT.—The
20 term ‘finished intelligence product’ means a docu-
21 ment in which an intelligence analyst has evaluated,
22 interpreted, integrated, or placed into context raw
23 intelligence.”.

1 **SEC. 6. TECHNICAL AMENDMENT.**

2 The table of contents in section 1(b) of the Homeland
3 Security Act of 2002 (6 U.S.C. 101(b)) is amended by
4 adding after the item relating to section 210E the fol-
5 lowing new items:

“210F. Controlled unclassified information framework implementation program.

“210G. Enforcement of over-classification prevention and controlled unclassified
information framework implementation programs.

“210H. Definitions.”.

○