

110TH CONGRESS
2D SESSION

H. R. 6193

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

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, tribal, and territorial homeland
22 security and law enforcement partners, private sec-
23 tor customers, and 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 understanding that all departmental information
9 that is not properly classified, or marked as con-
10 trolled unclassified information and otherwise ex-
11 empt from disclosure, should be made available to
12 members of the public pursuant to section 552 of
13 title 5, United States Code (commonly referred to as
14 the “Freedom 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 National Archives and Records Admin-
21 istration 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 to standardize the use of controlled un-
13 classified markings on, and to maximize the disclosure to
14 the public of, homeland security information, terrorism in-
15 formation, weapons of mass destruction information, and
16 other information within the scope of the information
17 sharing environment established under section 1016 of the
18 Intelligence Reform and Terrorism Prevention Act of
19 2004 (6 U.S.C. 485) that must be disseminated to prevent
20 and to collectively respond to acts of terrorism. The Sec-
21 retary shall coordinate with the Archivist of the United
22 States and consult with representatives of State, local,
23 tribal, and territorial government and law enforcement, or-
24 ganizations with expertise in civil rights, civil liberties, and
25 government oversight, and the private sector, as appro-
26 priate, to develop such policies, procedures, and programs.

1 “(b) REQUIREMENTS.—Not later than one year after
2 the date of the enactment of the Improving Public Access
3 to Documents Act of 2008, the Secretary, in administering
4 the policies, procedures, and programs required under sub-
5 section (a), shall—

6 “(1) create, in consultation with the Archivist
7 of the United States, a standard format for unclassi-
8 fied finished intelligence products created by the De-
9 partment that have been designated as controlled
10 unclassified information, consistent with any govern-
11 ment-wide standards, practices or procedures for
12 similar 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;

17 “(3) ensure that such policies, procedures, and
18 programs protect the national security as well as the
19 information privacy rights and legal rights of United
20 States persons pursuant to all applicable law and
21 policy, including the privacy guidelines for the infor-
22 mation sharing environment established pursuant to
23 section 1016 of the Intelligence Reform and Ter-
24 rorism Prevention Act of 2004 (6 U.S.C. 485), as
25 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, including all Department
7 components that generate unclassified finished intel-
8 ligence products, to—

9 “(A) assess whether applicable controlled
10 unclassified information policies, procedures,
11 rules, and regulations 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;

17 “(C) recommend improvements in aware-
18 ness and training to address any problems iden-
19 tified in subparagraph (B); and

20 “(D) report at least annually to the Com-
21 mittee on Homeland Security of the House of
22 Representatives and the Committee on Home-
23 land Security and Governmental Affairs of the
24 Senate, and the public on the findings of the
25 Inspector 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 by Department employees or contrac-
4 tors and be rewarded with specific incentives for suc-
5 cessful challenges resulting in—

6 “(A) the removal of controlled unclassified
7 information markings; or

8 “(B) the correct application of appropriate
9 controlled unclassified information markings;

10 “(6) inform employees and contractors that fail-
11 ure to comply with the policies, procedures, and pro-
12 grams established under this section could subject
13 them to a series of penalties;

14 “(7) institute a series of penalties for employees
15 and contractors who repeatedly fail to comply with
16 the policies, procedures, and programs established
17 under this section after having received both notice
18 of their noncompliance and appropriate training or
19 re-training to address such noncompliance;

20 “(8) maintain a publicly available list of all doc-
21 uments designated, in whole or in part, as controlled
22 unclassified information by Department employees
23 or contractors that—

24 “(A) have been withheld in response to a
25 request made pursuant to section 552 of title 5,

1 United States Code (commonly referred to as
2 the ‘Freedom of Information Act’); and

3 “(B) includes for each such withheld docu-
4 ment a summary of the request and a state-
5 ment that identifies the exemption under sec-
6 tion 552(b) of title 5, United States Code (com-
7 monly referred to as the ‘Freedom of Informa-
8 tion Act’) that justified the withholding; and

9 “(9) create a process through which the public
10 can notify the Inspector General of the Department
11 of any concerns regarding the implementation of the
12 controlled unclassified information framework, in-
13 cluding the withholding of controlled unclassified in-
14 formation pursuant to section 552(b) of title 5,
15 United States Code (commonly referred to as the
16 ‘Freedom of Information Act’), which shall be con-
17 sidered as part of the audit described in paragraph
18 (4).

19 “(c) IMPLEMENTATION.—In carrying out subsections
20 (a) and (b), the Secretary shall ensure that—

21 “(1) information is designated as controlled un-
22 classified information and includes an authorized
23 controlled unclassified information marking only if—

1 “(A) a statute or executive order requires
2 or authorizes such a designation and marking;
3 or

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

13 “(2) notwithstanding paragraph (1), informa-
14 tion is not to be designated as controlled unclassified
15 information—

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

18 “(B) to prevent embarrassment to Federal,
19 State, local, tribal, or territorial governments or
20 any official, agency, or organization thereof;
21 any agency; or any organization;

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) information can be shared within the
9 Department and with State, local, tribal, and
10 territorial governments, the private sector, and
11 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, including in
19 any relevant future executive memoranda or ex-
20 ecutive orders;

21 “(C) the number of Department employees
22 and contractors with controlled unclassified in-
23 formation designation authority is limited ap-
24 propriately as determined in consultation with
25 the parties referred to in subsection (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, including in any relevant future exec-
13 utive memoranda or executive orders;

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

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

22 “(d) PUBLIC ACCESS TO UNCLASSIFIED INFORMA-
23 TION.—The Secretary shall make available to members of
24 the public all controlled unclassified information and other
25 unclassified information in its possession that is releasable

1 pursuant to an appropriate request under section 552 of
2 title 5, United States Code (commonly referred to as the
3 ‘Freedom of Information Act’).

4 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
5 tion shall be construed to prevent or discourage the De-
6 partment from voluntarily releasing to the public any un-
7 classified information that is not exempt from disclosure
8 under section 552 of title 5, United States Code (com-
9 monly referred to as the ‘Freedom of Information Act’).”.

10 **SEC. 4. ENFORCEMENT OF CONTROLLED UNCLASSIFIED IN-**
11 **FORMATION FRAMEWORK IMPLEMENTATION**
12 **WITHIN THE DEPARTMENT OF HOMELAND**
13 **SECURITY.**

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

17 **“SEC. 210G. ENFORCEMENT OF CONTROLLED UNCLASSI-**
18 **FIED INFORMATION FRAMEWORK IMPLE-**
19 **MENTATION PROGRAMS.**

20 “(a) PERSONAL IDENTIFIERS.—The Secretary
21 shall—

22 “(1) assess the technologies available or in use
23 at the Department by which an electronic personal
24 identification number or other electronic identifying
25 marker can be assigned to each Department em-

1 employee and contractor with controlled unclassified in-
2 formation designation authority in order to—

3 “(A) track which documents have been
4 designated as controlled unclassified informa-
5 tion by a particular employee or contractor;

6 “(B) determine the circumstances when
7 such documents have been shared;

8 “(C) identify and address misuse of con-
9 trolled unclassified information markings, in-
10 cluding the misapplication of controlled unclas-
11 sified information markings to documents that
12 do not merit such markings; and

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

15 “(2) develop an implementation plan for a De-
16 partment standard for such technology with appro-
17 priate benchmarks, a timetable for its completion,
18 and cost estimate for the creation and implementa-
19 tion of a system of electronic personal identification
20 numbers or other electronic identifying markers for
21 all relevant Department employees and contractors;
22 and

23 “(3) upon completion of the implementation
24 plan described in paragraph (2), or not later than
25 180 days after the date of the enactment of the Im-

1 proving Public Access to Documents Act of 2008,
2 whichever is earlier, the Secretary shall provide a
3 copy of the plan to the Committee on Homeland Se-
4 curity of the House of Representatives and the Com-
5 mittee on Homeland Security and Governmental Af-
6 fairs of the Senate.

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

9 “(1) require annual training for each Depart-
10 ment employee and contractor with controlled un-
11 classified information designation authority or those
12 responsible for analysis, dissemination, preparation,
13 production, receiving, publishing, or otherwise com-
14 municating written controlled unclassified informa-
15 tion. Such training shall—

16 “(A) educate each employee and contractor
17 about—

18 “(i) the Department’s requirement
19 that all unclassified finished intelligence
20 products that they create that have been
21 designated as controlled unclassified infor-
22 mation be prepared in a standard format
23 prescribed by the Department;

1 “(ii) the proper use of controlled un-
2 classified information markings, including
3 portion markings; and

4 “(iii) the consequences of improperly
5 using controlled unclassified information
6 markings, including the misapplication of
7 controlled unclassified information mark-
8 ings to documents that do not merit such
9 markings, and of failing to comply with the
10 Department’s policies and procedures es-
11 tablished under or pursuant to this section,
12 including the negative consequences for the
13 individual’s personnel evaluation, homeland
14 security, information sharing, and the
15 overall success of the Department’s mis-
16 sions;

17 “(B) serve as a prerequisite, once com-
18 pleted successfully, as evidenced by an appro-
19 priate certificate, for—

20 “(i) obtaining controlled unclassified
21 information designation authority; and

22 “(ii) renewing such authority annu-
23 ally; and

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

4 “(2) ensure that such program is conducted ef-
5 ficiently, in conjunction with any other security, in-
6 telligence, or other training programs required by
7 the Department to reduce the costs and administra-
8 tive burdens associated with the additional training
9 required by this section.

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

11 “(1) implement a Departmental detailee pro-
12 gram to detail Departmental personnel to the Na-
13 tional Archives and Records Administration for one
14 year, for the purpose of—

15 “(A) training and educational benefit for
16 the Department personnel assigned so that they
17 may better understand the policies, procedures,
18 and laws governing the controlled unclassified
19 information framework;

20 “(B) bolstering the ability of the National
21 Archives and Records Administration to con-
22 duct its oversight authorities over the Depart-
23 ment and other Departments and agencies; and

24 “(C) ensuring that the policies and proce-
25 dures established by the Secretary remain con-

1 sistent with those established by the Archivist
2 of the United States; and

3 “(2) in coordination with the Archivist of the
4 United States, report to Congress not later than 90
5 days after the conclusion of the first year of the pro-
6 gram established under paragraph (1), on—

7 “(A) the advisability of expanding the pro-
8 gram on a government-wide basis, whereby
9 other departments and agencies would send
10 detailees to the National Archives and Records
11 Administration; and

12 “(B) the administrative and monetary
13 costs of full compliance with this section.

14 “(d) TERMINATION OF DETAILEE PROGRAM.—Ex-
15 cept as otherwise provided by law, subsection (c) shall
16 cease to have effect on December 31, 2012.”.

17 **SEC. 5. DEFINITIONS.**

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

21 **“SEC. 210H. DEFINITIONS.**

22 “‘In this Act:

23 “(1) CONTROLLED UNCLASSIFIED INFORMA-
24 TION.—The term ‘controlled unclassified informa-
25 tion’ means a categorical designation that refers to

1 unclassified information, including unclassified infor-
2 mation within the scope of the information sharing
3 environment established under section 1016 of the
4 Intelligence Reform and Terrorism Prevention Act
5 of 2004 (6 U.S.C. 485), including unclassified home-
6 land security information, terrorism information,
7 and weapons of mass destruction information (as de-
8 fined in such section) and unclassified national intel-
9 ligence (as defined in section 3(5) of the National
10 Security Act of 1947 (50 U.S.C. 401a(5))), that
11 does not meet the standards of National Security
12 Classification under Executive Order 12958, as
13 amended, but is (i) pertinent to the national inter-
14 ests of the United States or to the important inter-
15 ests of entities outside the Federal Government, and
16 (ii) under law or National Archives and Records Ad-
17 ministration policy requires safeguarding from unau-
18 thorized disclosure, special handling safeguards, or
19 prescribed limits on exchanges or dissemination.

20 “(2) CONTROLLED UNCLASSIFIED INFORMA-
21 TION FRAMEWORK.—The term ‘controlled unclassi-
22 fied information framework’ means the single set of
23 policies and procedures governing the designation,
24 marking, safeguarding, and dissemination of ter-
25 rorism-related controlled unclassified information

1 that originates in departments and agencies, regard-
 2 less of the medium used for the display, storage, or
 3 transmittal of such information, as set forth in the
 4 President’s May 7, 2008 Memorandum for the
 5 Heads of Executive Departments Regarding Des-
 6 ignation and Sharing of controlled unclassified infor-
 7 mation (CUI), and in any relevant future executive
 8 memoranda, executive orders, or legislation.

9 “(3) FINISHED INTELLIGENCE PRODUCT.—The
 10 term ‘finished intelligence product’ means a docu-
 11 ment in which an intelligence analyst has evaluated,
 12 interpreted, integrated, or placed into context raw
 13 intelligence or information.”.

14 **SEC. 6. TECHNICAL AMENDMENT.**

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

“Sec. 210F. Controlled unclassified information framework implementa-
 tion program.

“Sec. 210G. Enforcement of controlled unclassified information framework im-
 plementation programs.

“Sec. 210H. Definitions.”.

Passed the House of Representatives July 30, 2008.

Attest: LORRAINE C. MILLER,
Clerk.