

Union Calendar No. 498

110TH CONGRESS
2D SESSION

H. R. 6193

[Report No. 110-779]

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

JULY 28, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on June 5, 2008]

A BILL

To require the Secretary of Homeland Security to develop and administer policies, procedures, and programs to promote the implementation of the Controlled Unclassi-

fied 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 Access*
5 *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 with*
17 *whom both internally at the Department of Homeland*
18 *Security and with its external partners. This problem*
19 *negatively impacts the dissemination of homeland se-*

1 *curity information to the Department’s State, local,*
2 *tribal, and territorial homeland security and law en-*
3 *forcement partners, private sector customers, and the*
4 *public.*

5 *(3) Overuse of “sensitive but unclassified” mark-*
6 *ings stands in the way of a safer and more secure*
7 *homeland. This trend is antithetical to the creation*
8 *and operation of the information sharing environ-*
9 *ment established under section 1016 of the Intelligence*
10 *Reform and Terrorism Prevention Act of 2004 (6*
11 *U.S.C. 485), and must be halted and reversed.*

12 *(4) To do so, the Department should start with*
13 *the understanding that all departmental information*
14 *that is not properly classified, or marked as con-*
15 *trolled unclassified information and otherwise exempt*
16 *from disclosure, should be made available to members*
17 *of the public pursuant to section 552 of title 5, United*
18 *States Code (commonly referred to as the “Freedom of*
19 *Information Act”).*

20 *(5) The Department should also develop and ad-*
21 *minister policies, procedures, and programs that pro-*
22 *mote compliance with applicable laws, executive or-*
23 *ders, and other authorities pertaining to the proper*
24 *use of controlled unclassified information markings*

1 *and the National Archives and Records Administra-*
2 *tion policies implementing them.*

3 **SEC. 3. CONTROLLED UNCLASSIFIED INFORMATION**
4 **FRAMEWORK IMPLEMENTATION WITHIN THE**
5 **DEPARTMENT OF HOMELAND SECURITY.**

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

9 **“SEC. 210F. CONTROLLED UNCLASSIFIED INFORMATION**
10 **FRAMEWORK IMPLEMENTATION PROGRAM.**

11 *“(a) IN GENERAL.—The Secretary shall develop and*
12 *administer policies, procedures, and programs within the*
13 *Department to implement the controlled unclassified infor-*
14 *mation framework to standardize the use of controlled un-*
15 *classified markings on, and to maximize the disclosure to*
16 *the public of, homeland security information, terrorism in-*
17 *formation, weapons of mass destruction information, and*
18 *other information within the scope of the information shar-*
19 *ing environment established under section 1016 of the Intel-*
20 *ligence Reform and Terrorism Prevention Act of 2004 (6*
21 *U.S.C. 485) that must be disseminated to prevent and to*
22 *collectively respond to acts of terrorism. The Secretary shall*
23 *coordinate with the Archivist of the United States and con-*
24 *sult with representatives of State, local, tribal, and terri-*
25 *torial government and law enforcement, organizations with*

1 *expertise in civil rights, civil liberties, and government*
2 *oversight, and the private sector, as appropriate, to develop*
3 *such policies, procedures, and programs.*

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

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

16 “(2) *require that all unclassified finished intel-*
17 *ligence products created by the Department that have*
18 *been designated as controlled unclassified information*
19 *be prepared in the standard format;*

20 “(3) *ensure that such policies, procedures, and*
21 *programs protect the national security as well as the*
22 *information privacy rights and legal rights of United*
23 *States persons pursuant to all applicable law and*
24 *policy, including the privacy guidelines for the infor-*
25 *mation sharing environment established pursuant to*

1 *section 1016 of the Intelligence Reform and Terrorism*
2 *Prevention Act of 2004 (6 U.S.C. 485), as appro-*
3 *priate;*

4 *“(4) establish an ongoing auditing mechanism*
5 *administered by the Inspector General of the Depart-*
6 *ment or other appropriate senior Department official*
7 *that randomly selects, on a periodic basis, controlled*
8 *unclassified information from each component of the*
9 *Department, including all Department components*
10 *that generate unclassified finished intelligence prod-*
11 *ucts, to—*

12 *“(A) assess, on an individualized basis,*
13 *whether applicable controlled unclassified infor-*
14 *mation policies, procedures, rules, and regula-*
15 *tions have been followed;*

16 *“(B) describe any problems with the admin-*
17 *istration of the applicable controlled unclassified*
18 *information policies, procedures, rules and regu-*
19 *lations, including specific non-compliance issues;*

20 *“(C) recommend improvements in aware-*
21 *ness and training to address them; and*

22 *“(D) report at least annually to the Com-*
23 *mittee on Homeland Security of the House of*
24 *Representatives and the Committee on Homeland*
25 *Security and Governmental Affairs of the Sen-*

1 *ate, and the public on the findings of the Inspec-*
2 *tor General’s audits under this section;*

3 *“(5) establish a process whereby employees may*
4 *challenge the use of controlled unclassified informa-*
5 *tion markings by Department employees or contrac-*
6 *tors and be rewarded with specific incentives for suc-*
7 *cessful challenges resulting in—*

8 *“(A) the removal of controlled unclassified*
9 *information markings; or*

10 *“(B) the correct application of appropriate*
11 *controlled unclassified information markings;*

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

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

22 *“(8) maintain a publicly available list of all*
23 *documents designated, in whole or in part, as con-*
24 *trolled unclassified information by Department em-*
25 *ployees or contractors that—*

1 “(A) have been withheld in response to a re-
2 quest made pursuant to section 552 of title 5,
3 United States Code (commonly referred to as the
4 ‘Freedom of Information Act’); and

5 “(B) includes for each such withheld docu-
6 ment a summary of the request and a statement
7 that identifies the exemption under section
8 552(b) of title 5, United States Code (commonly
9 referred to as the ‘Freedom of Information Act’)
10 that justified the withholding; and

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

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

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

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

3 “(B) the Secretary, through regulations, di-
4 rectives, or other specific guidance to the agency
5 that have been submitted to and approved by the
6 Archivist of the United States, determines that
7 the information is controlled unclassified infor-
8 mation based on mission requirements, business
9 prudence, legal privilege, the protection of per-
10 sonal or commercial rights, safety, or security;

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

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

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

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

22 “(D) to prevent or delay the release of infor-
23 mation that does not require such protection;

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

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

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

6 “(A) information can be shared within the
7 Department and with State, local, tribal, and
8 territorial governments, the private sector, and
9 the public, as appropriate;

10 “(B) all policies and standards for the des-
11 ignation, marking, safeguarding, and dissemina-
12 tion of controlled unclassified information are
13 consistent with the controlled unclassified infor-
14 mation framework and any other policies, guide-
15 lines, procedures, instructions, or standards es-
16 tablished by the President, including in any rel-
17 evant future executive memoranda or executive
18 orders;

19 “(C) the number of Department employees
20 and contractors with controlled unclassified in-
21 formation designation authority is limited ap-
22 propriately as determined in consultation with
23 the parties referred to in subsection (a);

24 “(D) controlled unclassified information
25 markings are not a determinant of public disclo-

1 *sure pursuant to section 552 of title 5, United*
2 *States Code (commonly referred to as the ‘Free-*
3 *dom of Information Act’);*

4 *“(E) controlled unclassified information*
5 *markings are placed on archived or legacy mate-*
6 *rial whenever circulated, consistent with the con-*
7 *trolled unclassified information framework and*
8 *any other policies, guidelines, procedures, in-*
9 *structions, or standards established by the Presi-*
10 *dent, including in any relevant future executive*
11 *memoranda or executive orders;*

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

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

20 *“(d) PUBLIC ACCESS TO UNCLASSIFIED INFORMA-*
21 *TION.—The Secretary shall make available to members of*
22 *the public all controlled unclassified information and other*
23 *unclassified information in its possession that is releasable*
24 *pursuant to an appropriate request under section 552 of*

1 *title 5, United States Code (commonly referred to as the*
 2 *‘Freedom of Information Act’).*

3 “(e) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
 4 *tion shall be construed to prevent or discourage the Depart-*
 5 *ment from voluntarily releasing to the public any unclassi-*
 6 *fied information that is not exempt from disclosure under*
 7 *section 552 of title 5, United States Code (commonly re-*
 8 *ferred to as the ‘Freedom of Information Act’).*”.

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

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

16 **“SEC. 210G. ENFORCEMENT OF CONTROLLED UNCLASSI-**
 17 **FIED INFORMATION FRAMEWORK IMPLEMEN-**
 18 **TATION PROGRAMS.**

19 “(a) *PERSONAL IDENTIFIERS.*—*The Secretary shall—*
 20 *“(1) assess the technologies available or in use at*
 21 *the Department by which an electronic personal iden-*
 22 *tification number or other electronic identifying*
 23 *marker can be assigned to each Department employee*
 24 *and contractor with controlled unclassified informa-*
 25 *tion designation authority in order to—*

1 “(A) track which documents have been des-
2 signed as controlled unclassified information by
3 a particular employee or contractor;

4 “(B) determine the circumstances when such
5 documents have been shared;

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

11 “(D) assess the information sharing impact
12 of any such problems or misuse;

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

21 “(3) upon completion of the implementation
22 plan described in paragraph (2), or not later than
23 180 days after the date of the enactment of the Im-
24 proving Public Access to Documents Act of 2008,
25 whichever is earlier, the Secretary shall provide a

1 *copy of the plan to the Committee on Homeland Secu-*
2 *rity of the House of Representatives and the Com-*
3 *mittee on Homeland Security and Governmental Af-*
4 *airs of the Senate.*

5 “(b) *TRAINING.—The Secretary, in coordination with*
6 *the Archivist of the United States, shall—*

7 “(1) *require annual training for each Depart-*
8 *ment employee and contractor with controlled unclas-*
9 *sified information designation authority and who are*
10 *responsible for analysis, dissemination, preparation,*
11 *production, receiving, publishing, or otherwise com-*
12 *municating written controlled unclassified informa-*
13 *tion. Such training shall—*

14 “(A) *educate each employee and contractor*
15 *about—*

16 “(i) *the Department’s requirement that*
17 *all unclassified finished intelligence prod-*
18 *ucts that they create that have been des-*
19 *ignated as controlled unclassified informa-*
20 *tion be prepared in a standard format pre-*
21 *scribed by the Department;*

22 “(ii) *the proper use of controlled un-*
23 *classified information markings, including*
24 *portion markings; and*

1 “(iii) the consequences of improperly
2 using controlled unclassified information
3 markings, including the misapplication of
4 controlled unclassified information mark-
5 ings to documents that do not merit such
6 markings, and of failing to comply with the
7 Department’s policies and procedures estab-
8 lished under or pursuant to this section, in-
9 cluding the negative consequences for the in-
10 dividual’s personnel evaluation, homeland
11 security, information sharing, and the over-
12 all success of the Department’s missions;

13 “(B) serve as a prerequisite, once completed
14 successfully, as evidenced by an appropriate cer-
15 tificate, for—

16 “(i) obtaining controlled unclassified
17 information designation authority; and

18 “(ii) renewing such authority annu-
19 ally; and

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

23 “(2) ensure that such program is conducted effi-
24 ciently, in conjunction with any other security, intel-
25 ligence, or other training programs required by the

1 *Department to reduce the costs and administrative*
2 *burdens associated with the additional training re-*
3 *quired by this section.*

4 *“(c) DETAILEE PROGRAM.—The Secretary shall—*

5 *“(1) implement a Departmental detailee pro-*
6 *gram to detail Departmental personnel to the Na-*
7 *tional Archives and Records Administration for one*
8 *year, for the purpose of—*

9 *“(A) training and educational benefit for*
10 *the Department personnel assigned so that they*
11 *may better understand the policies, procedures,*
12 *and laws governing the controlled unclassified*
13 *information framework;*

14 *“(B) bolstering the ability of the National*
15 *Archives and Records Administration to conduct*
16 *its oversight authorities over the Department and*
17 *other Departments and agencies; and*

18 *“(C) ensuring that the policies and proce-*
19 *dures established by the Secretary remain con-*
20 *sistent with those established by the Archivist of*
21 *the United States; and*

22 *“(2) in coordination with the Archivist of the*
23 *United States, report to Congress not later than 90*
24 *days after the conclusion of the first year of the pro-*
25 *gram established under paragraph (1), on—*

1 “(A) the advisability of expanding the pro-
2 gram on a government-wide basis, whereby other
3 departments and agencies would send detailees to
4 the National Archives and Records Administra-
5 tion; and

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

8 “(d) *TERMINATION OF DETAILEE PROGRAM.*—*Except*
9 *as otherwise provided by law, subsection (c) shall cease to*
10 *have effect on December 31, 2012.*”.

11 **SEC. 5. DEFINITIONS.**

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

15 **“SEC. 210H. DEFINITIONS.**

16 *“In this Act:*

17 “(1) *CONTROLLED UNCLASSIFIED INFORMA-*
18 *TION.*—*The term ‘controlled unclassified information’*
19 *means a categorical designation that refers to unclas-*
20 *sified information, including unclassified information*
21 *within the scope of the information sharing environ-*
22 *ment established under section 1016 of the Intelligence*
23 *Reform and Terrorism Prevention Act of 2004 (6*
24 *U.S.C. 485), including unclassified homeland security*
25 *information, terrorism information, and weapons of*

1 *mass destruction information (as defined in such sec-*
2 *tion) and unclassified national intelligence (as de-*
3 *defined in section 3(5) of the National Security Act of*
4 *1947 (50 U.S.C. 401a(5))), that does not meet the*
5 *standards of National Security Classification under*
6 *Executive Order 12958, as amended, but is (i) perti-*
7 *nent to the national interests of the United States or*
8 *to the important interests of entities outside the Fed-*
9 *eral Government, and (ii) under law or National Ar-*
10 *chives and Records Administration policy requires*
11 *safeguarding from unauthorized disclosure, special*
12 *handling safeguards, or prescribed limits on ex-*
13 *changes or dissemination.*

14 “(2) *CONTROLLED UNCLASSIFIED INFORMATION*
15 *FRAMEWORK.—The term ‘controlled unclassified in-*
16 *formation framework’ means the single set of policies*
17 *and procedures governing the designation, marking,*
18 *safeguarding, and dissemination of terrorism-related*
19 *controlled unclassified information that originates in*
20 *departments and agencies, regardless of the medium*
21 *used for the display, storage, or transmittal of such*
22 *information, as set forth in the President’s May 7,*
23 *2008 Memorandum for the Heads of Executive De-*
24 *partments Regarding Designation and Sharing of*
25 *controlled unclassified information (CUI), and in any*

1 *relevant future executive memoranda, executive or-*
2 *ders, or legislation.*

3 “(3) *FINISHED INTELLIGENCE PRODUCT.*—*The*
4 *term ‘finished intelligence product’ means a document*
5 *in which an intelligence analyst has evaluated, inter-*
6 *preted, integrated, or placed into context raw intel-*
7 *ligence or information.”.*

8 **SEC. 6. TECHNICAL AMENDMENT.**

9 *The table of contents in section 1(b) of the Homeland*
10 *Security Act of 2002 (6 U.S.C. 101(b)) is amended by add-*
11 *ing after the item relating to section 210E the following*
12 *new items:*

 “*Sec. 210F. Controlled unclassified information framework implementation pro-*
 gram.”

 “*Sec. 210G. Enforcement of controlled unclassified information framework imple-*
 mentation programs.”

 “*Sec. 210H. Definitions.*”.

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JULY 28, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed