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H. R. 4806

IN THE SENATE OF THE UNITED STATES

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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 a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reducing Over-Classi-
3 fication Act of 2008”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) A key conclusion in the Final Report of the
7 National Commission on Terrorist Attacks Upon the
8 United States (commonly known as the “9/11 Com-
9 mission”) was the need to prevent over-classification
10 by the Federal Government.

11 (2) The 9/11 Commission and others have ob-
12 served that the over-classification of homeland secu-
13 rity information interferes with accurate, actionable,
14 and timely homeland security information sharing,
15 increases the cost of information security, and need-
16 lessly limits public access to information.

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

1 (4) Excessive government secrecy stands in the
2 way of a safer and more secure homeland. This
3 trend is antithetical to the creation and operation of
4 the information sharing environment established
5 under section 1016 of the Intelligence Reform and
6 Terrorism Prevention Act of 2004 (6 U.S.C. 485),
7 and must be halted and reversed.

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

16 (6) The Department should also develop and
17 administer policies, procedures, and programs that
18 promote compliance with applicable laws, executive
19 orders, and other authorities pertaining to the prop-
20 er use of classification markings and the United
21 States National Archives and Records Administra-
22 tion policies implementing them.

1 **SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE**
2 **DEPARTMENT OF HOMELAND SECURITY.**

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

6 **“SEC. 210F. OVER-CLASSIFICATION PREVENTION PRO-**
7 **GRAM.**

8 “(a) IN GENERAL.—The Secretary shall develop and
9 administer policies, procedures, and programs within the
10 Department to prevent the over-classification of homeland
11 security information, terrorism information, weapons of
12 mass destruction information, and other information with-
13 in the scope of the information sharing environment estab-
14 lished under section 1016 of the Intelligence Reform and
15 Terrorism Prevention Act of 2004 (6 U.S.C. 485) that
16 must be disseminated to prevent and to collectively re-
17 spond to acts of terrorism. The Secretary shall coordinate
18 with the Archivist of the United States and consult with
19 representatives of State, local, tribal, and territorial gov-
20 ernment and law enforcement, organizations with exper-
21 tise in civil rights, civil liberties, and government over-
22 sight, and the private sector, as appropriate, to develop
23 such policies, procedures, and programs.

24 “(b) REQUIREMENTS.—Not later than one year after
25 the date of the enactment of the Reducing Over-Classifica-
26 tion Act of 2008, the Secretary, in administering the poli-

1 cies, procedures, and programs required under subsection
2 (a), shall—

3 “(1) create, in consultation with the Archivist
4 of the United States, standard classified and unclas-
5 sified formats for finished intelligence products cre-
6 ated by the Department, consistent with any govern-
7 ment-wide standards, practices or procedures for
8 similar products;

9 “(2) require that all finished intelligence prod-
10 ucts created by the Department be simultaneously
11 prepared in the standard unclassified format, pro-
12 vided that such an unclassified product would rea-
13 sonably be expected to be of any benefit to a State,
14 local, tribal or territorial government, law enforce-
15 ment agency or other emergency response provider,
16 or the private sector, based on input provided by the
17 Interagency Threat Assessment and Coordination
18 Group Detail established under section 210D;

19 “(3) ensure that such policies, procedures, and
20 programs protect the national security as well as the
21 information privacy rights and legal rights of United
22 States persons pursuant to all applicable law and
23 policy, including the privacy guidelines for the infor-
24 mation sharing environment established pursuant to
25 section 1016 of the Intelligence Reform and Ter-

1 terrorism Prevention Act of 2004 (6 U.S.C. 485), as
2 appropriate;

3 “(4) establish an ongoing auditing mechanism
4 administered by the Inspector General of the De-
5 partment or other appropriate senior Department of-
6 ficial that randomly selects, on a periodic basis, clas-
7 sified information from each component of the De-
8 partment that generates finished intelligence prod-
9 ucts to—

10 “(A) assess whether applicable classifica-
11 tion policies, procedures, rules, and regulations
12 have been followed;

13 “(B) describe any problems with the ad-
14 ministration of the applicable classification poli-
15 cies, procedures, rules, and regulations, includ-
16 ing specific non-compliance 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, the Committee on Homeland
23 Security and Governmental Affairs of the Sen-
24 ate, and the public, in an appropriate format,

1 on the findings of the Inspector General’s au-
2 dits under this section;

3 “(5) establish a process whereby employees may
4 challenge original classification decisions made by
5 Department employees or contractors and be re-
6 warded with specific incentives for successful chal-
7 lenges resulting in the removal of classification
8 markings or the downgrading of them;

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

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

19 “(c) FINISHED INTELLIGENCE PRODUCT DE-
20 FINED.—The term ‘finished intelligence product’ means a
21 document in which an intelligence analyst has evaluated,
22 interpreted, integrated, or placed into context raw intel-
23 ligence or information.”.

1 **SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVEN-**
2 **TION WITHIN THE DEPARTMENT OF HOME-**
3 **LAND SECURITY.**

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

7 **“SEC. 210G. ENFORCEMENT OF OVER-CLASSIFICATION PRE-**
8 **VENTION PROGRAMS.**

9 “(a) **PERSONAL IDENTIFIERS.**—The Secretary
10 shall—

11 “(1) assess the technologies available or in use
12 at the Department by which an electronic personal
13 identification number or other electronic identifying
14 marker can be assigned to each Department em-
15 ployee and contractor with original classification au-
16 thority in order to—

17 “(A) track which documents have been
18 classified by a particular employee or con-
19 tractor;

20 “(B) determine the circumstances when
21 such documents have been shared;

22 “(C) identify and address over-classifica-
23 tion problems, including the misapplication of
24 classification markings to documents that do
25 not merit such markings; and

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

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

11 “(3) upon completion of the implementation
12 plan described in paragraph (2), or not later than
13 180 days after the date of the enactment of the Re-
14 ducing Over-Classification Act of 2008, whichever is
15 earlier, the Secretary shall provide a copy of the
16 plan to the Committee on Homeland Security of the
17 House of Representatives and the Committee on
18 Homeland Security and Governmental Affairs of the
19 Senate.

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

22 “(1) require annual training for each Depart-
23 ment employee and contractor with classification au-
24 thority or those responsible for analysis, dissemina-
25 tion, preparation, production, receiving, publishing,

1 or otherwise communicating written classified infor-
2 mation, including training to—

3 “(A) educate each employee and contractor
4 about—

5 “(i) the Department’s requirement
6 that all classified finished intelligence prod-
7 ucts that they create be simultaneously
8 prepared in unclassified form in a standard
9 format prescribed by the Department, pro-
10 vided that the unclassified product would
11 reasonably be expected to be of any benefit
12 to a State, local, tribal, or territorial gov-
13 ernment, law enforcement agency, or other
14 emergency response provider, or the pri-
15 vate sector, based on input provided by the
16 Interagency Threat Assessment and Co-
17 ordination Group Detail established under
18 section 210D;

19 “(ii) the proper use of classification
20 markings, including portion markings; and

21 “(iii) the consequences of over-classi-
22 fication and other improper uses of classi-
23 fication markings, including the
24 misapplication of classification markings to
25 documents that do not merit such mark-

1 ings, and of failing to comply with the De-
2 partment’s policies and procedures estab-
3 lished under or pursuant to this section,
4 including the negative consequences for the
5 individual’s personnel evaluation, homeland
6 security, information sharing, and the
7 overall success of the Department’s mis-
8 sions;

9 “(B) serve as a prerequisite, once com-
10 pleted successfully, as evidenced by an appro-
11 priate certificate, for—

12 “(i) obtaining classification authority;

13 and

14 “(ii) renewing such authority annu-

15 ally; and

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

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

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

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

5 “(A) training and educational benefit for
6 the Department personnel assigned so that they
7 may better understand the policies, procedures
8 and laws governing original classification au-
9 thorities;

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

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

18 “(2) ensure that the program established under
19 paragraph (1) includes at least one individual for
20 each Department office with delegated original clas-
21 sification authority; and

22 “(3) 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—

