

110TH CONGRESS
1ST SESSION

H. R. 4806

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.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2007

Ms. HARMAN (for herself, Mrs. LOWEY, Mr. LANGEVIN, Mr. MARKEY, Mrs. CHRISTENSEN, Mr. PERLMUTTER, Ms. LORETTA SANCHEZ of California, Ms. ZOE LOFGREN of California, Ms. NORTON, Mr. DICKS, Mr. CARNEY, Ms. CLARKE, Ms. JACKSON-LEE of Texas, and Mr. ETHERIDGE) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reducing Over-Classi-
5 fication Act of 2007”.

1 **SEC. 2. DEPARTMENT OF HOMELAND SECURITY STRATEGY**
2 **ON OVER-CLASSIFICATION.**

3 (a) IN GENERAL.—Subtitle A of title II of the Home-
4 land Security Act of 2002 (6 U.S.C. 121 et seq.) is amend-
5 ed by adding at the end the following new section:

6 **“SEC. 210F. DEPARTMENT OF HOMELAND SECURITY STRAT-**
7 **EGY ON OVER-CLASSIFICATION.**

8 “(a) IN GENERAL.—The Secretary of Homeland Se-
9 curity or the Secretary’s designee shall develop and imple-
10 ment a Department-wide strategy to prevent the over-clas-
11 sification of information within the scope of the informa-
12 tion sharing environment established under section 1016
13 of the Intelligence Reform and Terrorism Prevention Act
14 of 2004 (6 U.S.C. 485), including homeland security in-
15 formation, terrorism information, and weapons of mass
16 destruction information, that includes a sensitive and
17 shared information program for the creation and sharing
18 of unclassified information of a sensitive nature.

19 “(b) STRATEGY.—The strategy developed under sub-
20 section (a) shall—

21 “(1) foster sharing of homeland security infor-
22 mation, terrorism information, and weapons of mass
23 destruction information at the Department;

24 “(2) require that—

25 “(A) all intelligence documents and other
26 information created by the Department be ini-

1 tially prepared in unclassified form before any
2 version of those documents is created that is in
3 classified form;

4 “(B) if there is significant doubt about the
5 need to classify information, the information
6 not be classified;

7 “(C) if there is significant doubt about the
8 appropriate level of classification of informa-
9 tion, the information be classified at the lower
10 level;

11 “(D) documents only be classified for the
12 limited purpose of protecting sensitive intel-
13 ligence sources or methods; and

14 “(E) classified intelligence documents and
15 other information be declassified as soon as
16 they no longer meet the criteria for classifica-
17 tion;

18 “(3) include a sensitive and shared information
19 program that—

20 “(A) ensures that sensitive and unclassi-
21 fied information can be shared across the De-
22 partment and with State, local, and tribal gov-
23 ernments and the private sector as needed;

24 “(B) ensures that the Department can pro-
25 tect sensitive information and the information

1 privacy rights and other legal rights of United
2 States persons;

3 “(C) ensures that there are a minimal
4 number of categories and corresponding mark-
5 ings and that such markings are—

6 “(i) defined by the Secretary for use
7 in all Department components;

8 “(ii) designed to allow wide informa-
9 tion sharing to appropriate audiences as
10 defined by the Secretary;

11 “(iii) used only upon an affirmative
12 showing, applying standards clearly defined
13 and explained by the Secretary, that the
14 security need for a marking outweighs the
15 public interest in disclosure; and

16 “(iv) of limited duration not to exceed
17 90 days unless an affirmative showing as
18 described in subparagraph (iii) is made
19 that an extension, of similar limited dura-
20 tion, is warranted;

21 “(D) includes processes by which—

22 “(i) Department personnel, personnel
23 of other Departments and agencies of the
24 Federal Government, or the public may
25 challenge the appropriateness of a marking

1 on a document and seek the removal of the
2 marking; and

3 “(ii) documents with expired markings
4 that have not been extended are systemati-
5 cally generated in an unclassified format
6 without the marking; and

7 “(E) supercedes any existing policies and
8 procedures relating to the creation, control, and
9 sharing of unclassified information of a sen-
10 sitive nature;

11 “(4) include a system of financial and other in-
12 centives and disincentives to encourage Department
13 personnel to use classified and sensitive and shared
14 information program markings properly, including
15 incentives and disincentives that impact the career
16 advancement potential and bonus eligibility of an
17 employee;

18 “(5) include a training program for each De-
19 partment employee and contractor who analyzes, dis-
20 seminate, prepares, produces, receives, publishes, or
21 otherwise communicates information within the
22 scope of the information sharing environment that
23 educates personnel about—

1 “(A) the Department’s format for intel-
2 ligence and other information products, includ-
3 ing the requirements under paragraph (2);

4 “(B) the proper use of classification mark-
5 ings, including portion markings, and sensitive
6 and shared information program markings;

7 “(C) the consequences of improperly using
8 classification markings and of failing to use the
9 Department’s format for intelligence and other
10 information products, including the negative
11 consequences for homeland security, informa-
12 tion sharing, and the overall success of the De-
13 partment’s missions;

14 “(D) the incentives and disincentives re-
15 ferred to in paragraph (4); and

16 “(E) procedures for making classification
17 challenges and requests for declassification;

18 “(6) include policies and procedures designed to
19 encourage Departments and agencies that provide
20 intelligence and other information to the Depart-
21 ment to provide such intelligence or other informa-
22 tion—

23 “(A) in an unclassified form that meets
24 the Department’s intelligence and information
25 requirements while indicating the level of con-

1 fidence that the Department or agency sharing
2 the information has in the unclassified product;

3 “(B) if necessary, in a form with unclassi-
4 fied information contained at the beginning of
5 the document and the classified portion of the
6 document at the end of the document; and

7 “(C) if necessary, with a sensitive and
8 shared information marking that complies with
9 the program referred to in paragraph (3);

10 “(7) include an ongoing auditing mechanism
11 administered by a designee of the Secretary or the
12 Secretary’s designee referred to in subsection (a)
13 that randomly selects classified and sensitive and
14 shared information program materials from all rel-
15 evant components of the Department to—

16 “(A) assess whether applicable classifica-
17 tion and sensitive and shared information pro-
18 gram policies, procedures, rules, and regulations
19 have been followed;

20 “(B) describe for managers and other su-
21 pervisory personnel any problem trends with
22 over-classification and abuse of sensitive and
23 shared information program markings and rec-
24 ommend improvements in awareness and train-
25 ing to address such trends; and

1 “(C) identify individual employees who re-
2 quire re-training, notify such employees and the
3 managers and other supervisors of such employ-
4 ees of the need for such re-training, and record
5 subsequent re-training by such employees in the
6 personnel file of such employees;

7 “(8) include the creation of an independent De-
8 partment classification review board to—

9 “(A) ensure that intelligence and other in-
10 formation is declassified as soon as it no longer
11 meets classification criteria;

12 “(B) facilitate and review requests for de-
13 classification and classification challenges;

14 “(C) review Department policies, proce-
15 dures, and practices that foster the goals of the
16 strategy; and

17 “(D) make recommendations for improve-
18 ments to such policies, procedures, and prac-
19 tices;

20 “(9) include an assessment of the technologies
21 available or in use at the Department by which an
22 electronic personal identification number or other
23 electronic identifying marker can be assigned to each
24 Department employee with classification authority or

1 authority to use sensitive and shared information
2 program markings—

3 “(A) to track which, when, and how many
4 documents have been classified or marked as
5 sensitive and shared information by a particular
6 employee;

7 “(B) to determine with whom and how
8 often any such documents have been shared;

9 “(C) to address any over-classification
10 problems or abuse of the sensitive and shared
11 information program;

12 “(D) to assess the information sharing im-
13 pact of any such problems or abuse; and

14 “(E) including a cost estimate for imple-
15 menting any such technologies on a Depart-
16 ment-wide basis and an implementation plan for
17 adopting such technologies; and

18 “(10) apply to all personnel and contractors of
19 the Department.

20 “(c) INITIAL REPORT; IMPLEMENTATION.—Not later
21 than 90 days after the date of the enactment of this sec-
22 tion, the Secretary shall—

23 “(1) submit to Congress a report that in-
24 cludes—

1 “(A) the strategy developed under sub-
2 section (a);

3 “(B) an indication of which parts of the
4 strategy can be accomplished without the enact-
5 ment of legislation and which cannot; and

6 “(C) recommendations for the enactment
7 of legislation to accomplish the parts of the
8 strategy that the Secretary indicates require the
9 enactment of legislation; and

10 “(2) begin implementation of the parts of the
11 strategy that the Secretary indicates in accordance
12 with paragraph (1) can be accomplished without the
13 enactment of legislation.

14 “(d) SUBSEQUENT REPORTS.—The Secretary shall
15 annually submit to Congress an update on the implemen-
16 tation of the strategy developed under subsection (a) with
17 the President’s budget submission for each fiscal year pur-
18 suant to section 1105 of title 31, United States Code.

19 “(e) ANNUAL AUDIT BY INSPECTOR GENERAL.—

20 “(1) IN GENERAL.—The Inspector General of
21 the Department shall conduct an annual audit of the
22 strategy developed and implemented under sub-
23 section (a) to—

24 “(A) determine whether policies, proce-
25 dures, rules, and regulations pertaining to clas-

1 sified and sensitive and shared information have
2 been followed; and

3 “(B) track the progress of the Department
4 in implementing the strategy over time on a
5 component by component basis.

6 “(2) REPORT.—Not later than 60 days after
7 the completion of an audit under paragraph (1), the
8 Inspector General of the Department shall submit to
9 Congress a report on the audit and recommenda-
10 tions for improvement of the strategy and the imple-
11 mentation of the strategy.

12 “(f) DEFINITIONS.—In this section:

13 “(1) INFORMATION SHARING ENVIRONMENT.—
14 The term ‘information sharing environment’ means
15 the information sharing environment established
16 pursuant to section 1016(b) of the Intelligence Re-
17 form and Terrorism Prevention Act of 2004 (6
18 U.S.C. 485(b)).

19 “(2) SENSITIVE AND SHARED INFORMATION.—
20 The term ‘sensitive and shared information’ means
21 unclassified information that does not meet the
22 standards for classification under Executive Order
23 12958 (or any succeeding executive order) but is
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 requires protection
2 from unauthorized disclosure, special handling safe-
3 guards, or prescribed limits on exchange or dissemi-
4 nation.”.

5 (b) CONFORMING AMENDMENT.—The table of con-
6 tents in section 1(b) of such Act (6 U.S.C. 101(b)) is
7 amended by inserting after the item relating to section
8 210E the following new item:

“Sec. 210F. Department of Homeland Security strategy on over-classifica-
tion.”.

○