

Calendar No. 1051

110TH CONGRESS
2D SESSION

H. R. 3815

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

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

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. LIEBERMAN, with an amendment

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

AN ACT

To amend the Homeland Security Act of 2002 to require
the Secretary of Homeland Security to make full and
efficient use of open source information to develop and
disseminate open source homeland security information
products, 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 “Homeland Security
5 Open Source Information Enhancement Act of 2008”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The Internet has profoundly expanded the
4 amount, significance, and accessibility of all types of
5 information, but the Department of Homeland Secu-
6 rity has not sufficiently expanded its use of such in-
7 formation to produce analytical products.

8 (2) Open source products can be shared with
9 Federal, State, local, and tribal law enforcement, the
10 American public, the private sector, and foreign al-
11 lies because of their unclassified nature.

12 (3) The Department of Homeland Security is
13 responsible for providing open source products to
14 consumers consistent with existing Federal open
15 source information guidelines.

16 **SEC. 3. FULL AND EFFICIENT USE OF OPEN SOURCE INFOR-
17 MATION.**

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

21 **“SEC. 210F. FULL AND EFFICIENT USE OF OPEN SOURCE IN-
22 FORMATION.**

23 “(a) RESPONSIBILITIES OF SECRETARY.—The See-
24 retary shall establish an open source collection, analysis,
25 and dissemination program within the Department. This
26 program shall make full and efficient use of open source

1 information to develop and disseminate open source intel-
2 ligence products.

3 **“(b) OPEN SOURCE PRODUCTS.”**—The Secretary shall
4 ensure that among the open source products that the De-
5 partment generates, there shall be a specific focus on open
6 source products that—

7 “(1) analyze news and developments related to
8 foreign terrorist organizations including how the
9 threat of such organizations is relevant to homeland
10 security;

11 “(2) analyze the risks and vulnerabilities to the
12 Nation’s critical infrastructure;

13 “(3) analyze terrorist tactics and techniques to
14 include recommendations on how to identify patterns
15 of terrorist activity and behavior allowing State,
16 local and tribal first responders to allocate resources
17 appropriately; and

18 “(4) utilize, as appropriate, computer-based
19 electronic visualization and animation tools that
20 combine imagery, sound, and written material into
21 unclassified open source intelligence products.

22 **“(e) SHARING RESULTS OF ANALYSIS.”**—The Sec-
23 retary shall share the unclassified results of such analysis
24 with appropriate Federal, State, local, tribal, and private-
25 sector officials.

1 “(d) PROTECTION OF PRIVACY.—The Secretary shall
2 ensure that the manner in which open source information
3 is gathered and disseminated by the Department complies
4 with the Constitution, section 552a of title 5, United
5 States Code (popularly known as the Privacy Act of
6 1974), provisions of law enacted by the E-Government Act
7 of 2002 (Public Law 107-347), and all other relevant
8 Federal laws.

9 “(e) INSPECTOR GENERAL REPORT.—The Inspector
10 General of the Department shall audit the use and dis-
11 semination of open source information by the Department
12 to evaluate the effectiveness of the Department’s activities
13 and to ensure that it is consistent with the procedures es-
14 tablished by the Secretary or a designee of the Secretary
15 for the operation of the Department’s open source pro-
16 gram and with Federal open source information and intel-
17 ligence guidelines promulgated by the Director of National
18 Intelligence.

19 “(f) OPEN SOURCE INFORMATION DEFINED.—In
20 this section the term ‘open source information’ means in-
21 formation that is publicly available and that can be used
22 and disseminated in a timely manner to an appropriate
23 audience for the purpose of addressing a specific homeland
24 requirement.

1 "(g) AUTHORIZATION OF APPROPRIATIONS.—There
2 is authorized to be appropriated for each of fiscal years
3 2009 through 2013 such sums as may be necessary to
4 carry out this section.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
6 in section 1(b) of such Act is amended by adding at the
7 end of the items relating to such subtitle the following:
“Sec. 210F. Full and efficient use of open source information.”.

8 **SEC. 4. PRIVACY AND CIVIL LIBERTIES IMPACT ASSESS-
9 MENT.**

10 Not later than 90 days after the date of the enact-
11 ment of this Act, the Privacy Officer and the Officer for
12 Civil Rights and Civil Liberties of the Department of
13 Homeland Security, in consultation with the Chief Privacy
14 Officer and Civil Liberties Protection Officer of the Office
15 of the Director of National Intelligence, shall submit to
16 the Secretary of Homeland Security, the Director of Na-
17 tional Intelligence, the Committee on Homeland Security
18 and Governmental Affairs of the Senate, the Committee
19 on Homeland Security of the House of Representatives,
20 and the Privacy and Civil Liberties Oversight Board, a
21 privacy and civil liberties impact assessment of the De-
22 partment of Homeland Security’s open source program,
23 including information on the collection, analysis, and dis-
24 semination of any information on United States persons.

1 SEC. 5. OPEN SOURCE INFORMATION DEFINED.

2 In this Act the term “open source information” has
3 the meaning that term has in section 203 of Homeland
4 Security Act of 2002, as amended by this Act.

5 SECTION 1. SHORT TITLE.

6 *This Act may be cited as the “Homeland Security*
7 *Open Source Information Enhancement Act of 2008”.*

8 SEC. 2. FULL AND EFFICIENT USE OF OPEN SOURCE INFOR-

9 *MATION.*

10 (a) *IN GENERAL.*—Subtitle A of title II of the Home-
11 land Security Act of 2002 (6 U.S.C. 121 et seq.) is amended
12 by adding at the end the following:

15 “(a) *DEFINITION OF OPEN SOURCE INFORMATION.*—

16 *In this section, the term ‘open source information’ means*

17 *publicly available information that can be lawfully ob-*

18 *tained by a member of the public by request, purchase, or*

19 *observation.*

“(b) RESPONSIBILITIES OF SECRETARY.—In coordination with the Assistant Deputy Director of National Intelligence for Open Source and the Director of National Intelligence, the Secretary shall establish an open source collection, analysis, and dissemination program within the Office of Intelligence and Analysis. The program shall make full and efficient use of open source information to develop

1 and disseminate open source alerts, warnings, and other in-
2 telligence products relating to the mission of the Depart-
3 ment.

4 “(c) INTELLIGENCE ANALYSIS.—The Secretary shall
5 ensure that the Department makes full and efficient use of
6 open source information in carrying out paragraphs (1)
7 and (2) of section 201(d).

8 “(d) DISSEMINATION.—The Secretary shall make open
9 source information of the Department available to appro-
10 priate officers of the Federal Government, State, local, and
11 tribal governments, and private-sector entities, using sys-
12 tems and networks for the dissemination of homeland secu-
13 rity information.

14 “(e) PROTECTION OF PRIVACY.—

15 “(1) COMPLIANCE WITH OTHER LAWS.—The Sec-
16 retary shall ensure that the manner in which open
17 source information is gathered and disseminated by
18 the Department complies with section 552a of title 5,
19 United States Code (commonly referred to as the Pri-
20 vacy Act of 1974), provisions of law enacted by the
21 E-Government Act of 2002 (Public Law 107-347),
22 and all other relevant Federal laws.

23 “(2) DESCRIPTION IN ANNUAL REPORT BY CHIEF
24 PRIVACY OFFICER.—The Chief Privacy Officer of the
25 Department shall include in the annual report sub-

1 *mitted to Congress under section 222 an assessment*
2 *of compliance by Federal departments and agencies*
3 *with the laws described in paragraph (1), as they re-*
4 *late to the use of open source information.”.*

5 *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*
6 *table of contents in section 1(b) of the Homeland Security*
7 *Act of 2002 (6 U.S.C. et seq.) is amended by inserting after*
8 *the item relating to section 210E the following:*

“Sec. 210F. *Full and efficient use of open source information.”.*

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