

Calendar No. 184

110TH CONGRESS
1ST SESSION

S. 236

To require reports to Congress on Federal agency use of data mining.

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 2007

Mr. FEINGOLD (for himself, Mr. SUNUNU, Mr. LEAHY, Mr. AKAKA, Mr. KENNEDY, Mr. CARDIN, Mrs. FEINSTEIN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 4, 2007

Reported by Mr. LEAHY, with an amendment

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

A BILL

To require reports to Congress on Federal agency use of data mining.

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 “Federal Agency Data
5 Mining Reporting Act of 2007”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) DATA MINING.—The term “data mining”
4 means a query, search, or other analysis of 1 or
5 more electronic databases, where—

6 (A) a department or agency of the Federal
7 Government, or a non-Federal entity acting on
8 behalf of the Federal Government, is con-
9 ducting the query, search, or other analysis to
10 discover or locate a predictive pattern or anom-
11 ally indicative of terrorist or criminal activity on
12 the part of any individual or individuals; and

13 (B) the query, search, or other analysis
14 does not use personal identifiers of a specific in-
15 dividual, or inputs associated with a specific in-
16 dividual or group of individuals, to retrieve in-
17 formation from the database or databases.

18 (2) DATABASE.—The term “database” does not
19 include telephone directories, news reporting, infor-
20 mation publicly available to any member of the pub-
21 lic without payment of a fee, or databases of judicial
22 and administrative opinions.

23 **SEC. 3. REPORTS ON DATA MINING ACTIVITIES BY FED-**
24 **ERAL AGENCIES.**

25 (a) REQUIREMENT FOR REPORT.—The head of each
26 department or agency of the Federal Government that is

1 engaged in any activity to use or develop data mining shall
2 submit a report to Congress on all such activities of the
3 department or agency under the jurisdiction of that offi-
4 cial. The report shall be made available to the public, ex-
5 cept for a classified annex described in subsection (b)(8).

6 (b) ~~CONTENT OF REPORT.~~—Each report submitted
7 under subsection (a) shall include, for each activity to use
8 or develop data mining, the following information:

9 (1) ~~A thorough description of the data mining~~
10 ~~activity, its goals, and, where appropriate, the target~~
11 ~~dates for the deployment of the data mining activity.~~

12 (2) ~~A thorough description of the data mining~~
13 ~~technology that is being used or will be used, includ-~~
14 ~~ing the basis for determining whether a particular~~
15 ~~pattern or anomaly is indicative of terrorist or crimi-~~
16 ~~nal activity.~~

17 (3) ~~A thorough description of the data sources~~
18 ~~that are being or will be used.~~

19 (4) ~~An assessment of the efficacy or likely effi-~~
20 ~~ciacy of the data mining activity in providing accu-~~
21 ~~rate information consistent with and valuable to the~~
22 ~~stated goals and plans for the use or development of~~
23 ~~the data mining activity.~~

24 (5) ~~An assessment of the impact or likely im-~~
25 ~~impact of the implementation of the data mining activ-~~

1 ity on the privacy and civil liberties of individuals,
2 including a thorough description of the actions that
3 are being taken or will be taken with regard to the
4 property, privacy, or other rights or privileges of any
5 individual or individuals as a result of the implemen-
6 tation of the data mining activity.

7 (6) A list and analysis of the laws and regula-
8 tions that govern the information being or to be col-
9 lected, reviewed, gathered, analyzed, or used with
10 the data mining activity.

11 (7) A thorough discussion of the policies, proce-
12 dures, and guidelines that are in place or that are
13 to be developed and applied in the use of such tech-
14 nology for data mining in order to—

15 (A) protect the privacy and due process
16 rights of individuals, such as redress proce-
17 dures; and

18 (B) ensure that only accurate information
19 is collected, reviewed, gathered, analyzed, or
20 used.

21 (8) Any necessary classified information in an
22 annex that shall be available, as appropriate, to the
23 Committee on Homeland Security and Governmental
24 Affairs, the Committee on the Judiciary, the Select
25 Committee on Intelligence, and the Committee on

1 Appropriations of the Senate and the Committee on
2 Homeland Security, the Committee on the Judiciary,
3 the Permanent Select Committee on Intelligence,
4 and the Committee on Appropriations of the House
5 of Representatives.

6 ~~(c) TIME FOR REPORT.~~—Each report required under
7 subsection ~~(a)~~ shall be—

8 (1) submitted not later than 180 days after the
9 date of enactment of this Act; and

10 (2) updated not less frequently than annually
11 thereafter, to include any activity to use or develop
12 data mining engaged in after the date of the prior
13 report submitted under subsection ~~(a)~~.

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the “Federal Agency Data*
16 *Mining Reporting Act of 2007”.*

17 **SEC. 2. DEFINITIONS.**

18 *In this Act:*

19 (1) *DATA MINING.*—*The term “data mining”*
20 *means a program involving pattern-based queries,*
21 *searches, or other analyses of 1 or more electronic*
22 *databases, where—*

23 (A) *a department or agency of the Federal*
24 *Government, or a non-Federal entity acting on*
25 *behalf of the Federal Government, is conducting*

1 *the queries, searches, or other analyses to dis-*
2 *cover or locate a predictive pattern or anomaly*
3 *indicative of terrorist or criminal activity on the*
4 *part of any individual or individuals;*

5 *(B) the queries, searches, or other analyses*
6 *are not subject-based and do not use personal*
7 *identifiers of a specific individual, or inputs as-*
8 *sociated with a specific individual or group of*
9 *individuals, to retrieve information from the*
10 *database or databases; and*

11 *(C) the purpose of the queries, searches, or*
12 *other analyses is not solely—*

13 *(i) the detection of fraud, waste, or*
14 *abuse in a Government agency or program;*
15 *or*

16 *(ii) the security of a Government com-*
17 *puter system.*

18 (2) *DATABASE.—The term “database” does not*
19 *include telephone directories, news reporting, infor-*
20 *mation publicly available to any member of the pub-*
21 *lic without payment of a fee, or databases of judicial*
22 *and administrative opinions or other legal research*
23 *sources.*

1 **SEC. 3. REPORTS ON DATA MINING ACTIVITIES BY FEDERAL**
2 **AGENCIES.**

3 (a) *REQUIREMENT FOR REPORT.*—The head of each
4 department or agency of the Federal Government that is
5 engaged in any activity to use or develop data mining shall
6 submit a report to Congress on all such activities of the
7 department or agency under the jurisdiction of that official.
8 The report shall be produced in coordination with the pri-
9 vacy officer of that department or agency, if applicable, and
10 shall be made available to the public, except for an annex
11 described in subsection (c).

12 (b) *CONTENT OF REPORT.*—Each report submitted
13 under subsection (a) shall include, for each activity to use
14 or develop data mining, the following information:

15 (1) *A thorough description of the data mining*
16 *activity, its goals, and, where appropriate, the target*
17 *dates for the deployment of the data mining activity.*

18 (2) *A thorough description of the data mining*
19 *technology that is being used or will be used, includ-*
20 *ing the basis for determining whether a particular*
21 *pattern or anomaly is indicative of terrorist or crimi-*
22 *nal activity.*

23 (3) *A thorough description of the data sources*
24 *that are being or will be used.*

25 (4) *An assessment of the efficacy or likely effi-*
26 *cacy of the data mining activity in providing accu-*

1 *rate information consistent with and valuable to the*
2 *stated goals and plans for the use or development of*
3 *the data mining activity.*

4 (5) *An assessment of the impact or likely impact*
5 *of the implementation of the data mining activity on*
6 *the privacy and civil liberties of individuals, includ-*
7 *ing a thorough description of the actions that are*
8 *being taken or will be taken with regard to the prop-*
9 *erty, privacy, or other rights or privileges of any in-*
10 *dividual or individuals as a result of the implementa-*
11 *tion of the data mining activity.*

12 (6) *A list and analysis of the laws and regula-*
13 *tions that govern the information being or to be col-*
14 *lected, reviewed, gathered, analyzed, or used in con-*
15 *junction with the data mining activity, to the extent*
16 *applicable in the context of the data mining activity.*

17 (7) *A thorough discussion of the policies, proce-*
18 *dures, and guidelines that are in place or that are to*
19 *be developed and applied in the use of such data min-*
20 *ing activity in order to—*

21 (A) *protect the privacy and due process*
22 *rights of individuals, such as redress procedures;*
23 *and*

24 (B) *ensure that only accurate and complete*
25 *information is collected, reviewed, gathered, ana-*

1 *lyzed, or used, and guard against any harmful*
2 *consequences of potential inaccuracies.*

3 *(c) ANNEX.—*

4 *(1) IN GENERAL.—A report under subsection (a)*
5 *shall include in an annex any necessary—*

6 *(A) classified information;*

7 *(B) law enforcement sensitive information;*

8 *(C) proprietary business information; or*

9 *(D) trade secrets (as that term is defined in*
10 *section 1839 of title 18, United States Code).*

11 *(2) AVAILABILITY.—Any annex described in*
12 *paragraph (1)—*

13 *(A) shall be available, as appropriate, and*
14 *consistent with the National Security Act of*
15 *1947 (50 U.S.C. 401 et seq.), to the Committee*
16 *on Homeland Security and Governmental Af-*
17 *airs, the Committee on the Judiciary, the Select*
18 *Committee on Intelligence, the Committee on Ap-*
19 *propriations, and the Committee on Banking,*
20 *Housing, and Urban Affairs of the Senate and*
21 *the Committee on Homeland Security, the Com-*
22 *mittee on the Judiciary, the Permanent Select*
23 *Committee on Intelligence, the Committee on Ap-*
24 *propriations, and the Committee on Financial*
25 *Services of the House of Representatives; and*

1 (B) shall not be made available to the pub-
2 lic.

3 (d) *TIME FOR REPORT.*—Each report required under
4 subsection (a) shall be—

5 (1) submitted not later than 180 days after the
6 date of enactment of this Act; and

7 (2) updated not less frequently than annually
8 thereafter, to include any activity to use or develop
9 data mining engaged in after the date of the prior re-
10 port submitted under subsection (a).

11 **SEC. 4. PROTECTION FOR CLASSIFIED INFORMATION CON-**
12 **TAINED IN AN ANNEX TO A DATA MINING RE-**
13 **PORT.**

14 Any disclosure of any classified information contained
15 in an annex made available to Congress pursuant to either
16 section 3(c)(2) of this Act or section 126(a)(7) of Public
17 Law 109–177, may be prosecuted under any applicable
18 statute, including—

19 (1) sections 793, 794, 798, or 1924 of title 18,
20 United States Code; and

21 (2) section 4 of the Subversive Activities Control
22 Act of 1950 (50 U.S.C. 783).

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