

111TH CONGRESS
1ST SESSION

H. R. 854

To require the Archivist of the United States to promulgate regulations to prevent the over-classification of information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. CLAY (for himself and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To require the Archivist of the United States to promulgate regulations to prevent the over-classification of 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 “Over-Classification Re-

5 duction Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to increase Government-

8 wide information sharing and the availability of informa-

9 tion to the public by applying standards and practices to

10 reduce improper classification.

1 **SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE**
2 **FEDERAL GOVERNMENT.**

3 (a) ARCHIVIST RESPONSIBILITIES.—

4 (1) REGULATIONS.—The Archivist of the
5 United States, in consultation with the heads of af-
6 fected Federal agencies, shall promulgate regulations
7 to prevent the over-classification of information.

8 (2) REQUIREMENTS.—The regulations under
9 this subsection shall—

10 (A) identify specific requirements to pre-
11 vent the over-classification of information, in-
12 cluding for determining—

13 (i) when classified products should be
14 prepared in a similar format Government-
15 wide; and

16 (ii) when classified products should
17 also be prepared in an unclassified format;
18 taking into consideration whether an un-
19 classified product would reasonably be ex-
20 pected to be of any benefit to a State,
21 local, tribal or territorial government, law
22 enforcement agency, or other emergency
23 response provider, the private sector, or
24 the public;

1 (B) ensure that compliance with this Act
2 protects national security and privacy rights;
3 and

4 (C) establish requirements for Federal
5 agencies to implement, subject to chapter 71 of
6 title 5, United States Code, including the fol-
7 lowing:

8 (i) The process whereby an individual
9 may challenge without retribution classi-
10 fication decisions by another individual and
11 be rewarded with specific incentives for
12 successful challenges resulting in—

13 (I) the removal of improper clas-
14 sification markings; or

15 (II) the correct application of ap-
16 propriate classification markings.

17 (ii) A method for informing individ-
18 uals that repeated failure to comply with
19 the regulations promulgated under this
20 section could subject them to a series of
21 penalties.

22 (iii) Penalties for individuals who re-
23 peatedly fail to comply with the regulations
24 promulgated under this section after hav-
25 ing received both notice of their noncompli-

1 ance and appropriate training or re-train-
2 ing to address such noncompliance.

3 (3) CONSULTATION.—The regulations shall be
4 promulgated in consultation, as appropriate, with
5 representatives of State, local, tribal, and territorial
6 governments; law enforcement entities; organizations
7 with expertise in civil rights, employee and labor
8 rights, civil liberties, and Government oversight; and
9 the private sector.

10 (4) DEADLINE.—The regulations under this
11 subsection shall be promulgated in final form not
12 later than one year after the date of the enactment
13 of this Act.

14 (b) INSPECTOR GENERAL RESPONSIBILITIES.—Con-
15 sistent with the Inspector General Act of 1978 (5 U.S.C.
16 App.) and section 17 of the Central Intelligence Agency
17 Act of 1949 (50 U.S.C. 403q), the Inspector General of
18 each affected Federal agency, in consultation with the Ar-
19 chivist, shall randomly audit classified information from
20 each component of the agency with employees that have
21 classification authority. In conducting any such audit, the
22 Inspector General shall—

23 (1) assess whether applicable classification poli-
24 cies, procedures, rules, and regulations have been
25 followed;

1 (2) describe any problems with the administra-
2 tion of the applicable classification policies, proce-
3 dures, rules, and regulations, including specific non-
4 compliance issues;

5 (3) recommend improvements in awareness and
6 training to address any problems identified under
7 paragraph (2); and

8 (4) report to Congress, the Archivist, and the
9 public, in an appropriate format, on the findings of
10 the Inspector General's audits under this section.

11 **SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVEN-**
12 **TION WITHIN THE FEDERAL GOVERNMENT.**

13 (a) PERSONAL IDENTIFIERS.—

14 (1) IN GENERAL.—For purposes described in
15 paragraph (2), the Archivist of the United States
16 shall require that, at the time of classification of in-
17 formation, the following shall appear on the informa-
18 tion:

19 (A) The name, personal identifier, or
20 unique agency identifier of the individual apply-
21 ing classification markings to the information.

22 (B) The agency, office, and position of the
23 individual.

24 (2) PURPOSES.—The purposes described in this
25 paragraph are as follows:

1 (A) To enable the agency to identify and
2 address over-classification problems, including
3 the classification of information that should not
4 be classified.

5 (B) To assess the information sharing im-
6 pact of any such problems.

7 (b) TRAINING.—When implementing the security
8 education and training program pursuant to Executive
9 Order 12958, Executive Order 12829, and successor ap-
10 propriate Executive Orders, the Archivist, subject to chap-
11 ter 71 of title 5, United States Code, shall, in consultation
12 with heads of affected Federal agencies—

13 (1) integrate training to educate about—

14 (A) the prevention of over-classification of
15 information;

16 (B) the proper use of classification mark-
17 ings, including portion markings;

18 (C) the consequences of over-classification
19 and other repeated improper uses of classifica-
20 tion markings, including the misapplication of
21 classification markings to information that does
22 not merit such markings, and of failing to com-
23 ply with the policies and procedures established
24 under or pursuant to this section, including the
25 negative consequences for the individual's per-

sonnel evaluation, information sharing, and the overall success of the agency's missions; and

(D) information relating to lessons learned from implementation of the regulations including affected Federal agency internal audits and Inspector General audits, as provided under this Act; and

(2) ensure that such program is conducted efficiently, in conjunction with any other security, intelligence, or other training programs required by the agency to reduce the costs and administrative burdens associated with the additional training required by this section.

(c) DETAILEE PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—The Archivist, subject to chapter 71 of title 5, United States Code, in consultation with heads of affected Federal agencies, shall implement a detailee program to detail Federal agency personnel, on a nonreimbursable basis, to the National Archives and Records Administration for the purpose of—

(A) training and educational benefit for the agency personnel assigned so that they may better understand the policies, procedures and laws governing classification authorities;

1 (B) bolstering the ability of the National
2 Archives and Records Administration to con-
3 duct its oversight authorities over agencies; and

4 (C) ensuring that the policies and proce-
5 dures established by the agencies remain con-
6 sistent with those established by the Archivist
7 of the United States.

8 (2) SUNSET OF DETAILEE PROGRAM.—Except
9 as otherwise provided by law, this subsection shall
10 cease to have effect on December 31, 2012.

11 **SEC. 5. DEFINITIONS.**

12 In this Act:

13 (1) INFORMATION.—The term “information”
14 means any communicable knowledge or documentary
15 material, regardless of its physical form or charac-
16 teristics, that is owned by, is produced by or for, or
17 is under the control of the Federal Government.

18 (2) FEDERAL AGENCY.—The term “Federal
19 agency” means—

20 (A) any Executive agency, as that term is
21 defined in section 105 of title 5, United States
22 Code;

23 (B) any military department, as that term
24 is defined in section 102 of such title; and

1 (C) any other entity within the executive
2 branch that comes into the possession of classi-
3 fied information.

4 (3) AFFECTED FEDERAL AGENCY.—The term
5 “affected Federal agency” means any Federal agen-
6 cy that employs an individual with original or deriva-
7 tive classification authority.

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