

111TH CONGRESS
1ST SESSION

H. R. 553

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

JANUARY 15, 2009

Ms. HARMAN 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 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

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

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

22 (4) Excessive government secrecy stands in the
23 way of a safer and more secure homeland. This
24 trend is antithetical to the creation and operation of
25 the information sharing environment established

1 under section 1016 of the Intelligence Reform and
2 Terrorism Prevention Act of 2004 (6 U.S.C. 485),
3 and must be halted and reversed.

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

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

19 **SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE**
20 **DEPARTMENT OF HOMELAND SECURITY.**

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

1 **“SEC. 210F. OVER-CLASSIFICATION PREVENTION PRO-**
2 **GRAM.**

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

19 “(b) REQUIREMENTS.—Not later than one year after
20 the date of the enactment of the Reducing Over-Classifica-
21 tion Act of 2009, the Secretary, in administering the poli-
22 cies, procedures, and programs required under subsection
23 (a), shall—

24 “(1) create, in consultation with the Archivist
25 of the United States, standard classified and unclas-
26 sified formats for finished intelligence products cre-

1 ated by the Department, consistent with any govern-
2 ment-wide standards, practices or procedures for
3 similar products;

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

14 “(3) ensure that such policies, procedures, and
15 programs protect the national security as well as the
16 information privacy rights and legal rights of United
17 States persons pursuant to all applicable law and
18 policy, including the privacy guidelines for the infor-
19 mation sharing environment established pursuant to
20 section 1016 of the Intelligence Reform and Ter-
21 rorism Prevention Act of 2004 (6 U.S.C. 485), as
22 appropriate;

23 “(4) establish an ongoing auditing mechanism
24 administered by the Inspector General of the De-
25 partment or other appropriate senior Department of-

1 ficial that randomly selects, on a periodic basis, clas-
2 sified information from each component of the De-
3 partment that generates finished intelligence prod-
4 ucts to—

5 “(A) assess whether applicable classifica-
6 tion policies, procedures, rules, and regulations
7 have been followed;

8 “(B) describe any problems with the ad-
9 ministration of the applicable classification poli-
10 cies, procedures, rules, and regulations, includ-
11 ing specific non-compliance issues;

12 “(C) recommend improvements in aware-
13 ness and training to address any problems iden-
14 tified in subparagraph (B); and

15 “(D) report at least annually to the Com-
16 mittee on Homeland Security of the House of
17 Representatives, the Committee on Homeland
18 Security and Governmental Affairs of the Sen-
19 ate, and the public, in an appropriate format,
20 on the findings of the Inspector General’s au-
21 dits under this section;

22 “(5) establish a process whereby employees may
23 challenge original classification decisions made by
24 Department employees or contractors and be re-
25 warded with specific incentives for successful chal-

1 lenges resulting in the removal of classification
2 markings or the downgrading of them;

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

7 “(7) institute a series of penalties for employees
8 and contractors who repeatedly fail to comply with
9 the policies, procedures, and programs established
10 under this section after having received both notice
11 of their noncompliance and appropriate training or
12 re-training to address such noncompliance.

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

18 **SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVEN-**
19 **TION WITHIN THE DEPARTMENT OF HOME-**
20 **LAND SECURITY.**

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

1 **“SEC. 210G. ENFORCEMENT OF OVER-CLASSIFICATION PRE-**
2 **VENTION PROGRAMS.**

3 “(a) **PERSONAL IDENTIFIERS.**—The Secretary
4 shall—

5 “(1) assess the technologies available or in use
6 at the Department by which an electronic personal
7 identification number or other electronic identifying
8 marker can be assigned to each Department em-
9 ployee and contractor with original classification au-
10 thority in order to—

11 “(A) track which documents have been
12 classified by a particular employee or con-
13 tractor;

14 “(B) determine the circumstances when
15 such documents have been shared;

16 “(C) identify and address over-classifica-
17 tion problems, including the misapplication of
18 classification markings to documents that do
19 not merit such markings; and

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

22 “(2) develop an implementation plan for a De-
23 partment standard for such technology with appro-
24 priate benchmarks, a timetable for its completion,
25 and cost estimate for the creation and implementa-
26 tion of a system of electronic personal identification

1 numbers or other electronic identifying markers for
2 all relevant Department employees and contractors;
3 and

4 “(3) upon completion of the implementation
5 plan described in paragraph (2), or not later than
6 180 days after the date of the enactment of the Re-
7 ducing Over-Classification Act of 2009, whichever is
8 earlier, the Secretary shall provide a copy of the
9 plan to the Committee on Homeland Security of the
10 House of Representatives and the Committee on
11 Homeland Security and Governmental Affairs of the
12 Senate.

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

15 “(1) require annual training for each Depart-
16 ment employee and contractor with classification au-
17 thority or those responsible for analysis, dissemina-
18 tion, preparation, production, receiving, publishing,
19 or otherwise communicating written classified infor-
20 mation, including training to—

21 “(A) educate each employee and contractor
22 about—

23 “(i) the Department’s requirement
24 that all classified finished intelligence prod-
25 ucts that they create be simultaneously

1 prepared in unclassified form in a standard
2 format prescribed by the Department, pro-
3 vided that the unclassified product would
4 reasonably be expected to be of any benefit
5 to a State, local, tribal, or territorial gov-
6 ernment, law enforcement agency, or other
7 emergency response provider, or the pri-
8 vate sector, based on input provided by the
9 Interagency Threat Assessment and Co-
10 ordination Group Detail established under
11 section 210D;

12 “(ii) the proper use of classification
13 markings, including portion markings; and

14 “(iii) the consequences of over-classi-
15 fication and other improper uses of classi-
16 fication markings, including the
17 misapplication of classification markings to
18 documents that do not merit such mark-
19 ings, and of failing to comply with the De-
20 partment’s policies and procedures estab-
21 lished under or pursuant to this section,
22 including the negative consequences for the
23 individual’s personnel evaluation, homeland
24 security, information sharing, and the

1 overall success of the Department's mis-
2 sions;

3 “(B) serve as a prerequisite, once com-
4 pleted successfully, as evidenced by an appro-
5 priate certificate, for—

6 “(i) obtaining classification authority;
7 and

8 “(ii) renewing such authority annu-
9 ally; and

10 “(C) count as a positive factor, once com-
11 pleted successfully, in the Department's employ-
12 ment, evaluation, and promotion decisions; and

13 “(2) ensure that such program is conducted ef-
14 ficiently, in conjunction with any other security, in-
15 telligence, or other training programs required by
16 the Department to reduce the costs and administra-
17 tive burdens associated with the additional training
18 required by this section.

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

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

24 “(A) training and educational benefit for
25 the Department personnel assigned so that they

1 may better understand the policies, procedures
2 and laws governing original classification au-
3 thorities;

4 “(B) bolstering the ability of the National
5 Archives and Records Administration to con-
6 duct its oversight authorities over the Depart-
7 ment and other Departments and agencies; and

8 “(C) ensuring that the policies and proce-
9 dures established by the Secretary remain con-
10 sistent with those established by the Archivist
11 of the United States;

12 “(2) ensure that the program established under
13 paragraph (1) includes at least one individual for
14 each Department office with delegated original clas-
15 sification authority; and

16 “(3) in coordination with the Archivist of the
17 United States, report to Congress not later than 90
18 days after the conclusion of the first year of the pro-
19 gram established under paragraph (1), on—

20 “(A) the advisability of expanding the pro-
21 gram on a government-wide basis, whereby
22 other departments and agencies would send
23 detailees to the National Archives and Records
24 Administration; and

1 “(B) the administrative and monetary
2 costs of full compliance with this section.

3 “(d) SUNSET OF DETAILEE PROGRAM.—Except as
4 otherwise provided by law, subsection (c) shall cease to
5 have effect on December 31, 2012.

6 “(e) FINISHED INTELLIGENCE PRODUCT DE-
7 FINED.—The term ‘finished intelligence product’ has the
8 meaning given the term in section 210F(c).”.

9 **SEC. 5. TECHNICAL AMENDMENT.**

10 The table of contents in section 1(b) of the Homeland
11 Security Act of 2002 (6 U.S.C. 101(b)) is amended by
12 adding after the item relating to section 210E the fol-
13 lowing new items:

“Sec. 210F. Over-classification prevention program.

“Sec. 210G. Enforcement of over-classification prevention programs.”.

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