H. R. 6193

To require the Secretary of Homeland Security to develop and administer policies, procedures, and programs to promote the implementation of the Controlled Unclassified Information Framework applicable to unclassified information that is homeland security information, terrorism information, weapons of mass destruction information and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2008

Ms. HARMAN (for herself, Mr. REICHERT, Mr. THOMPSON of Mississippi, Mr. LANGEVIN, Ms. NORTON, Mr. CARNEY, Mr. DICKS, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To require the Secretary of Homeland Security to develop and administer policies, procedures, and programs to promote the implementation of the Controlled Unclassified Information Framework applicable to unclassified information that is homeland security information, terrorism information, weapons of mass destruction information and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Improving Public Ac-
cess to Documents Act of 2008”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The proliferation and widespread use of
“sensitive but unclassified” (SBU) control markings
by the Federal government interferes with accurate,
actionable and timely homeland security information
sharing, increases the cost of information security,
and needlessly limits public access to information.

(2) The control markings problem, which has
worsened since the 9/11 attacks, causes considerable
confusion about what information can be shared
with whom both internally at the Department of
Homeland Security and with its external partners.
This problem negatively impacts the dissemination
of homeland security information to the Depart-
ment’s State, local, and tribal homeland security,
law enforcement, and private sector customers, and
the public.

(3) Overuse of “sensitive but unclassified”
markings stands in the way of a safer and more se-
cure homeland. This trend is antithetical to the cre-
ation and operation of the information sharing envi-
ronment established under section 1016 of the Intel-
ligence Reform and Terrorism Prevention Act of
2004 (6 U.S.C. 485), and must be halted and re-
versed.

(4) To do so, the Department should start with
the presumption that all homeland security informa-
tion that is not properly classified, or marked as
controlled unclassified information and otherwise ex-
empt from disclosure, should be shared with the
public pursuant to section 552 of title 5, United
States Code (commonly referred to as the “Freedom
of Information Act”).

(5) The Department should also develop and
administer policies, procedures, and programs that
promote compliance with applicable laws, executive
orders, and other authorities pertaining to the prop-
er use of controlled unclassified information mark-
ings and the United States National Archives and
Records Administration policies implementing them.
SEC. 3. CONTROLLED UNCLASSIFIED INFORMATION FRAMEWORK IMPLEMENTATION WITHIN THE DEPARTMENT OF HOMELAND SECURITY.

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

“SEC. 210F. CONTROLLED UNCLASSIFIED INFORMATION FRAMEWORK IMPLEMENTATION PROGRAM.

“(a) IN GENERAL.—The Secretary shall develop and administer policies, procedures, and programs within the Department to implement the controlled unclassified information framework in order to maximize the disclosure to the public of, and to standardize the use of controlled unclassified information control markings on, homeland security information, terrorism information, weapons of mass destruction information, and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485) that must be disseminated to prevent and to collectively respond to acts of terrorism. The Secretary shall coordinate with the National Archives and Records Administration and consult with representatives of State, local, and tribal government; organizations with expertise in civil rights, civil liberties, and government oversight; and the private
sector, as appropriate, to develop such policies, procedures, and programs.

“(b) REQUIREMENTS.—Within 180 days of the enactment of this Act, the Secretary, in administering the policies, procedures, and programs required under subsection (a), shall—

“(1) create a standard format for unclassified finished intelligence products created by the Department that have been designated as controlled unclassified information, consistent with any government-wide standards, practices or procedures for similar products;

“(2) require that all unclassified finished intelligence products created by the Department that have been designated as controlled unclassified information be prepared in the standard format, whenever possible;

“(3) ensure that such polices, procedures, and programs protect the information privacy rights and legal rights of United States persons pursuant to all applicable law and policy, including the privacy guidelines for the information sharing environment established pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), as appropriate;
“(4) establish an ongoing auditing mechanism administered by the Inspector General of the Department or other appropriate senior Department official that randomly selects, on a periodic basis, controlled unclassified information from each component of the Department that generates unclassified finished intelligence products to—

“(A) assess, on an individualized basis, whether applicable controlled unclassified information policies, procedures, rules, and regulations have been followed;

“(B) describe any problems with the administration of the applicable controlled unclassified information policies, procedures, rules and regulations, including specific non-compliance issues with individuals engaged in this work;

“(C) recommend improvements in awareness and training to address them;

“(D) report at least annually to the Committee on Homeland Security of the House of Representatives and the Homeland Security and Government Affairs Committee of the Senate, and the public on the findings of the Inspector General’s audits under this section;
“(5) establish a process whereby employees may challenge the use of controlled unclassified information markings and be rewarded with specific incentives for successful challenges resulting in the removal of controlled unclassified information markings;

“(6) institute a series of penalties, up to and including termination, for employees and contractors who fail to comply with the policies, procedures, and programs established under this section; and

“(7) maintain a publicly available list of documents designated and marked, in whole or in part, as controlled unclassified information, indicating which have been withheld in response to a request made pursuant to section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’), and create a process through which the public may seek the removal of such a designation and marking.

“(c) IMPLEMENTATION.—In furtherance of the requirements in paragraphs (a) and (b), the Secretary shall ensure that:

“(1) information shall be designated as controlled unclassified information and include an au-
authorized controlled unclassified information marking

only if:

“(A) a statute requires or authorizes such

a designation and marking; or

“(B) the Secretary, through regulations,
directives or other specific guidance to the
agency that have been submitted to and ap-
proved by the Archivist of the United States,
determines that the information is controlled
unclassified information based on mission re-
quirements, business prudence, legal privilege,
the protection of personal or commercial rights,
safety, or security;

“(2) notwithstanding the provisions contained
in paragraph (c)(1), information shall not be des-
ignated as controlled unclassified information—

“(A) to conceal violations of law, ineffi-
ciency, or administrative error;

“(B) to prevent embarrassment to the
Federal Government or any Federal official,
any organization, or agency;

“(C) to improperly or unlawfully interfere
with competition in the private sector;

“(D) to prevent or delay the release of in-
formation that does not require such protection;
“(E) if it is required to be made available to the public; or

“(F) if it has already been released to the public under proper authority; and

“(3) the controlled unclassified information framework is administered in a manner that ensures that—

“(A) controlled unclassified information can be shared within the Department and with State, local, and tribal governments, the private sector, and the public, as appropriate;

“(B) all policies and standards for the designation, marking, safeguarding, and dissemination of controlled unclassified information are consistent with the controlled unclassified information framework and any other policies, guidelines, procedures, instructions, or standards established by the President;

“(C) the number of Department employees and contractors with original and derivative controlled unclassified information designation authority is limited appropriately as determined through consultation with the parties identified in paragraph (a);
“(D) controlled unclassified information markings are not a determinant of public disclosure pursuant to section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’);

“(E) controlled unclassified information markings are placed on archived or legacy material whenever circulated, consistent with the controlled unclassified information framework and any other policies, guidelines, procedures, instructions, or standards established by the President;

“(F) all controlled unclassified information portions of classified documents are marked as controlled unclassified information; and

“(G) it supersedes any pre-existing policies and procedures relating to the creation, control, and sharing of sensitive but unclassified information generated by the Department, except where otherwise provided by law.

“(d) Public Access to Unclassified Information.—The Secretary shall make available to the public, pursuant to an appropriate request under section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’), all controlled unclassified
information and other unclassified information in its possession.”.

SEC. 4. ENFORCEMENT OF CONTROLLED UNCLASSIFIED INFORMATION FRAMEWORK IMPLEMENTATION WITHIN THE DEPARTMENT OF HOMELAND SECURITY.

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

“SEC. 210G. ENFORCEMENT OF CONTROLLED UNCLASSIFIED INFORMATION FRAMEWORK IMPLEMENTATION PROGRAMS.

“(a) PERSONAL IDENTIFIERS.—The Secretary shall—

“(1) assess the technologies available or in use at the Department by which an electronic personal identification number or other electronic identifying marker can be assigned to each Department employee or contractor with controlled unclassified information designation authority in order to—

“(A) track which documents have been designated as controlled unclassified information by a particular employee;

“(B) determine the circumstances when such documents have been shared;
“(C) identify and address misuse of controlled unclassified information markings, including the misapplication of controlled unclassified information markings to documents that do not merit such markings; and

“(D) assess the information sharing impact of any such problems or misuse;

“(2) develop an implementation plan for a Department standard for such technology with appropriate benchmarks, a timetable for its completion, and cost estimate for the creation and implementation of a system of electronic personal identification numbers or other electronic identifying markers for all relevant Department employees and contractors; and

“(3) upon completion of the implementation plan described in paragraph (2), or within 180 days of the enactment of this legislation, whichever is sooner, the Secretary shall provide a copy of the plan to the Committee on Homeland Security of the House of Representatives and the Homeland Security and Government Affairs Committee of the Senate.

“(b) TRAINING.—The Secretary, in coordination with the Archivist of the United States, shall—
“(1) require annual training for each Department employee or contractor with controlled unclassified information designation authority and who are responsible for analysis, dissemination, preparation, production, receiving, publishing, or otherwise communicating written controlled unclassified information. Such training shall:

“(A) educate each employee and contractor about—

“(i) the Department’s requirement that all unclassified finished intelligence products that they create that have been designated as controlled unclassified information be prepared in a standard format prescribed by the Department;

“(ii) the proper use of controlled unclassified information markings, including portion markings; and

“(iii) the consequences of improperly using controlled unclassified information markings, including the misapplication of controlled unclassified information markings to documents that do not merit such markings, and of failing to comply with the Department’s policies and procedures es-
lished under or pursuant to this section, including the negative consequences for the individual’s personnel evaluation, homeland security, information sharing, and the overall success of the Department’s missions;

“(B) serve as a prerequisite, once completed successfully, as evidenced by an appropriate certificate, for:

“(i) obtaining controlled unclassified information designation authority; and

“(ii) renewing such authority annually; and

“(C) count as a positive factor, once completed successfully, in the Department’s employment, evaluation, and promotion decisions; and

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

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

“(1) implement a Departmental Detatleee program to detail Departmental personnel to the United
States National Archives and Records Administration for one year, for the purpose of—

“(A) training and educational benefit for the Department personnel assigned so that they may better understand the policies, procedures and laws governing the controlled unclassified information framework;

“(B) bolstering the ability of the National Archives and Records Administration to conduct its oversight authorities over the Department and other Departments and agencies; and

“(C) ensuring that the policies and procedures established by the Secretary remain consistent with those established by the Archivist of the United States;

“(2) ensure that the program established under paragraph (1) includes at least one individual for each Department office with delegated controlled unclassified information designation authority; and

“(3) in coordination with the Archivist of the United States, report to Congress no later than 90 days after the conclusion of the first year of the program established under paragraph (1), on the advisability of expanding the program on a government-wide basis, whereby other departments and agencies...
would send detailees to the United States National Archives and Records Administration. Such report shall also include the administrative and monetary costs of full compliance with this section.

“(d) IN GENERAL.—Except as otherwise provided by law, subsection (c) shall cease to have effect on December 31, 2012.”.

SEC. 5. DEFINITIONS.

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

“SEC. 210H. DEFINITIONS.

“In this Act:

“(1) CONTROLLED UNCLASSIFIED INFORMATION.—The term ‘controlled unclassified information’ means a categorical designation that refers to unclassified homeland security information; law enforcement information relating to terrorism; and information, as defined in the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, section 504; that does not meet the standards of National Security Classification under Executive Order 12958, as amended, but is (i) pertinent to the national interests of the United States or to the important interests of entities out-
side the Federal Government, and (ii) under law or
United States Archives and Records Administration
policy requires safeguarding from unauthorized dis-
closure, special handling safeguards, or prescribed
limits on exchanges or dissemination.

“(2) Controlled Unclassified Information Framework.—The term ‘controlled unclassified information framework’ means the single set of policies and procedures governing the designation, marking, safeguarding, and dissemination of terrorism-related controlled unclassified information that originates in departments and agencies, regardless of the medium used for the display, storage, or transmittal of such information, as set forth in the President’s May 7, 2008 Memorandum for the Heads of Executive Departments Regarding Designation and Sharing of controlled unclassified information (CUI).

“(3) Finished Intelligence Product.—The term ‘finished intelligence product’ means a document in which an intelligence analyst has evaluated, interpreted, integrated, or placed into context raw intelligence.”.
SEC. 6. TECHNICAL AMENDMENT.

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

"210F. Controlled unclassified information framework implementation program.
"210G. Enforcement of over-classification prevention and controlled unclassified information framework implementation programs.
"210H. Definitions.".