

Reporters Committee for Freedom of the Press.txt
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BEFORE THE
DEPARTMENT OF HOMELAND SECURITY

**COMMENTS OF
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS**

In the matter of)
Procedures for Handling)
Critical Infrastructure Information)

The Reporters Committee for Freedom of Press submits these views to the Department of Homeland Security in response to the April 15, 2002, invitation for comments. Our remarks concern its consideration of rules regarding public access to Critical Infrastructure Information.

The Reporters Committee is a voluntary, unincorporated association established in 1970 by news editors and reporters to defend the First Amendment and freedom of information rights of the print and broadcast media.

We are very concerned that the Department interprets broadly, rather than narrowly, its ability to keep information labeled as CII from the public, and we oppose efforts here to expand the limited authority for withholding information that was granted to the Department by the Homeland Security Act. The proposals implement widely criticized secrecy provisions mandated by the Homeland Security Act.

Although the act applies only to information submitted to the Department of Homeland Security, these proposals require other federal agencies to pass on information to the department for labeling, so that, essentially the rules extend the new law's CII provisions to other federal agencies. Congress rejected an amendment to the Homeland Security Act that similarly would

have addressed so-called critical infrastructure information in other agencies.

Also, we object to the proposal that the department will rely on the discretion of submitters to determine whether information they provide meets the definition of critical infrastructure information set out in the act. Because submitters enjoy advantages of secrecy including, in some cases, immunity from prosecution, they cannot be expected to make disinterested decisions as to whether information should be withheld as CII.

The Department cannot expand the reach of this law to all federal agencies

The Homeland Security Act uniquely criminalizes the disclosure of certain unclassified information in the hands of the federal government. Congress does not give such protection lightly. Legislation that would criminalize the disclosure even of national security information has been both vetoed and subsequently rejected. The CII measure was controversial from the time that it was first introduced. Numerous bills to protect CII were rejected. Under these circumstances, there is no basis for the Department to presume that it can broaden the application of the law.

In Sec. 29.1 Purpose and Scope, the Department broadly expands the authority of the Act, which limited the protections of CII information to that submitted to the Department of Homeland Security, to apply government-wide.

The House of Representatives in the 107th Congress specifically considered and rejected the application of rules concerning CII information to all federal agencies in H.R. 5005 introduced by Rep. Tom Davis of Virginia.

Nonetheless, these rules would extend the protections afforded CII to similar information voluntarily submitted to *all* federal agencies that receive, care for, or store CII voluntarily submitted to the *Federal Government* pursuant to the CII Act of 2002. The Act pointedly does

not cover all such information submitted to the Federal Government and these rules to implement the Act cannot make that expansion.

In 29.2, these rules lay out procedures requiring other federal agencies to act on behalf of voluntary submitters to tag information through the Department of Homeland Security so that the Act will apply. This sleight-of-hand maneuver simply counters the intent of Congress to limit the application of the law to CII information voluntarily submitted to the Department of Homeland Security.

We greatly appreciate the Department's consideration of these comments.

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Executive Director

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