

**Sec. 195. Protection of Voluntarily Furnished Confidential Information**

(A) Notwithstanding any other provision of law, records pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response and recovery efforts) that are furnished voluntarily to the Department of Homeland Security shall not be made available pursuant to section 552 of title 5, United States Code, provided that -

- (1) the provider would not customarily make the records available to the public; and
- (2) the records are designated and certified by the provider as confidential and not customarily made available to the public in a manner specified by the Department of Homeland Security.

(B) Records Shared with Other Agencies -

- (1) An agency in receipt of a record that was voluntarily provided to the Department of Homeland Security and subsequently shared with the agency, shall, upon receipt of a request pursuant to section 552 of title 5, United States Code, for such record, not make the record available and refer the request to the Department of Homeland Security for processing and response in accordance with this subsection. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.
- (2) Notwithstanding paragraph (1), nothing in this section shall prohibit any agency from making available, pursuant to section 552 of title 5, United States Code, records that the agency received independently of the Department of Homeland Security, regardless of whether the Department of Homeland Security has similar or identical records.

(C) Withdrawal of Confidential Designation - A provider of voluntarily furnished records under subsection (A) may, at any time withdraw, in a manner specified by the Department of Homeland Security the confidential designation.

(D) Procedures - The Department of Homeland Security shall establish procedures for -

- (1) the acknowledgment of receipt of voluntarily provided records;
- (2) the designation, marking and certification of voluntarily provided records as confidential and not customarily made available to the public;
- (3) the care and storage of voluntarily provided records;
- (4) the protection and maintenance of the confidentiality of voluntarily provided records; and

(5) the withdrawal of confidential designation.

(E) Definitions. -

(1) Critical Infrastructure. The term "critical infrastructure" has the same meaning as given in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) Furnished Voluntarily - The term "furnished voluntarily" means submissions made to the Department of Homeland Security-

(i) in the absence of authority of the Department requiring them to be furnished, and

(ii) the records are not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit, such as agency forbearance, loans, reductions or modifications of agency penalties or rulings, or other approval from the government. For purposes of this section, warnings, alerts or other risk analyses by the Department of Homeland Security are not a benefit.

(F) Limitation - Nothing in this section shall be construed as preempting or otherwise modifying state or local law concerning the disclosure of any information that the state or local government received independently of the Department of Homeland Security.

(G) Report - The General Accounting Office shall submit to the Committees on the Judiciary, the Committee on Governmental Affairs and the Committee on Government Reform and Oversight of the Senate and House of Representatives a report, in classified or unclassified form, or both, by eighteen months after enactment of this Act that shall contain a detailed description of the implementation and use of this section, including-

(1) the number of persons within the private sector and state and local agencies providing records voluntarily to the Department of Homeland Security under this section;

(2) the number of requests for access to records granted or denied under this section; and

(3) recommendations for improving the collection and analysis of sensitive information held by the persons within the private sector bearing on threats and risks to critical infrastructures, as well as responses to those threats and risks.