

108TH CONGRESS
2D SESSION

H. R. 5073

To restore and strengthen the laws that provide for an open and transparent
Federal Government.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2004

Mr. WAXMAN (for himself, Mr. SANDERS, Mrs. MALONEY, Mr. CUMMINGS,
Mr. KUCINICH, Mr. CLAY, Mr. VAN HOLLEN, Ms. NORTON, Ms. MCCOLLUM,
and Mr. McDERMOTT) introduced the following bill; which was referred to the Committee on Government Reform

A BILL

To restore and strengthen the laws that provide for an
open and transparent Federal Government.

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 “Restore Open Govern-
5 ment Act of 2004”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of Contents.

- Sec. 101. Revocation of the Ashcroft Memo and the Card Memo.
 Sec. 102. Findings and policy relating to disclosure of information under the
 Freedom of Information Act.
 Sec. 103. Protection of voluntarily furnished confidential information.

TITLE II—PRESIDENTIAL RECORDS

- Sec. 201. Revocation of Executive Order of November 1, 2001.

TITLE III—ADVISORY COMMITTEES

- Sec. 301. Presidential inter-agency advisory committees.

TITLE IV—CLASSIFICATION OF INFORMATION

- Sec. 401. Reducing excessive classification of information.

TITLE V—OTHER PROVISIONS

- Sec. 501. Citizen actions.

1 **TITLE I—FREEDOM OF** 2 **INFORMATION**

3 **SEC. 101. REVOCATION OF THE ASHCROFT MEMO AND THE** 4 **CARD MEMO.**

5 The “Memorandum for Heads of all Federal Depart-
 6 ments and Agencies” on “The Freedom of Information
 7 Act” issued by Attorney General John Ashcroft on Octo-
 8 ber 12, 2001, and the “Memorandum for the Heads of
 9 Executive Department and Agencies” on “Action to Safe-
 10 guard Information Regarding Weapons of Mass Destruc-
 11 tion and Other Sensitive Documents Related to Homeland
 12 Security” issued by Andrew H. Card, Jr., Assistant to the
 13 President and Chief of Staff on March 19, 2002, shall
 14 have no force or effect.

1 **SEC. 102. FINDINGS AND POLICY RELATING TO DISCLO-**
2 **SURE OF INFORMATION UNDER THE FREE-**
3 **DOM OF INFORMATION ACT.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) Public access to information held by the
6 Federal Government is vitally important to the func-
7 tioning of a democratic society.

8 (2) The Freedom of Information Act was en-
9 acted to ensure such public access to information.

10 (3) The Freedom of Information Act specifies
11 limited exemptions to the general requirement for
12 disclosure, where disclosure could potentially threat-
13 en other important public policy goals.

14 (4) In establishing the categories of exempt in-
15 formation under the Freedom of Information Act,
16 Congress allowed agencies to withhold information in
17 those categories, but did not in any way mandate or
18 encourage such withholding.

19 (b) POLICY.—The policy of the Federal Government
20 is to release information to the public in response to a
21 request under the Freedom of Information Act—

22 (1) if such release is required by law; or

23 (2) if such release is allowed by law and the
24 agency concerned does not reasonably foresee that
25 disclosure would be harmful to an interest protected
26 by an applicable exemption.

1 (c) GUIDANCE.—All guidance provided to Federal
2 Government employees responsible for carrying out the
3 Freedom of Information Act shall be consistent with the
4 policy set forth in subsection (b).

5 **SEC. 103. PROTECTION OF VOLUNTARILY FURNISHED CON-**
6 **FIDENTIAL INFORMATION.**

7 (a) IN GENERAL.—Title II of the Homeland Security
8 Act of 2002 (Public Law 107–296) is amended by striking
9 subtitle B and inserting the following:

10 **“Subtitle B—Protection of Volun-**
11 **tarily Furnished Confidential**
12 **Information**

13 **“SEC. 211. PROTECTION OF VOLUNTARILY FURNISHED**
14 **CONFIDENTIAL INFORMATION.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) CRITICAL INFRASTRUCTURE.—The term
17 ‘critical infrastructure’ has the meaning given that
18 term in section 1016(e) of the USA PATRIOT ACT
19 of 2001 (42 U.S.C. 5195c(e)).

20 “(2) FURNISHED VOLUNTARILY.—

21 “(A) DEFINITION.—The term ‘furnished
22 voluntarily’ means a submission of a record
23 that—

1 “(i) is made to the Department in the
2 absence of authority of the Department re-
3 quiring that record to be submitted; and

4 “(ii) is not submitted or used to sat-
5 isfy any legal requirement or obligation or
6 to obtain any grant, permit, benefit (such
7 as agency forbearance, loans, or reduction
8 or modifications of agency penalties or rul-
9 ings), or other approval from the Govern-
10 ment.

11 “(B) BENEFIT.—In this paragraph, the
12 term ‘benefit’ does not include any warning,
13 alert, or other risk analysis by the Department.

14 “(b) IN GENERAL.—Notwithstanding any other pro-
15 vision of law, a record pertaining to the vulnerability of
16 and threats to critical infrastructure (such as attacks, re-
17 sponse, and recovery efforts) that is furnished voluntarily
18 to the Department shall not be made available under sec-
19 tion 552 of title 5, United States Code, if—

20 “(1) the provider would not customarily make
21 the record available to the public; and

22 “(2) the record is designated and certified by
23 the provider, in a manner specified by the Depart-
24 ment, as confidential and not customarily made
25 available to the public.

1 “(c) RECORDS SHARED WITH OTHER AGENCIES.—

2 “(1) IN GENERAL.—

3 “(A) RESPONSE TO REQUEST.—An agency
4 in receipt of a record that was furnished volun-
5 tarily to the Department and subsequently
6 shared with the agency shall, upon receipt of a
7 request under section 552 of title 5, United
8 States Code, for the record—

9 “(i) not make the record available;

10 and

11 “(ii) refer the request to the Depart-
12 ment for processing and response in ac-
13 cordance with this section.

14 “(B) SEGREGABLE PORTION OF
15 RECORD.—Any reasonably segregable portion of
16 a record shall be provided to the person re-
17 questing the record after deletion of any portion
18 which is exempt under this section.

19 “(2) DISCLOSURE OF INDEPENDENTLY FUR-
20 NISHED RECORDS.—Notwithstanding paragraph (1),
21 nothing in this section shall prohibit an agency from
22 making available under section 552 of title 5, United
23 States Code, any record that the agency receives
24 independently of the Department, regardless of

1 whether or not the Department has a similar or
2 identical record.

3 “(d) WITHDRAWAL OF CONFIDENTIAL DESIGNA-
4 TION.—The provider of a record that is furnished volun-
5 tarily to the Department under subsection (b) may at any
6 time withdraw, in a manner specified by the Department,
7 the confidential designation.

8 “(e) PROCEDURES.—The Secretary shall prescribe
9 procedures for—

10 “(1) the acknowledgement of receipt of records
11 furnished voluntarily;

12 “(2) the designation, certification, and marking
13 of records furnished voluntarily as confidential and
14 not customarily made available to the public;

15 “(3) the care and storage of records furnished
16 voluntarily;

17 “(4) the protection and maintenance of the con-
18 fidentiality of records furnished voluntarily; and

19 “(5) the withdrawal of the confidential designa-
20 tion of records under subsection (d).

21 “(f) EFFECT ON STATE AND LOCAL LAW.—Nothing
22 in this section shall be construed as preempting or other-
23 wise modifying State or local law concerning the disclosure
24 of any information that a State or local government re-
25 ceives independently of the Department.

1 “(g) REPORT.—

2 “(1) REQUIREMENT.—Not later than 18
3 months after the date of the enactment of the Re-
4 store Open Government Act of 2004, the Comp-
5 troller General of the United States shall submit to
6 the committees of Congress specified in paragraph
7 (2) a report on the implementation and use of this
8 section, including—

9 “(A) the number of persons in the private
10 sector, and the number of State and local agen-
11 cies, that furnished voluntarily records to the
12 Department under this section;

13 “(B) the number of requests for access to
14 records granted or denied under this section;
15 and

16 “(C) such recommendations as the Comp-
17 troller General considers appropriate regarding
18 improvements in the collection and analysis of
19 sensitive information held by persons in the pri-
20 vate sector, or by State and local agencies, re-
21 lating to vulnerabilities of and threats to critical
22 infrastructure, including the response to such
23 vulnerabilities and threats.

1 “(2) COMMITTEES OF CONGRESS.—The com-
2 mittees of Congress specified in this paragraph
3 are—

4 “(A) the Committees on the Judiciary and
5 Governmental Affairs of the Senate; and

6 “(B) the Committees on the Judiciary and
7 Government Reform and Oversight of the
8 House of Representatives.

9 “(3) FORM.—The report shall be submitted in
10 unclassified form, but may include a classified
11 annex.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—
13 The table of contents for the Homeland Security Act of
14 2002 (Public Law 107–296) is amended by striking the
15 items relating to subtitle B of title II and sections 211
16 through 215 and inserting the following:

 “Subtitle B—Protection of Voluntarily Furnished Confidential Information
 “Sec. 211. Protection of voluntarily furnished confidential information.”.

17 **TITLE II—PRESIDENTIAL**
18 **RECORDS**

19 **SEC. 201. REVOCATION OF EXECUTIVE ORDER OF NOVEM-**
20 **BER 1, 2001.**

21 Executive Order number 13233, dated November 1,
22 2001 (66 Fed. Reg. 56025), shall have no force or effect,
23 and Executive Order number 12667, dated January 18,
24 1989 (54 Fed. Reg. 3403), shall apply by its terms.

1 **TITLE III—ADVISORY**
2 **COMMITTEES**

3 **SEC. 301. PRESIDENTIAL INTER-AGENCY ADVISORY COM-**
4 **MITTEES.**

5 (a) DEFINITION.—The term “Presidential inter-
6 agency advisory committee” is any committee or task force
7 that—

8 (1) is composed wholly of full-time, or perma-
9 nent part-time, officers or employees of the Federal
10 Government;

11 (2) includes officers or employees of at least
12 two separate Federal agencies;

13 (3) is established or utilized to provide advice,
14 ideas, or recommendations to the President or Vice
15 President on a specified topic or topics; and

16 (4) has at least one officer or employee as-
17 signed full-time as a staff member of the committee
18 to support the functions of the committee.

19 (b) REQUIREMENTS.—

20 (1) The President shall ensure that the names
21 of the members of the committee are published in
22 the Federal Register.

23 (2) The committee must make public each sub-
24 stantive contact between the advisory committee, or
25 individual members of the advisory committee acting

1 on the committee's behalf, and any person who is
2 not a full-time or permanent part-time officer or em-
3 ployee of the Federal Government, including—

4 (A) the date of the contact;

5 (B) the form of the contact (in person, by
6 telephone, by e-mail, or in writing);

7 (C) the names and affiliations of the par-
8 ties involved; and

9 (D) the substance of the communication
10 and the communication itself, if in electronic or
11 written form.

12 (3) For purposes of this subsection, a contact
13 shall be considered substantive if the information
14 conveyed influenced or was reflected in any way in
15 the committee's advice, recommendations, or report
16 to the President or Vice President.

17 **TITLE IV—CLASSIFICATION OF** 18 **INFORMATION**

19 **SEC. 401. REDUCING EXCESSIVE CLASSIFICATION OF IN-** 20 **FORMATION.**

21 As soon as possible, but in no event later than 180
22 days after the date of the enactment of this Act, the Presi-
23 dent shall require Federal departments and agencies to
24 promote a culture of information sharing by reducing dis-
25 incentives to information sharing, including overclassifica-

1 tion of information and unnecessary requirements for
2 originator approval.

3 **TITLE V—OTHER PROVISIONS**

4 **SEC. 501. CITIZEN ACTIONS.**

5 Section 552(a)(4)(E) of title 5, United States Code,
6 is amended—

7 (1) by inserting “, or in any case seeking infor-
8 mation from a Federal agency or official under any
9 other Federal law,” after “case under this section”;
10 and

11 (2) by adding at the end the following: “For
12 purposes of this section, a complainant has ‘substan-
13 tially prevailed’ if the complainant has obtained
14 some of its requested relief through a judicial or ad-
15 ministrative order or an enforceable written agree-
16 ment, or if the complainant’s pursuit of a nonfrivo-
17 lous claim or defense has been a catalyst for a vol-
18 untary or unilateral change in position by the oppos-
19 ing party that provides any significant part of the
20 relief sought.”.

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