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United States Senate

COMMITTEE ON
GOVERNMENT OPERATIONS
WASHINGTON, D.C. 20510

October 5, 1973

73-1174
Executive Registry
73-6404

Honorable William Colby, Director
Central Intelligence Agency
Washington, D. C.

Dear Mr. Colby:

Re: S. 2451

Attached is a copy of a bill which has been referred to this committee for consideration.

It will be helpful if you will give the committee the benefit of your views regarding the provisions of this bill, and your recommendations as to committee action.

Please transmit your reply in quadruplicate.

Thanking you for your cooperation, I am

Sincerely yours,

Sam J. Ervin, Jr.

Sam J. Ervin, Jr.
Chairman

Enclosure

CRC, 3/19/2003

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93^d CONGRESS
1ST SESSION

S. 2451

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 1973

Mr. HATHAWAY introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To amend section 552 of title 5 of the United States Code to clarify certain exemptions from its disclosure requirements, to provide guidelines and limitations for the classification of 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 That this Act may be cited as the "Freedom of Information
4 Act Amendments of 1973".

5 CONFORMING AMENDMENTS

6 SEC. 101. Section 552 (b) of title 5, United States
7 Code, is amended—

8 (1) by striking out "(b) This section" and insert-
9 ing in lieu thereof "(b) (1) Subsection (a)";

U

1 (2) by redesignating paragraphs (1) through (9)
2 as subparagraphs (A) through (I), respectively;

3 (3) by striking out subparagraph (A), as redesign-
4 ated by clause (2), and inserting in lieu thereof the
5 following: "(A) designated 'Secret Defense Data' in
6 accordance with subsection (d)"; and

7 (4) by inserting at the end thereof the following
8 new paragraph:

9 “(2) subsection (a) applies to any matter which is
10 declassified under subsection (e).”

11 CLASSIFICATION OF INFORMATION

12 SEC. 102. Section 552 of title 5, United States Code, is
13 amended by adding at the end thereof the following new
14 subsections:

15 “(d) (1) The Congress finds and declares that the free
16 flow of information among individuals, between the Govern-
17 ment and the citizens of the United States, and among the
18 separate branches of Government is essential to the proper
19 functioning of the constitutional processes of the United
20 States. The Congress further finds that certain unwarranted
21 policies and procedures for the classification of information
22 and to material have in the past unduly inhibited this free
23 flow of information, and that in order to correct this situation
24 it is necessary to prescribe certain guidelines and limitations
25 for the classification of information and material which the

1 President or the head of an agency determines to require
2 limited dissemination in the interest of national defense.

3 “(2) The President and the heads of those agencies
4 listed under subparagraph (A) of paragraph (4) are au-
5 thorized to classify as ‘Secret Defense Data’ any official in-
6 formation or material originated or acquired by them, the
7 unauthorized disclosure of which may reasonably be expected
8 to cause damage to the national defense. Official information
9 or material may be classified as Secret Defense Data only if
10 its unauthorized disclosure would adversely affect the ability
11 of the United States to protect itself against overt or covert
12 hostile action. In no case shall information or material be
13 classified in order to conceal incompetence, inefficiency,
14 wrongdoing, or administrative error, to avoid embarrassment
15 to any individual or agency, to restrain competition or inde-
16 pendent initiative, or to prevent or delay for any reason the
17 release of information or material the dissemination of which
18 will not damage the national defense.

19 “(3) Except as otherwise provided by law, no designa-
20 tion other than ‘Secret Defense Data’ shall be used to classify
21 information or material in the interest of national defense.

22 “(4) (A) Official information or material may be orig-
23 inally classified as ‘Secret Defense Data’ by the heads of the
24 following agencies: the Department of State; the Department
25 of Defense and the military departments; the Department of

1 the Treasury; the Department of Justice; the Department of
2 Commerce; the Department of Transportation; the Atomic
3 Energy Commission; the Central Intelligence Agency; the
4 National Aeronautics and Space Administration; and such
5 offices within the Executive Office of the President as the
6 President may designate by Executive order.

7 “ (B) (i) Within the agencies described in subparagraph
8 (A), the classification, in the interest of national defense, of
9 official information may only be done by the head of each
10 such agency, and such other senior principal deputies, as-
11 sistants, and subordinate officials within each such agency
12 who are designated in writing by the head of each such
13 agency. The head of each such agency shall semiannually
14 review each individual whom he has designated in writing
15 as having authority to classify official information or material,
16 and shall revoke such designation in the case of any individ-
17 ual whose operational responsibilities no longer require that
18 he have such authority.

19 “ (ii) No individual authorized to classify official infor-
20 mation or material may redelegate such authority to any
21 other individual.

22 “ (5) Official information and material shall be classified
23 according to what it contains or reveals, and not according
24 to its relationship with or reference to other information or
25 material.

1 “(6) Information or material furnished to the United
2 States by a foreign government or international organization,
3 the unauthorized disclosure of which could reasonably be
4 expected to cause damage to the national defense or to the
5 defense of a foreign government with which the United
6 States is allied, may be designated as ‘Secret Defense Data’.

7 “(7) Official information or material originated or ac-
8 quired by an agency and classified as ‘Confidential’, ‘Secret’,
9 or ‘Top Secret’ pursuant to any Executive order shall be
10 subject to the provisions of this subsection. Such information
11 or material shall be marked in accordance with the provi-
12 sions of this subsection to show that it has been designated
13 ‘Secret Defense Data’, or to show that it has been declassified
14 and cite this subsection or subsection (c) as authority for
15 such marking.

16 “(c) (1) (A) Any official information or material
17 which—

18 “(i) is classified pursuant to the provisions of sub-
19 section (d) after the effective date of such subsection;
20 and

21 “(ii) at any time thereafter ceases to meet require-
22 ments of subsection (d) (2), or can no longer be pro-
23 tected against unauthorized disclosure, shall be declassi-
24 fied promptly by the President or an individual within

1 the appropriate agency who has the authority to classify
2 such information or material.

3 “(b) Except as provided in paragraph (2), any official
4 information or material which is classified pursuant to sub-
5 section (d) on or after the effective date of such subsection
6 and which is not declassified as provided in subparagraph
7 (a), shall be declassified automatically upon the expiration
8 of two years after the end of the month of its classification,
9 by the President or an individual within the appropriate
10 agency who has authority to classify such information or
11 material, regardless of whether or not the document or
12 other material has been marked to show the declassification.

13 “(c) Except as provided by paragraph (2), any official
14 information or material which was originally classified as
15 ‘Confidential’, ‘Secret’, or ‘Top Secret’ pursuant to any
16 Executive order during the two-year period immediately
17 preceding the effective date of subsection (d), and which is
18 classified as ‘Confidential’, ‘Secret’, or ‘Top Secret’ on such
19 effective date, shall be declassified automatically upon the
20 expiration of two years after the end of the month of the
21 original classification of such information or material, by the
22 President or an individual within the appropriate agency
23 who has the authority to classify such information or mate-
24 rial, regardless of whether or not the document or other
25 material has been marked to show the declassification. If the

1 original date of classification of such information or material
2 is not known, it shall be declassified automatically not later
3 than the expiration of two years after the effective date of
4 subsection (d).

5 “(d) Except as provided by paragraph (2), any official
6 information or material which was originally classified pur-
7 suant to any Executive order, directive, memorandum, or
8 other authority prior to the two-year period immediately pre-
9 ceding the effective date of subsection (d), and which con-
10 tinues to be classified on such effective date, shall be de-
11 classified automatically upon the expiration of six months
12 after such effective date, by the President or an individual
13 within the appropriate agency who has authority to classify
14 such information or material, regardless of whether the docu-
15 ment or other material has been marked to show the de-
16 classification.

17 “(2) (a) Any official information or material which is
18 classified and which is subject to automatic declassification
19 as provided in subparagraph (b), (c), or (d) of paragraph
20 (1) may be assigned a deferred automatic declassification
21 date by the President or the head of the agency which origi-
22 nally classified such information or material or by the head
23 of the agency which has responsibility for such information
24 or material in the case of a transfer of functions from one
25 agency to another, upon a determination by the President

1 or the agency head that the information or material is of such
2 sensitivity and importance to continue to satisfy the require-
3 ments for classification as 'Secret Defense Data'. For each
4 item of information or material for which the President or
5 the head of an agency makes such a determination, he shall
6 submit, in writing, to the Committee on Government Opera-
7 tions of the Senate, the Committee on Government Operations
8 of the House of Representatives, and the Comptroller Gen-
9 eral of the United States a detailed justification for the
10 continued classification of such information or material. Both
11 such committees shall compile and print at least annually as
12 a public document all such reports received by them, except
13 that upon recommendation of the President or the head of
14 the agency concerned, such committee may delete from print-
15 ing any material which itself satisfies the requirements for
16 classification as 'Secret Defense Data'. Each such deletion
17 shall be indicated in the printed document, and the complete
18 document without deletions shall be kept in committee files
19 and made available, upon request, to any member of com-
20 mittee of Congress. In no case may the President or the head
21 of an agency assign a deferred automatic declassification
22 date of more than two years after the date of declassification
23 provided for under subparagraph (b), (c), or (d) of para-
24 graph (1), except that such official may assign an additional
25 deferred automatic declassification date upon determination

1 that the classified information or material continues to satisfy
2 the criterion for classification as 'Secret Defense Data'. For
3 each such deferral such official shall submit a written justi-
4 fication as provided herein. The authority to defer declassifi-
5 cation shall not be redelegated by the head of any agency.
6 Any information or material assigned a deferred automatic
7 declassification date may at any time be declassified in ac-
8 cordance with paragraph (1) (a).

9 " (B) The declassification of secret defense data shall be
10 accomplished by issuance of an official announcement de-
11 scribing or otherwise identifying the information or material
12 to be declassified, or by the classification authority authen-
13 ticating the declassification according to the procedures de-
14 scribed in paragraph (4) on the record copy of a document
15 or other material and notifying all holders of copies of such
16 document or material that the information or material has
17 been declassified.

18 " (f) (1) The head of each agency which exercises au-
19 thority to classify or declassify official information or material
20 shall, in conjunction with the Comptroller General of the
21 United States, prescribe such regulations as he considers
22 necessary or appropriate to carry out the provisions of sub-
23 sections (d) and (e) of this section, including regulations
24 which prescribe administrative reprimand, suspension, or

1 other disciplinary action for the improper classification of
2 official information or material.

3 “(2) The Comptroller General of the United States
4 shall monitor the actions taken by agencies to implement and
5 adhere to the policies and provisions of subsections (d) and
6 (e) of this section. To this end the Comptroller General shall
7 perform, among others, the following functions:

8 “(A) Prescribe, in conjunction with heads of agencies,
9 such regulations as may be necessary to achieve uniformity
10 among agencies in the implementation of subsections (d) and
11 (e) of this section.

12 “(B) Obtain and review agency implementing regula-
13 tions and those of such subordinate components as may be
14 necessary to determine the effectiveness of agency actions.

15 “(C) Inquire on a periodic basis regarding the need for
16 assignment or retention of the secret defense data designa-
17 tion on selected documents and other material.

18 “(D) Conduct visits on a periodic basis to observe the
19 practical application of classification and declassification pol-
20 icy and the safeguarding of secret defense data by officers
21 and employees of agencies.

22 “(E) Investigate, when deemed appropriate, inquiries
23 initiated by private citizens, officers, or employees of the
24 United States, or any other person concerning any allegation

1 of improper classification of information or material, or con-
2 cerning any allegation of the failure of any agency, or any
3 officer or employee thereof, to comply with the policies and
4 provisions of subsection (d) or (e) of this section, or any
5 regulation prescribed under this subsection.

6 “(F) Transmit semiannual reports not later than
7 March 1 and September 1 of each year to both the Senate
8 Committee on Government Operations and the House Com-
9 mittee on Government Operations, setting forth the findings
10 of such reviews, inquiries, visits, and investigations as may
11 have been conducted pursuant to subparagraphs (B) through
12 (E) during the reporting period, as well as any other mat-
13 ters pertaining to the implementation of subsections (d) and
14 (e) which may be of interest to the committees. Such reports
15 also shall contain any recommendations for action by the
16 committees relating to this Act which the Comptroller Gen-
17 eral may deem appropriate.

18 “(G) No person may withhold or authorize withholding
19 information or material from the Congress, or any committee
20 or Member thereof, or from any court of the United States
21 on the basis that such information or material is classified or
22 qualified for classification as ‘Secret Defense Data’ or is
23 otherwise classified pursuant to any law, Executive order,
24 directive, memorandum, or other authority.”

1 EFFECTIVE DATE

2 SEC. 103. (a) The provisions of this title shall take effect
3 on the first day of the third month that commences after the
4 date of its enactment.

5 (b) Section 552 (f), as added by section 102 of this
6 title, shall take effect upon the date of the enactment of this
7 Act.

93RD CONGRESS
1ST SESSION

S. 2451

A BILL

To amend section 552 of title 5 of the United States Code to clarify certain exemptions from its disclosure requirements, to provide guidelines and limitations for the classification of information, and for other purposes.

By Mr. HATHAWAY

SEPTEMBER 20, 1973

Read twice and referred to the Committee on Government Operations

9/1/73

EXECUTIVE SECRETARIAT
Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	DDS&T				
4	DDI				
5	DDO				
6	DDM&S				
7	D/DCI/IC				
8	D/ONE				
9	OGC		✓		
10	OLC	✓			
11	IG				
12	D/PPB				
13	D/Pers				
14	D/OS				
15	D/Trng				
16	SAVA				
17	ASST/DCI				
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SUSPENSE		17 OCT Date			

Remarks: *P/s prepare reply for DCI's signature*