

Joshua Bolten
Chief of Staff, Office of the President
The White House
Washington, DC 20500

April 11, 2008

Dear Mr. Bolten:

The undersigned organizations write regarding the need for public input before the final issuance of new rules regarding Controlled Unclassified Information (“CUI”). The prevalent use of control markings on non-classified federal records is widely recognized to interfere with information sharing and public disclosure, and thus to have an impact on public health, safety, and security, as well as government accountability. Accordingly, members of the public, including the groups listed below, have urged the executive branch to take steps to reduce the use of such markings. To that end, many of the undersigned sent a letter to Homeland Security Secretary Ridge in August 2003 (copy attached), urging “the Department of Homeland Security to give the public an opportunity to comment on procedures that are being developed that may restrict the public dissemination of ‘homeland security information,’ including information that is ‘sensitive but unclassified.’” When the process for developing rules for CUI was moved to the Office of the Program Manager for the Information Sharing Environment, many of the undersigned again requested an opportunity to comment on any resulting rules (copy attached). At meetings throughout the process, we were repeatedly assured that there would be opportunities for public comment.

Moreover, in October 2002, in testimony before the House Committee on Science, John H. Marburger, Director of the Office of Science and Technology Policy, recognized the interest of “stakeholders, including scientific societies, university organizations, private industry, public interest groups, state and local government representatives, and other interested parties,” concerning the definition of sensitive non-classified information across different sections and committed to “publication of the guidance in the Federal Register for comment.”

And, yet, nearly six years later, we understand that, despite our repeated efforts to raise issues of public concern and accountability and to engage with the public officials involved in crafting this guidance, the final guidance will soon be released by the White House without allowing for public review and comment.

The proliferation of disparate and open ended control designations, such as “Sensitive But Unclassified,” “For Official Use Only,” and “Sensitive Security Information,” restricts public access to disclosable information and makes more difficult sharing of information among governmental entities and others that the federal government recognizes as having a “legitimate need to know.” Moreover, many of these labels exist without congressional sanction, leading to confusion as to whether the records are releasable under the Freedom of Information Act (FOIA), including undermining the FOIA’s presumption of openness and its requirement that Congress, and only Congress, should create new categories of withheld records. Although such designations do not describe any category of records that may be properly withheld under the law, they are often treated as a basis for withholding records requested under FOIA.

Depending on how it is crafted, the guidance to be released likely will affect the media's ability to keep the public informed and the public's ability to press government action to improve safety and security. In addition, of course, this information sharing guidance will affect countless first responders and government officials across the country.

While we do not know the content of the proposal, we are concerned additionally that the agencies involved in leading this effort do not have disclosure as a component of their core mission, and, thus, may not be as sensitive to the need for and benefits of open government. We believe this makes it essential that all stakeholders have an opportunity to convey their concerns before the policy is finalized.

We once again urge you to publish the guidance for public comment before it is issued.

Thank you. If you have any questions, please contact Patrice McDermott at 202-332-6736.

Sincerely,

American Association of Law Libraries
American Association of University
Professors
American Civil Liberties Union
American Library Association
Association of Research Libraries
Center for National Security Studies
Citizens for Responsibility and Ethics in
Washington
Citizens for Sunshine
Council on Political Assassinations
Defending Dissent Foundation
Electronic Frontier Foundation
Essential Information
Feminists for Free Expression
Freedom of Information, Oklahoma, Inc.
Government Accountability Project
Indiana Coalition for Open Government
iSolon.org

The James Madison Project
Liberty Coalition
National Coalition Against Censorship
National Coalition for History
National Security Archive
OMB Watch
OpenTheGovernment.org
9/11 Research Project
Project On Government Oversight
Protect All Children's Environment
Public Citizen
Radio-Television News Directors
Association
Society of American Archivists
Special Libraries Association
U.S. Bill of Rights Foundation
Washington Coalition for Open Government
The Woodhull Freedom Foundation

Cc: Assistant to the President for National Security Affairs Stephen J. Hadley, Assistant to the
President for Homeland Security and Counterterrorism Kenneth Wainstein

Ambassador Thomas McNamara, Program Manager, Information Sharing Environment, Office of
the Director of National Intelligence

Chairman Joe Lieberman and Ranking Member Susan Collins, Senate Homeland Security and
Governmental Affairs Committee

Chairman Henry Waxman and Ranking Member Tom Davis, House Committee on Oversight and
Government Reform