

109TH CONGRESS
1ST SESSION

S. 622

To amend the Homeland Security Act of 2002 (Public Law 107–296) to provide for the protection of voluntarily furnished confidential information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2005

Mr. LEAHY (for himself, Mr. LEVIN, Mr. FEINGOLD, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Homeland Security Act of 2002 (Public Law 107–296) to provide for the protection of voluntarily furnished confidential 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoration of Free-
5 dom of Information Act of 2005”.

1 **SEC. 2. PROTECTION OF VOLUNTARILY FURNISHED CON-**
 2 **FIDENTIAL INFORMATION.**

3 Title II of the Homeland Security Act of 2002 (6
 4 U.S.C. 121 et seq.) is amended by striking subtitle B and
 5 inserting the following:

6 **“Subtitle B—Protection of Volun-**
 7 **tarily Furnished Confidential**
 8 **Information**

9 **“SEC. 211. PROTECTION OF VOLUNTARILY FURNISHED**
 10 **CONFIDENTIAL INFORMATION.**

11 “(a) DEFINITIONS.—In this section:

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

16 “(2) FURNISHED VOLUNTARILY.—

17 “(A) DEFINITION.—The term ‘furnished
 18 voluntarily’ means a submission of a record
 19 that—

20 “(i) is made to the Department in the
 21 absence of authority of the Department re-
 22 quiring that record to be submitted; and

23 “(ii) is not submitted or used to sat-
 24 isfy any legal requirement or obligation or
 25 to obtain any grant, permit, benefit (such
 26 as agency forbearance, loans, or reduction

1 or modifications of agency penalties or rul-
2 ings), or other approval from the Govern-
3 ment.

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

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

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

15 “(2) the record is designated and certified by
16 the provider, in a manner specified by the Depart-
17 ment, as confidential and not customarily made
18 available to the public.

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

20 “(1) IN GENERAL.—

21 “(A) RESPONSE TO REQUEST.—An agency
22 in receipt of a record that was furnished volun-
23 tarily to the Department and subsequently
24 shared with the agency shall, upon receipt of a

1 request under section 552 of title 5, United
2 States Code, for the record—

3 “(i) not make the record available;

4 and

5 “(ii) refer the request to the Depart-
6 ment for processing and response in ac-
7 cordance with this section.

8 “(B) SEGREGABLE PORTION OF
9 RECORD.—Any reasonably segregable portion of
10 a record shall be provided to the person re-
11 questing the record after deletion of any portion
12 which is exempt under this section.

13 “(2) DISCLOSURE OF INDEPENDENTLY FUR-
14 NISHED RECORDS.—Notwithstanding paragraph (1),
15 nothing in this section shall prohibit an agency from
16 making available under section 552 of title 5, United
17 States Code, any record that the agency receives
18 independently of the Department, regardless of
19 whether or not the Department has a similar or
20 identical record.

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

1 “(e) PROCEDURES.—The Secretary shall prescribe
2 procedures for—

3 “(1) the acknowledgment of receipt of records
4 furnished voluntarily;

5 “(2) the designation, certification, and marking
6 of records furnished voluntarily as confidential and
7 not customarily made available to the public;

8 “(3) the care and storage of records furnished
9 voluntarily;

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

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

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

19 “(g) REPORT.—

20 “(1) REQUIREMENT.—Not later than 18
21 months after the date of the enactment of the Res-
22 toration of Freedom of Information Act of 2005, the
23 Comptroller General of the United States shall sub-
24 mit to the committees of Congress specified in para-

1 graph (2) a report on the implementation and use
2 of this section, including—

3 “(A) the number of persons in the private
4 sector, and the number of State and local agen-
5 cies, that furnished voluntarily records to the
6 Department under this section;

7 “(B) the number of requests for access to
8 records granted or denied under this section;
9 and

10 “(C) such recommendations as the Comp-
11 troller General considers appropriate regarding
12 improvements in the collection and analysis of
13 sensitive information held by persons in the pri-
14 vate sector, or by State and local agencies, re-
15 lating to vulnerabilities of and threats to critical
16 infrastructure, including the response to such
17 vulnerabilities and threats.

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

21 “(A) the Committees on the Judiciary and
22 Homeland Security and Governmental Affairs
23 of the Senate; and

1 “(B) the Committees on the Judiciary and
2 Government Reform and Oversight of the
3 House of Representatives.

4 “(3) FORM.—The report shall be submitted in
5 unclassified form, but may include a classified
6 annex.”.

7 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENT.**

8 The table of contents for the Homeland Security Act
9 of 2002 (Public Law 107–296) is amended by striking the
10 matter relating to subtitle B of title II and inserting the
11 following:

 “SUBTITLE B—PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL
 INFORMATION

 “Sec. 211. Protection of Voluntarily Furnished Confidential Information.”.

