

August 27, 2003

The Honorable Tom Ridge
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Secretary:

We are writing to urge 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."

These procedures are being developed to implement the Homeland Security Information Sharing Act (HSISA). The Act was passed into law as Section VIII of the Homeland Security Act of 2002 with the purpose of fostering the sharing of information among federal, state, and local officials about possible terrorism activities.

The public's ability to remain informed of and participate in the decision-making of government is fundamental to the democratic process. Democracy is undermined whenever openness is compromised. Consistent with these democratic principles, those compromises, when they are made, should be made only when necessary and only after an open process in which the public participates.

Public comment on the procedures implementing the Act is warranted for several reasons. First, the definition of Homeland Security Information (HSI) included in HSISA is so broad that it raises the question whether activities of government officials and the public that have little to do with terrorism could be harmed by these implementing regulations. In particular, Section 892(f)(1) of HSISA defines homeland security information to include information that

(A) relates to the threat of a terrorist activity, (B) relates to the ability to prevent, interdict, or disrupt terrorist activity, (C) would improve the identification or investigation of a suspected terrorist or terrorist organization, or would (D) improve the response to a terrorist act.

What remains unclear until implementing regulations are written and released is whether these procedures would preclude public access to information that community residents, parents, journalists and others in the public currently obtain from or with the assistance of government in order to make their communities safer, inform the public, and for other purposes. Equally unclear is whether these procedures will require government to remove information already publicly available. The public should have an opportunity to address that question in a public notice-and-comment rulemaking and government policymakers should consider those answers in formulating the information sharing procedures.

Second, public comment is warranted because the procedures developed under HSISA could directly affect a large number of people both inside and outside of the federal government. The HSISA would prohibit public disclosure of information subject to agreements between the government and those receiving "sensitive but unclassified" information. One recent analysis estimates that roughly four million people – including public health officials not employed by government at any level – could be asked under the requirements of HSISA to sign formal

nondisclosure agreements. Those agreements would be enforceable through civil and criminal sanctions. In addition, the procedures implementing the Act could expand the list of those subject to these agreements even further.

Third, the public has an interest in being informed of new procedures for sharing information that may infringe on the public's ability to obtain information from government about its activities. Since the procedures that are to be created will directly address the "safeguarding" of information and restrictions on public dissemination of information, the public should have the opportunity to review a draft version of these implementing procedures, analyze their adequacy and potential impact, and make recommendations for improvements, as necessary.

The Homeland Security Information Sharing Act was passed into law with little public review and scrutiny and, thus, the impacts of the procedures that are to be developed to implement the Homeland Security Information Sharing Act are unknown. Since its passage, though, the law has attracted increased attention outside the government. We ask that the Department of Homeland Security provide the public with a period of sufficient length (i.e., 90 days) to review and comment upon a draft version of the procedures before they are finalized.

Please contact Rick Blum at OMB Watch by email at <blumr@ombwatch.org> or by phone at 202-234-8494 in regards to this letter. We look forward to hearing from you.

Sincerely,

American Association of Law Libraries
American Library Association
American Society of Business Publication Editors
American Society of Magazine Editors
American Society of Newspaper Editors
Asian American Journalists Association
Associated Press Managing Editors
Association of Capitol Reporters and Editors
Association for Education in Journalism and Mass Communication
Association of Health Care Journalists
Association of Research Libraries
Calhoun County (Texas) Resource Watch
Center for Democracy and Technology
Chicago Association of Law Librarians
Children's Environmental Health Network
Citizens' Environmental Coalition (New York)
College Media Advisers
Committee of Concerned Journalists
Common Cause
Criminal Justice Journalists
Department for Professional Employees, AFL-CIO
The Education Writers Association
Electronic Privacy Information Center
Environmental Defense
Federation of American Scientists
Freedom of Information Center, University of Missouri School of Journalism
Good Neighbor Committee of South Cook County (Illinois)
Government Accountability Project

HealthLink
Journalism Education Association
Journalism and Women's Symposium
Law Librarians Association of Wisconsin
Law Librarians of New England- Executive Board
Magazine Publishers of America
Mid-America Association of Law Librarians
Military Reporters & Editors
Montana Coalition for Health, Environmental & Economic Rights
National Association of Black Journalists
National Association of Hispanic Journalists
National Association of Science Writers
National Environmental Trust
National Federation of Press Women
National Press Foundation
National Press Photographers Association
National Security Archive
National Society of Newspaper Columnists
New Mexico Foundation for Open Government
Newspaper Association of America
The Newspaper Guild-CWA
Ohio Regional Association of Law Librarians
Ohio Valley Environmental Coalition
OMB Watch
Online News Association
Oregon Toxics Alliance
People For the American Way Foundation
Project On Government Oversight
Protect All Children's Environment
Radio-Television News Directors Association
Refinery Reform Campaign
The Reporters Committee for Freedom of the Press
The Silha Center for the Study of Media Ethics and Law (Minnesota)
Society of Environmental Journalists
Society of Professional Journalists
Society for News Design
South Carolina Library Association
South Florida Association of Law Libraries
Southern California Association of Law Libraries
Southern New England Law Librarians Association
Sustainable Energy and Economic Development (SEED) Coalition (Texas)
UNITY: Journalists of Color, Inc.
Valley Watch, Inc. (Indiana)
Wasatch Clean Air Coalition (Utah)
Western Pacific Chapter of the American Association of Law Libraries
Western Pennsylvania Law Library Association
Working Group on Community Right to Know

cc: Condoleeza Rice, National Security Advisor
Joshua Bolten, Director, Office of Management and Budget
John Ashcroft, Attorney General, Department of Justice