

August 15, 2011

Dear Senators,

On behalf of the undersigned organizations, we are writing to urge you to oppose an over-broad and ill-defined provision relating to "critical infrastructure information," in Section 1044 of the National Defense Authorization Act, S. 1254, that could prevent the public from having access to critical health and security information.

Section 1044, as written in the bill passed by the Senate Armed Services Committee, grants the Secretary of Defense, or his delegate, the authority to expand protections from public disclosure for any information that could result in the "disruption, degradation, or destruction" of Department of Defense (DoD) operations, property, or facilities. The language defining "critical infrastructure information" is exceedingly broad, encapsulating information that is crucial for the public to understand public health and safety risks and information already protected under one of the Freedom of Information Act's (FOIA) other exemptions.

We believe that the provision is intended to address agency concerns about protecting information since the Supreme Court threw out the broad use of FOIA Exemption Two in *Milner v. Department of Navy*. Granting DoD carte-blanche to withhold information under an exceedingly broad and ill-defined rubric of "critical infrastructure information" is not the right step, especially given that DoD has misused such authority to hide information in the past. Between 1957 and 1987, the United States Marine Corps knowingly allowed as many as one million Marines and their family members at Camp Lejeune to be exposed to a host of toxic chemicals, including known human carcinogens benzene and vinyl chloride. Civilian employees who worked on the base and people who live in the communities around the base near Jacksonville, NC, are now reporting a high incidence of cancers. For years, the Marine Corps kept this secret, blocking many attempts to uncover the truth--even after the first news of water contamination broke in 1987. Many FOIA requests for information about the contamination were denied, sometimes using Exemption Two in a way that is no longer allowable after this year's *Milner* decision. The entire truth about the incident only came to light in part from information accidentally (and temporarily) posted on the internet by the Marine Corps.

We support language in Senator Leahy's proposed amendment that helps protect against such cover-ups by requiring DoD to weigh whether there is an over-riding public interest in disclosing the information and further protects public health and safety by tightening the definition of "critical infrastructure security information" to make it clear that the Secretary may withhold only information that could substantially increase effectiveness of a terrorist attack. The Leahy Amendment also would slightly modify another exemption to FOIA in Section 1044 for information in the data files of the Military Flight Operations Quality Assurance System, which we support, though we would prefer it to be further narrowed or stricken altogether.

We urge you to pass the Leahy Amendment to narrow the overly-broad Section 1044, and welcome an opportunity to discuss this issue with you further. To reach our groups, you or your staff may contact Patrice McDermott, Director of OpenTheGovernment.org, at 202-332-6736 or pmcdermott@openthegovernment.org or Angela Canterbury, Director of Public Policy at the Project On Government Oversight, at 202-347-1122 or acanterbury@pogo.org.

Sincerely,

3P Human Security
American Association of Law Libraries
American Booksellers Foundation for Free Expression
American Library Association
American Society of News Editors
Association of Research Libraries
Agency for Toxic Substances and Disease Registry's Camp Lejeune Community Assistance Panel
Center for International Policy
Californians Aware
Citizens for Responsibility and Ethics in Washington – CREW
Defending Dissent Foundation
Environmental Working Group
Essential Information
Federation of American Scientists
Feminists for Free Expression
Freedom of Information Center at the Missouri School of Journalism
Friends of the Earth
Fund for Constitutional Government
Government Accountability Project – GAP
Heart of America Northwest
Just Foreign Policy
Liberty Coalition
National Association of Social Workers, North Carolina Chapter
National Coalition Against Censorship
National Freedom of Information Coalition
Northern California Association of Law Libraries
OMB Watch
OpenTheGovernment.org
Project On Government Oversight – POGO
Public Citizen
Public Employees for Environmental Responsibility – PEER
Reporters Committee for Freedom of the Press
Society of Professional Journalists
Southwest Research and Information Center

Special Libraries Association

Sunlight Foundation

Tri-Valley CAREs (Communities Against a Radioactive Environment)

Washington Coalition for Open Government