

January 3, 2007

Ambassador Thomas McNamara  
Office of the Director of National Intelligence  
Attn: Program Manager Information Sharing Environment  
Washington, DC 20511

Dear Ambassador McNamara:

We are writing to follow up on our November 20<sup>th</sup> meeting with you and express our desire as open government advocates to remain involved in the process of formulating effective policy for the designation and management of controlled unclassified information (CUI).

We appreciate the outreach to public interest groups that you have already done as chair of the Coordinating Committee. As recommendations for government-wide CUI policy are developed for January 2007, we urge that such policy include provisions for continued public participation in order to ensure government accountability. Such participation ideally would include an opportunity to present policy recommendations and provide feedback on any draft recommendations of the committee. We also urge that the government-wide CUI policy that you adopt results in more government information being made available to the public and not less.

Several of the principles that we hope the committee will take into consideration in formulating CUI policy include:

Review of CUI Decisions:

- A clear distinction should be drawn between Freedom of Information Act (FOIA) exemptions and CUI to demonstrate that a CUI marking is not a sufficient justification for FOIA exemption.
- There should be a public appeals process for challenging CUI markings.

Limitations on CUI:

- There should be an expiration date on information marked as CUI, just as there is an expiration date on classified information.
- Clear limits should be placed on the authority to mark a document as CUI.
- The kinds and categories of information marked CUI should be carefully delineated and limited.

Public Role in CUI Process:

- The public has a vital interest in much of the information controlled by CUI categories, and there should be a process granting special access if there is a demonstrated individual need or a public interest.
- The public should have an opportunity to comment on new CUI information categories.

Oversight:

- Agencies should be required to regularly report on the number of documents marked as CUI, the cost of implementing CUI policies and of safeguarding documents so marked, and the number, training, and levels of officials with authority to designate information as CUI.
- Agency inspectors general should be required to regularly audit a selection of CUI documents to ensure compliance with the CUI standards.
- The Office of the Director of National Intelligence should list all agency CUI categories and standards on a centralized website.

Protection of Whistleblowers:

- CUI policy should protect whistleblowers, stating that no criminal charges are associated with disclosing information marked as CUI.
- CUI policy should make clear that a CUI marking in no way bars disclosure to Congress or to an authorized official of an executive agency of information that is essential to reporting a violation of law, waste, fraud, abuse or other misconduct.

These principles are intended as guideposts for formulating effective government-wide policy to prevent unnecessary controls on information. As the Information Sharing Environment plan recognizes, CUI policies, as they currently stand, pose a severe impediment to effective information sharing practices. The implementation of a policy that incorporates the above principles will help to alleviate this problem and ensure government accountability, and we appreciate your efforts in this regard.

We look forward to working with you on this important initiative and to the follow-on meeting we discussed. If you have any immediate questions, please contact Patrice McDermott at 202-332-6736 or [pmcdermott@openthegovernment.org](mailto:pmcdermott@openthegovernment.org).

Sincerely,

Steven Aftergood  
Project Director  
Federation of American Scientists

Meredith Fuchs  
General Counsel  
National Security Archive

Danielle Brian  
Executive Director  
Project on Government Oversight

Patrice McDermott  
Director  
[OpenTheGovernment.org](http://OpenTheGovernment.org)

Lucy Dalglish  
Executive Director  
The Reporters Committee for Freedom of  
the Press

Sean Moulton  
Director of Federal Information Policy  
OMB Watch

Caroline Fredrickson,  
Director of Washington Legislative Office  
American Civil Liberties Union