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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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March 1, 2005

The Honorable Christopher Shays  
Chairman  
Subcommittee on National Security, Emerging  
Threats, and International Relations  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

In its final report on the attacks of September 11, 2001, the 9/11 Commission observed that the government keeps too many secrets. To address this problem, the Commission recommended that the “culture of agencies feeling they own the information they gathered at taxpayer expense must be replaced by a culture in which the agencies instead feel they have a duty ... to repay the taxpayers’ investment by making that information available.”<sup>1</sup>

Unfortunately, there is growing evidence that the executive branch has increased the amount of information withheld from the American public and misused rapidly proliferating designations such as “sensitive but unclassified,” “for official use only,” “sensitive homeland security information,” and “sensitive security information” to block the release of important government records.

My staff has investigated several examples of the use of these burgeoning designations. We have found that they are being invoked improperly to block the release of information that is not classified. Some of the examples we reviewed involve absurd overreactions to vague security concerns. In other examples, the Administration appears to have invoked the designations to cover up potentially embarrassing facts, rather than to protect legitimate security interests. The examples include the following:

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<sup>1</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (July 22, 2004).

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- The State Department withheld unclassified conclusions by the agency's Inspector General that the CIA was involved in preparing a grossly inaccurate global terrorism report;
- The State Department concealed unclassified information about the role of John Bolton, Under Secretary of State for Arms Control, in the creation of a fact sheet that falsely claimed that Iraq sought uranium from Niger;
- The Department of Homeland Security concealed the unclassified identity and contact information of a newly appointed TSA ombudsman whose responsibility it was to interact daily with members of the public regarding airport security measures;
- Over the objections of chief U.S. weapons inspector Charles A. Duelfer, the CIA Mr. Duelfer to conceal the unclassified names of U.S. companies that conducted business with Saddam Hussein under the Oil for Food program; and
- The Nuclear Regulatory Commission sought to prevent a nongovernmental watchdog group from making public criticisms of its nuclear power plant security efforts based on unclassified sources.

In order to investigate more fully the scope of this problem, I request that the Subcommittee conduct a systematic analysis of information that the Administration has withheld from the American public through the use of these unclassified designations. In particular, I propose that the Subcommittee obtain from multiple federal agencies, including the Departments of Defense, State, and Homeland Security, copies of documents that exist in both a restricted but unclassified version and a public version. After obtaining these documents, the Subcommittee would be able to assess which specific pieces of information were removed and determine whether those redactions were appropriate.

I understand that the Subcommittee will be holding a hearing tomorrow on precisely this type of "pseudo-classification" of information by the Administration, and I commend you for taking this step. I hope we will have the opportunity at that time to discuss this proposal in more detail. The rest of this letter sets forth additional information on the examples described above.

### **Background**

The Administration treats restricted unclassified information differently than traditional classified information. Classified information is governed by relatively uniform rules across federal agencies, and only a limited number of authorized personnel are permitted to designate information as classified. In addition, there are guidelines on how information must be declassified.

In contrast, restricted but unclassified information lacks even minimal controls or monitoring. It is governed by a rapidly evolving patchwork of disparate agency regulations and directives. Generally, any federal employee has authority to designate documents as “sensitive but unclassified,” there are no uniform rules about when or how to remove these designations, and there are few checks in place to control the abuse of such designations. To the contrary, these designations appear to be used as automatic or default markings on many federal documents that government officials have not sufficiently reviewed.

In many cases, these unclassified designations have questionable legal pedigrees. For example, the designation “sensitive but unclassified” is not defined by statute or even by executive order. And unlike the criteria for categories of classified information, the criteria for many of the sensitive but unclassified designations are wholly the executive branch’s invention.

For classified information, there is a single office charged with overseeing the classification process. This office, the Information Security Oversight Office (ISOO) at the National Archives and Records Administration, reported that in fiscal years 2001 to 2003, the average number of original classifications per year increased 50% over the average for the previous five fiscal years.<sup>2</sup> ISOO also reported that during this time, the average number of derivative classifications increased to 19.37 million per year, a 95% increase over the period from fiscal years 1996 to 2000.<sup>3</sup>

Unfortunately, there is no office comparable to the ISOO that monitors trends in the use of sensitive but unclassified information. And watchdog groups are severely hampered in their efforts to collect information about the propriety of the Administration’s use of these restricted unclassified designations.

In order to investigate this issue, my staff examined several documents issued by the Administration in both public and restricted but unclassified formats. Instances in which the Administration appears to have inappropriately withheld information from the public are described below. To be clear, none of these examples involved classified information. Instead, the relevant information was withheld by federal agencies using various other rationales or, in some cases, no stated rationale at all.

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<sup>2</sup> National Archives and Records Administration, Information Security Oversight Office, *Report to the President 2003* (Mar. 31, 2004). See also *White House Takes Secrecy to New Levels, Coalition Reports*, San Francisco Chronicle (Aug. 27, 2004).

<sup>3</sup> *Id.* See also OpenTheGovernment.org, *Secrecy Report Card: Quantitative Indicators of Secrecy in the Federal Government* (Aug. 26, 2004) (online at [www.openthegovernment.org/otg/secrecy\\_reportcard.pdf](http://www.openthegovernment.org/otg/secrecy_reportcard.pdf)) (reporting that the Administration spent \$6.5 billion last year creating and maintaining classified documents, more than it spent during the entire decade previously).

### **Concealment of the CIA's Role in a Faulty Annual Terrorism Report**

In September 2004, the State Department withheld from the public unclassified conclusions by its Inspector General that the CIA was involved in preparing a grossly inaccurate report on global terrorism. The report in question falsely claimed that terrorist events fell to a record low in 2003, when in fact significant terrorist attacks reached a record high.

Each year, the State Department produces the authoritative *Patterns of Global Terrorism* report on the total number of terrorist attacks throughout the world. The 2003 report claimed "the lowest annual total of international terrorist attacks since 1969."<sup>4</sup> After the report was issued, however, I joined two independent experts in questioning the report's data and conclusions. As we pointed out, the State Department made obvious errors in undercounting the number of terrorist events and failed to report that significant terrorist attacks actually reached a 20-year high in 2003.<sup>5</sup> Secretary of State Powell ultimately conceded that the "fact-checking, the methodology and at times even the math were flawed."<sup>6</sup>

In September 2004, the State Department Inspector General's office completed an unclassified analysis of the flawed *Patterns* report. The IG issued two versions of its final assessment: one to government officials marked "sensitive but unclassified,"<sup>7</sup> and another to the general public via the Department's website.<sup>8</sup> The second version was altered from the original and redacted in several places.

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<sup>4</sup> U.S. Department of State, *Patterns of Global Terrorism — 2003* (Apr. 2004). See also U.S. Department of State, *Release of the 2003 "Patterns of Global Terrorism" Annual Report* (Apr. 29, 2003) (online at [www.state.gov/s/d/rm/31961.htm](http://www.state.gov/s/d/rm/31961.htm)) (quoting Deputy Secretary of State Richard Armitage stating that the data in the report provided "clear evidence that we are prevailing in the fight"); Letter from Paul V. Kelly, Assistant Secretary of State for Legislative Affairs, to Members of Congress (Apr. 29, 2004) (stating that the data was "an indication of the great progress that has been made in fighting terrorism").

<sup>5</sup> Letter from Rep. Henry A. Waxman to Secretary of State Colin L. Powell (May 17, 2004). See also Professors Alan B. Krueger and David Laitin, *Faulty Terror Report Card*, *Washington Post* (May 17, 2004).

<sup>6</sup> Letter from Secretary of State Colin L. Powell to Rep. Henry A. Waxman (June 28, 2004).

<sup>7</sup> U.S. Department of State, Office of the Inspector General, *Review of the Department's Patterns of Global Terrorism — 2003 Report* (Sept. 2004) (Report Number SIO-S-04-18) ("sensitive but unclassified" version).

<sup>8</sup> U.S. Department of State, Office of the Inspector General, *Review of the Department's Patterns of Global Terrorism — 2003 Report* (Sept. 2004) (online at <http://oig.state.gov/documents/organization/41085.pdf>) (Report Number SIO-S-04-18) (publicly released version).

A comparison of both versions of the report reveals that the changes were designed to significantly downplay the CIA's role in preparing the faulty 2003 *Patterns* report. For example, the Inspector General's unredacted version stated that the "CIA drafts Appendixes B and C, which contain descriptions of 'designated foreign terrorist organizations' and 'other terrorist groups.'" It also stated that the "CIA also handles the production of the report for the Department." But these references to CIA's role were removed from the public version.

Other changes concealed the CIA's role in working with the Terrorist Threat Integration Center (TTIC). For example, the public version stated: "other U.S. government entities (primarily TTIC) assist in writing portions of the report and in producing the statistics used for the report's Appendix A." But the unredacted version stated that "other U.S. government entities (primarily CIA and TTIC) produced the terrorist statistics in Appendix A (emphasis added).

The public version also concealed the CIA's role in working with the State Department's Bureau of Intelligence and Research (INR). For example, the public report stated: "The Department's INR draft individual country reports within the regional overviews." But the unredacted version shows that these country reports and regional overviews are actually written by both "INR and the CIA" (emphasis added). In addition to these redactions, references to the CIA were also removed from a flow chart designating how the *Patterns* report was compiled, as well as from a discussion of a new Memorandum of Understanding between the State Department and the CIA for the preparation of future reports.

The restricted version of the report was marked "sensitive but unclassified." It also included a form notice, stating that public availability of the document would be determined according to 5 U.S.C. 552, the Freedom of Information Act, and that "improper disclosure of this report may result in criminal, civil, or administrative penalties." The State Department provided no explanation, however, on why the redacted information was withheld from the public under this statute.

### **Concealment of a State Department Official's Role in the Niger Uranium Claim**

In April 2004, the State Department used the designation "sensitive but unclassified" to conceal unclassified information about the role of John Bolton, Under Secretary of State for Arms Control, in the creation of a fact sheet distributed to the United Nations that falsely claimed Iraq had sought uranium from Niger.

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On December 19, 2002, the State Department issued a fact sheet entitled "Illustrative Examples of Omissions from the Iraqi Declaration to the United Nations Security Council."<sup>9</sup> The fact sheet listed eight key areas in which the Bush Administration found fault with Iraq's weapons declaration to the United Nations on December 7, 2002. Under the heading "Nuclear Weapons," the fact sheet stated:

The Declaration ignores efforts to procure uranium from Niger.  
Why is the Iraqi regime hiding their uranium procurement?

It was later discovered that this claim was based on fabricated documents.<sup>10</sup> In addition, both State Department intelligence officials and CIA officials reported that they had rejected the claim as unreliable.<sup>11</sup> As a result, it was unclear who within the State Department was involved in preparing the fact sheet.

On July 21, 2003, I wrote to Secretary of State Colin Powell, asking for an explanation of the role of John Bolton, Under Secretary of State for Arms Control and International Security Affairs, in creating the document.<sup>12</sup> On September 25, 2003, the State Department responded with a definitive denial: "Under Secretary of State for Arms Control and International Security Affairs, John R. Bolton, did not play a role in the creation of this document."<sup>13</sup>

Subsequently, however, I joined six other members of the Government Reform Committee in requesting from the State Department Inspector General a copy of an unclassified

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<sup>9</sup> U.S. Department of State, *Illustrative Examples of Omissions from the Iraqi Declaration to the United Nations Security Council* (Dec. 19, 2002) (online at [www.state.gov/r/pa/prs/ps/2002/16118pf/htm](http://www.state.gov/r/pa/prs/ps/2002/16118pf/htm)).

<sup>10</sup> *Some Evidence on Iraq Called Fake; U.N. Nuclear Inspector Says Documents on Purchases Were Forged*, Washington Post (Mar. 8, 2003).

<sup>11</sup> *See, e.g., (Over)selling the World on War*, Newsweek (June 9, 2003) (quoting Greg Thielmann, a former director of Strategic, Proliferation, and Military Affairs in the State Department's Bureau of Intelligence and Research (INR), as stating that "INR had concluded that the purchases were implausible — and made that point clear to Powell's office"). *See also* Statement by George J. Tenet, Director of Central Intelligence, Central Intelligence Agency (July 11, 2003) (stating that the CIA repeatedly prevented Bush Administration officials from inserting the claim into various official statements, including "many public speeches, Congressional testimony and the secretary of state's United Nations presentation in early 2003").

<sup>12</sup> Letter from Rep. Henry A. Waxman to Secretary of State Colin L. Powell (July 21, 2003).

<sup>13</sup> Letter from Paul V. Kelly, Assistant Secretary of State for Legislative Affairs, to Rep. Henry A. Waxman (Sept. 25, 2003).

“chronology” on how the fact sheet was developed.<sup>14</sup> This chronology described a meeting on December 18, 2002, between Secretary Powell, Mr. Bolton, and Richard Boucher, the Assistant Secretary for the Bureau of Public Affairs. According to this chronology, Mr. Boucher specifically asked Mr. Bolton “for help developing a response to Iraq’s Dec 7 Declaration to the United Nations Security Council that could be used with the press.” According to the chronology, which is phrased in the present tense, Mr. Bolton “agrees and tasks the Bureau of Nonproliferation,” a subordinate office that reports directly to Mr. Bolton, to conduct the work.

This unclassified chronology also stated that on the next day, December 19, 2003, the Bureau of Nonproliferation “sends email with the fact sheet, ‘Fact Sheet Iraq Declaration.doc,’” to Mr. Bolton’s office (emphasis in original). A second e-mail was sent a few minutes later, and a third e-mail was sent about an hour after that. According to the chronology, each version “still includes Niger reference.” Although Mr. Bolton may not have personally drafted the document, the chronology appears to indicate that he ordered its creation and received updates on its development.

The Inspector General’s chronology was marked “sensitive but unclassified.” In addition, the letter transmitting the chronology stated that it “contains sensitive information, which may be protected from public release under the Freedom of Information Act,” and requested that no “public release of this information” be made.<sup>15</sup> In fact, however, the chronology consisted of nothing more than a factual recitation of information on meetings, e-mails, and documents.

### **Concealment of TSA Ombudsman’s Identity**

In February 2002, the Department of Homeland Security concealed the unclassified identity of a newly appointed ombudsman for the Transportation Security Administration (TSA) whose responsibility it was to interact daily with members of the public regarding airport security measures.

On February 14, 2002, TSA Director John W. Magaw appointed an ombudsman “to listen to a variety of concerns from passengers” and others regarding security screening methods and other issues related to the relatively new agency.<sup>16</sup> In making his announcement, Mr.

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<sup>14</sup> Letter from Rep. Henry A. Waxman et. al to Anne W. Patterson, Deputy Inspector General, U.S. Department of State (Apr. 6, 2004) (this request was made under 5 U.S.C. §2954, the “Seven-Member Rule,” which requires an executive agency to “submit any information requested of it” when sought by seven members of the House Government Reform Committee).

<sup>15</sup> Letter from Anne W. Patterson, Deputy Inspector General, Department of State, to Rep. Henry A. Waxman (Apr. 15, 2004).

<sup>16</sup> *Official to Check Screening Complaints*, Washington Post (Feb. 15, 2002).

Magaw stated, “We want to have a very simple but very complete passenger-complaint system so that we can look at them and, if feasible, make changes.” He also stated that the ombudsman would sit “right off my office” and serve as a sounding board for passengers.

Despite this stated goal of interacting with members of the public, the identity of the ombudsman was withheld from the public. At the press conference in which the announcement was made, Mr. Magaw “declined to name the appointee.”<sup>17</sup> In addition, at a subsequent briefing to Congress in January 2004, TSA officials provided a slide marked “sensitive security information” that stated: “How to contact the Ombudsman — Phone: 1-571-227-2383 or 1-877-266-2837 (toll-free).”<sup>18</sup>

Ironically, a cursory Google search reveals that both the identity of the ombudsman, Kimberly Hubbard Walton, and her contact information had been posted as part of a release on the TSA management team on the TSA’s own website.<sup>19</sup>

There have been similar accounts relating to other federal government employees. According to the publication *Government Executive*, for example, the Defense Department telephone book has now been designated “for official use only,” even though it was formerly publicly available at the Government Printing Office.<sup>20</sup>

### **Concealment of U.S. Companies Involved in the Oil for Food Program**

In September 2004, the CIA intervened to block the chief U.S. weapons inspector, Charles A. Duelfer, from revealing the unclassified identities of U.S. companies that conducted business with Saddam Hussein under the Oil for Food program.

On September 30, 2004, Mr. Duelfer issued an unclassified report regarding the absence of weapons of mass destruction in Iraq.<sup>21</sup> As part of this report, Mr. Duelfer implicated a number of oil and energy services companies in schemes to assist Saddam Hussein in diverting funds away from legitimate humanitarian purposes under the Oil for Food program. Although the

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<sup>17</sup> *Id.*

<sup>18</sup> Briefing to House Committee on Homeland Security, *Transportation Security Intelligence Service* (Jan. 8, 2004).

<sup>19</sup> TSA, *TSA Announces New Additions to the TSA Management Team* (Jan. 24, 2003) (online [www.tsa.gov/public/display?content=090005198000f2e2](http://www.tsa.gov/public/display?content=090005198000f2e2)).

<sup>20</sup> *Groups Raise Concerns about Increased Classification of Documents*, *Government Executive* (Oct. 27, 2004).

<sup>21</sup> Iraq Survey Group, *Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD* (Sept. 30, 2004).



report named all foreign companies that received vouchers for the purchase of Iraqi oil, the names of U.S. corporations were redacted, even though they had received 20 contracts to procure over 71 million barrels of oil from Iraq. The U.S. companies listed in the restricted report include:

<u>Companies</u>	<u>Barrels of Oil</u>
Coastal Petroleum	36.0 million
Chevron	9.5 million
Mobil Export	9.3 million
Phoenix International	9.1 million
Bay Oil	5.6 million
Texaco	1.8 million

In addition to these six companies, Halliburton was also doing business in Iraq, apparently under the Oil for Food program.<sup>22</sup> Halliburton's contracts came to light after Vice President Cheney claimed he had instituted "a firm policy that we wouldn't do anything in Iraq, even — even arrangements that were supposedly legal."<sup>23</sup>

The public version of Mr. Duelfer's report removed the names of the American corporations and replaced them with the generic term "U.S. Company." In addition, the report stated: "The names of US citizens and business entities have been redacted from this report in accordance with provisions of the Privacy Act, 5 U.S.C. 552a, and other applicable law."<sup>24</sup>

When asked why the Bush Administration concealed this information, Mr. Duelfer testified to the Senate that he had wanted to identify the U.S. companies, but was overruled. According to Mr. Duelfer, "it was my view to put forward all the data ... because I felt it was important." But "with respect to the American names," Mr. Duelfer said, the Administration would not allow it.<sup>25</sup> According to Mr. Duelfer, CIA officials warned him that "the Privacy Act, you know, prohibits the public — putting out publicly American names." The CIA told Mr.

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<sup>22</sup> *Firm's Iraq Deals Greater Than Cheney Has Said*, Washington Post (June 23, 2001) (stating that Halliburton held stakes in two firms, Dresser-Rand and the Ingersoll Dresser Pump Company, that signed contracts to sell more than \$73 million in oil production equipment and spare parts to Iraq while Vice President Cheney was chairman and chief executive officer).

<sup>23</sup> *This Week*, ABC News (July 30, 2000) (when pressed further, the Vice President stated: "we've not done any business in Iraq since the sanctions are imposed, and I had a standing policy that I wouldn't do that").

<sup>24</sup> Iraq Survey Group, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD* (Sept. 30, 2004) (online at [www.cia.gov/cia/reports/iraq\\_wmd\\_2004](http://www.cia.gov/cia/reports/iraq_wmd_2004)).

<sup>25</sup> *Hearing of the Senate Armed Services Committee: Duelfer Report on Iraqi Weapons of Mass Destruction Programs*, Federal News Service (Oct. 6, 2004).

Duelfer that the information was not classified, but that it should be withheld nonetheless. As Mr. Duelfer stated: “they said look, this is the law.”

Contrary to the information provided to Mr. Duelfer, however, the Privacy Act does not apply to corporations, but rather to individuals. The U.S. Code defines the term “individual” in the context of the Privacy Act as “a citizen of the United States or an alien lawfully admitted for permanent residence.”<sup>26</sup> Corporations are not “citizens” under the Privacy Act.

### **Concealment of a Report Criticizing Faulty Nuclear Security Exercises**

On August 4, 2003, the Chairman of the Nuclear Regulatory Commission (NRC) asserted in a letter to Congress that mock attack exercises with private security contractors at the Indian Point nuclear facility in New York demonstrated the strength of security measures there. In a letter to Senator Charles Schumer, the NRC Chairman stated that “force on force exercises at Indian Point indicates that the licensee has a strong defensive strategy and capability.”<sup>27</sup> Another member of the NRC said: “Indian Point is our star; it did famously.”<sup>28</sup>

In a highly critical letter on September 11, 2003, however, the nonprofit Project on Government Oversight (POGO) took issue with these statements, detailing numerous flaws with the exercises.<sup>29</sup> POGO based its findings on unclassified interviews with participants and observers of the exercises.

In particular, POGO highlighted that the exercises “used an inadequate and unrealistically low number of attackers,” did not allow mock attackers to use “basic, readily-available weapons,” conducted all exercises “during the daylight,” and required mock attackers to use “only one entry point.” The letter also condemned the NRC’s “unacceptably poor planning” in failing to inform the Coast Guard about the exercise, resulting in Coast Guard personnel threatening to use “live ammo against the mock attackers.” As POGO concluded, these exercises “should not in any way reassure you about the ability of the Indian Point security force to defend that facility against a credible terrorist attack.”

In response to POGO’s letter, the NRC directed the group not to make public its concerns and to remove its letter from its website. In a letter sent four days after receiving POGO’s letter,

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<sup>26</sup> 5 U.S.C. § 552a(a)(2).

<sup>27</sup> Letter from Niles J. Diaz, Chairman, Nuclear Regulatory Commission, to Senator Charles Schumer (Aug. 4, 2003).

<sup>28</sup> *Group Says Test of Nuclear Plant’s Security Was Too Easy*, New York Times (Sept. 16, 2003) (quoting Commissioner Edward McGaffigan, Jr.).

<sup>29</sup> Letter from Danielle Brian, Executive Director, Project on Government Oversight, to Niles J. Diaz, Chairman, Nuclear Regulatory Commission (Sept. 11, 2003).

the NRC stated that it had identified both classified “Safeguards Information” and unclassified “sensitive homeland security information” that was for “official use only.”<sup>30</sup> Yet the NRC informed POGO that it would not “identify what portions of your letter needed to be redacted so that you could put a redacted version of your letter on your website.”<sup>31</sup>

Rather than identifying the passages of concern, according to POGO, the NRC “threatened us with criminal and civil sanctions were we to continue to make public either our letter or any of the sensitive material it allegedly contained.”<sup>32</sup> Indeed, an October 8, 2003, letter from the NRC warned POGO “once again” that it would face “criminal penalties” if it did not “permanently remove from [its] website the entire letter.”<sup>33</sup>

Since the NRC refused to identify any specific portions of the letter with classified or sensitive information, POGO could neither publish nor discuss any matter identified in the letter. As a result, POGO concluded that the NRC “took this position to stifle legitimate criticism of the agency.”<sup>34</sup> POGO’s concern was not with NRC efforts to protect classified information about the facility’s defenses, but with NRC attempts to bar the publication of the entire report when it was based entirely on public sources critical of those defenses.

Rather than let the matter drop, POGO retained counsel to pursue legal action against the NRC for stifling its free speech. As a result, the NRC ultimately reversed its position, stating that “it has now become apparent that our general guidance was insufficient.”<sup>35</sup> The NRC agreed to identify the specific information it believed should not be made public and informed POGO of these passages. None of the information ultimately identified by the NRC was classified or otherwise outside the public domain. After an impasse of three months, POGO issued a redraft of its original letter on December 9, 2003, with only minor changes to the text.<sup>36</sup>

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<sup>30</sup> Letter from Annette L. Vietti-Cook, Secretary, Nuclear Regulatory Commission, to Danielle Brian, Executive Director, Project on Government Oversight (Sept. 15, 2003).

<sup>31</sup> Letter from Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response, Nuclear Regulatory Commission, to Danielle Brian, Executive Director, Project on Government Oversight (Oct. 8, 2003).

<sup>32</sup> Letter from Danielle Brian, Executive Director, Project on Government Oversight, to Chairman Niles J. Diaz, Nuclear Regulatory Commission (Dec. 9, 2003).

<sup>33</sup> Letter from Roy P. Zimmerman, *supra* note 31.

<sup>34</sup> Letter from Danielle Brian, *supra* note 32.

<sup>35</sup> Letter from Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response, Nuclear Regulatory Commission, to David C. Vladeck and Richard McKewen, Institute for Public Representation (Oct. 28, 2003).

<sup>36</sup> Letter from Danielle Brian, *supra* note 32.

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### Conclusion

These examples are alarming. Democracies need openness and accountability to thrive. Yet under the Bush Administration, the executive branch is creating new categories of "sensitive but unclassified" information that are invoked to deny public access to important government information. These designations lack a statutory basis, and there is no federal entity monitoring their use. As a result, Congress and the American people have little idea how frequently the Administration is withholding information under these rapidly proliferating unclassified designations.

I know that you share my concern with this problem. Last year, you stated that "fewer people classifying fewer secrets would better protect national security by focusing safeguards on truly sensitive information while allowing far wider dissemination of the facts and analysis the 9/11 commission says must be shared."<sup>37</sup> In this spirit, I hope we can work together in bringing sunlight onto this issue. I look forward to speaking with you further.

Sincerely,



Henry A. Waxman  
Ranking Minority Member

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<sup>37</sup> *White House Takes Secrecy to New Levels, Coalition Reports*, San Francisco Chronicle (Aug. 27, 2004).