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Statement of Rep. Christopher Shays

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It has been said bureaucracies always seek the path of least disclosure. During the Cold War, that innate tendency to excessive secrecy was useful against the monolithic threat of Soviet military and industrial espionage. But today, against the polymorphic perils of stateless terrorism, reflexive concealment of broad categories of official information harms, more than enhances, national security. Unreformed habits of secrecy blind us to the dispersed shards of information that, if linked, could reveal the enemy's shadowy plans.

Recent reports of a secret program to reclassify previously declassified documents reflect the stubborn refusal of many Cold Warriors to move from the "need to know" to the "need to share" security paradigm. Operating since 1999, the program pulled materials from public archives that had already been viewed, copied or republished. Claiming that bureaucratic "equities" (code for "turf") had been ignored in the rush to declassify, the reclassifiers have taken tens of thousands of pages from the open files in an arrogant and futile attempt to un-write history. Many of the documents deal with issues having no current security implications. As a result, obvious non-secrets – like the spectacularly wrong estimate in 1950 the Chinese would not enter the Korean War – are once again stamped "Secret."

This absurd effort to put the toothpaste back into the tube persists despite the growing consensus – supported by testimony before this Subcommittee – that from fifty to ninety percent of the material currently withheld should not be classified at all.

That inbred penchant for overclassification has also spawned a perverse offspring in the form of a vast and rapidly growing body of pseudo-secrets withheld from public view in the name of national and homeland security.

As this Subcommittee learned in two previous hearings on post-9/11 barriers to information sharing, what is not classified can still be kept from the public through the use of Sensitive But Unclassified (SBU) designations like "For Official Use Only" (FOUO) or "Official Use Only" (OUO). The unchecked proliferation of documents bearing these and other access restriction labels is choking what the 9/11 Commission said should be free-flowing pathways for critical information about an adaptable, decentralized foe.

After our hearing last year, Mr. Waxman and I asked key cabinet departments how many documents they had shielded with SBU markings over the past four years. Claiming the task so burdensome and the numbers so large, they could not even venture an estimate.

At the same time, we asked the Government Accountability Office (GAO) to examine policies and procedures on FOUO and OUO documents at the Department of Defense and Energy. Stamping something "For Official Use Only" should only mean someone has determined the information may meet the limited criteria for exemption from automatic public release under the Freedom of Information Act (FOIA). But increasingly, in this security-conscious era, SBU designations are being misused as an unregulated form of "classification-lite." In a report released today, GAO finds a lack of clear standards governing use of the FOUO and OUO labels. Almost anyone can apply the "Official Use Only" restriction and no one can make it go away unless someone happens to request the document under the FOIA.

Against a rising tide of global terrorism, we are drowning in sea of our own faux secrets, hiding public information from its real owners behind spurious FOUO and OUO labels. To right the balance between the public's right to know and countervailing public interests in security and privacy, the habits of secrecy must give way to the culture of shared information.

Our discussion today is timely. This is Sunshine Week 2006, the second annual observance by organizations and individuals seeking greater openness in government. At the same time, policies and procedures on classification, declassification, reclassification and designation of Sensitive But Unclassified material appear to be rushing headlong in the opposite direction.

We are joined by two panels of highly qualified and knowledgeable witnesses, including the Archivist of the United States. Welcome. We look forward to their testimony and to a constructive discussion of what can be done to sustain and enhance the public's access to their information.