



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

SEP 9 2008

Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

Dear Senator Reid:

I am writing to add the Department's views to those of the Director of National Intelligence (DNI) and the Attorney General (AG) in strong opposition to S.2035, the "Free Flow of Information Act." While recognizing a good-faith attempt has been made to address some of our concerns, the Department remains opposed to the amended legislation, which will still adversely affect our ability to protect national security.

In my previous letter, dated March 31, 2008, I described the Department's very serious concerns that this bill will undermine our ability to protect national security information and intelligence sources and methods and could seriously impede investigations of unauthorized disclosures. The amended legislation will undermine the investigation and deterrence of unauthorized leaks of national security information to the media, gravely damaging the Department's ability to protect national security.

Consistent with the DNI and AG's recent letter of August 22, 2008, the amended version of this bill does not resolve these concerns. Therefore, if it were presented to the President in its current form, I would recommend he veto the bill.

The Department is charged with safeguarding classified information in the interest of protecting national security. Past investigations into unauthorized disclosures through the media have found that significant details were revealed to our adversaries concerning a wide array of national security matters on different occasions. Disclosures of classified information about military operations will directly threaten the lives of military members and the success of current and future military operations. Such disclosures also threaten the lives and safety of American citizens and the welfare of the Nation.

The most problematic provisions, Sections 5, 6, 8, 9 and 10, include:

- The circumstances in which the bill would permit the Government to obtain information related to national security from a covered person, including leaks of classified information, remain far too restrictive.



- The legislation's exception to prevent "significant and articulable" harm to national security still applies only prospectively; it does not apply to investigations once the harm has occurred. Even in cases involving prospective harm, it could require the Government to disclose further sensitive information with no assurance that all or any classified information would remain protected.
- The legislation transfers key national security and prosecutorial decision-making authority –including decisions about what does and does not constitute harm to the national security –from the Executive Branch to the judiciary, and it gives judges virtually limitless discretion to make such determinations by imposing standardless and highly subjective balancing tests that could be used to override national security interests.
- The legislation would extend protection to leaks publicized by individuals who are not even journalists, as that concept is normally understood.

This bill is characterized as a compromise between the Executive Branch's interests in protecting national security and enforcing the law, and the freedom of the press to gather and disseminate news to the public. For a purported compromise, however, the terms of this bill are decidedly one-sided: The Executive is compelled to cede authority over core determinations such as (1) what does and does not constitute harm to the national security; (2) whether information has been properly classified; and (3) what information is necessary to a national security or criminal investigation. Imposing such significant burdens upon the Government will impede our ability to protect the national security and prosecute serious crimes.

So, for these reasons and those set out by the DNI and the AG in detail in their letter of August 22, I urge you to reject S.2035.



cc:
The Honorable Mitch McConnell
Minority Leader



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

SEP 9 2008

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to add the Department's views to those of the Director of National Intelligence (DNI) and the Attorney General (AG) in strong opposition to S.2035, the "Free Flow of Information Act." While recognizing a good-faith attempt has been made to address some of our concerns, the Department remains opposed to the amended legislation, which will still adversely affect our ability to protect national security.

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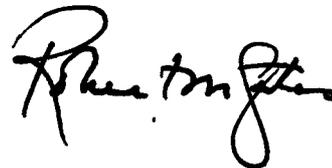
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So, for these reasons and those set out by the DNI and the AG in detail in their letter of August 22, I urge you to reject S.2035.



cc:
The Honorable John McCain
Ranking Member



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

SEP 9 2008

The Honorable John D. Rockefeller IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to add the Department's views to those of the Director of National Intelligence (DNI) and the Attorney General (AG) in strong opposition to S.2035, the "Free Flow of Information Act." While recognizing a good-faith attempt has been made to address some of our concerns, the Department remains opposed to the amended legislation, which will still adversely affect our ability to protect national security.

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A handwritten signature in black ink, appearing to read "Robert Mueller". The signature is written in a cursive, flowing style with a large initial "R".

cc:
The Honorable Christopher S. Bond
Vice Chairman



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

SEP 9 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to add the Department's views to those of the Director of National Intelligence (DNI) and the Attorney General (AG) in strong opposition to S.2035, the "Free Flow of Information Act." While recognizing a good-faith attempt has been made to address some of our concerns, the Department remains opposed to the amended legislation, which will still adversely affect our ability to protect national security.

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cc:
The Honorable Arlen Specter
Ranking Member