



## Patriot Act II Also Limits the Public's Right-to-Know

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The U.S. Department of Justice appears ready to ask Congress to allow broader surveillance of citizens and aliens and to grant wide new avenues for government censorship. A "confidential" draft of an 86-page bill called the Domestic Security Enhancement Act of 2003 would help transform the government into the big brother you never had and would greatly constrain the free flow of information.

The draft is quite sweeping with more than 100 changes in law. Much of the press attention has focused on features that would dramatically increase government electronic surveillance and data collection abilities, and impose the first-ever federal criminal penalties for using encryption in the U.S. Under the draft, the government could, among other things, collect DNA samples from suspected terrorists, including anyone associating with suspected terrorist groups; strip citizenship from people lawfully supporting groups allegedly engaged in terrorism; and invalidate state consent decrees seeking to curb police spying. The draft would create new powers to obtain information about credit reports of individuals and monitor voice and Internet communications of Web-enabled cell phones. It would also allow people in official positions to be imprisoned for revealing the existence of an anti-terrorism investigation. All this would result in a government with far more power to snoop, detain and harass.

While rumors have been circulating about the Justice Department developing a "Patriot Act II" for some time, they were often denied. Even now the legislation has not been officially released. Yet the Justice Department has not categorically dismissed it either. Instead government officials simply say no final version has been agreed upon.

Many organizations and policymakers are beginning to register objections to this draft. However, one aspect of the draft that has not received much attention is the impact on the public's right-to-know. The proposal contains numerous troubling provisions that address access to government information, including:

- **Section 121, "Definition of Terrorist Activities"**: According to the section by section analysis of the draft bill, this section adds a definition of "terrorist activities" to the criminal code governing electronic surveillance. The analysis states that in addition to an established definition for criminal acts of domestic and international terrorism the definition would include "related preparatory, material support and criminal activities." While the draft legislative language does not include this point, the section analysis may indicate intentions for future versions of the bill. The inclusion of preparatory activities is troubling as the term could be interpreted broadly to include research and information gathering. Aggressive investigations could have a significant "chilling" effect on the public's right to know by discouraging research of certain subjects and the collection of certain types of information.

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- **Section 201, “Prohibition of Disclosure of Terrorism Investigation Detainee Information”:** This section would codify the questionable policies of the Bush Administration to withhold information on suspected terrorists in government custody. The draft would create specific authority under Exemption 3 of the Freedom of Information Act, which prohibits the disclosure of information “specifically exempted from disclosure by statute.” This would be a blanket secrecy policy for the government concerning detainees held under the suspicion of terrorism releasing the government from its burden to prove its need for secrecy in each case.

This provision would expand on a policy advocated by Attorney General John Ashcroft in an October 2001 memo regarding implementation of FOIA. That memo encouraged FOIA officers to take national security, "protecting sensitive business information and, not least, preserving personal privacy" into consideration when reviewing FOIA requests. The memo places a higher premium on withholding information from the public than on disclosure.

- **Section 202, “Distribution of ‘Worst Case Scenario’ Information”:** This section would create new restrictions for information collected by the Environmental Protection Agency (EPA) under the Clean Air Act. Facilities that use large amounts of hazardous and flammable chemicals are required to file Risk Management Plans (RMPs) with the EPA. A portion of the plans is a “worst case scenario” report that describes the possible impact a catastrophic release of these chemicals would have on nearby communities. The draft bill would reduce public access to these worst case scenarios and any information that identifies, describes, or is derived from this section.

The EPA would continue to provide access to the information, but it would be limited to “read only.” According to the section-by-section analysis, which differs from the draft legislative language, access would also be limited to those “who live and work in the geographical area likely to be affected by a worst-case scenario.” The draft bill would make it illegal to even take notes on the worst case scenario or for any civil employee to disclose any of the information. The provisions also require that the information available to the public "does not disclose the identity or location of any facility or any information from which the identity or location of any facility could be deduced." Thus, even if someone traveled during working hours to the appropriate government reading room to review the information about vulnerabilities in their community, they would not be able to find out where the danger is or who is causing it.

This subtitle of the draft bill would allow corporations to more easily hide and potentially ignore the risks that these facilities pose to workers and nearby residents. This provision seems to build off a bill introduced by Sen. Christopher Bond (R-MO) called "Community Protection from Chemical Terrorism Act" (S.2579), which was intended to restrict access to the RMPs.

Ironically, it is precisely this type of information that can help the public to reduce vulnerabilities in our communities. For example, in the Washington, DC area, after reviewing RMP data, the public demanded and the Blue Plains Treatment Plan agreed to move a 90-ton rail car with chlorine to insure greater safety, as well as to use a chemical substitute for chlorine that is much safer. A worst case scenario had shown that an accident might cause a chlorine plume to cover the White House and Congress.

- **Section 313, “Disclosure of Information”:** This section would grant civil immunity for corporations and employees that voluntarily provide information to federal law enforcement agencies to assist in the investigation and prevention of terrorist activities. Civil immunity is one of the corporate giveaways offered in the recently passed Homeland Security Act of 2003 for companies that provided the new Department of Homeland Security with “Critical Infrastructure Information.” The provision, which many believe can be used by corporations to avoid accountability, was highly controversial in the Homeland Security Act. The section in the draft bill would widely expand the type of information that could be protected from use in civil suits as well as the number of government agencies that could receive it.

The draft Domestic Security Enhancement Act is yet another development in a series of actions taken by the Bush Administration to increase secrecy within the federal government and reduce public access to government information.