

Sunshine in Government Initiative

1101 Wilson Boulevard, Suite 1100 · Arlington, Virginia 22209

Phone (703) 807-2100 · Fax (703) 807-2109

www.SunshineInGovernment.org · info@SunshineInGovernment.org



September 14, 2006

The Honorable Christopher Bond
Russell Senate Office Building 274
United States Senate
Washington, DC 20515
Sent via facsimile: 202-224-8149

Dear Senator Bond:

Our organizations are writing to express our strong opposition to S. 3774, overly broad legislation that would, for the first time in our nation's history, criminalize disclosures of classified information. Instead of pursuing new legislation, we urge you to endorse and participate in an ongoing dialogue hosted by the Aspen Institute and involving active journalists, publishers and very senior level government officials.

We recognize that the government has a duty to protect national security and that some unauthorized disclosures of classified information may cause serious damage. The media clearly have an obligation to act carefully and responsibly and to avoid harm to national security as they make their decisions whether to publish.

As part of the media's responsibility, we also acknowledge that our founders understood that there is the delicate balance between the public's right to know and the government's need to protect national security secrets.

In lieu of new legislation, we urge you to pursue congressional endorsement of and participation in a renewed dialogue between government and the media. Since the 9/11 attacks, senior representatives of government and the media have engaged in several off-the-record discussions designed to avoid the disclosure of truly harmful secrets. Congressional representatives also participated in some of these sessions. Executive and legislative branch officials need to understand how to talk to the press about sensitive information without improperly disclosing highly classified information. Journalists need to understand what to do when learning of highly sensitive information that may cause harm if disclosed. When these discussions occurred, those attending found them extremely helpful. Due in part to turnover within intelligence agencies, these discussions have not occurred in some time.

We are committed to renewing the dialogue. The Aspen Institute and its Communications and Society Program has agreed to sponsor the "dialogue" and the first session is scheduled in early October.

American Society of Newspaper Editors · The Associated Press · The Association of Alternative Newsweeklies ·
Coalition of Journalists for Open Government · National Newspaper Association ·
Newspaper Association of America · Radio-Television News Directors Association ·
The Reporters Committee for Freedom of the Press · Society of Professional Journalists

Over the years, Congress has passed a variety of laws to punish disclosure of specific types of classified information (such as information relating to communications intelligence, atomic weapons and covert agents). However, through two world wars and the Cold War, Congress resisted requests for a broad “Official Secrets Act” that would criminalize the unauthorized disclosure of any classified information. In 2001, Congress again rejected “Official Secrets Act” legislation, and instead mandated a comprehensive review by the Justice Department of protections against the unauthorized disclosure of classified information. On October 15, 2002, then-Attorney General John Ashcroft submitted a report to Congress in which he stated, “Accordingly I am not recommending that the Executive Branch focus its attention on pursuing new legislation at this time. “

S. 3774 would have a chilling effect on legitimate interactions between government officials and the public. With the threat of criminal prosecution looming, it would alter the way in which government officials — including members of Congress — deal with the press, the way in which the press gathers and reports the news and the way in which the public learns about its government. The bill would also expose journalists to greater pressure to reveal confidential sources.

Beyond the news media, it would affect the legitimate interaction of many others with the government, including historians and public policy think tanks. Such legislation would discourage government “whistleblowers” from coming forward with information that may shed light on inappropriate or unlawful activities. While such disclosures often cause discomfort within the institutions involved, they have often informed Congress in its constitutional responsibility to govern the nation.

Consider the following matters that came to light when classified information was disclosed to journalists: The Pentagon Papers; lapses in security creating vulnerability to espionage, such as the case of former CIA agent Edward Lee Howard; government radiation and biological warfare experiments on unwitting Americans; and waste, fraud and abuse in the defense industry. Leaks to the media, even of classified information, have served as a vital source of information about public issues and the operation of government.

Thank you for considering our views on this important matter. We look forward to a dialogue with you on remedies to the problems and challenges of protecting national security while preserving open discussion of important public issues. To follow up, please contact Rick Blum, coordinator of the Sunshine in Government Initiative, at 703-807-2100.

Sincerely,

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