

July 31, 2026

The Honorable Chuck Grassley
Chairman
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dick Durbin
Ranking Member
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, DC 20510

RE: Coalition opposition to the Defense Department's proposal to exempt controlled unclassified information from FOIA

Dear Chairman Grassley, Ranking Member Durbin, and Members of the Committee:

On behalf of the undersigned organizations, we are writing to strongly oppose the Defense Department's June 25 proposal to exempt controlled unclassified information (CUI) from the Freedom of Information Act (FOIA). If added as Section 130f of Title 10, this change would give the Secretary of Defense broad authority to withhold unclassified records from the public under the guise of national security.

CUI covers important everyday information—including military housing safety reports, contractor performance reviews, and health evaluations. Executive Order 13556, which governs controlled unclassified information, specifically states, "The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches." Giving the Pentagon the power to hide these documents guts public accountability, limits congressional oversight, and hampers investigative reporting. Congress has rejected similar proposals before, and we urge you to reject this one as well.

While DoD argues that a new statutory exemption is required to create a "more uniform protection" for unclassified national security information, FOIA already contains robust exemptions that are designed to shield sensitive information without unnecessarily curtailing the public's right to know.

Specifically, Exemption 1 protects records that are properly classified in the interest of national defense or foreign policy. If information held by the Department genuinely poses a risk to national defense if released, the executive branch already possesses the authority to classify that information under established procedures.

FOIA also already provides protections for unclassified information. For example, Exemption 3 prohibits the release of information that is protected by statutes other than FOIA—including certain defense and procurement information, Exemption 5 protects deliberative communications, and Exemption 6 protects privacy.

Instead of using these existing exemptions, the Pentagon wants a new blanket exemption that would pull huge volumes of unclassified records entirely out of public view.

This proposal is especially concerning because it would allow the Secretary of Defense unilateral discretion over whether a record should be kept secret. Withholding decisions would hinge on whether the Secretary thinks the potential harm to the department outweighs public interest, replacing independent court oversight with internal agency discretion. This will naturally favor politicization and avoiding embarrassment over public transparency.

Worse, the proposed "transparency" assurances in the text are illusory. While the statute notes that written CUI determinations shall be made available "upon request," this places an unnecessary burden on citizens and journalists, forcing them to file a second request simply to see why a record was hidden.

Finally, the rule steamrolls state and local open government laws by explicitly banning state or local agencies from releasing shared CUI, even if local law permits them to do so. This creates a federal veto over state sunshine laws, cutting off local reporters and taxpayers from information held right in their own communities.

The DoD's proposal is not a novel response to emerging security threats; it is merely the agency's latest attempt to erode FOIA and undermine journalists, congressional committees, and watchdogs working to expose mismanagement and abuse within the military.

Matters regarding FOIA should be managed and considered through the proper committees of jurisdiction, the House Committee on Oversight and Accountability and the Senate Committee on the Judiciary, to make sure they do not undermine the statute.

We respectfully urge the Committee to defend transparency for the public, including military families, and reject the inclusion of proposed Section 130f in the upcoming National Defense Authorization Act or any subsequent legislative package.

Thank you for your leadership and consideration of this critical matter.

Sincerely,

American Civil Liberties Union
American Governance Institute
American Oversight
Bahr Law Offices, P.C.
Brennan Center for Justice at NYU School of Law
Center for Biological Diversity
Center for Environmental Justice and Children's Health
Citizens for Responsibility and Ethics in Washington
Demand Progress

Democracy Defenders Action
Electronic Frontier Foundation
Electronic Privacy Information Center
Fiat Fiendum
First Amendment Coalition
First Amendment Foundation
Free Government Information
Freedom of the Press Foundation
Government Accountability Project
Government Information Watch
Hans Kristensen (Federation of American Scientists)
Institute For Justice
Knight First Amendment Institute at Columbia University
MuckRock Foundation
National Press Club
National Press Club Journalism Institute
National Security Archive
National Security Counselors
PEN America
People For the American Way
Project on Government Oversight
Radio Television Digital News Association
Reporters Without Borders (RSF)
RootsAction
Sierra Club
Society for Historians of American Foreign Relations
Society of Environmental Journalists
Society of Professional Journalists
Taxpayers for Common Sense
The Association of Foreign Press Correspondents in the United States
The Black Vault, Inc.
The Intercept
The NewsGuild - Communications Workers of America