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Secrecy provision frightens critics

National intel chief would be able to protect 'sources and methods'

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COX NEWS SERVICE

WASHINGTON - Civil liberties groups and advocates of open government are alarmed at a provision moving rapidly in Congress that would give a new national intelligence director power to keep information secret to protect intelligence "sources and methods."

The language, part of two intelligence-reform bills being merged by congressional negotiators, could lead to a major expansion of government secrecy by increasing exemptions to the Freedom of Information Act, critics say.

Under current law, the director of central intelligence has power to exempt sensitive information from public disclosure by labeling it vital to national security. Advocates of open government fear that the power could be extended broadly under the bill, which lawmakers aim to finish before the Nov. 2 election.

House and Senate negotiators planned to work through the weekend hoping to emerge next week with a compromise bill.

The measure could allow all agencies under the new intelligence director to claim the exemption, including the FBI, the Treasury Department and the Department of Homeland Security, said Joseph Onek, senior counsel of the Constitution Project, a nonprofit group in Washington that studies civil rights and security issues.

In addition, he said the national-security exemption is the only one that does not allow judicial review. As a result, the agencies would not have to explain to a court why they are keeping things secret.

"Intelligence methods"

For example, the Justice Department withheld the list of names of people arrested after the Sept. 11, 2001, terrorist attacks under a different exemption that allows the government to keep secrets to avoid revealing terrorism methods.

Under the new legislation, the list of names could be classified as "intelligence methods" and "no court would have the opportunity to require a justification for such secrecy," according to an analysis by Kate Martin, director of the Center for National Security Studies, a civil-liberties group in Washington.

Journalism groups are also urging lawmakers to change the language to make it clear that the legislation is not intended to expand existing Freedom of Information exemptions and further increase government secrecy.

The White House said in a recent letter to congressional negotiators that it supports the "sources and methods" provision and that it believes "the head of each element of the intelligence community should be explicitly charged with carrying out this critical authority, according to the (new director's) guidance."

Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists, said it is unclear whether the proposed legislation would have a major impact on secrecy.

The director of central intelligence "arguably already has this level of authority," Aftergood said. But he said the

national intelligence director will have more power over various agencies, which could make a significant difference.

The exact level of power, however, is still being worked out by congressional negotiators, making it difficult to predict what could happen, Aftergood said.

A difficult compromise

The House and Senate bills differ on several issues, making a compromise difficult. One of the major points of contention is an immigration provision passed by the House that expedites deportations.

The two bills also differ on whether to keep the total intelligence budget classified.

The Sept. 11 commission, an independent panel that studied the terrorist attacks in New York and Washington, recommended in a best-selling report that the amount be made public.

Aftergood said keeping the intelligence budget classified has allowed the government to withhold a large amount of information from the public.

"Budget secrecy is at the root of the overclassification problems that plague U.S. intelligence," he said. "It's kind of a filter that impedes the release of all kinds of innocuous information."

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