

# CRS Report for Congress

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## Homeland Security: Intelligence Support

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### Summary

Both House and Senate versions of legislation to establish a Department of Homeland Security (DHS) (H.R. 5005 and S. 2452) include provisions for an intelligence analysis function within the new department. Neither, however, proposes the transfer to DHS of existing government intelligence and law enforcement agencies. Both envision the intelligence element utilizing the products of other agencies to provide warning of terrorist attacks, assessments of vulnerability, and recommendations for remedial actions at the federal, state, and local levels and by the private sector. The House bill provides somewhat more latitude for DHS analysts to fuse intelligence and law enforcement information; the Senate version would have DHS depend more on analysis by CIA's Counterterrorist Center. This report does not address provisions in the proposed legislation governing the sharing of intelligence with state and local officials. This report will be updated as circumstances warrant.

### Introduction

The Bush Administration's legislative proposal for a Department of Homeland Security (DHS) released July 16, 2002 was incorporated in H.R. 5005, introduced on June 24, 2002 by Representative Armeo. Title II of the bill, Information Analysis and Infrastructure Protection, as subsequently amended and passed by the House on July 26, includes provisions to establish an Intelligence Analysis Center to provide intelligence support to the homeland security effort and to identify priorities for measures to protect key sources and critical infrastructures. In the Senate, Senator Lieberman introduced legislation (S. 2452) to establish a Department of National Homeland Security on May 2, 2002. The original version of S.2452 did not address the intelligence function, but subsequent amendments in the nature of a substitute include provisions establishing a Directorate of Intelligence as an integral part of the new department.

The House version would establish an Intelligence Analysis Center headed by the Under Secretary for Information Analysis and Infrastructure Protection; the Senate bill would establish a Directorate of Intelligence. The House approach seeks to promote closer ties between intelligence analysts and those responsible for assessing vulnerabilities of key U.S. infrastructure. The Senate approach seeks to provide better intelligence

support to all parts of the new Department and ensure that intelligence has an independent position among DHS elements.<sup>1</sup> Both House and Senate bills envision an intelligence entity focused on receiving and analyzing information<sup>2</sup> from other government agencies and using it to provide warning of terrorist attacks and for addressing vulnerabilities throughout the country that terrorists could exploit. Neither, however, would transfer major intelligence agencies to the DHS, although DHS elements, including Customs and the Coast Guard, do collect information that is crucial to analyzing terrorist threats. There are a number of issues remaining and undoubtedly modifications to current legislative language will be proposed, but many observers believe that the two bills do not contain irreconcilable approaches to intelligence support to the counterterrorist effort.

## Background

Better intelligence is held by many observers to be a crucial factor in preventing future terrorist attacks. In particular, concerns have been expressed that no part of the federal government has been in a position to “connect the dots” between diffuse pieces of information acquired separately by intelligence and law enforcement agencies. For example, data collected abroad by intelligence agencies about terrorist groups out to attack the U.S. has not been evaluated by analysts having direct access to information about visitors to this country who have violated immigration or other laws. For many years the sharing of intelligence and law enforcement information was deterred by organizational policies and statutory prohibitions. Beginning in the early 1990's, however, much effort has gone into improving interagency coordination.<sup>3</sup> In addition, a number of statutory obstacles have been removed by the USA-Patriot Act of 2001 and other legislation.<sup>4</sup> Nevertheless, no one agency currently has direct statutory responsibility for looking at all intelligence and law enforcement information that might relate to potential terrorist threats to the homeland.

Under either the House or Senate proposal, DHS would not duplicate the collection effort of intelligence agencies; it would not have its own agents, satellites, or signals intercept sites. The intelligence entity within DHS would have, however, the responsibility for acquiring and reviewing information from the agencies of the Intelligence Community, from law enforcement agencies, and unclassified publicly available information (known as open source information or “osint”) from books, periodicals, pamphlets, the Internet, media, etc. S. 2452 is explicit that, unless otherwise directed by the President, DHS will “have access to, and United States Government agencies shall provide, all reports, assessments, analytical information, and information,

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<sup>1</sup> For background on DHS organizational issues, see CRS Report RL31493, *Homeland Security: Department Organization and Management*, by Harold C. Relyea.

<sup>2</sup> Some writers distinguish between information and intelligence; the former being unanalyzed information the latter being the result of analysis. In practice, however, the terms are often used interchangeably and the distinction will not be observed in this report.

<sup>3</sup> For background on this issue, see CRS Report RL30252, *Intelligence and Law Enforcement: Countering Transnational Threats to the U.S.*, by Richard A. Best, Jr.

<sup>4</sup> See CRS Report RL31377, *The USA Patriot Act: A Legal Analysis*, by Charles Doyle; and CRS Report RL30465, *The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework*, by Elizabeth Bazan.

including unevaluated information, relating to the plans, intentions, capabilities, and activities of terrorists and terrorist organization....”<sup>5</sup> While arrangements involving broad categories of information are envisioned by S. 2452, regardless of whether such arrangements exist, the bill stipulates that “all agencies ... shall promptly provide information...” The Administration has expressed concern that this language could result in DHS being flooded with large volumes of immaterial information, making it more, not less, difficult for DHS analysts to identify pertinent information.

In the House version, DHS analysts would be charged with using this information to produce “infrastructure vulnerability assessments,” “identifying priorities for protective and support measures by [DHS], by other executive agencies, by State and local governments, by the private sector, and by other entities.” Intelligence would supply the evidentiary basis for enabling the DHS to fulfill its responsibility for “public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.”

Both the House and Senate versions envision the intelligence elements initially staffed by analysts from other intelligence and law enforcement agencies assigned on reimbursable details. Service in DHS would be considered a positive factor for selection to positions of greater authority within all supporting agencies. Personnel security standards would be established in conjunction with Intelligence Community standards.

Both bills would make DHS responsible for ensuring that any material received is protected from unauthorized disclosure and handled and used only for the performance of official duties. Intelligence information would be transmitted, retained, and disseminated consistent with policies established under the authority of the Director of Central Intelligence (DCI) to protect intelligence sources and methods.<sup>6</sup> Information from law enforcement agencies would be transmitted, retained, and disseminated in accordance with the Attorney General’s authorities on sensitive law enforcement information.<sup>7</sup>

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<sup>5</sup> The language provides for a presidential exception that might arise because of particularly sensitive information; some observers also argue that the President has a constitutional authority to control the dissemination of intelligence information.

<sup>6</sup> The DCI’s authority for protecting intelligence sources and methods is set forth in 50 USC 403-3(c)(6).

<sup>7</sup> The Attorney General’s authorities for safeguarding law enforcement information are diffuse; see, *e.g.*, 18 USC 2511 (interception and disclosure of wire, oral, or electronic communications prohibited, exceptions); 18 USC 2517 (authorization for disclosure and use of intercepted wire, oral, or electronic communications); 21 USC 190(e) (public disclosure of significant foreign narcotics traffickers and required reports, exclusions of certain information).

## Issues Under Discussion

**DHS Role in the Intelligence Community.** The U.S. Intelligence Community, consisting of the Central Intelligence Agency (CIA) and some 14 other agencies,<sup>8</sup> provides information in various forms to the White House and other federal agencies (as well as to Congress). In addition, law enforcement agencies, such as the Federal Bureau of Investigation (FBI), also collect information for use in the federal government<sup>9</sup>. Neither H.R. 5005 nor S. 2452 would make fundamental alterations in existing roles and missions of intelligence and law enforcement agencies.

Within the Intelligence Community, priorities for collection (and to some extent for analysis) are established by the DCI,<sup>10</sup> based in practice on inter-agency discussions. Being “at the table” when priorities are discussed, it is suggested, helps ensure equitable allocations of limited collection resources. Both bills would make the intelligence office of the DHS a member of the Intelligence Community and thus give DHS a formal role when intelligence collection and analysis priorities are being addressed and also facilitate access to intelligence community databases and other analytical resources. Some argue that such a move would entail participation in extensive Intelligence Community staffing and would require more personnel resources than currently envisioned for DHS in this area, thereby detracting from the intended focus on terrorist threats.

This legislation to establish DHS envisions an intelligence center having an integral role within DHS. DHS will not itself become an intelligence agency like the CIA; rather the Intelligence Analysis Center/Directorate of Intelligence will be a component division that is a part of the Intelligence Community and that will function in a support and advisory role to other DHS elements. A similar situation has long existed in the State Department which has a Bureau of Intelligence and Research (INR), also a component of the Intelligence Community, charged with providing intelligence input to the foreign policymaking process. Although INR has had to strive to avoid letting policy goals of the Department influence its intelligence judgments, most observers credit INR with having performed responsibly over the years. Being a component of the Intelligence Community has allowed INR to have direct and close access to intelligence data and analysis as well as to influence the establishment of collection and analysis priorities.

Both bills would also place the DHS intelligence element within the National Foreign Intelligence Program (NFIP).<sup>11</sup> The NFIP is a collection of programs whose budgets are developed by the DCI and presented to the President for review and forwarding to Congress as components of annual budget submissions. Although DHS intelligence budgets are likely to be far smaller than those of the major technical collection agencies, participation in NFIP processes arguably would permit the DHS to help ensure that counterterrorist intelligence missions are appropriately considered.

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<sup>8</sup> Defined by 50 USC 401a(4). (Membership in the Intelligence Community has changed over the years; in 2001 the Coast Guard acquired the status of a member of the Intelligence Community pursuant to section 105 of P.L. 107-108, the FY2002 Intelligence Authorization Act.)

<sup>9</sup> 28 USC 533 provides information collecting authority to the Justice Department and the FBI.

<sup>10</sup> 50 USC 403-3(c)(2).

<sup>11</sup> 50 USC 401a(6).

**The Question of “Raw” Intelligence.** There has been some discussion in the media regarding the extent to which DHS will have access to “raw” intelligence or only to finished analytical products. This issue appears not to be completely resolved. There may be some uncertainty regarding the definition of “raw” intelligence. A satellite photograph standing by itself might be considered “raw” data, but it would be useless unless something were known about where and when it was taken. Thus, satellite imagery supplied to DHS would under almost any circumstances have to have some analysis included. The same would apply to any signals intercepts. Reports from human agents present special challenges. Some assessment of the reliability of the source would have to be provided, but anything that would identify a specific individual would normally be retained within a very small number of intelligence officials; the further such sensitive information is spread, the greater the danger of unauthorized disclosure and harm to the source. It is highly unlikely that “raw” reports identifying a human source would be made available to DHS except under very rare circumstances. The Administration has, however, expressed concern that language in the Senate version could be read to require that source-identifying information go directly to the new Department.

**The Role of CIA’s Counterterrorist Center.** H.R. 5005 appears to assume that DHS will receive the same types of reporting from all intelligence sources that are routinely received by intelligence analysts in CIA or other agencies, although it does not specifically address the question of the extent of DHS access. On the other hand, the most recent version of S. 2452, even though it includes provisions mandating DHS access to information, including “unevaluated intelligence,” appears to assume that CIA’s Counterterrorist Center (CTC)<sup>12</sup> would “have primary responsibility for the analysis of foreign intelligence relating to international terrorism.” The bill provides that the DCI, the Attorney General, and heads of other agencies will ensure that all intelligence and other information relating to international terrorism is provided to the CTC. The DCI would further ensure that this information is analyzed by the Counterterrorist Center. In the most significant change in the Senate version, the Intelligence Directorate would apparently not analyze information collected by intelligence agencies, but rather would fuse information from non-intelligence agencies with “appropriate analytical products, assessments, and warnings relating to threats of terrorism” from the CIA’s CTC. A separate sub-paragraph, however, states that nothing “shall be construed to prohibit the Directorate from conducting supplemental analysis of foreign intelligence.”

There are various considerations in either approach. Providing a full flow of intelligence and law enforcement data to DHS will require larger numbers of trained and experience analysts (who tend to be in short supply). There is, inevitably, an increased risk of compromising classified information that goes with any increase in the number of those with access to it. There may be some duplication of effort, which will be costly.

Those who support giving the DHS responsibilities for analyzing foreign intelligence in conjunction with law enforcement information argue that it is important for one set of

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<sup>12</sup> The CTC was established in CIA’s Operations Directorate in 1986 by then DCI William Casey with Duane Clarridge as its first head; for its origins and the problems it encountered in its early years, see Duane R. Clarridge with Digby Diehl, *A Spy for All Seasons: My Life in the CIA* (New York: Scribner, 1997); for a more recent description, see Paul R. Pillar, *Terrorism and U.S. Foreign Policy* (Washington: Brookings, 2001). The CTC has, as yet, no statutory charter.

analysts to sift evidence from all intelligence, law enforcement, and other sources to seek out linkages and identify potential threats. They suggest that requiring DHS to rely only on published products from CIA would restrict DHS analysts from undertaking comprehensive data mining and other research efforts. These observers caution that having agencies responsible for foreign intelligence—and especially CIA’s Operations Directorate—deeply and routinely involved in the analysis of law enforcement data—much of which will concern U.S. persons—could eventually raise issues about civil liberties. The CTC would in any event retain its current responsibilities for analysis of international terrorist activities throughout the world. The inevitable degree of duplication of effort would be justified, it is argued, by the importance of the stakes involved and by the fact that analytical efforts are—relatively—inexpensive in comparison to collection.

**Open Source Information (Osint).** Information from unclassified sources—books, pamphlets, periodicals, Internet sources, television and radio programs—is arguably an important resource for gaining information about terrorist groups and the larger political movements with which they are associated. There are different views regarding the emphasis to which intelligence agencies should give to open source information. DCI George Tenet in prepared testimony for the Senate Government Affairs Committee on June 27, 2002, stated that “In every possible case, we will provide intelligence at the lowest permissible level of classification, including ‘sensitive, but unclassified.’” Pointedly, he did not include open source information. DHS thus might become responsible for collecting and analyzing osint without support from intelligence agencies; the Senate bill explicitly makes reference to the Intelligence Directorate having timely and efficient access to open source information.

There has been a longstanding discussion of the role of intelligence agencies in collecting and analyzing osint. Some observers argue that the Intelligence Community should devote more resources to exploiting information that is available publicly, collecting materials that do not circulate widely, and assigning a significant analytical effort to monitoring osint. Others argue that the fundamental responsibility of intelligence agencies is secret information and that an extensive osint effort would detract from that assignment. It is unclear whether DHS will be charged with a comprehensive osint collection effort or whether intelligence agencies will assume this function.

## **Conclusion**

Both House and Senate bills for creating a homeland security department recognize the crucial importance of intelligence to the counterterrorist effort. Both bills propose an analytical office within DHS that will be able to draw upon all the information gathering resources of other government agencies and of the private sector. Both envision the DHS intelligence entity working closely with other DHS offices, other federal agencies, state and local officials, and the private sector to devise strategies and programs to protect U.S. vulnerabilities and to provide warning of specific attacks. Both provide for maintaining the security of classified and sensitive information and require its use only for official purposes. The success of a DHS intelligence entity would, however, be largely dependent upon the quality of leadership, the skills of analysts, and the cooperation provided by federal, state, local, and private agencies.