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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3214**

February 24, 2012

The Honorable Leon E. Panetta  
Secretary  
U.S. Department of Defense  
100 Defense Pentagon  
Washington, DC 20301

Dear Mr. Secretary,

I write with great concern regarding recent reports of a Department of the Navy request to redact information from an Agency for Toxic Substances and Disease Registry (ATSDR) report about water contamination at the U.S. Marine Corps base, Camp Lejeune—where for three decades, thousands of Marines and their families consumed tap water contaminated with toxic chemicals that likely led to cancers and other illnesses, but have yet to receive justice.

I authored a provision that was included in the House-passed version of H.R. 1540, the National Defense Authorization Act for Fiscal Year 2012 that requires the application of a public interest balancing test by the Department of Defense (DoD) when exempting clearly-defined, sensitive, but unclassified “Critical Infrastructure Security Information,” or CISI, from responses to Freedom of Information Act (FOIA) requests. As you know, the final, compromise language that was passed as part of the FY12 NDAA conference report, which was signed into law on December 31, 2011, would permit the withholding of CISI under the Freedom of Information Act (FOIA) only when the public interest is outweighed by the interests in security. This determination is to be made in writing by the Secretary of Defense, or designee, and then made public.

Given the documented history of secrecy surrounding the Camp Lejeune investigation, the Department of the Navy’s actions raise serious concerns regarding the legal justifications for its most recent request for redactions from the Camp Lejeune report, particularly in light of the new CISI statutory exemption to FOIA. As you well know, ultimately all federal government information is public and available through a FOIA request unless classified or exempted through FOIA or the Privacy Act.

Certainly some CISI should not be made public due to security concerns interests that outweigh other public interests. However, all DoD components need guidance clarifying that CISI will only be truly secure if it can be properly be withheld under FOIA. Therefore, treatment of CISI should be governed by the DoD CISI exemption—not the host of other unrelated laws, regulations, and instructions cited by the Navy in its letter to ATSDR.

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I request that you provide the following information regarding the proper implementation of the new law:

- What measures is DoD undertaking to properly implement the use of the CISI exemption to FOIA?
- When does DoD plan to initiate the rulemaking process, and to clarify the appropriate usage of the exemption and how it may relate to existing instructions, regulations, or statutes relating to critical infrastructure information security?
- How will you ensure the public interest balancing test is appropriately and consistently applied and that requesters are given an opportunity to present the public interest in question once DoD has determined the requested information is CISI?
- How will DoD conduct oversight over the use of the CISI exemption?
- How will DoD ensure public access to determinations to withhold information using the CISI exemption?
- Finally, given the great public interest in information related to the Camp Lejeune water contamination, what measures are you taking to ensure that information is made publicly available?

We must protect certain CISI to keep our defense operations, properties and facilities safe from terrorists and others who would do harm to American interests. But in our efforts to do so, we also must strike the necessary balance between safeguarding security interests and the public's right to know – and prevent another Camp Lejeune from happening.

Thank you for your prompt attention to this matter, and I look forward to your reply.

Sincerely,

  
CAROLYN B. MALONEY  
Member of Congress