

DHS. Information independently obtained by a State or local government entity, agency, or authority is not subject to the CII Act of 2002's prohibition on making such information available pursuant to any State or local law requiring disclosure of records or information.

(h) *Ex parte communications with decision-making officials.* Pursuant to section 214(a)(1)(B) of the Homeland Security Act of 2002, Protected CII is not subject to "any agency rules or judicial doctrine regarding ex parte communications with a decision-making official."

(i) *Restriction on use of Critical Infrastructure Information in civil actions.* Protected CII shall not, without the written consent of the person or entity submitting such information, be used by any Federal, State, or local authority, or by any third party, in any civil action arising under Federal or State law if such information is submitted in good faith for homeland security purposes.

(j) *Disclosure to foreign governments.* The CII Program Manager, or the Program Manager's designee, may provide Protected CII to a Foreign Government without the written consent of the person or entity submitting such information to the same extent it may provide advisories, alerts, and warnings to other governmental entities as described in § 29.8(e) of this chapter, or in furtherance of an investigation or the prosecution of a criminal act.

(k) *Obtaining written consent for further disclosure from the person or*

entity submitting information. Only the CII Program Manager, or the Program Manager's designee, may seek and obtain written consent from persons or entities submitting information when such consent is required under the CII Act of 2002 to permit disclosure. A person or entity's consent to additional disclosure, if conditioned both on a limited release of Protected CII for DHS's purposes and in a manner that offers reasonable protection against disclosure to the general public, shall not result in the information's loss of treatment as Protected CII.

§ 29.9 Investigation and reporting of violation of CII procedures.

(a) All persons authorized to have access to Protected CII shall report any possible violations of security procedures, the loss or misplacement of Protected CII, and any unauthorized disclosure of Protected CII immediately to the CII Program Manager, who shall in turn report the incident to the IAIP Directorate Security Officer and to the DHS Inspector General.

(b) *Review and investigation of written report.* The Inspector General, CII Program Manager, or IAIP Security Officer, shall investigate the incident and, in consultation with the Office of the General Counsel, determine whether a violation of procedures, loss of information, and/or unauthorized disclosure has occurred. If the investigation reveals any evidence of wrongdoing, DHS, through the Office of the General Counsel, shall immediately contact the Department of Justice, Criminal Division, for consideration of prosecution under the criminal penalty

provisions of section 214(f) of the CII Act of 2002.

(c) *Notification to originator of Protected CII.* If the CII Program Manager or the IAIP Security Officer determines that an unauthorized disclosure occurred, or that Protected CII is missing, the CII Program Manager shall notify the submitter of the information in writing. The written notice shall contain a description of the incident and the date of disclosure, if known.

(d) *Criminal and administrative penalties.* Pursuant to section 214(f) of the Homeland Security Act of 2002, whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any CII protected from disclosure by the Homeland Security Act and coming to the officer or employee in the course of his or her employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under Title 18 of the United States Code, imprisoned not more than one (1) year, or both, and shall be removed from office or employment.

Dated: April 9, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03-9126 Filed 4-14-03; 8:45 am]

BILLING CODE 4410-10-P