

James W. Conrad

*Protecting Private Security-Related Information
from Disclosure by Government Agencies*

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In the wake of the terrorist attacks of September 11, 2001, security assessments of an entity's vulnerability and its ability to adequately respond to a perceived threat have gained increasing importance within both the public and private sectors. With many private sector entities often required to share this sensitive information with the government, the use of governmental public disclosure laws provide potential terrorists with an unprecedented level of insight into America's greatest vulnerabilities and a roadmap on how best to circumvent the protective measures these entities undertake. In his article, *Protecting Private Security-Related information from Disclosure by Government Agencies*, American Chemistry Council Assistant General Counsel James W. Conrad explores the various legal protections available to the government for preventing the public release of a private business's security documents once they come into the federal government's possession.

Conrad argues that the government's current use of the Freedom of Information Act (FOIA), which is intended to preserve the notion of open government, must adequately balance the needs of national security with its important long-standing principle of governmental transparency. He considers the various exemptions to FOIA that executive branch agencies often employ for denying requests for disclosure, such as the national security and law enforcement exemptions, and insists that they be used in a manner that ensures American security while not extending them to information that should otherwise be available to the public. In addition to FOIA, whose application of the exemptions may be construed varyingly by different federal courts, Conrad identifies other legal measures currently in force that the federal government should employ to protect sensitive information from public release, paying particular attention to two controversial programs relating to "critical infrastructure information" and "sensitive security information."

After surveying the various laws at the federal government's disposal, Conrad concludes that in an age that requires more enhanced security and an accompanying need for information sharing between public and private sectors - and often among public sector agencies themselves - all involved parties must work together to maximize the effectiveness of the various legal measures. Such cooperation will require reconciliation of three competing objectives: (1) protective sensitive information from public release; (2) sharing sensitive information, where appropriate, among the relevant public and private entities; and (3) ensuring the first two goals do not lead to unnecessary withholding of truly non-sensitive and properly public information.