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NEWS RELEASE

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Seven Good Reasons to Stand Up for Information Freedom on Bioweapons Research

And what agendas may be at work to squelch the public's right to know.

(Austin and Hamburg - 30 October 2001) - The United States Congress is on the verge of passing a new law (H.R. 3160) that contains a measure that would restrict citizen and research groups from accessing information about the US biological defense program under the Freedom of Information Act. This measure will not only fail to protect the US from acts of bioterrorism, it will severely undermine the transparency of US biodefense research (hurting credibility) and raise questions about US willingness to uphold its commitment under the Biological and Toxin Weapons Convention to not develop or stockpile biological weapons.

The measure will eliminate the public's right to know what the government and its contractors are doing and may have more to do with protecting corporate secrecy than Americans from biological warfare. The location, types and quantities of agents being studied or stockpiled, as well as what institutions are conducting biological weapons agent research will become secret. Instead of promoting secrecy on biological weapons research, to restore international confidence in biological weapons control, the US should be moving in the opposite direction to promote high transparency.

This news release summarizes some of the main reasons why this law will fail to protect from bioterrorism and what interests might really be at work to eliminate the public's right to know.

Why the law will not prevent bioterrorism, and what embarrassing or dangerous problems may result:

The cat is already out of the bag.

There are hundreds of relatively recent scientific publications about biological weapons agents. This research is conducted in all parts of the world, since many potential biological weapons also have peaceful uses or are diseases that public health officials seek to control. Most of these publications indicate the location of one or more biological weapons agents, spread in laboratories across the world. Extensive information on the location of biological weapons agents can also be found in the catalogs of culture collections, government documents, and even the general press. This information cannot be recalled.

Would-be bioterrorists do not need and would not use the Freedom of Information Act to locate stocks of dangerous pathogens. That information is already widely available. Any moderately knowledgeable person can locate stocks of practically any biological weapons agent in an hour (or less) of internet research. A large majority of the dangerous pathogens and toxins listed on the rich countries' Australia Group Export Control List can presently be found in the internet catalog of the American Type Culture Collection (ATCC) near Washington. Not to single out ATCC - the same is true for many other culture collections and laboratories around the world.

Using FOIA would only compromise a terrorist's intent and provoke investigation. Instead, the FOIA restriction will work against legitimate citizen and research groups who are monitoring the US biodefense program for the constructive purposes of understanding what research and stockpiling is going on in their neighborhoods or to educate the public and policymakers in important issues in biological weapons control.

Bioweapons Agents are Mostly Naturally-Occurring.

The US Congress's newfound preoccupation suggests a basic misunderstanding of where biological weapons agents come from. Although most require technical knowledge and some facilities to use effectively (some don't, for example, foot and mouth disease), locating the agent is NOT the hard part. In fact, biological weapons agents are practically ubiquitous and can be found everywhere. Anthrax is endemic in the United States, and any person with scientific skill who wants to acquire it can simply ply the old cattle trails or livestock pens of Texas, where it is found, long enough to isolate a sample. This is merely an example, the same is true for many other diseases: hantaviruses in the US Southwest, hemorrhagic fevers in the Americas and Africa, avian influenza in Asia. Clamping down on FOIA will do nothing to change the reality that US laboratories are merely one moderately

convenient biological weapons source, there are many other sources, some of which offer much easier access and are far less traceable, providing cover for biological weapons developers.

Would squelch public science.

Effective regulation of this law will be impossible without seriously encumbering scientific freedom, particularly that of public sector science. Many biological weapons agents are also public health threats. In order to publish scientific information and advances in treating these diseases, it is necessary to divulge information about them. To reproduce and validate scientific results it is necessary to describe the agents used, their provenance, how they were cultured, and many other details that would expose information that is supposed to be withheld by this law. Therefore, its regulation must choose between massive leaks in the legitimate interest of public science and health, or immoral censorship on the exchange of scientific information on public health concerns and disease treatment and prevention. Should the US Department of Health and Human Services, a major implementer for this law, take such a monstrous stab at public health research?

This situation would play into the hands of large corporate research concerns that have little interest in the dissemination of scientific knowledge so long as they are paid for their work. With billions of dollars presently being allocated for biodefense research, public health would suffer at the hands of interests of greed and secrecy (see below for more on biotech interests and this law).

Denying citizens information provided to everyone else, even Saddam.

Under international treaties, including the Biological and Toxin Weapons Convention, governments have agreed to exchange information about their military research programs in the interests of promoting transparency and mutual trust. With biological weapons, these exchanges are particularly important, as the intent of research can easily be misconstrued. If US citizens and groups are denied access under FOIA, the United States will be in the embarrassing position of providing more information to its enemies and alleged biological weapons producing states, such as Iraq and Libya, than it will to its own people. Alternatively, the US could simply not comply with its international commitments; but doing so would be very foolhardy. In reality, release of information that would be made secret under H.R. 3160 does not significantly help biological weapons makers, and should be publicly available. This is one important reason why the US has provided this information to all governments for many years, for example in the BTWC's Confidence Building Measures.

Diplomats hamstrung.

In addition to providing more information to Saddam Hussein than its own people, the secrecy that the law would impose around research may curtail US diplomatic options by limiting what international efforts the US could agree to. The most effective approaches to preventing the development and use of biological weapons involve exchange of information and international inspection. But if the US refuses to release basic information about the location, quantities, types, and institutions involved in biodefense research, how could it possibly justify granting access to such information to the United Nations and practically all governments around the world? It could not, and thus the law could hogtie diplomats, making them unable to support reasonable initiatives and debilitating progress in international arms control agreements in the name of protecting a US law that restricts its own citizens' access to information.

Accident vulnerability, public concern.

Citizens are justifiably concerned and have a right to know if biological weapons research is being conducted that affects them and their environment. If an accident occurs at a facility researching biological weapons agents, the public backlash could be severe. Citizens will demand to know why they were not advised of research with dangerous pathogens in their own backyards. FOIA transparency cannot prevent accidents; but it can raise questions about risky research and stimulate a critical dialog. Those discussions are incumbent on a responsible government that protects its citizens, who have a right to know how their lives may be affected by biological weapons research. For example, presently the United States is preparing to create a genetically modified anthrax strain. If this new law passes, where this research will take place and what biosecurity precautions exist will be completely unknown.

Poisons the Watchdog.

Does the US government and its citizens believe that only bureaucrats should oversee practically all aspects of research on biological weapons agents? Will the Department of Health and Human Services keep on top of the hundreds, probably thousands, of facilities across the US that have stocks of biological weapons agents? Unlikely. What if one of these facilities, for whatever reason, begins questionable research or stockpiles agents in unjustifiable quantities? Accountability under FOIA could be critical in preventing slip-ups or more nefarious activity in US institutions. This watchdog role is one that Congress should permit and encourage non-governmental organizations and citizens to play; but under the present proposal the possibility is all but eliminated.

In summary, this law attacks the public right to know, eliminates accountability and is impossible to implement without negatively impacting the advancement of scientific knowledge on important public health issues. Even worse, it would not measurably reduce the bioterrorist threat and it would undermine international confidence in US commitments to fulfill treaty requirements.

Another Agenda at Work?

The FOIA exemption measure clearly does not protect US citizens or prevent the possibility of a bioterrorist attack. Whose interests, then, would it protect, and what other agendas may be at work? Likely candidates are the biotechnology industry and government laboratories, such as Sandia National Lab in New Mexico, Livermore in California, and the Naval Research Lab.

The National Laboratories vehement opposition to biological agent accountability already led to near-mutiny late in the Clinton Administration when their strenuous objections to minimal oversight measures helped drown out voices of reason and prevent US endorsement of the BTWC Verification Protocol. The labs selfishly and implausibly claimed that inspections by trained UN teams to promote transparency would be too bothersome and distracting for their work, and that their secrets would be compromised by spies.

But European countries conducted mock inspections of biotechnology facilities, not unlike those the chemical industry is accustomed to under the Chemical Weapons Convention, and concluded that they do not risk trade secrets. If trade secrets aren't at stake, what secrets then are the National Laboratories seeking to protect? Many think the labs might have something to hide, which is probably the case, as the National Laboratories conduct some of the most controversial and cutting-edge research on biological weapons and recent revelations about the US biodefense program suggest the US is violating the BTWC by making genetically-modified bioweapon agents and manufacturing bioweapons production facilities and weapons (biological bombs).

For its part, the biotechnology industry has never met a measure that increases proprietary rights and secrecy that it didn't like. The industry already enjoys and has been instrumental in creating an enormously strong system of life patents and is perpetually promoting expansion of this system abroad as well as more powerful measures to keep control of unpatented trade secrets. The US is now appropriating billions of new dollars for biodefense research, and the biotech industry wants a major piece of the action. Under the FOIA exemption measure, the biotech industry would be granted a huge additional secrecy clause and would not even have to admit what agents it is dealing with, how much of them it is growing, and detail of what types of research it is conducting. But even better than patents, by hiding this work behind national security law, the biotech industry would have added a major new weapon in its war against public science and rational, humane priority making in what diseases are targeted for cures, and what kinds of treatments and prevention is developed.

Further restraining public access to information would also help solve another problem for the biotechnology industry. This one is public relations. Obviously, companies which promote an image of solving the world's illnesses with massively expensive drugs do not want their laboratories identified as housing collections of very dangerous and repugnant biological weapons agents. So, in order to cash in on Federal dollars for biodefense research, the industry needs a structure that will isolate its image from that of the more ambiguous and dangerous work on biological weapons agents. The FOIA exemption provides just that distance and deniability, enabling the biotech industry to score major government contracts without "dirtying" its white coat image with detailed information about its defense activities, allowing industry to carefully pick and choose what information it wants public.

Strike the Provision

The only way to resolve the problems posed by this law are to strike the FOIA exemptions on identifying persons, locations, and entities stocking biological weapons agents, as well as those prohibiting release of information on the type, quantity, and identity of agents held. Imposing these exemptions will not prevent terrorism; but will undermine security and the rights of the public. The only legitimate FOIA exemption contained in the law is that which specifically and solely pertains to the physical security measures in place at bioweapons agent facilities (in other words, the passcode to the alarm system, and law enforcement plans to prevent theft or abuse). In the interest of the public, science, and arms control, the Senate should immediately move to eliminate all other FOIA exemptions and, working with members of the House in Conference, eliminate that provision from the conference bill that is ultimately passed. If it is impossible to strike this provision, H.R. 3160 should be allowed to die without becoming law because it sacrifices far too much and poses too many new dangers in its naive effort to promote biosecurity.