

LEGAL AUTHORITIES DATABASE

A “LEGAL FOUNDATIONS” STUDY

Report 4 of 12

Report to the
President’s Commission
on Critical Infrastructure Protection
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This report was submitted to the President’s Commission on Critical Infrastructure Protection, and informed its deliberations and recommendations. This report represents the opinions and conclusions solely of its developers.

Acknowledgments

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Preface

Executive Order 13010 established the President's Commission on Critical Infrastructure Protection (PCCIP) and tasked it with assessing the vulnerabilities of, and threats to, eight named critical infrastructures and developing a national strategy for protecting those infrastructures from physical and cyber threats. The Executive Order also required that the PCCIP consider the legal and policy issues raised by efforts to protect the critical infrastructures and propose statutory and regulatory changes necessary to effect any subsequent PCCIP recommendations.

To respond to the legal challenges posed by efforts to protect critical infrastructures, the PCCIP undertook a variety of activities to formulate options and to facilitate eventual implementation of PCCIP recommendations by the Federal government and the private sector. The PCCIP recognized that the process of infrastructure assurance would require cultural and legal change over time. Thus, these activities were undertaken with the expectation that many would continue past the life of the PCCIP itself.

The *Legal Foundations* series of reports attempts to identify and describe many of the legal issues associated with the process of infrastructure assurance. The reports were used by the PCCIP to inform its deliberations. The series consists of 12 reports:

1. *Legal Foundations: Studies and Conclusions*
2. *The Federal Legal Landscape*
3. *The Regulatory Landscape*
4. *Legal Authorities Database*
5. *Infrastructure Protection Solutions Catalog*
6. *Major Federal Legislation*
7. *Adequacy of Criminal Law and Procedure (Cyber)*
8. *Adequacy of Criminal Law and Procedure (Physical)*
9. *Privacy and the Employer-Employee Relationship*
10. *Legal Impediments to Information Sharing*
11. *Federal Government Model Performance*
12. *Approaches to Cyber Intrusion Response*

and two special studies:

- *Information Sharing Models*
- *Private Intrusion Response*

Legal Foundations: Studies and Conclusions is the overall summary report. It describes the other reports, the methodologies used by the researchers to prepare them, and summarizes the possible approaches and conclusions that were presented to the PCCIP for its consideration. The

series has been sequenced to allow interested readers to study in detail a specific area of interest. However, to fully appreciate the scope of the topics studied and their potential interaction, a review of the entire series is recommended.

Legal Authorities Database

In the fall of 1996, the President's Commission on Critical Infrastructure Protection (PCCIP) commissioned the creation of a legal database. The PCCIP Legal Authorities Database (Database) now houses over 14,000 legal authorities bearing on infrastructure assurance, including Federal, state, local, international, and even private sector authorities such as standards and guidelines.

The Database grew out of the PCCIP's various legal "landscaping" projects. It was originally intended to serve as a study tool—a collection point for legal authorities that appeared relevant to infrastructure assurance efforts, but that defied ready categorization. As it turns out, many of the authorities collected do in fact defy ready categorization, which makes the Database all the more useful as a tool for researching avenues by which to implement infrastructure assurance recommendations.

The Database content specifically reflects the results of a *de novo* review of pertinent legal sources, and input from PCCIP Commissioners and staff from each of the five Sector Working Groups. Laws and regulations were included based on sector reports, briefings and additional authorities that came to the PCCIP's attention. The content also embodies contractor submissions, suggestions from numerous public officials, and reports from the private sector. The Database features separate fields for (among other things) the title and citation of the authority, a summary of the authority, relevant text, related citations, and a "current as of" date.

Uses For The Legal Authorities Database

The Database as a Research Tool

The Database was designed to assist interested persons in a number of key ways. First, by placing a substantial number of pertinent resources in one clearinghouse, the Database saves researchers considerable time and energy. Critical infrastructure issues are difficult to research. Numerous sources are required to address most critical infrastructure issues—Presidential materials, Congressional statutes, administrative rulings, unpublished guidelines, international laws, and private sector materials; these materials can now be accessed in one place.

Second, the Database provides a clearer context in which to analyze and understand critical infrastructure assurance issues. Many of the materials in the Database were originally entered around key words and concepts relevant to assurance efforts. These included topics such as indications and warnings, information sharing, education and awareness, information security, emergency response and the like. Although the Database has grown beyond these topics, they continue to serve as useful search terms to guide research efforts. Most interested persons will have limited experience with critical infrastructure assurance issues and the Database offers a compass for navigating through rugged terrain.

The Database as an Implementation Tool

Given the difficulties inherent in categorizing many of the Database entries, it would likely prove productive to enter search terms keyed to various recommendations; results of such a search are likely to produce an array of authorities—Federal laws and regulations, international agreements, and even private sector standards.

For example, a sample search for laws addressing cyber threats to the Nation's securities and commodities exchanges direct the user to pertinent portions of the Federal criminal code, Securities and Exchange Commission regulations and SEC Rules for emergencies, state computer crime laws, and NYSE, AMEX and NASDAQ floor rules, among others. The PCCIP Legal Authorities Database can assist implementation efforts by Federal and state agencies, lawmakers, and even private practitioners.

A Closer Look at the Legal Authorities Database

Appendix A contains a manual which accompanies the Database CD-ROM disk itself. The graphics illustrate the legal categories and critical infrastructure topic areas represented in the Database. The Legal Authorities Database includes relevant legal materials for each of the critical infrastructures. In addition, the Database includes up-to-date legal source materials on relevant "cross-cutting" issues. Cross-cutting topics include state computer crimes legislation, U.S. Sentencing Guidelines, the Federal Response Plan, reporting requirements for infrastructure owners and operators, information security and similar laws at the state level.

Appendix A also suggests the ease with which the Database may be used to locate relevant legal authorities. Instead of categorizing relevant laws in terms of issuing agency or general area of law (e.g., section of C.F.R. or U.S. Code topics), the Database is based on critical infrastructure issue areas (e.g., Energy, Telecommunications and Information, Vital Human Services, Banking & Finance, and Physical Distribution). Few commercial legal database sources include all of these materials in one searchable database file.

The Database manual contains graphic representations of the contents of the database for each of the infrastructure sectors and select cross-cutting issues. It is meant to give the reader a flavor of the scope and depth of the Database, and should not be taken as a comprehensive rendering of all authorities in each area.

APPENDIX A

LEGAL AUTHORITIES DATABASE MANUAL



The Legal Authorities Database will be forthcoming in the future.