

Hiding the Truth?

President Bush's Need-to-Know Democracy

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29 October 2003

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"This administration is the most secretive of our lifetime, even more secretive than the Nixon administration. They don't believe the American people or Congress have any right to information."

-- Larry Klayman, chairman of Judicial Watch

It's been said that the first casualty of war is always truth. But with the Bush administration's war on terrorism, it's hard to know, because even before 9/11 the administration had begun hermetically sealing formerly public sources of government information.

It began when Vice President Dick Cheney refused to provide details of his energy task force meetings with energy companies, particularly top Enron officials. Then, came President George Bush's November 2001 executive order allowing the administration or former presidents to order executive branch documents withheld from the public. At the time, the administration said the new restriction on presidential papers was to protect the privacy of former presidents and those they dealt with while in office.

But, the order also shields from public view documents from President Bush's father's term in office that could be awkward now. The suspicion was that the executive order was designed to protect several current White House officials who served in the Reagan and Bush 41 administrations from embarrassment -- specifically, Secretary of State Colin Powell, Vice President Dick Cheney, White House Chief of Staff Andrew Card, and former Budget Director Mitch Daniels, Jr.

Each official had brushes with controversial policies in earlier administrations -- not the least of which was the Iran-Contra scandal during the Reagan administration. The elder Bush, then-Vice President, maintained he was "out of the loop." Documents in the Reagan archives might contradict that version of history.

Excerpt of Presidential Executive Order 13233

(1) If under the standard set forth in Section 3 below, the incumbent President concurs in the former President's decision to request withholding of records as privileged, the incumbent President shall so inform the former President. The Archivist shall not permit access to those records by a requester unless and until an incumbent President advises the Archivist that the former President and the incumbent President agree to authorize access to the records or until so ordered by a final court order.

Both Cheney's refusal to hand over his energy task force documents, and the presidential order shielding past administrations' archived documents caused uproars among opengovernment advocates, historians and members of Congress.

Most of that resistance melted away in the wake of the 9/11 terrorist attacks. A scared and rattled nation was told that information was potentially dangerous. During World War II, the admonition read, "Loose lips sink ships." After 9/11, the list of perceived dangers expanded to previously unclassified information from virtually every executive branch department.

Any one of these actions would have had negligible effects. But, the cumulative effect of executive orders and new legislation restricting public access to public records has alarmed even many conservative groups.

"This administration is the most secretive of our lifetime, even more secretive than the Nixon administration. They don't believe the American people or Congress have any right to information," said Larry Klayman, chairman of Judicial Watch, a conservative group that is suing the administration to force it to reveal the members of the energy task force.

"Our keeping of secrets has often misled and confused our own people but has been ineffective in denying information to our enemies. Until recently the Soviet Union was the most secretive organization in the world; it no longer exists."

-- Dr. Edward Teller, 1992

Gary Bass, executive director of OMB Watch, an independent public advocacy group, says that the United States, "is moving from a society based on the right to know to one based on the need to know."

The breadth and scope of the Bush administration's clamp down on information is the largest such effort to restrict public disclosure since World War II. Because much of these changes have come in little-noticed dribs and drabs since 9/11, many have largely escaped public notice or explanation. In this report we chronicle some of the most significant changes.

Birth of America's New "Need to Know" Democracy

Even before terrorism became the focal point of President Bush's foreign and domestic policies, slowing the flow of information openly available to the public had already become a hallmark of his administration. But the terrorist attacks of September 11, 2001 provided a context in which large swaths of formerly public information could be shielded from view on grounds that its easy availability could benefit our new enemies.

September 2001:

Attorney General John Ashcroft moved quickly in the wake of the 9/11 attacks to put into force new rules limiting the scope of the 1966 Freedom of Information Act (FOIA).

While unveiled in the context of the new war on terrorism, the changes had actually been on the administration's "to-do" list since it took office. (See Why ponder new, needless FOIA exemptions?, by Robert Gellman, *Government Computer News*, 6/19/00)

- Ashcroft's new rule is dubbed "**Exemption 2.**"
(See FOIA Post (2001): New Attorney General FOIA Memorandum Issued) It empowers federal agencies to reject requests for documents from journalists and the public, whether or not they are of legitimate public interest:
 - "Whether there is any public interest in disclosure is legally irrelevant under this 'anti-circumvention' aspect of Exemption 2." (from "High 2": Risk of Circumvention (quote above precedes footnote 60) from FOIA Guide, May 2002: Exemption 2, Dept. of Justice)

October 2001:

- Pentagon acquisition czar **Pete Aldridge** issues a terse memo to defense contractors warning them not to talk to the press about the kinds of contracts they are getting from the Pentagon, and to be guarded in "all public statements, press releases and communications." (Memo: From Under Secretary of Defense E.C. "Pete" Aldridge, Jr. to Industry Partners, 10/2/01) (**Note:** Aldridge retired in May 2003 and that June took a seat on the **Lockheed Martin** Board of Directors.)
 - The Air Force's senior acquisition official, **Darleen Druyun**, follows up with an even sterner warning:
 - "Effective immediately, I do not want anyone within the Air Force acquisition community discussing any of our programs with the media, on or off the record."
(See: Suggested E-Mail to DACs - Communications Regarding Programs e-mail by Darleen Druyun, 10/4/01)
- (**Note:** Druyun retired from her government post at the end of 2002 and in January, 2003, Ms. Druyun was appointed Deputy General Manager for Missile Defense Systems at Boeing. "Druyun Joins Boeing as Deputy General Manager for Missile Defense Systems," Boeing News Release, 1/3/03)
- Deputy Defense Secretary Paul Wolfowitz screws the information spigot down even tighter. In a memo to military and civilian DoD personnel Wolfowitz forbade employees as well as "persons in other organizations that support DOD" to talk about their work in public spaces or on commercial networks.
 - "[Even] unclassified [material] can often be compiled to reveal sensitive conclusions . . . Much of the information we use to conduct DOD's operations must be withheld from public release because of its sensitivity. If in doubt, do not release or discuss official information except with other DOD personnel."
(Full memo: Operations Security Throughout the Department of Defense, Deputy Secretary of Defense, 10/18/01)

- The month of October ends with the passage by Congress of the **Patriot Act**. The law broadens law enforcement powers and, while allowing new restrictions on information available to the public about government actions, the new law allows the government to collect formerly protected information about citizens. One of the most controversial of such provisions is the right of federal authorities to learn what kinds of books individuals are borrowing from libraries.
(Full Text of Act: <http://www.ratical.org/ratville/CAH/USAPA.html#HR3162>)

November 2001:

- The **Department of Justice** closes to the public and press immigration hearings for hundreds of individuals rounded up during post 9/11 FBI and INS sweeps. Even immediate family members are denied access or information -- even though some detainees are not even accused of a crime, but rather were being held as "material witnesses." (Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees, Human Rights Watch report, Vol. 14, No. 4(G) - August 2002)
- Administration officials begin shutting down formerly user-friendly online information sites used to keep communities and local governments apprised of health and safety issues. Among the sites shut down or gutted of data were online systems designed to warn communities about potential risks or accidents at hazardous materials and chemical facilities in or near their area. Online maps used by local first responders, citizens and environmental groups that identified the location of pipelines carrying hazardous substances were also deleted, as were Web sites containing academic studies concerning the risks associated with nuclear power plants.

"By restricting our right to know, even through a well-intentioned effort to protect safety, government is abandoning its duty to warn the public if a community is at risk," said Jeremiah Baumann, environmental health specialist at the **US Public Interest Research Group** in Washington.

- The administration's **Office of Information and Privacy** holds a meeting with the FOIA staffs of all executive branch agencies. The purpose of the meeting is to brief them on the new powers Attorney General Ashcroft's FOIA Exemption 2. The meeting's minutes were classified. (Office of Information and Privacy, U.S. Dept. of Justice)

December 2001:

- President Bush grants his **Health and Human Services** secretary power to classify his department's information secret.

Designation Under Executive Order 12958

In accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled "Classified National Security Information," I

hereby designate the Administrator of the Department of Health and Human Services to classify information originally as "**Secret.**"

George W. Bush
THE WHITE HOUSE

2002: New Year Brings Renewed Clampdown

This would prove a busy year for those in the administration who wielded classification stamps. The annual number of classification decisions made by classifiers in the executive branch soared. By the end of the year, more than **23 million** individual "classification actions" had been taken. At the same time, declassification activity -- which had surged during the Clinton administration -- declined to the lowest level in seven years.

It is impossible to say how all this new secrecy affected terrorists, but law-abiding Americans whose work had become dependent on access to online public information systems quickly felt it. University of Michigan researchers lost access to an Environmental Protection Agency database they had been using to conduct a three-year study of hazardous waste facilities. Cartographers, geologists and others who relied on taxpayer-funded satellite images suddenly discovered that they were no longer available online because they had been removed by the National Imagery and Mapping Agency. Thousands of documents vanished from government Web sites.

And the pressure for yet more secrecy continued.

March, 2002:

- White House Chief of Staff Andrew Card issues an "all-agency" memo ordering departments to safeguard any information, no matter how old, that "could be misused to harm the security of our nation" -- a standard open government advocates described as dangerously vague. (See FOIA Post (2002): Guidance on Homeland Security Information Issued, 3/19/02)

April 2002:

- A **Department of Energy** site that details information on the transport of hazardous materials vanishes. Asked to account for all this missing information, even the Government Accounting Office, Congress' investigative arm, said it could not figure out either how many departments had deleted information from their sites, exactly what information had been deleted or by whom.

"A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives."

-- James Madison

- "I'm not sure there's any sort of inventory of what's been taken off the Web," said Tony Cicco, GAO chief information officer.

May 2002:

- President Bush grants the Environmental Protection Agency its own "**Secret**" stamp.

Designation Under Executive Order 12958

In accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the Administrator of the **Environmental Protection Agency** to classify information originally as "**Secret**."

George W. Bush
THE WHITE HOUSE

June 2002:

- The **Department of Defense** clamps down on the release of test data from the controversial Missile Defense System. In a June 2002 news briefing, Air Force Lt. Gen Ronald Kadish said that "no responsible individual would make that type of information available to our adversaries." He said from now on taxpayers would simply have to trust that the decision to move forward on a missile defense system would be based on factual information. "People should have confidence in that," Kadish said.

(**Note:** In the previous year, a \$100 million experiment failed when a U.S. missile warhead did not hit a dummy warhead in a test at the same air force base.)

- Defense **Secretary Donald Rumsfeld**, also citing national security and the need for flexibility, proposes exempting missile defense spending from the Pentagon's auditing and accounting rules.

September 2002:

- President Bush awards his Secretary of Agriculture her own "**Secret**" stamp:

In accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the **Secretary of Agriculture** to classify information originally as "**Secret**."

George W. Bush
THE WHITE HOUSE

November 19, 2002:

- Congress passes the administration's Homeland Security Act, which includes several provisions blocking information access. Language added to the bill by House Republicans blocks FOIA disclosures of information about technology vulnerabilities. Attempts to remove the language by Senate Democrats fail.

November 18, 2001 - Sen. Patrick Leahy Statement on The Homeland Security Act: "This is the most severe weakening of the Freedom of Information Act in its 36-year history . . . [it] would hurt and not help our national security, and along the way it will frustrate enforcement of the laws that protect the public's health and safety." Leahy added that the act's mandatory confidentiality regarding information businesses submit concerning their vulnerabilities, is "a big-business wish-list gussied up in security garb."

2003: A Year of Secrecy and War

The war with Iraq created a host of additional motivations to shut the public out of the decision-making process. As war loomed early in the year, the administration struggled to rally both international and public support for attacking Iraq. When the world community refused to accept the administration's "just us" response to demands of proof that Iraq had weapons of mass destruction, the administration appeared to abandon its secrecy fetish, sending Secretary of State Colin Powell to the United Nations to describe in detail U.S. intelligence to bolster claims of Iraq's WMD programs and production.

While Powell's presentation did not succeed in swaying international opposition to the war, it went a long way toward bringing the U.S. Congress and public on board. It was only after the war was over and the U.S. in virtual possession of Iraq that the public began to learn that the information provided before the war was bogus. There were no chemical warheads or shells poised for use against U.S. troops. There were no Scud missiles ready to hit Israel. And, there was no uranium-laden yellowcake heading from Africa to Iraq, as the president claimed in his State of the Union message.

Suddenly an old and familiar question was being asked around Washington: "What did the administration know? And when did it know it?"

It's a question that remains largely unanswered, in part because of the lid this administration has been able to maintain on disclosure of government proceedings -- a process that continues.

January 2003:

- Secretary of Defense Rumsfeld complains that, even after earlier scrubblings, there is still too much sensitive information available on DoD web sites that must be removed. Rumsfeld's warning comes in the form of a memo circulated throughout the Defense Department.

"One must conclude our enemies access Department of Defense Web sites on a regular basis. The fact that For Official Use Only (FOUO) and other sensitive unclassified information (e.g., CONOPS, OPLANS, SOP) continues to be found on public web sites indicates that too often, data posted are insufficiently reviewed for sensitivity and/or inadequately protected. Over 1500 discrepancies were found during the past year. This continuing trend must be reversed." (Secretary Rumsfeld)

- Leading Republican senators complain that Bush administration secrecy policies are leaving them "out of the loop" on crucial defense and national security matters to which they have both a right and obligation to review. "I will not tolerate a continuation of what's been going on the last two years." -- Sen. John Warner, chairman of the Senate Armed Services Committee.

March 2003:

- President Bush signs a new executive order on national security classification policy that will defer an April, 2003 deadline for automatic declassification of millions of 25-year-old documents until December 31, 2006. (See *Bush Delays Declassification of Govt. Documents - Mixed Reaction from Historians*, by Deb Riechmann, *Associated Press*, 3/26/03)
- President Bush's new order also stipulates that all information provided in confidence by a foreign government is automatically presumed secret. And the new order also gives the director of the CIA veto power over decisions by the **Interagency Security Classification Appeals Panel**, which hears appeals of government refusals to declassify information. The presidential order also allows for the reclassification of records that already have been disclosed or declassified under former President Clinton's 1995 orders to declassify records deemed overclassified.
- When the Congress formed the new Department of Homeland Security, House Republicans included in that law yet another exemption to FOIA.. "**Exemption 3**" that allowed the department to cloak US infrastructure information in secrecy. (See *Homeland Security Law Contains New Exemption 3 Statute*, FOIA Post (2003))
- In a potentially momentous change in government information policy, the **Federal Energy Regulatory Commission** (FERC) is empowered to process public requests for access to certain kinds of sensitive energy infrastructure information on a "need to know" basis only. Under the new rules, access to "critical energy infrastructure information" would be denied to ordinary requesters under the Freedom of Information Act.

Excerpt: "Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement [as specified below] (A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act)". (See Homeland Security Law Contains New Exemption 3 Statute)

- **Director of Central Intelligence** , George J. Tenet, signs a 28-page statement opposing declassification of the fiscal year 2002 intelligence budget total.

"I have determined . . . that the FY 2002 intelligence community aggregate budget figure must be withheld because its disclosure reasonably could be expected to cause serious damage to the national security and would tend to reveal intelligence sources and methods," DCI Tenet concluded. (Full statement: Declaration of DCI George J. Tenet Opposing Disclosure of 2002 Intelligence Budget, 3/19/03; and see Federation of American Scientists FOIA Lawsuit for Disclosure of 2002 Intelligence Budget Total *Steven Aftergood v. Central Intelligence Agency*, Case No. 02-1146 (RMU), D.C. District Court)

April, 2003:

- The Bush administration begins imposing budget secrecy on the congressional appropriations process where it had previously been unheard of. For starters, President Bush asked that Congress appropriate \$2.5 billion for postwar Iraq reconstruction, but to appropriate the money to the White House itself where it could be spent without further congressional interference or public notice. A memo prepared by senior GOP staff for the House Appropriations Committee noted that the arrangement would erect a "wall of executive privilege [that] would deny Congress and the Committee access to the management of the Fund. (See U.S. Plan For Iraq's Future Is Challenged - Pentagon Control, Secrecy Questioned, by Karen DeYoung and Dan Morgan, *Washington Post*, 4/6/03)
- Routine budget justification documents are inexplicably withheld from congressional appropriators, provoking anger from even Republican lawmakers sympathetic to the administration. Rep. Harold Rogers (R-KY) abruptly adjourns a hearing of a House Appropriations Subcommittee when requisite documents were not provided by the **Department of Homeland Security** . "We need those [budget] justifications to perform our Constitutional duty," said Rep. Rogers before terminating the hearing.

May 2003:

- The Bush administration refuses to declassify key sections of an investigation into the 9/11 attacks developed by a Bush administration working group. Intelligence officials assigned to review the document have taken a hard line against further public disclosure. Critics familiar with the findings say the administration may have wished to keep under wraps a July 2001 intelligence report warning that Al Qaeda was planning a major attack on U.S. soil "in the coming weeks." The intelligence briefing went on to say: "The attack will be spectacular and designed to inflict mass casualties against U.S. facilities or interests. Attack preparations have been made. Attack will occur with little or no warning." The warning went unheeded by the administration and President Bush spent the month of August 2001 on vacation at his Texas ranch. Nearly 30 pages of the report are also blanked out because of accusations that the Saudi government may have aided the terrorists. (See The 9/11 Congressional Report and the Saudis, *questionsquestions.net*, 7/28/03)

June 2003:

- Attorney General John Ashcroft rejects growing congressional criticism of his Department for withholding its report on the case related to Los Alamos scientist, Wen Ho Lee. The case had become a major embarrassment for the DOJ and a rallying point for Asian Americans who believed Lee was targeted solely because he was of Chinese extraction.

"There are lots of times, especially in international intelligence security matters, when we don't release things because it's not in the national interest to do so," the Attorney General said at a House Judiciary hearing June 2003. (See Justice Department refuses to release report on Lee case, by Leslie Hoffman, *Associated Press*, 6/5/03)

July 2003:

- Meanwhile, the non-partisan **National Commission on Terrorist Attacks Upon the United States** complains that the Bush administration is not only failing to cooperate with its investigation into what led up to the 9/11 attacks, but is actively hindering the investigation by withholding pertinent documents. The Commission named the Department of Defense, the Department of Justice, the Bureau of Immigration and the Immigration and Naturalization Service and the FBI as being slow or unresponsive in turning over requested information. "The problems that have arisen so far with the Department of Defense are becoming particularly serious," according to the group's interim report (First Interim Report of the National Commission on Terrorist Attacks Upon the United States, 7/8/03). The Commission said "records requested from DoJ are overdue." In a twist of irony, the Commission also protested the Justice Department's "insistence on having agency representatives present during interviews of serving officials. The administration pointed to a similar request by Iraq regarding interviews of its officials and scientists as proof that Iraq was trying to intimidate those

officials into silence."

- White House spokesman **Ari Fleischer** denies that the administration has been withholding information from the public and Congress.

"The administration has been very cooperative in providing as much information as possible to people up on Capitol Hill, and will continue to do so," he said.

Congressional critics shot back:

"How can this administration declassify things, drop certain items into the press that are complimentary and positive from their point of view and get away with it?" **Sen. Richard J. Durbin (D-IL)**, *Misleading The American People*, Congressional Record: July 22, 2003 (Senate), Page S9667-S9671.

- Freedom of Information Act requester **Robert G. Todd** asks two different agencies for a copy of the generic cover sheets they used to identify classified documents as "**Confidential**," "**Secret**" and "**Top Secret**." Mr. Todd was not asking for the actually classified materials, simply copies of the cover sheets. The **Department of Defense** refuses to provide a copy of these cover sheets, citing FOIA Exemption 2, which shields information that could enable "circumvention" of agency rules, policies or statutes.
- On a party line vote of 50-46, the Senate decides to keep the homeland security advisory process beyond the scrutiny of the general public. (See Senate Shields Homeland Security From FACA, *Secrecy News*, Issue No. 64, 7/28/03, and Robert Byrd's proposed Amendment No. 1373 to the Department of Homeland Security Appropriations Act, 2004 (H.R. 2555), Congressional Record: July 24, 2003 (Senate), Page S9857-S9887)

August 2003:

- The **Transportation Security Administration (TSA)** launches an investigation to ferret out employees in the Federal Air Marshall Program, who leaked to reporters that, despite new warnings of terrorist attacks, the TSA was going to slash the number of air marshalls to save money. The Department of Homeland Security is embarrassed by the revelations. To justify its investigation, the TSA cites the USA Patriot Act. (TSA in 'witch hunt,' air marshals say - Homeland Security denies knowledge of formal investigation, by Brock Meeks, MSNBC, 8/11/03)

September 2003:

- The Department of Defense blocks public access to the online database containing directives maintained by the Defense Technical Information Center. These unclassified directives, which define routine DoD policies and procedures, have been publicly available online for almost as long as the Pentagon has been on the World Wide Web. Now the directive database website has been restricted to "official users only."

(Washington Headquarter Services - Communications and Directives Directorate, Directives and Records Division website)

- In a letter to **Senator Bob Graham**, National Security **Advisor Condoleezza Rice** dismisses for the foreseeable future any possibility of further declassification of the report of the congressional Joint Inquiry into September 11. (White House Rejects Further Declass of 9/11 Report, *Secrecy News*, Issue No. 84, 10/2/03 and 9/26/03 letter from Condoleezza Rice to Senator Graham)
- President Bush grants the Director of the **White House Office of Science and Technology Policy (OSTP)** the authority to classify information **Top Secret**. This ruling brought to just over 4,000 the number of executive branch employees authorized to generate classified information.
- Citing unspecified security concerns, the **U.S. Air Force** removes from its Web site the already widely circulated text of the 1993 Gulf War Air Power Survey, a highly regarded study of the air campaign in the first Gulf War. That report can still be purchased in hardcopy from Government Printing Office.

October 2003:

- Bush administration officials refuse to explain why they have classified the cost of continuing the search for weapons of mass destruction in Iraq. (See The Struggle for Iraq: Illicit Weapons; Officials Say Bush Seeks \$600 Million to Hunt Iraq Arms, by James Risen and Judith Miller, *New York Times*, 10/2/03)

"I don't classify these things," **Defense Secretary Donald Rumsfeld** says evasively. "I'm sure that they have classifications for good reason."

- Over the past year, 133 secrecy orders were imposed this year on new **patent applications**. The rationale was to limit their disclosure because they could be "detrimental to the national security." More than half of the new orders affected private inventors who developed their inventions without government funding or support. Secrecy orders imposed on such private inventors are termed "**John Doe**" orders.

Conclusion

Effectively, keeping secrets means never having to say you're sorry. It also means never having to admit you made a terrible mistake, or even lied.

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