

Support for PBS.org provided by:

What's this?



Watch videos from your favorite PBS KIDS shows anywhere, anytime! Available on the App Store



Search

WATCH & LISTEN THE BLOG ARCHIVE TRANSCRIPTS BUY DVDS

▶ The Need to Know



- ▶ WATCH VIDEO
- ▶ READ TRANSCRIPT
- ▶ COMMENT

Madison

The Bush Administration is by many measures one of the most secretive in years. According to the Information Security Oversight Office (part the National Archives) the number of documents classified under the President has almost quadrupled — from 5.8 million under Bill Clinton in 1996 to more than 20 million last year. The administration has argued that this increase is a direct result of the greater secrecy demanded by the post 9/11 climate. But classifying of new documents isn't the only matter of secrecy dogging the Bush Administration. President Bush signed several Executive Orders altering the way documents are classified and who can do the classifying.

Early in his administration the President raised the hackles of scholars by signing Executive Order 13233 which gave either a sitting president or former president the ability to severely limit access to the records of former administrations. The Order was viewed as sidestepping the post-Watergate Presidential Records Act of 1978 which mandated that records of former presidents would automatically become the property of the federal government upon his leaving the Oval Office and made public after 12 years.

The order was intended to block the release of 68,000 pages of records from the Reagan Administration, a move which some critics saw as an effort to protect records from the President's father's era from becoming public. The Executive Order was challenged in court by The American Historical Association and others. In early October 2007 a federal judge ruled against the administration in allowing the National Archives final discretion on the release of such documents.

In 2003, President Bush signed another Executive Order addressing secrecy. Executive Order 13292, among other things, granted the Vice President the same power to classify documents as the President himself. Vice President Cheney, viewed by some critics as devoted to amassing executive power, has frequently come into

October 26, 2007

In his conversation with [Bill Moyers](#) and [Charles Fried](#), Frederick Schwarz reflected on the problem of presidential power: "If you have secrecy and lack of oversight, you're going to get abuse." Concern over government secrecy dates back to the founding fathers — James Madison warned early on:

"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

▶ ALSO THIS WEEK:

POWER AND THE PRESIDENCY

Bill Moyers talks with constitutional law professor Charles Fried and lawyer and author Fritz Schwarz on the growing power of the executive branch.

LESSONS FROM HISTORY

The post-Watergate Church Committee led to the Foreign Intelligence Surveillance Act (FISA). The War on Terror's led to FISA revisions. What's next for domestic intelligence?

THE NEED TO KNOW

Where do you draw the line on secrecy in a democracy? The new classification process and the Freedom of Information Act.

> [Is a Presidential Coup Under Way?](#) by Jim Hightower

> [More on presidential signing statements](#)

> [More on civil liberties in wartime](#)

> [More on the torture debate](#)

▶ WATCH last week's show

▶ EXPLORE the archive

▶ TALKBACK: THE BLOG

Our posts and your comments

OUR POSTS

May 25, 2011
Michael Winship: Democracy Talks -- Listen Up...

YOUR COMMENTS

conflict with Congress and the judiciary over secrecy.

"That's the really important thing about "free speech"...you can figure out the HUGE DAMAGE th..." - *Anna D*

THE ECONOMIST, in a recent series of articles on civil liberties and national security, questioned the Bush Administration's penchant for secrecy and warned that what we don't know is probably much greater than what we do: "Peter Galison, a Harvard professor, reckons that 'the classified universe...is certainly not smaller and very probably much larger than [the] unclassified one.' If true, more is kept hidden than revealed."

The Freedom of Information Act

The Freedom of Information Act, (FOIA) has long been the tool by which citizens and scholars can combat government secrecy. FOIA suits have forced the release of documents including everything from the Post-9/11 "torture memos" to Hoover era records on women's and civil rights groups. But critics of secrecy worry that FOIA is also under attack.

In August 2007, THE NEW YORK TIMES called a new strategy in the ongoing battle over release of emails from the Vice President's office "absurd" stating: "The administration is claiming that the White House Office of Administration is not covered by the Freedom of Information Act, even though there are some compelling reasons to think it is. Like the fact that the office has its own FOIA officer. And it responded to 65 FOIA requests last year. And the White House's own Web site, as of yesterday, insisted the office is covered by FOIA."

And the White House's up and down relationship with FOIA is not all that's worrisome. A 2007 study found that although the Freedom of Information Act requires a federal agency to provide an initial response to a request within 20 days and to provide the documents in a timely manner — "the oldest pending request uncovered in a new survey of 87 agencies and departments has been awaiting a response for 20 years, and 16 requesters have been waiting more than 15 years for results." In February 2006, THE NEW YORK TIMES exposed a secret program that has been going on at the National Archives since 1999 - the reclassification of more than 55,000 previously declassified pages. Many historians are concerned about the process, fearing that it might place many harmless documents of historic value off limits, but government officials argue that some of the information was recklessly and wrongly declassified in the first place.

Madison's statement on secrecy opens [A CITIZEN'S GUIDE ON USING THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT OF 1974](#). The guide has been published by mandate of Congress every year since 1977.

History: The Freedom of Information Act, enacted in 1966, was the first law that gave Americans the right to access the records of federal agencies. The legislation was the brainchild of California Congressman John Moss. Due to his zeal for making information public, Moss's own FBI file, recently obtained under FOIA, grew to two inches thick. In 1974, after the Watergate scandal, the act was amended to force greater agency compliance. Today FOIA requests number in the millions — and nearly every state has its own FOIA (or sunshine) law.

Federal FOIA Web Sites:

Recent revisions to the Freedom of Information Act mandate that every federal agency maintain a FOIA Web page. The information available gives a glimpse into the breadth of FOIA. On the [Occupational Safety and Health Administration](#) Web site, you can access a database of U.S. businesses with the worst health and safety records — they've all been sent official warnings. The [National Security Agency's](#) Web page includes quick information for those making common FOIA requests. The homepage states clearly that "the names of agency employees are confidential" and "NO RECORDS EXIST" on U.F.O.s.

FREEDOM OF INFORMATION AND PRIVACY ACTS

SUBJECT: [MARTIN LUTHER KING JR.](#)

FILE NUMBER:100-106670

MAIN FILE

SECTION:103

Changes: One of the crucial aspects of the Bush administration's stand on the FOIA will be interpretation of the standard on withholding information if there is a "sound legal basis" for doing so. This is an alteration from the previous test, instituted in

1993, which said FOIA applications should be complied with unless "disclosure would be harmful."

In addition, under the [Homeland Security Bill](#), Public Law 107-296, "critical infrastructure information" gathered by the new Homeland Security Department "shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);"

Find out what the rules of classification are today.

Published on October 26, 2007

RELATED MEDIA:



Tough Talk on Impeachment

BILL MOYERS JOURNAL explores the talk of impeachment with Constitutional scholar Bruce Fein, who wrote the first article of impeachment against President Bill Clinton, and THE NATION's John Nichols, author of THE GENIUS OF IMPEACHMENT.



Jack L. Goldsmith

Former head of the Office of Legal Counsel under George W. Bush, Jack L. Goldsmith, discusses the Administration's expanded view of executive power.



John Dean

Watch Nixon lawyer John Dean discuss presidential secrecy with Bill Moyers on NOW with Bill Moyers, April 2, 2004.



License to Spy

Bill Moyers talks with former Congressman Mickey Edwards and ACLU Executive Director Anthony Romero about revisions to the Foreign Intelligence Surveillance Act.

REFERENCES AND READING:

US Department of Justice

The Department of Justice's Office of Information and Privacy (OIP) is the principal contact point within the executive branch for advice and policy guidance on matters pertaining to the administration of the Freedom of Information Act.

Access Reports

For more than 25 years, Access Reports has been the news source of choice for professionals concerned with access to government information.

Attorney General Ashcroft's Memo

The text of Attorney General John Ashcroft's memo to all government agencies concerning the Freedom of Information Act, published in October 2001.

The Information Security Oversight Office

The Information Security Oversight Office (ISOO) is responsible to the President for policy and oversight of the Government-wide security classification system and the National Industrial Security Program.

Freedom of Information Act Historical Interest Listing

Browse through a fascinating, and entertaining selection of FBI files released due to Freedom of Information Act requests. You can read about the investigation of "communist leanings" in Cesar Chavez's United Farm workers or the investigation into the Hindenburg disaster. Or click on over to "Famous Persons" and read why J. Edgar Hoover's men were interested in Lucille Ball.

The General Accounting Office (GAO)

The GAO is the investigative arm of Congress. GAO exists to support the Congress in meeting its Constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people.

GUARDIAN Unlimited Special: Freedom of Information

Compare U.S. secrecy rules with those of the United Kingdom with this comprehensive guide to issue from THE GUARDIAN. The U.K.'s much debated Freedom of Information Act dates only from the year 2000.

Judicial Watch, Inc.

Judicial Watch, Inc. was established in 1994 as a non-partisan, non-profit foundation to serve as an ethical and legal "watchdog" over the US government, legal, and judicial systems. The organization's site provides more information about current lawsuits, many of which are filings under the Freedom of Information Act, as well as documents from previous suits.

The National Security Archive

An independent non-governmental research institute and library located at George Washington University in Washington, D.C., the Archive collects and publishes declassified documents acquired through the Freedom of Information Act.

▶ SIGN UP FOR BLOG UPDATES AND PODCASTS

▶ EMAIL US

[Newsletter](#) [For Educators](#) [About the Series](#) [Bill Moyers on PBS](#) [Feedback](#)

[© Public Affairs Television 2010](#) [Privacy Policy](#) [TV Schedule](#) [DVD/VHS](#) [Terms of Use](#) [FAQ](#)

