

Washington Insider

2010 Secrecy Report Card Released

The 2010 Secrecy Report Card was recently released by the watchdog group OpenTheGovernment.org. The report shows a continued decrease in most indicators of secrecy since the end of the Bush administration and growing backlogs in the declassification system as old secrets move through the system. The report covers the first 9 months of Obama's administration. Issues discussed include: classified information and classified costs, the Freedom of Information Act (FOIA), signing statements, use of state secrets, and more.

According to Patrice McDermott, Director of OpenTheGovernment.org, "Encouraging trends are evident in these early months of the Obama administration, in both FOIA and in general secrecy. In general, after hitting high water marks during the Bush Administration, statistics indicate the creation of new national security secrets is slowly ebbing." In FY 2009, for example, the number of original classification decisions, the "sole sources of newly classified information," decreased almost 10% to 183,224—down from 203,541 in 2008.

Statistics also indicate, however, that the declassification system continues to fall further behind. In FY 2009, the government spent \$196 maintaining secrets already on the books for every \$1 spent declassifying documents. Only one-half cent of every dollar spent on security classifications costs overall was spent on declassification, and 8% fewer pages were declassified than in 2008. Overall, expenditures to maintain secrecy increased 2%.

The only indicators covered by the report that may reflect the Administration's open government initiative concern the Freedom of Information Act (FOIA). In FY 2009, the federal government processed 55,000 more FOIA requests than it received in 2009 and reduced backlogged pending requests by almost 56,000.

GAO Issues Reports on National Archives Records Oversight and Internal Security

The Government Accountability Office (GAO) recently issued two reports evaluating the effectiveness of the National Archives in overseeing the government-wide management of records and implementing its own internal security controls.

The first GAO report, "Oversight and Management Improvements Initiated but More Action Needed," found that the National Archives has been more proactive in carrying out its records management oversight responsibilities. For example, NARA has conducted its first government-wide records management self-assessment survey, resumed agency inspections after a long gap, and expanded its reporting. However, the GAO also found shortcomings in these initiatives, feeling that NARA's efforts to validate self-reported survey data were limited, as were its plans for conducting inspections of agency records management.

The second GAO report, "National Archives and Records Administration Needs to Implement Key Program Elements and Controls," found that "significant weaknesses pervade its systems." GAO sharply criticized NARA for not implementing necessary information security controls to prevent, limit and detect unauthorized access to its computers, programs, information and facilities.

U.S. Archivist David S. Ferriero issued a response statement,

saying, "I welcome these audits by GAO and I appreciate that the reports made some helpful recommendations and acknowledged the strides of improvement this agency has been making over the last year. I also agree with GAO that more work needs to be done, both internally at the Archives and across the records management community in the federal government."

Administration Issues Executive Order on Controlled Unclassified Information

One of the more difficult situations in the post-9/11 world was the increasing use by federal agencies of the category "Sensitive but Unclassified Information (SBU)." Agencies used this designation "for documents and information that are sufficiently sensitive to warrant some level of protection from disclosure but that do not warrant classification." Researchers and scientific groups claimed that SBU use was limiting "the scientific community's right to publish the results of basic research" and restricting the participation of non-U.S. researchers in their projects.

In 2008, the Bush administration issued a memo changing the nomenclature from SBU to Controlled Unclassified Information (CUI). The memo distinguished three types of CUI, while allowing agency or department heads to maintain significant discretion to determine if information falls into the category. This allowed the continuation of a system that the Obama administration called an "inefficient, confusing patchwork."

After considering task force recommendations, President Obama issued an Executive Order (EO) on November 4 that "establishes an open and uniform program for managing information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and government-wide policies" but excludes classified information.

To end the employment of "ad-hoc, agency specific policies, procedures, and markings to safeguard and control this information" and to make the CUI policy more transparent, the EO creates a government-wide policy to identify unclassified information that is still "sensitive."

The new policy makes the National Archives and Records Administration (NARA) the "executive agent" to determine the categories and subcategories of CUI "to be applied uniformly throughout the executive branch." NARA will review submissions from agencies and also implement the order and oversee agency actions to ensure compliance.

The EO also makes clear that "if there is significant doubt about whether information should be designated as CUI, it shall not be so designated." In another decision favoring openness, the EO notes: "The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information." Thus, Freedom of Information Act requests are appropriate for CUI documents.

For the full EO, see <http://www.whitehouse.gov/the-press-office/2010/11/04/executive-order-controlled-unclassified-information>.

From the National Coalition for History's Washington Update (<http://historycoalition.org/archives/>) and the COSSA Washington Update (<http://www.cossa.org/communication/update.shtml>). ■