

Center for Democracy & Technology Transition Memo
Theme: Promoting Open Government
Issue: Government Transparency and Accountability

★ **Issue/Problem.** In the last eight years, our federal government has become less open and thus less accountable to the people. Freedom of Information Act (FOIA) requests have been granted at an ever-dropping rate, FOIA backlogs are becoming longer and longer, and agencies are taking advantage of exemptions to withhold documents at an alarming rate.

★ **Policy History.** In 2001, shortly after coming into office, then-Attorney General John Ashcroft issued a memo to federal agencies instructing them to withhold information by using FOIA exemptions if any argument could be made to do so. The Ashcroft memo reversed a policy in place since 1993 when Attorney General Reno had directed agencies to disclose information unless it would result in “foreseeable harm.” In addition, White House Chief of Staff Andrew Card issued a memo establishing a category of “sensitive but unclassified” information that was to be withheld in order to protect national security interests, though it was not necessary to specify why.

Executive Order 13233 issued by President Bush in 2001 restricted access to historical information about former presidents. Other actions by the Bush Administration created new types of “sensitive” information; the most recent stage in this process was the May 2008 issuance of a Presidential memo on “CUI,” Controlled Unclassified Information.¹ The new Administration will have to consider whether implementation of CUI is increasing or decreasing the availability of information to the public. Overall, though, it is clear that the last eight years have seen a pervasive movement towards restricting information based on manufactured technicalities, rather than releasing it.

★ **What the Obama Administration Should Do.** President Obama should make transparency and the publication of information important goals at all levels of the federal government. (1) President Obama can show dedication to an open government immediately upon taking office, by rescinding the Ashcroft memo, the Card memo and related executive orders and by instructing agencies that the government must share information with the public unless a FOIA exception clearly applies.

The government should actively and affirmatively disseminate information, without waiting for a FOIA request. (2) President Obama should instruct OMB to issue rules for agencies to proactively provide more information to the public online and in easily useable and searchable formats. Much of the information that is created and collected by the government should be made public even before a FOIA request is received. Among other things, this would reduce the workload on FOIA officers.

¹ <http://www.whitehouse.gov/news/releases/2008/05/20080509-6.html>

★ For More Information.

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Resources:

- OMB Watch, “Moving Towards a 21st Century Right to Know Agenda: Recommendations to President-Elect Obama and Congress”:
<http://www.ombwatch.org/21strtkrecs.pdf>
- Sunshine Week, “Groups Call for Transparency in New President’s Administration”:
<http://www.sunshineweek.org/sunshineweek/opengroups08>

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