OPINION

Despite Pledge of Transparency, Obama Is Clogging Information Flow

Administration's overuse of FOIA exception blocks legitimate requests for records.

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When President Barack Obama issued a memorandum on his first day in office on the Freedom of Information Act encouraging transparency, it was a promising first step toward being the "most transparent administration in history." Three months later, however, the president's chief lawyer secretly advised government agencies to send to the White House all records involving "White House equities" that are identified in response to any document request, FOIA or otherwise.

The largely elusive and undefined term "White House equities" greatly expanded what the White House has access to. Previously its access was limited to documents that originated within the White House.

Consequently, federal agencies are sending politically sensitive requests to the White House for review, delaying the release of records to the media, public requesters and even to Congress, violating the letter and spirit of FOIA.

TAKING EXCEPTION: A government watchdog group says President Barack Obama is using an "undefined" exception to delay the release of records requested through the Freedom of Information Act.

It is crucial that the public knows what the White House is doing to hinder transparency. For example, in 2010, an Associated Press investigation found that the White House screened the Department of Homeland Security's FOIA requests related to the economic-stimulus plan, as well as requests for the calendars of cabinet members.

DIEGO M. RADZINSCHI

Making matters worse, Homeland Security applied extra scrutiny to FOIA requests and congressional requests that sought politically sensitive information. Political staffers at the department demanded to know information about requesters, including their occupations and where they lived.

That the White House proactively seeks to screen requests suggests that the administration is more concerned about negative press than transparency. In April 2012, the media reported that the General Services Administration (GSA) had squandered $822,000 on a posh conference in Las Vegas. The scandal drew heavy criticism for the administration.

A FOIA investigation conducted by Cause of Action, a Washington-based nonprofit government watchdog group, found that only a few weeks later, Seth Greenfeld, a senior assistant general counsel at the GSA, forwarded five FOIA requests related to the conference to Jonathan Su at the White House Counsel's Office. According to documents Cause of Action procured via FOIA, Greenfeld wrote to Su, "Per your request, here are the five FOIA requests that in some manner ask for the 2010 Western Regions Conference website and its contents." The president is effectively using the notion of "White House equities" to turn the FOIA process on its head. Although Congress designed FOIA to allow the public to know what the government is up to, the White House review process allows the government to know what the media are up to, potentially chilling the free press.

SIGNIFICANT DELAYS

A number of agencies target media requesters for extra review, including the departments of the Treasury, Defense, and Housing and Urban Development, often delaying production to well past FOIA deadlines. A March 23, 2010, request from Cox Television was significantly delayed after the GSA provided records to the House of Representatives and the White House for "comment," according to a report from the GSA inspector general. The request sought e-mails "between the GSA and the staffs of U.S. Representatives Nancy Pelosi, Silvestre Reyes, and Zack Space." At the time of the inspector general's September 2010 report, the request had been pending for 118 days. The response deadline for FOIA, however, is 20 days, or at most 30 days in "unusual circumstances."

The use of "White House equities" to screen document requests also hinders congressional oversight. Records from the Department of Interior, for example, show that the National Park Service failed to respond to a March 27, 2013, congressional document request, instead sending the documents to the White House, Office of Management and Budget, and Department of Justice for review. When the documents had still not been produced after six months, the House Oversight and Government Reform Committee was forced to issue a subpoena. Similarly, emails obtained by Cause of Action from the Environmental Protection Agency indicate that White House review delayed an April 10, 2013, document request from the House oversight committee to the agency. In response, the committee sent a Nov. 8, 2013, subpoena to the EPA for communications with White House officials concerning the delay.

The Obama administration cannot credibly claim to be transparent when it publicly issues memoranda advocating for openness in the FOIA process, but then secretly instructs agencies to refer all records with "White House equities" to the White House for review. Not only is the FOIA process significantly and illegally stalled by White House review—a fact that agencies zealously guard from requesters—but it permits the political interests of the administration to trump the important policy goals of FOIA. The White House's attempts to subvert the purposes of FOIA by demanding to review potentially damaging and politically sensitive requests may protect the President's own interests, but at the expense of the governmental transparency and accountability he had promised to advance.

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