

The Freedom of Information Act at 40

A sampling of articles, commentaries and editorials on the Freedom of Information Act, its history, its effectiveness, and its potential offered around the anniversary of the act's signing on July 4, 1966.

National Security Archive

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB194/index.htm>

LBJ Refused Ceremony, Undercut Bill with Signing Statement

By Tom Blanton

Washington, DC, 4 July 2006 - Forty years ago on July 4, 1966, Lyndon Johnson signed the landmark Freedom of Information Act while vacationing at his Texas ranch. But the event does not even appear on LBJ's Daily Diary, which is the first indication (the dog that didn't bark) that something was amiss on the Pedernales.

Documents from the LBJ Library show that the normally gregarious President, who loved handing out pens at bill signings, refused even to hold a formal ceremony for the FOIA, personally removed strong openness language from the press statement, and only agreed to approve the bill after the Justice Department suggested the tactic that has become President Bush's favorite – a signing statement that undercut the thrust of the law.

This back story behind Johnson's grudging signature highlights some constants – the government's resistance to outside scrutiny – and some surprising role reversals, featuring then-congressman Donald Rumsfeld as a FOIA champion and then-White House aide Bill Moyers as a FOIA opponent, at least for a time.

A Democratic congressman from Sacramento, California, the late John Moss, was the real hero of the Freedom of Information story. Supported by extensive press coverage and active lobbying by newspaper editors, Moss led hearings beginning in 1955 that documented and denounced excessive government secrecy. But as long as Eisenhower was president, Moss could hardly find a Republican co-sponsor for his proposed openness reforms.

Republicans became more interested during the Kennedy and Johnson presidencies, especially after LBJ's landslide victory in 1964. As a young Republican from Illinois assigned to Moss's subcommittee, Rumsfeld signed up as a leading co-sponsor (see Document 9, page 14) of the Moss bill for freedom of information, and denounced what he called the Johnson administration's "continuing tendency toward managed news and suppression of public information that the people are entitled to have." (Less than 10 years later, Rumsfeld as White House chief of staff, and his deputy Richard Cheney, would lead President Ford's effort to veto the strengthening amendments to the FOIA, but they would lose.)

Moss himself, as a member of the Democratic House leadership in 1965-66, had to pretend the President was on board; but he told his staff (after cleaning up the expletives from the original) what LBJ's real reaction was: "What is Moss trying to do, screw me? I thought he was one of our boys, but the Justice Department tells me his goddamn bill will screw the Johnson Administration." [See George Kennedy, "How Americans got their right to know," www.johnmossfoundation.org/foi/kennedy.htm]

All through 1965, the administration stalled Moss's bill. All 27 federal agencies and departments that presented testimony opposed the bill. An August 1965 Bureau of the Budget analysis noted that the Justice Department considered the bill unconstitutional, and remarked, "The requirement that information be made available to all and sundry, including the idly curious, could create serious practical problems for the agencies." Out to the side, Moyers scribbled "True!" and on the cover note he wrote: "I agree with BOB's objections and believe we should continue to oppose the legislation."

But by the spring of 1966, the Senate had passed its own version of Moss's legislation and Moyers had heard unanimous support from the journalists he was dealing with as press secretary. Other White House staff were getting the idea that the train was leaving the station. White House counsel Milton Semer talked directly with Moss, connected Moss with Moyers, and even suggested to Moyers that he "exploit the fact that the President is under pressure from the bureaucracy to veto," as a way of arguing that the bill would actually help the President bring the "permanent bureaucratic interest" more under control.

By May and June 1966, the White House documents show quiet lobbying by Moyers in favor of the legislation, advising the newspaper editors (see Document 9, page 2) what kind of "sharply briefed exhibit" of editorials would have the most impact, and forwarding quotes to White House staff from previous Johnson speeches about the perils of secrecy and the virtues of openness.

Behind the scenes, the Justice Department prevailed on Moss to create a new House report on the bill with government-produced language that rolled back the Senate interpretations (even though the language of the two bills was identical). The new report added numerous specific examples of information that would be exempt from disclosure, and emphasized "broader protection for the internal working papers of executive agencies." The agencies told Justice the new language "clarifies the bill and substantially relieves our earlier concerns." (May 13, 1966 NLRB to Justice)

By the time the House passed the bill on June 20, 1966 (the vote was 307 to zero) and sent it on to LBJ, only one agency (Health, Education & Welfare) still recommended a veto. Semer summed up the government's position in his July 1 memo to LBJ: "The departments and agencies have been concerned about this bill for many years, but have come around to the view that they can live with it, and the attached agency reports do not recommend disapproval (with the minor exception of HEW)."

But the agencies were certainly not enthusiastic. Of the 14 that weighed in, 5 had “no recommendation,” 4 had “no objection,” only 3 noted “approval,” HEW concluded “disapproval would best serve public interest,” and Justice’s tortured language perhaps best captured the ambivalence: “Does not urge withholding of approval (signing statement attached).”

President Johnson clearly shared those very mixed feelings – he personally handwrote “No ceremony” across the bottom of a June 24 memo about the possibility of a signing event with leading editors and legislators.

Because Congress had adjourned, Johnson had to act by Monday, July 4, or the bill would fall victim to a pocket veto. On July 2, the head of the American Society of Newspaper Editors wired Moyers in San Antonio (LBJ was at the ranch for the July 4 weekend, so the White House press briefings took place 70 miles away in the closest city with hotels): “press of America concerned legislation overwhelmingly adopted by Congress may die through inadvertence.” Moyers responded the same day, “Inadvertence not our habit. Thank you for your telegram.”

The last drama of the Freedom of Information signing saga was over the president’s statement. As Justice recommended, it endorsed the rollback House report with three paragraphs of cautionary language about military secrets, personnel files, confidential advice, executive privilege, and investigative files. In fact, the signing statement includes more about the need to keep secrets than the urgency of openness.

But Moyers had also included several ringing phrases, such as “I signed this measure with a deep sense of pride that the United States is an open society in which the decisions and policies – as well as the mistakes – of public officials are always subjected to the scrutiny and judgment of the people.” This version actually reached the press corps in San Antonio, only to be withdrawn after a phone call between LBJ and Moyers on the morning of July 4. In the files is Moyers’ draft with LBJ’s own edits (see Document 31, page 5), as well as a copy of the statement that already had been given to the press, the latter featuring Moyers’ dark ink pen slicing through the clause about decisions and policies and mistakes, which went missing from the final language, and changing a reference to the “whim of public officials” into “the desire of public officials or private citizens.”

Moyers later remarked that LBJ’s language was “almost lyrical – ‘With a deep sense of pride that the United States is an open society in which the people’s right to know is cherished and guarded.’... But I knew that LBJ had to be dragged kicking and screaming to the signing... He hated the very idea of the Freedom of Information Act; hated the thought of journalists rummaging in government closets and opening government files; hated them challenging the official view of reality. He dug in his heels and even threatened to pocket veto the bill after it reached the White House. And he might have followed through if Moss and [Russell] Wiggins and other editors hadn’t barraged him with pleas and petitions. He relented and signed ‘the damned thing,’ as he called it (I’m paraphrasing what he actually said in case C-Span is here).”

Today the U.S. government answers more than four million FOIA requests a year, the majority from veterans and senior citizens seeking information about their benefits and service records. In 1966, the U.S. law was the third in world history, after Sweden and Finland; but today, more than 60 other countries (most recently Uganda and Germany) have enacted similar laws that open access to government information (see www.freedominfo.org for the new 2006 global survey).

FOIA Legislative History *National Security Archive*

<http://www.gwu.edu/~nsarchiv/nsa/foialeghistory/legistfoia.htm>

Forty Great FOIA Stories *National Security Archive*

<http://www.gwu.edu/~nsarchiv/nsa/foia/stories.htm>

OMB Watch Website

<http://www.ombwatch.org/article/articleview/3503/1/1?TopicID=1>

FOIA's 40th Anniversary - Bigger Backlogs and Poor Planning

This July 4th marked the 40th anniversary of the Freedom of Information Act (FOIA), signed into law by President Lyndon Baines Johnson. Open government advocates marked the occasion by releasing two reports that simultaneously underscored the importance of FOIA 40 years later and the need for improved agency procedures.

Forty years ago FOIA established the public's right to access government information, however, as OpenTheGovernment.org notes, "from its inception the implementation and usability of the Freedom of Information Act have been matters of concern." In response to increasing pressure to relieve agency backlogs and improve FOIA procedures, President George W. Bush issued [Executive Order 13392](#) on Dec. 14, 2005. The order required, among other things, that agencies develop a plan to improve FOIA procedures, reduce backlogs, and increase public access to highly sought-after government information.

In its [review](#) of the recently released FOIA improvement plans, OpenTheGovernment.org found that "many of the improvement areas were either not addressed or rated as poorly addressed." The Securities and Exchange Commission and the Office of Management and Budget plans received the worst ratings and, of the 27 identified improvement areas, failed to address 24 and 22, respectively. Generally, reviewed agencies and offices produced reports focused on a narrow set of problems and only explored short-term solutions with little effort to consider larger issues or longer term improvements.

The Coalition of Journalists for Open Government found that although FOIA requests were down in 2005, the backlog of unanswered requests rose from 20 percent of total requests made in 2004 to 31 percent in 2005. In addition to the increase in unanswered requests, requesters had to wait longer for replies. The worst median response time for complex FOIA requests was within the Department of Agriculture which had an average response time of 1,277 working days. The median response time of the Securities and Exchange Commission doubled from the previous year to 410 working days.

The increasingly dire state of FOIA procedures and backlogs across government agencies and the inadequacy of improvement plans may inspire Congress to resume consideration of FOIA improvement legislation. In February 2005, Sens. John Cornyn (R-TX) and Patrick Leahy (D-VT) introduced the Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2005 (S. 394), aimed at strengthening FOIA.

"This bipartisan legislation will help to ensure an open and deliberate process in Congress, by providing that any future legislation to establish a new exemption to the federal Freedom of Information Act must be stated explicitly within the text of the bill," Cornyn stated at the time the legislation was introduced.

Then in March 2005, another bill sponsored by Cornyn and Leahy, the Faster FOIA Act of 2005, was reported favorably out of committee that would appoint a commission to study backlog problems and possible improvements of agency procedures.

These new reports may provide ammunition to critics of Bush's FOIA executive order, many of whom believe it to be window dressing to a serious problem that may have killed momentum for the Cornyn-Leahy legislation. Critics have also argued that the executive order cannot significantly improve FOIA, because no new resources were given to the agencies to help them speed up FOIA processing. The two reports appear to validate the critics' contention that, without additional resources, attempts to make government more transparent will be next to impossible.

Associated Press

http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1002765571

Happy Birthday -- Freedom of Information Act

WASHINGTON President Lyndon Johnson had deep reservations when he signed the law that opened the government's filing cabinets to its citizens, worrying that it might force the disclosure of damaging national secrets, newly disclosed records show. Forty years later, the Freedom of Information Act still creates tension between the government and citizens, corporations, researchers and journalists. The law's staunchest advocates believe its principles are imperiled, threatened by what they describe as the Bush administration's penchant for secrecy and concerns about revealing strategies to terrorists.

"This is the worst of times for the Freedom of Information Act in many ways," said Paul K. McMasters of the First Amendment Center, which studies issues of free speech, press and

religion. McMasters cited large backlogs of unresolved citizen requests for records, and new Bush administration strategies to withhold documents.

When he signed the law on July 4, 1966, Johnson was so uneasy about the new legislation he refused to conduct a public signing ceremony that would draw attention to it. He also submitted a signing statement that some researchers believe was intended to undercut the bill's purpose of forcing government to disclose records except in narrow cases.

Draft language from Johnson's statement arguing that "democracy works best when the people know what their government is doing," was changed with a handwritten scrawl to read: "Democracy works best when the people have all the info that the security of the nation will permit."

This sentence was eliminated entirely with the same handwritten markings: "Government officials should not be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest." Another scratched sentence said the decisions, policies and mistakes of public officials "are always subjected to the scrutiny and judgment of the people."

The 1966 papers were discovered in the Lyndon Baines Johnson Library and Museum in Austin, Texas, by the National Security Archive at George Washington University. The group's researchers make more than 1,500 requests for government records under the Freedom of Information Act every year on U.S. national security and foreign policy.

The archive's director, Thomas Blanton, said it was unclear from the documents whether Johnson personally edited his statement or directed his press secretary, Bill Moyers, to make changes. Moyers, who later became a prominent PBS journalist and frequent critic of conservatives, has recounted Johnson's unease about signing the new information law in 1966.

Tension over the law continues. Seeking records can be a hair-pulling experience, with requests often taking months or even years before paperwork - if any - is returned, and the government is under orders to improve its system.

"The Freedom of Information Act is embattled and at risk," said Meredith Fuchs, the top lawyer at the security archive. "The federal government is really shutting down the taps on information."

But when President Bush instructed agencies to review their information programs, many of them - including the CIA and Pentagon - boasted about their performance. The Justice Department said its handling of FOIA requests for records was working "exceptionally well," although officials acknowledged there was "room for improvement."

The CIA, famously loath to open even its historical files, cited its "strong record" on disclosures. The Pentagon - where records requests can languish for over a year - said its "customer responsiveness is generally good." The Homeland Security Department and State Department did not complete the mandatory reviews ordered by Bush.

Brian Martin of Denver, a private computer-security consultant, submitted two requests for records to the Homeland Security Department more than a year ago - and never heard back. Martin sought information about how much the government spends tracking software problems exploited by hackers and others.

"This process is supposedly there to get me information about how my tax dollars are being spent," Martin said. "I'm curious how it's all being used. I'm left just to wonder." When he sent a similar request to the Commerce Department, it told him he could have the records he wanted - if he would pay more than \$1,800 for copying and search fees

Former President Jimmy Carter

<http://www.washingtonpost.com/wp-dyn/content/article/2006/07/02/AR2006070200674.html>

We Need Fewer Secrets

By Jimmy Carter

The U.S. Freedom of Information Act (FOIA) turns 40 tomorrow, the day we celebrate our independence. But this anniversary will not be a day of celebration for the right to information in our country. Our government leaders have become increasingly obsessed with secrecy. Obstructionist policies and deficient practices have ensured that many important public documents and official actions remain hidden from our view.

The events in our nation today -- war, civil rights violations, spiraling energy costs, campaign finance and lobbyist scandals -- dictate the growing need and citizens' desire for access to public documents. A poll conducted last year found that 70 percent of Americans are either somewhat or very concerned about government secrecy. This is understandable when the U.S. government uses at least 50 designations to restrict unclassified information and created 81 percent more "secrets" in 2005 than in 2000, according to the watchdog coalition [OpenTheGovernment.org](http://www.openthegovernment.org).

Moreover, the response to FOIA requests often does not satisfy the transparency objectives or provisions of the law, which, for example, mandates an answer to information requests within 20 working days. According to the National Security Archives 2003 report, median response times may be as long as 905 working days at the Department of Agriculture and 1,113 working days at the Environmental Protection Agency. The only recourse for unsatisfied requesters is to appeal to the U.S. District Court, which is costly, timely and unavailable to most people. Policies that favor secrecy, implementation that does not satisfy the law, lack of a mandated oversight body and inaccessible enforcement mechanisms have put the United States behind much of the world in the right to information.

Increasingly, developed and developing nations are recognizing that a free flow of information is fundamental for democracy. Whether it's government or private companies that provide public services, access to their records increases accountability and allows citizens to participate more fully in public life. It is a critical tool in fighting corruption, and people can use it to improve their own lives in the areas of health care, education, housing and other public services. Perhaps most important, access to information advances citizens' trust in their government, allowing people to understand policy decisions and monitor their implementation.

Nearly 70 countries have passed legislation to ensure the right to request and receive public documents, the vast majority in the past decade and many in middle- and low-income nations. While the United States retreats, the international trend toward transparency grows, with laws often more comprehensive and effective than our own. Unlike FOIA, which covers only the executive branch, modern legislation includes all

branches of power and some private companies. Moreover, new access laws establish ways to monitor implementation and enforce the right, holding agencies accountable for providing information quickly and fully.

What difference do these laws make?

In South Africa, a country emerging from authoritarian rule under the apartheid system, the act covering access to information gives individuals an opportunity to demand public documents and hold government accountable for its actions, an inconceivable notion just a decade ago. Requests have exposed inappropriate land-use practices, outdated HIV-AIDS policies and a scandalous billion-dollar arms deal. In the United Kingdom, the new law forced the government to reveal the factual basis for its decision to go to war in Iraq.

In Jamaica, one of the countries where the Carter Center has worked for the past four years to help establish an access-to-information regime, citizens have used their right to request documents concerning the protection of more than 2,500 children in public orphanages. Two years ago there were credible allegations of sexual and physical abuse. In the past year, a coalition of interested groups has made more than 40 information requests to determine whether new government recommendations were implemented to ensure the future safety and well-being of these vulnerable children.

Even in such unlikely places as Mali, India and Shanghai, efforts that allow access to information are ensuring greater transparency in decision making and a freer flow of information.

In the United States, we must seek amendments to FOIA to be more in line with emerging international standards, such as covering all branches of government; providing an oversight body to monitor compliance; including sanctions for failure to adhere to the law; and establishing an appeal mechanism that is easy to access, speedy and affordable. We cannot take freedom of information for granted. Our democracy depends on it.

The writer was the 39th president and is founder of the Carter Center.

The San Jose Mercury News

<http://www.mercurynews.com/mld/mercurynews/news/opinion/14963808.htm>

Making freedom of information stronger

By Martin Halstuk

Forty years ago, on July 4, 1966, the Freedom of Information Act (FOIA) was signed into law after a long and hard-fought campaign led by a little-known Democratic congressman from Sacramento, John Moss. At the time, the idea of a federal open-records law was considered radical. It took Moss and other open-government advocates in Congress, the newspaper industry

and the American Bar Association 173 hearings spanning 10 years before the groundbreaking legislation was passed.

The FOIA created a public right of access to the vast storehouses of information compiled by the dozens of federal administrative and regulatory agencies, along with the Cabinet departments. FOIA users vary widely and include journalists, public-interest groups, businesses, historians and advocacy organizations as ideologically disparate as the activist environmental organization Greenpeace and the conservative watchdog group Judicial Watch.

In pushing for the controversial law's passage, advocates of transparent government emphasized that the FOIA was grounded in the belief that in an open and democratic society, citizens must have a right of access to government-held information so they can hold officials accountable for their actions and make informed decisions pertaining to self-rule.

A 1965 Senate FOIA report instructs: "Government by secrecy benefits no one. It injures the people it seeks to serve; it injures its own integrity and operation. It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty."

Over the decades, the FOIA has been used to reveal waste, fraud and deception in the federal government and to identify unsafe consumer products, harmful drugs and serious health hazards. Decades ago we learned from records obtained under the FOIA why Ford Pinto gas tanks exploded, how defects in the Hubble Telescope limited its capabilities and when the FBI ordered illegal FBI surveillance of the Rev. Martin Luther King Jr.

The FOIA still works.

More recently, we viewed images of rows of military coffins, draped with American flags, returning from Iraq. We learned that the government ignored sexual-assault charges brought by women in the military against enlisted men and officers. We also found out that 22 percent of soldiers who died in Iraq died outside combat; suicides were an ongoing problem among American troops in Iraq; and about 16 percent of returned soldiers required treatment for mental problems.

On the other hand, the FOIA has also suffered some significant setbacks. The Supreme Court ruled in 2004 that there is a "presumption of legitimacy" when it comes to official government investigations that involve private individuals.

The court held that if someone uses the FOIA to request law enforcement records to aid in an investigation of government corruption or incompetence -- and the records contain personal information about a private individual -- then the FOIA requester must show evidence of wrongdoing in advance to justify getting access to the materials. The obvious Catch-22 is that documents that can reveal evidence of government misconduct are often in the government's hands.

The judiciary has also given the government tremendous leeway in how agencies can use executive privilege as an exemption to the FOIA. The Supreme Court has so broadly interpreted executive privilege that a federal agency can shield reports provided to the agency by a private outside consultant -- paid by tax dollars -- even if the consultant has a direct interest in the outcome of the agency decision.

In 2005, executive privilege was also the rationale for the federal Circuit Court of Appeals in the District of Columbia to rule that the National Energy Policy Development Group headed by Vice President Dick Cheney (the federal energy task force) can withhold policy recommendations made to the task force by the Department of Energy, the Department of the Interior and the National Resources Defense Council. (In a related but non-FOIA case, the lower federal courts also ruled that the even the names of the task force's members can be withheld from the public.)

Finally, the Central Intelligence Agency still enjoys a near-blanket FOIA exemption granted to the spy agency by the Supreme Court 20 years ago, despite the fact that the CIA was explicitly subject to the FOIA under the original legislation. The CIA's widely publicized failures in connection with the Sept. 11 terrorist attacks illustrate the folly of unchecked secrecy, which not only cloaks questionable agency activities but also conceals grave problems in management.

These problems were further evidenced in the CIA's miscalculations and false assessments of Iraqi weapons strength, which were used to justify the American invasion of Iraq.

Moss led the Congress of 40 years ago in giving the nation a blueprint for government transparency and access to the kind of information necessary for meaningful public discourse on the vital policy questions facing this nation. Today's Congress is currently reviewing at least two bills to strengthen the FOIA so that citizens can learn more about what the government is up to. Let us hope the lawmakers set the record straight.

***MARTIN E. HALSTUK**, who has written numerous articles about the Freedom of Information Act, teaches communications law at Pennsylvania State University. He wrote this article for the Mercury News.*

Media General News Service

<http://washdateline.mgnetwork.com/index.cfm?SiteID=wsh&PackageID=46&fuseaction=article.main&ArticleID=8611&GroupID=215>

Freedom of Information law reaches 40

By JAMES W. CRAWLEY

WASHINGTON - While everyone is celebrating the Fourth of July on Tuesday, let me suggest a little flag waving and fireworks for the 40th birthday of the Freedom of Information Act.

As the law reaches middle age, it needs a celebration.

The statute is looking a little shopworn as government officials erect new barriers to obtaining public information and the concept of open government is under assault, fueled by fears of terrorists and officials' embarrassment over leaks.

Signed begrudgingly by President Johnson on July 4, 1966, the open records law, abbreviated FOIA, has been the bane of secrecy advocates and bureaucrats ever since.

Before the law, the public's access to records was at the whim of government bureaucrats who could and did hide the facts behind walls of secrecy.

The law opens the federal government's books to everyone -- private citizens, reporters, attorneys, community activists, corporations, incarcerated prisoners -- for perusal.

During the past 40 years, FOIA has helped shine a light on government wrongdoing, incompetence and safety problems in Washington and in local communities. The law increased public awareness of pollution, questionable drugs, unsafe dams and poorly enforced regulations.

Another FOIA benefit: Fans can read Elvis Presley's FBI file -- all 683 pages.

I've obtained information about Cold War spying on Soviet diplomats living in the U.S., aviation safety, public officials' financial disclosures, agency staffing problems, military justice and other subjects. One request was answered in two hours; another still isn't filled 11 years later.

The government isn't wide open under FOIA.

The law exempts from disclosure classified information, along with most law enforcement, personal and financial data. Congress is exempt from the law. The courts are immune. Only the executive branch -- Cabinet departments and independent agencies -- must abide by the open records law.

But those barriers are not absolute.

Much of the information the American public knows about the enemy combatants imprisoned at Guantanamo, including their names and nationalities, is thanks to information obtained under FOIA.

Importantly, the federal statute has fostered greater openness by state and local governments. Many have modeled their open records laws after the federal law.

Freedom of information has never been a slam-dunk.

LBJ, according to a close aide, signed the law with great reluctance, despite his public show of support. Its Fourth of July signing was not for patriotic effect, rather to meet the constitutionally mandated 10-day signing deadline.

Congress voted to strengthen the law in 1974 -- adding important provisions to speed up responses, provide for judicial review and reduce fees. President Gerald Ford vetoed the amendment, largely on the advice of two top aides and a senior Justice Department attorney who argued that the law unduly burdened officials and was unconstitutional.

The aides -- Donald Rumsfeld and Dick Cheney -- and the attorney -- Antonin Scalia -- are familiar names today. And, many still consider them foes of open government.

Congress overwhelmingly nixed the veto and the improvements became law.

FOIA has had a few rough years lately.

"This is a presidential administration that loves secrecy," said Lucy Dalglish, executive director of the Reporters Committee for the Freedom of the Press.

Claiming to bolster national security since 9/11, government officials have severely limited access to records on many subjects, from dam safety to health impacts from chemical plant pollution.

Some disaster evacuation plans have been hidden from public view for fear terrorists could use the information.

"The public is less able to know about dangers in their community," Dalglish said. "I don't think an ignorant society is necessarily a safer society."

Thousands of previously declassified records at the National Archive, some dating back to World War II, have been removed and stamped "Top Secret" again.

Despite the tumultuous times, the Freedom of Information Act has survived 40 years of service to America.

So, let us raise a glass of iced tea -- after checking Food and Drug Administration records -- in salute of the Fourth and open records.

James W. Crawley is a national correspondent in Media General's Washington Bureau. E-mail Crawley at jcrawley@mediageneral.com

The Birmingham News

<http://www.al.com/business/birminghamnews/index.ssf?/base/business/1152004848181550.xml&coll=2>

City lawyer writes book on Freedom of Information Act

ROY L. WILLIAMS
News staff writer

Today marks not only America's independence day, but the 40th anniversary of the Freedom of Information Act.

The FOIA was passed by Congress to give the public greater access to records of the executive branch. A Birmingham lawyer who has written a new book examining the act says much of the public's right to know is being whittled away under the name of the war on terror.

Stephen Gidiere, an environmental and public records lawyer for Balch & Bingham, says that while it's understandable the federal government wants to keep the wraps on some information in the wake of the 9/11 terrorist attacks, he feels the administration has gone too far.

"Good government requires a balance between secrecy and openness," Gidiere said.

Gidiere's book, "The Federal Information Manual: How the Federal Government Collects, Manages and Discloses Information Under FOIA and other Statutes," was published this spring by the American Bar Association. Gidiere writes that in 2005 alone, the executive branch decided 14.2 million times to classify information as secret, nearly double the number of secrets created in 1998.

The federal government spent \$7.2 billion on designating and protecting its secrets in 2004, up from \$5.6 billion in 2002. In contrast, the federal government spent only \$300 million on issues related to the FOIA, he said.

"Much of this increase can understandably be attributed to the Iraq and Afghanistan wars and our increased military and intelligence operations since 9/11," Gidiere said. "However, Congress and the federal courts should not give the president an automatic free pass anytime he mentions national security."

The dilemma of fighting terror vs. freedom of the press continues to gain national headlines. Last week, the Bush administration blasted the New York Times for reporting about a federal program that tracks financial transactions by suspected terrorists.

On May 11, USA Today got similar criticism after a front page article that claimed the National Security Agency is collecting information on phone calls and e-mails here in the United States without court approval.

Web's reach:

The Freedom of Information Act became law in 1966 after Congress responded to public criticism that the executive branch was being too secretive, Gidiere said. Over the years, amendments were passed requiring federal agencies to make certain documents available for the public over the Internet. While speeding up access to federal records, the Web's world-wide reach also has caused the federal government to cloak more documents over the past few years in the name of the war on terror, Gidiere said.

"In 1998, the government classified information 7.2 million times. By 2005, it was 14.2 million," Gidiere said. "The war on terror is about protecting our freedom. But we are giving up some of our privacy and freedom to win the war - most notably, the freedom of information."

Why is secrecy so expensive? Gidiere said classified documents require extra security and monitoring.

Gidiere, who spent two years as a lawyer with the Department of Interior in Washington, D.C., before joining Balch & Bingham a decade ago, said he has examined the FOIA issue from both sides and understands the importance of keeping important documents from terrorists.

Gidiere, who serves on a new Alabama open records task force, said that a September 2005 report by The Reporters Committee for Freedom of the Press found that FOIA denials pose a severe risk to a free press' obligation to inform the public.

"People want information from the federal government, and they want it fast - instantaneously, in some cases," said Gidiere, who spent years researching and 18 months writing the book. "But now, there are more hurdles to cross that prevent or delay local officials, journalists, corporations and individuals from getting the information they want. It's easy to understand why the public and many in Congress are calling for reforms."

Gidiere designed his book to help journalists, organizations and the general public find their way through the federal information maze.

The Kalamazoo Gazette

<http://www.mlive.com/news/kzgazette/index.ssf?/base/columns-2/115219950169360.xml&coll=7>

40 years later, continue fight for information

When President Lyndon Johnson signed the federal Freedom of Information Act into law 40 years ago this week, he did it with tremendous uneasiness.

Newly released documents from Johnson's presidential archive show that he was not enthusiastic about mandating government to be open about what it does.

According to a story by the Associated Press, a draft of Johnson's signing statement revealed just how concerned he was about the impact the FOIA would have on the government's ability to keep secrets from the public. Stricken from the draft was the sentence: "Democracy works best when the people know what their government is doing." In its place was written: "Democracy works best when the people have all the info that the security of the nation will permit."

And removed entirely from the draft was the phrase: "Government officials should not be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest." Another phrase, which asserted that the decisions, policies and mistakes of public officials "are always subjected to the scrutiny and judgment of the people" also was scrubbed, according to the AP.

Americans should be grateful that, despite Johnson's reservations, he signed the ground-breaking bill. It was the first law to guarantee that Americans would have access to government information, unless that information would harm national security.

Although the FOIA is used by the news media and watchdog groups, it is intended for the use and benefit of any American who seeks to find out what the government is doing.

Now observers of government openness are voicing concerns that freedom of information may be in danger.

"This is the worst of times for the Freedom of Information Act in many ways," Paul McMasters of the First Amendment Center was quoted by the AP as saying.

"The Freedom of Information Act is embattled and at risk," agreed Meredith Fuchs, an attorney at the National Security Archive at George Washington University. "The federal government is really shutting down the taps on information."

Especially since 9-11, the federal government, claiming national security issues, has been clamping down on information that is allowed to be public. Some information should not be made public now because there are genuine security issues involved.

But we know from history that volumes of information have been hidden from public scrutiny because they would reveal government incompetence or corruption.

And during times of war or insecurity, incompetent or corrupt government officials have been more than willing to claim the nation's safety is at risk when they withhold information about their actions.

James Madison, the nation's fourth president, had it exactly right when he wrote: "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."

Government officials, journalists and everyday American citizens will forever clash over what the public has the right to know.

For our part, we will continue to campaign for openness. It is our contribution to ensuring that our government becomes neither farce nor tragedy -- and that Americans remain their own governors.

The Baltimore Sun

<http://www.baltimoresun.com/news/opinion/oped/bal-op.foia04jul04,0,2252554.story?coll=bal-oped-headlines>

On 40th birthday, Freedom of Information Act faces midlife crisis

BY DAVID O. STEWART

"Kicking and screaming," according to one who was there, President Lyndon B. Johnson signed the Freedom of Information Act at his Texas ranch on Independence Day in 1966. On its 40th birthday, the aging FOIA needs help from a Congress that is learning the high costs of secret government, and from executive agencies that too often ignore that lesson.

The problems with the FOIA could not be more current as radio talk shows thump The New York Times for having the temerity to inform Americans about what their government is doing. This nation should heed the advice Dean Wormer delivered to John Belushi's character in the movie Animal House: "Fat, drunk and stupid is no way to go through life."

More than 200 years ago, James Madison made the same point with greater elegance: "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."

That principle animates the FOIA, which was intended to ease citizen access to the government's troves of information. It is a delicate balancing act, to be sure. The government holds national security secrets, embarrassing and irrelevant personal information and valuable proprietary commercial information. To protect what truly needs to be protected, the FOIA provides several exemptions from disclosure.

The balance between disclosure and secrecy can be difficult to strike, particularly when more than 4 million FOIA requests are submitted every year. The Defense Department

alone has 500 FOIA offices. Yet there are many symptoms that the current policies fundamentally skew toward secrecy in a manner that can only injure the public interest.

In a secret program, federal agencies have spirited out of the National Archives more than 25,000 previously disclosed records and reclassified them as "secret." These included a 1951 assessment of agrarian reform in Guatemala and a 1948 memo on balloon drops of leaflets into Communist countries.

The CIA has demanded that the National Security Archive, an advocacy group that frequently unearths newsworthy information through FOIA requests, pay the search costs for more than 40 requests, which would run into hundreds of thousands of dollars.

The agency claims that information requests about Taliban leaders in Afghanistan and U.S. policy in the 1970s toward that nation do not meet its definition for "news." For the National Security Archive, and for writers who are part of the Freedom to Write Fund of the Washington Independent Writers, the CIA's cost-charging policy completely neuters the FOIA.

The entire government continues to function under former Attorney General John Ashcroft's 2001 directive that encouraged agencies to deny information requested under the FOIA, assuring them of Justice Department support in defending such denials.

The oldest FOIA request still pending was filed in 1989, with many others of scandalously senior vintage. Losing and misrouting such requests are discouragingly routine in many agencies.

The tightening of FOIA policies parallels other chilling increases in government secrecy. The government has asserted the "state secrets" privilege 25 times in lawsuits in the last five years, compared with 55 invocations over the preceding 48 years (most of which involved the nuclear standoff with the Soviet Union).

Neither Congress nor any court nor the American people knew that the government was eavesdropping on overseas telephone calls or rummaging through private banking records.

There are glimmers of hope. After years of snoozing on the job, the House Judiciary Committee has demanded information about the secret telephone eavesdropping program. An initiative prompted by an executive order in December aims to force each federal agency to improve its FOIA responses; formal plans to do so were posted last month.

Still, both the people and their servants need a much sharper appreciation of the essential connection - captured in the name of the FOIA - between "freedom" and "information." Despotism always has understood, and cynically leveraged, that connection to suppress dissent and extend control over their people.

James Madison understood the connection, too. "A people who mean to be their own governors," he wrote, "must arm themselves with the power which knowledge gives."

With the FOIA now at midlife, and with the government increasingly denying us the knowledge that we need to govern ourselves and to hold it accountable, we must demand greater openness and access to government information.

David O. Stewart, president of the Freedom to Write Fund of the Washington Independent Writers, is the author of a forthcoming history of the Constitutional Convention, "The Summer of 1787." His e-mail is xstewart1@comcast.net.

The Kansas City Star

<http://www.kansascity.com/mld/kansascity/news/opinion/14960808.htm>

FREEDOM OF INFORMATION ACT

forty years ago, public gained its right to know

By Mike McGraw
The Kansas City Star

An important anniversary will likely go unnoticed today, amidst all the hoopla surrounding the nation's 230th birthday.

It's also the 40th anniversary of the federal Freedom of Information Act.

Little known, poorly understood and, it seems, constantly embattled, the act stands as one of the most important pieces of legislation ever passed by the U.S. Congress. So important, in fact, that the Congress quickly exempted itself from its provisions.

The proposal was wrestled into law in 1966, after 11 arduous years and against overwhelming odds, by Rep. John E. Moss of California, and it required for the first time that broad categories of federal records be made available to the public.

Moss and his colleagues worked so hard to pass the law partly because members of Congress themselves were having trouble getting even routine information from federal agencies.

But Moss's battle was more than self-serving. He was an ardent believer that open government helped guarantee our freedoms.

"Inherent in the right of free speech and of free press is the right to know," he said on the floor of the House. "It is our solemn responsibility as inheritors of the cause to do all in our power to strengthen those rights — to give them meaning."

Also rising in support of the legislation was a young congressman from Illinois named Donald Rumsfeld: "Certainly it has been the nature of government to play down mistakes and to promote successes. This has been the case in the past administrations. Very likely this will be true in the future."

While he was reluctant to sign the bill and waited until the last day of a pocket-veto deadline to do so, Lyndon Johnson also spoke glowingly of it: "This legislation springs from one of our more essential principles: a democracy works best when the people have all the information that the security of the nation permits."

Today, the act remains the public's only legislative window on how government really works — or doesn't.

We can thank the act for the fact that we know that servicemen were once used as human nuclear guinea pigs; that "detainees" in the war on terror were abused, and that the Central Intelligence Agency conducted mind-control experiments on Americans in the 1950s.

But there is a mighty force working against open government. And that is the government itself.

According to a report released last week, the federal government is falling further and further behind in filling requests under the law; is more often refusing to release documents, and is spending more money doing it.

But perhaps the most distressing finding in the report, from the Coalition of Journalists for Open Government, is that the government has increased its use of broad discretionary exemptions to withhold documents from the public and the press.

The worst backlogs are occurring at such important federal agencies as the Securities and Exchange Commission, the National Archives, the CIA, the State Department and Homeland Security.

At a time of great and growing debate over whether the government should be required to tell us what it is up to or whether it should be allowed to withhold such information in order to keep us free, the words of one former president seem uniquely apropos:

"When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and — eventually — incapable of determining their own destinies." Richard Nixon, 1972

The Shreveport Times

<http://www.shreveporttimes.com/apps/pbcs.dll/article?AID=/20060704/OPINION03/607040308/1007>

Record access helps preserve the Union

Freedom of Information Act, at 40, constricted by bureaucracy.

"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, quoted in 2002 Citizen's Guide to the Freedom of Information Act, 102nd Congress

Happy Birthday, America.

We've survived another year, even if we're up to our "I's" in disagreements.

Independence Day arrives with the nation split over immigration, Iraq and, more lately, information. The latter ranges from the little-black-dress froth over Ann Coulter to the national security debate about decisions by The New York Times, Los Angeles Times and The Wall Street Journal to report on the government's monitoring of international financial transactions.

As happens periodically, the news media has pushed the envelope to a point that the government pushes back. It's up to the public to decide if the issue is more about national security or political opportunism.

Something to consider: Seldom will your government's timetable for disclosure match that of the media in fulfilling its First Amendment-backed freedom to keep the public informed. That's part of the healthy tension a free society needs.

The nation continues to stand because the public always manages -- eventually -- to sort out fact from fiction, harm from hype, public interest from politics.

But it all starts with information. Crucial to that end, both for private citizens and media watchdogs, is public access to government records.

This year marks the 40th anniversary of the federal Freedom of Information Act, a law that in 1966 marked a huge sea change in government accountability. The burden of proof on whether government records were accessible to the people shifted from the individual to the government. "The 'need to know' standard has been replaced by a 'right to know' doctrine," according to a 2002 Freedom of Information Act OIA Citizen's Guide issued by the 107th Congress.

And yet, those bureaucrats who would thwart the intent of the FOIA to make government more open and accessible have found an effective counter-measure in simply dragging their feet. The longest waiting FOIA request just celebrated the 17th anniversary of its filing.

Too much off limits

A governmentwide audit of how the FOIA is working found 28 different and uncoordinated open records policies, none of which include effective oversight or monitoring of how many records are marked and withheld, by whom, or for how long, according to a summary by the National Security Archive, an independent nongovernmental research institute and library located at The George Washington University.

In the audit released in March, eight out of the 28 policies permit any employee in the agency to designate sensitive unclassified information for protection, including the Department of Homeland Security, the second largest agency other than Defense, with more than 180,000 employees.

Tom Curley, president of The Associated Press, complained during last spring's observance of Sunshine Week that an "absurdly high amount of government information is being classified."

Certainly volume of requests can inundate some departments. But too often the public gets the feeling that slowing up records release has more to do with inconvenience, lethargy or the potential for agency embarrassment.

Many of the changes came following the Sept. 11 attacks. But we agree with the National Security Archive audit that many document protection designations are vague and open-ended and pose threats to citizen oversight of government. The "time is ripe" for governmentwide reform -- with public input -- of information safeguarding.

State opportunity missed

State addendum: The recently concluded state legislative session missed an opportunity to further open government to the light of day. Lawmakers left exempt from state open records laws dozens of state entities under the office of the governor. The governor, who opposed any change, has leaned toward disclosure of administration records. But what about successive administrations? As noted by the Public Affairs Research Council, "transparency in government should not rest on the vagaries of politics." With no statutory clarification, individual citizens may be forced to bear the costs of litigation to unlock public records.

Akron Beacon Journal

<http://www.ohio.com/mld/beaconjournal/14999667.htm>

Government records laws benefit us all

"The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them ... To cover with the veil of secrecy the common routine of business is an abomination in the eyes of every intelligent man."

--Patrick Henry

Mizell Stewart III, Managing Editor

Government in the sunshine.

That is the notion that our government should operate in the open -- and that a representative democracy depends on citizens who have access to the chambers where decisions are made and the information those decisions are based on.

Journalists spend an awful lot of time defending the First Amendment guarantee of freedom of the press, and rightly so. But the right of citizens to petition the government for redress of grievances is just as important.

Think about that right this way: In the absence of open records and open meetings, you would likely have no idea what to petition the government for.

The topic of open government comes to mind this week because of a confluence of events -- the 40th anniversary of the federal Freedom of Information Act and the tumultuous leadership transition at the Summit County Children Services Board.

Then-President Lyndon Johnson signed the Freedom of Information Act (FOIA) into law in 1966. Since then, the act has been used by citizens, reporters, and, increasingly, private businesses to expose fraud, identify waste and provide ready access to public information.

The federal act is similar to open records laws in many states, including Ohio, requiring government agencies to reveal information on request.

But government is doing a great job of enacting laws and issuing regulations telling the rest of us what to do -- and a lousy job of following its own rules when it comes to sharing information with the public.

One example that is very close to home is the recent ouster of Connie Humble, the former executive director of the Summit County Children Services Board. Amid conflicting explanations from board members as to the reason for her dismissal, the Beacon Journal made a public records request for documents backing up that decision.

Two weeks after the initial request, we have yet to see those particular records. That begs the question: Does the documentation exist?

We'll give them the benefit of the doubt. But we have a right to the information, just as you would if you walked up to the CSB office and asked for it.

Sadly, the foot-dragging by CSB is not unique.

Two years ago, the Ohio Coalition for Open Government, a project of the Ohio Newspapers Foundation, conducted a statewide survey that found local governments provided public records for inspection on the day they were requested only 50 percent of the time.

The audit focused on simple, everyday requests: auto crash reports, payroll records and cellular telephone bills, just to name three. But half of the local agencies surveyed just couldn't -- or wouldn't -- comply.

Much of the news you read each day would be impossible to gather if it weren't for laws providing for and protecting public access to government information.

From the late Charles Plinton's travails at the University of Akron to the question of nepotism in Summit County government, access to public information is a crucial element of the newspaper's ability to fulfill its watchdog role in the community. But this information is not useful only for journalists.

Need a copy of a police report after a fender-bender? Want to research the sale prices of homes in your neighborhood? How about getting a copy of a will or marriage license? Access to all these useful documents is protected under the law.

In the meantime, we'll do our part to reinforce the importance of open government by letting you know when public records are being used in news stories. When information has been requested but not delivered in a timely fashion, we'll say so, too.

All of us have a right to see the public's business conducted in the open. Our liberties will not be secure unless we protect our right to know.

The Nation

<http://www.thenation.com/blogs/thebeat?bid=1&pid=98274>

Democracy Demands Freedom of Information

Forty years ago this week, on July 4, 1966, President Lyndon Johnson signed the Freedom of Information Act.

The choice of July 4 for the signing ceremony was no coincidence.

The signing of the Freedom of Information Act represented the realization of the promise of self governance that may have been born on July 4, 1776, but that was never fully realized until 190 years later.

Why is the Freedom of Information Act such a big deal?

Because, as James Madison, the father of the Constitution, explained, "'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."

Until the enactment of the Freedom of Information Act, Americans were denied access to information that should rightfully have been available to them, and without which they could not be their own governors. As John Moss, the crusading California congressman who secured its passage, frequently noted, the Freedom of Information Act was the first law in the long history of the Republic that gave Americans the right to access the records of federal agencies that are funded with their tax dollars and that are, supposedly, at their service.

That is a right that, Moss argued, was every bit as essential to realizing the full potential of America democracy as the protections contained in the Bill of Rights. And, of course, he was correct. What good is freedom of speech if that speech is not informed by knowledge of what the government is doing in our name but without our informed consent? What good is freedom of the press if reporters are unable to find out what government agencies are up to?

The American people well recognize the value of the Freedom of Information Act. Millions of citizens have made FOIA requests over the past four decades.

Unfortunately, the hyper-sensitive and hyper-secretive Bush administration is now at war with the Freedom of Information Act -- just as the New York Times-bashing president and his allies are battling Freedom of the Press.

In the first year of his presidency, Bush's then attorney general, John Ashcroft, dispatched a memo to federal agencies that told their administrators to use delaying tactics to thwart the intent of the Freedom of Information Act (FOIA). Ashcroft's order directed federal agencies to stall the release of requested information until the completion of a painstakingly slow "full and deliberate consideration" of the implications of releasing any particular document. The response by federal agencies to FOIA requests slowed to a crawl, creating an outcry that finally led Bush to issue an order last year that appeared to endorse the values contained in the Freedom of Information Act. In fact, that was not the case.

While Bush's language seemed to support openness – "Agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing" – his order was actually a vague statement that was issued not to get agencies jumping on FOIA requests but to head off Congressional action on the bipartisan Open Government Act.

Written to strengthen the Freedom of Information Act, the Open Government Act seeks to end stonewalling by establishing a deadline – 20 days after the filing of an FOIA request -- by which agencies must respond.

It's a timely and necessary reform.

Yet, at this point, both the House and Senate versions of the Open Government Act are languishing in the Judiciary Committees of the respective chambers.

If Americans want on this 4th of July Holiday to honor the democratic values that are this country's greatest strength, perhaps of the best way to do so is by making a resolution to contact our representatives in the House and Senate and tell them to support the Open Government Act. This enactment of this simple reform will renew the promise not just of the Freedom of Information Act but of the Declaration of Independence and the American experiment.

Northwest Ohio News Herald

http://www.zwire.com/site/printerFriendly.cfm?brd=1698&dept_id=21846&newsid=16899168

Freedom of Information Act turns 40

Anyone who has ever sought public records from government may have found it an exasperating experience.

Yet, the federal government's Freedom of Information Act - which turned 40 years old on the Fourth of July - has sustained itself as one of the most important tools at the disposal of citizens and the media to scrutinize government actions.

How is your money being spent?

What is the motivation for a certain decision that was made? Does it benefit all or just a few?

The vigorous fight to defend the public's right to access of government records has been under increasing attack.

The most steadfast supporters of the Freedom of Information Act believe the heart of the act is in jeopardy because of the Bush administration's propensity for secrecy in the war on terrorism.

So Americans must renew their zeal for protecting this vital instrument that guarantees our right to know what government officials do - all of the time.

The most vociferous complaints have been those criticizing the administration's inability to strike a balance between preserving civil rights and national security.

Weeks after the Sept. 11 attacks, the U.S. House and Senate approved the Patriot Act. Federal lawmakers have begrudgingly extended it, but not without a rebuke of the Bush administration.

At issue was the little-known provision that allowed the federal government to snoop into library transactions and bookstore purchases.

Even U.S. Rep. Steven C. LaTourette, R-Concord Township and former Lake County prosecutor, believes the administration overreached with this element of the law.

That set the stage for sharper debates over civil rights.

Americans learned the National Security Agency was eavesdropping on telephone calls inside and outside of the country without proper court orders.

The New York Times recently reported the details of the federal government's use of an international banking consortium to track financial transactions of terrorists.

Did the newspaper commit a treasonous act by doing so?

It's raised crucial issues about government.

Some Americans now question what will happen to civil rights during a time of peace?

It's hard to imagine the Patriot Act expiring without a fight from the administration in power at the time - whether it's Republican or Democrat.

Americans pride themselves on having the freedom to question and petition the government and gain access to specific records in order to obtain answers.

But amazingly, it took 190 years - until 1966 - for federal lawmakers to realize the shortcomings of an American citizen's public access to government.

Let's make sure we don't lose it.

The Madison Capitol Times

<http://www.madison.com/tct/opinion/column/index.php?ntid=89886&ntpid=0>

Our freedom thrives on information

By John Nichols

Forty years ago today, President Lyndon Johnson signed the Freedom of Information Act.

The choice of the Fourth of July for the signing ceremony was no coincidence.

The signing of the Freedom of Information Act represented the realization of the promise of self-governance that may have been born on July 4, 1776, but that was never fully realized until 190 years later.

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Because, as James Madison, the father of the Constitution, explained, "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."

Until the enactment of the Freedom of Information Act, Americans were denied access to information that should rightfully have been available to them, and without which they could not be their own governors. As John Moss, the crusading California congressman who secured its passage, frequently noted, the Freedom of Information Act was the first law in the long history of the republic that gave Americans the right to access the records of federal agencies that are funded with their tax dollars and that are, supposedly, at their service.

That is a right that, Moss argued, was every bit as essential to realizing the full potential of American democracy as the protections contained in the Bill of Rights. And, of course, he was correct. What good is freedom of speech if that speech is not informed by knowledge of what the government is doing in our name but without our informed consent? What good is freedom of the press if reporters are unable to find out what government agencies are up to?

The American people will recognize the value of the Freedom of Information Act. Millions of citizens have made FOIA requests over the past four decades.

Unfortunately, the hypersensitive and hypersecretive Bush administration is now at war with the Freedom of Information Act. In the first year of his presidency, Bush's attorney general, John Ashcroft, dispatched a memo to federal agencies that told their administrators to use delaying tactics to thwart the intent of the Freedom of Information Act. Ashcroft's order directed federal agencies to stall the release of requested information until the completion of a painstakingly slow "full and deliberate consideration" of the implications of releasing any particular document.

The response by federal agencies to FOIA requests slowed to a crawl, creating an outcry that finally led Bush to issue an order last year that appeared to endorse the values contained in the Freedom of Information Act. In fact, that was not the case.

While Bush's language seemed to support openness "Agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing" his order was actually a vague statement that was issued not to get agencies jumping on FOIA requests but to head off congressional action on the bipartisan Open Government Act.

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It's a timely and necessary reform.

Yet, at this point, both the House and Senate versions of the Open Government Act are languishing in the Judiciary Committees of the respective chambers.

If Americans want on this Fourth of July to honor the democratic values that are this country's greatest strength, perhaps the best way to do so is by making a resolution to contact our representatives in the House and Senate and tell them to support the Open Government Act. The enactment of this simple reform would renew the promise not just of the Freedom of Information Act but of the Declaration of Independence and the American experiment.

*John Nichols is associate editor of The Capital Times. E-mail: jnichols@madison.com
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The Des Moines Register

<http://desmoinesregister.com/apps/pbcs.dll/article?AID=/20060704/OPINION03/607040349/1035/OPINION>

Make government more open to the people

While we're celebrating important national anniversaries, here's another one: Forty years ago today President Lyndon Johnson signed the federal Freedom of Information Act into law. The goal of the FOI Act was to open records of the federal government to the American people. Unfortunately, that goal has not always been achieved. The reality is that the tendency of government is to be slow to respond to information requests but quick to stamp "Top Secret" on documents.

Before the 1966 legislation, the legal presumption was that government agencies had unlimited discretion to withhold records from the public. A citizen had the burden of proving he or she needed the information. Under the FOI Act, the presumption is that government records are open to the public, and government officials have to make the case otherwise.

The law has a fair number of exemptions, of course, which give government agencies plenty of excuses to deny access to government documents — such as personnel

information and private business information. What's more, federal officials have the option of classifying information as a national secret, which puts it off limits to snoopy citizens.

Equally troubling and frustrating for government-information seekers, however, is the slowness of government in responding to FOI requests. The problem is that while there has been a steady increase in FOI requests by the public - to more than 4 million a year in the most recent survey - federal resources devoted to responding to those requests have remained flat. As a result, according to a report compiled for the openness advocacy group OpenTheGovernment.org, only 16 percent of 90 federal agencies surveyed were able to keep up with the demand. Some requests take years to complete.

At the same time, the feds classify more information as secret than ever. According to OpenTheGovernment, the process of declassifying secrets peaked in 1997 and has dropped precipitously since; meanwhile, the classification of documents as secret increased by more than 81 percent between 2000 and 2004.

There is reason to be optimistic that responses may eventually be improved. President Bush issued an executive order in December 2005 mandating improved response to FOI requests, and legislation was introduced in the Senate and House in early 2005 to streamline procedures. Nothing will reverse the obsession with secrecy, however, until Washington bureaucrats and politicians alike see the wisdom in making the government open to the people. Today is a good day to make that pledge.

The Bergen Record

<http://www.bergen.com/page.php?qstr=eXJpcnk3ZjczN2Y3dnFIZUVFeXk0MDAmZmdjZWw3Zjd2cWVIRUV5eTY5NjA3NTUmeXJpcnk3ZjcxN2Y3dnFIZUVFeXkxNA==>

Duct tape isn't good for transparency

A fundamental part of a democratic government is transparency. The public has a right to know what decisions are being made. However, it has become increasingly difficult to see through the windows of government when the White House has a penchant for duct tape. To get an idea of the Bush administration's view of the Freedom of Information Act, one has only to take a look at a memo sent to federal department heads by then-Attorney General John Ashcroft in October 2001, roughly one month after the Sept. 11 attacks.

The memo reads, in part: "Any discretionary decision by your agency to disclose information protected under FOIA should be made only after full and deliberate consideration of the institutional, commercial and personal privacy interests that could be implicated by disclosure of the information."

Less than a month later, President Bush took the unusual step of blocking another law passed by Congress, the Presidential Records Act, a 1978 measure meant to ensure historians' access to presidential records, roughly 12 years after their terms have ended. In his executive order, "Further Implementation of the Presidential Records Act," Bush effectively blocked the records

that would have come available concerning the Reagan presidency, in which the president's father, George H.W. Bush, served as vice president.

Last week's 40th anniversary of FOIA coincides, sadly, with one of the darkest times in this nation's history, especially when it comes to transparency in governing. Not only has the Bush administration become one of the most secretive White Houses, it has done so while simultaneously maintaining surveillance without warrant on millions of ordinary Americans.

It is true and well documented that President Johnson was reluctant to sign the original FOIA legislation in 1966. He was concerned about how any release of public information might affect his ability to govern in difficult times: the Civil Rights Movement was growing tense and the war in Vietnam was escalating. Even so, he signed it, appreciating, in the end, the importance of the "public's right to know."

"This information is vital to democracy," said Montclair lawyer Richard Gutman, who trains others in using FOIA. "Citizens need to know what the federal government is doing."

New Jersey Public Interest Research Group (NJPIRG) has made great use of FOIA. Doug O'Malley, a NJPIRG field director, said the act has been "critical for us in tracking down who violated clean water permits." It is indeed haunting to imagine what polluters might be getting away with otherwise.

In the last 40 years, FOIA has been utilized by other advocacy groups, non-profits, media, historians and ordinary citizens. They have used the act to examine public records, documents and a whole range of materials, everything from toxin levels to board of education minutes, from FBI records to public contracts.

Today it is troublesome, however, to discover that the government, especially on the federal level, is increasingly using the Sept. 11 attacks, and the subsequent "war on terror," to carry out major policy decisions in virtual secrecy and then stonewall the public, the media or anyone who seeks information about it.

More troubling is that too many Americans bought into the Bush administration mantra: Just trust us.

The founders of this nation knew one another well enough to know such an idea was untenable. That's why they established a separation of governmental powers into three distinct and autonomous branches, none of them meant to hold sway over another. The Freedom of Information Act is further manifestation of that separation, the idea that those who live in a democracy have a right, indeed an obligation, to know what their leaders are doing.