

# AUGMENTING STATE SECRETS: OBAMA'S INFORMATION WAR

By Aiden Warren and Alexander Dirksen

**Abstract**—This article will argue that while the Obama administration promised considerable change in the areas of transparency, intelligence gathering, and national security, it has differed very little from the Bush administration. In fact, it will contend that in many instances, the administration has actually augmented and increased its activities in its “secret war” on information and those actors deemed to be adversaries and threats to “states secrets.” Instead of a dramatic break from the policies of his predecessor, Obama’s approach to the balance of national security objectives and privacy concerns, has deeply contravened the administration’s initial pronouncements of a new “openness” and “transparency.” It will be shown that these actions have also extended to the global stage, particularly those that have impacted the U.S.-Russian “re-set” and bilateral relations with Germany. Indeed, from the treatment of whistleblowers to the assertive expansion of National Security Agency (NSA) surveillance programs, it has been an amplified “business as usual” approach that could significantly mar the Obama administration’s legacy.

## Introduction

IN THE LEAD-UP TO THE 2008 PRESIDENTIAL ELECTION, candidate Barack Obama signified that, should he be elected, “reversing President Bush’s policy of secrecy” would be a key tenet of his presidency.<sup>1</sup> Indeed, under the leadership of his predecessor, the United States had witnessed the first attack upon its soil since Pearl Harbor; an attack which spurred a global “War on Terror” that consumed both the public consciousness and the remainder of the president’s first and second terms in office. The Bush drive would come to challenge long-standing pillars of international law, including the legal

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justification for military engagement and the nature in which prisoners of war could be captured, questioned, and tried. Additionally, Bush's tenure would mark the beginning of a rapid escalation in funding for both military operations and intelligence-gathering capabilities.<sup>2</sup> While the capacity of military and intelligence agencies increased, the range of information available upon their actions was concurrently reduced, as the administration worked actively to classify materials and deny information requests.<sup>3</sup> During the concluding period of the Bush administration, many had hoped the era of covert practices and programs – which had undermined the nation's moral foundation in the name of counterterrorism – would end.

On President Obama's first day in office, he called for a "new standard of openness" in the federal government and proposed three prominent acts in the name of increased transparency.<sup>4</sup> In the "Transparency and Open Government" memorandum for the Heads of Executive Departments and Agencies, Obama declared that his Administration was committed to creating an unprecedented level of openness in government. Specifically, he pointed to improving the public trust via the establishment of a system that encompassed transparency, public participation, and collaboration. Obama concluded that "openness will strengthen our democracy and promote efficiency and effectiveness in Government."<sup>5</sup> The Presidential Memorandum on the Freedom of Information Act (FOIA) called upon all agencies to "adopt a presumption in favor of disclosure" in regards to its requests, while the Presidential Memorandum on Transparency and Open Government declared that the government would "take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use."<sup>6</sup> The newly inaugurated president also issued an Executive Order addressing the release of Presidential records by the National Archives and Records Administration (NARA).<sup>7</sup> Declaring that "transparency and rule of law will be the touchstone of this presidency," the acts garnered the praise of the heads of both the National Security Archives and the Citizens for Responsibility and Ethics in Washington.<sup>8</sup>

Yet while such promises have been – and continue to be – made by the administration, the reality differs markedly from the rhetoric within the Oval Office. Instead of a dramatic break from the policies of his predecessor, there has instead been an apparent continuation of and, in some cases, an augmentation of, these efforts. Access to information believed to be crucial to public discussion and debate remains difficult to obtain, while the administration is willing to test diplomatic relations in attempts to prosecute whistleblowers who seek to release information they believe has been unjustly withheld. Moreover, while the government actively works to safeguard "state secrets," it simultaneously accumulates more of them than ever before, collating a significant amount of data through classified programs that are exempt from the traditional avenues of public

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access. By tracing the administration's actions regarding these issues, we illustrate that while the Obama administration has promised considerable changes in the realm of transparency, intelligence gathering, and national security, it has differed little from the Bush administration in its substantive approach. In Obama's pursuit of a "secret war," he has in fact overseen both the continuation and emboldening of efforts, so as to distance aspects of the administration from public oversight that could present considerable implications for the state of the nation's democracy.

### **Closing the Window of Transparency**

With an array of new federal programs and further policy directives—all with the stated aim of improving public access to public or declassified federal government data—the Obama administration, early in the first term, appeared to be transforming rhetoric into action. The implementation of Data.gov, a new federal website to "increase public access to high value, machine readable data-sets from the federal government," was launched in March 2009, and its presence was bolstered that December with the Open Government Directive, which required all federal agencies to post three "high value data sets" to the platform for public access within forty-five days.<sup>9</sup> Additionally, Executive Order 13526 of December 2009 established a National Declassification Center to help "streamline the declassification process," while Executive Order 13556 of November 2010, stipulated "standardized processes for managing information that requires protection but is not classified."<sup>10</sup> Further developments took place in the form of a March 2009 memorandum in which Attorney General Eric Holder rescinded his predecessor's 2001 stance on FOIA requests, declaring that "an agency should not withhold information simply because it may do so legally."<sup>11</sup> Most recently, the "Open Data Policy" Memorandum, issued by the executive office in May 2013, sought to "institutionalize the principles of effective information management at each stage of the information's life cycle to promote interoperability and openness."<sup>12</sup> In essence, the message of increased transparency in government has been emphasized by the president himself who encouraged the development of "specific commitments to promote transparency" during his 2010 address to the United Nations General Assembly.<sup>13</sup>

During the first year of the Obama administration, 319 FOIA<sup>14</sup> lawsuits were filed (in contrast to 278 FOIA during the last year of the Bush administration), suggesting that any notions of change would take longer than anticipated. Still, many people remained optimistic.<sup>15</sup> A 2009 audit conducted by the National Security Archive of George Washington University revealed, however, that "only four agencies show both increases in releases and decreases in denials under the FOIA."<sup>16</sup> A follow-up report released in 2012 stated that "62 out of 99 government agencies have not updated their FOIA regulations" since Holder's 2009 memorandum.<sup>17</sup> The findings of the report were included within a letter drafted to Melanie Pustay of the Office of Information Policy by Darrell Issa and Elijah Cummings of the Committee on Oversight and Government Reform, in which they concluded that, "it is unknown whether agencies are complying with the Attorney General's presumption of openness."<sup>18</sup> Moreover, in a March 2013 study by the Center for Effective Government, despite concluding that "agencies have

generally improved their processing rates,” it noted that “between 2008 and 2012, the percentage of FOIA requests in which some information was withheld grew to 54 percent of all requests processed.”<sup>19</sup> Notwithstanding their initial aims, the extensive list of memorandums, policies, and frameworks, has created what many have described as a gatekeeper-style transparency – where the window into the government is opened to the public eye in a very selective fashion, and can be closed at will.

### The War on Whistleblowers

Those attempting to release critical classified information outside of the aforementioned bureaucratic constraints have faced stern responses from the Obama administration, mirroring or exceeding the harshness of those from the Bush administration. Despite describing the acts of whistleblowers as those of “courage and patriotism” that “should be encouraged rather than stifled,” Obama’s pursuit of whistleblowers has taken place on a scale never before seen in the Oval Office.<sup>20</sup> As noted by journalist Amy Goodman in 2012, “evoking the Espionage Act of 1917, the administration has pressed criminal charges against no fewer than six government employees, more than all previous presidential administrations combined.”<sup>21</sup> Whistleblower Peter van Buren, who revealed wasteful spending during the Iraq War, described the administration’s approach in the following terms:

The Obama administration, which arrived in Washington promoting “sunshine” in government, turned out to be committed to silence and the censoring of less-than-positive news about its workings. While it has pursued no prosecutions against CIA torturers, senior leaders responsible for Abu Ghraib or other war crimes, or anyone connected with the illegal surveillance of American citizens, it has gone after whistleblowers and leakers with ever increasing fierceness, both in court and inside the halls of various government agencies.<sup>22</sup>

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Of course, the core test pertaining to Obama's commitment to whistleblower protection came early in his first presidential term with the case of Thomas Drake, whose proceedings were launched under the Bush administration.<sup>23</sup> In 2010, ten charges were brought against Drake by the Department of Defense, with five citing the Espionage Act.<sup>24</sup> Yet when faced with the prospect of having to reveal information upon a covert intelligence program in order for the case against Drake to proceed (coupled with the revelation that documents leaked by Drake that the government had claimed to be classified were in fact unclassified materials), the government sought a plea bargain with Drake in June 2011 after five years of investigation.<sup>25</sup> Nevertheless, as noted by Yale law professor Jack Balkin, the Obama administration's willingness to continue to pursue a whistleblower case launched by his predecessor suggests that the White House has "systematically adopted policies consistent with the second term of the Bush Administration."<sup>26</sup> The case brought against former CIA officer Jeffrey Alexander Sterling gave credence to this claim, with Sterling being indicted by the U.S. Justice Department in January 2011 for his disclosure of information about a clandestine U.S. government program to *New York Times* columnist Jim Risen.<sup>27</sup> Risen, who was issued a subpoena by the Bush administration to testify upon his source, was issued a second subpoena authorized by Attorney General Eric Holder on May 24, 2011.<sup>28</sup> It was later suggested in a court filing that "federal law enforcement officials . . . obtained extensive records about his phone calls, finances and travel history," during their investigation of Sterling.<sup>29</sup> Recently, in a July 25, 2013 letter to Holder, Risen's legal team argued that it would be "utterly inconsistent with the guidelines" for federal prosecutors to maintain their drive in forcing Risen to testify on his sources for a 2006 book that discussed a CIA effort to trip up Iran's nuclear program more than a decade ago.

### The International Impact

While the aforementioned examples clearly illustrate the Obama penchant to investigate and prosecute in his information war, the controversial case of Edward Snowden – and that of Chelsea Manning before him – best exemplifies the discrepancy between the Obama administration's claims regarding whistleblowers' protections and the actions undertaken in the name of national security. Despite the differences between the two cases in the type of information released and the manner in which the information has been distributed, the White House portrayed both acts negatively. In both instances, Obama has made public statements against the whistleblowers, noting the illegality of their actions.<sup>30</sup> In speaking on the Edward Snowden case, President Obama offered a pointed rebuttal of his previous position on whistleblowers, saying he doesn't "welcome leaks, because there's a reason why these programs are classified."<sup>31</sup> Of course, the fervent pursuit of whistleblowers has come at a political cost to the Obama administration, as evidenced by the cancellation of a summit with Russia's Vladimir Putin in response to his granting Snowden asylum, thereby eliminating an opportunity for the two leaders to address political tension over the Syrian conflict.<sup>32</sup>

The international context of Obama's information drive became even more prominent with the Merkel spy revelations. In late October 2013, it was revealed that the NSA had not only monitored U.S. citizens' phone records, but also those of foreign leaders,

including German Chancellor Angela Merkel.<sup>33</sup> *Der Spiegel* reported that Merkel's mobile phone had been on an NSA target list since 2002, under the name "GE Chancellor Merkel." It was also apparent that the monitoring operation was still in place as recently as Obama's visit to Berlin in June 2013. Despite White House claims about the extent to which Obama knew of the operation, Merkel's spokesperson, Steffen Seibert, described the events as "completely unacceptable" and a "grave breach of trust."<sup>34</sup> According to Mark Mazzetti, administration officials said the NSA, in its push to build a global data-gathering network that can reach into any country, "has rarely weighed the long-term political costs of some of its operations."<sup>35</sup> Indeed, America's image has been sinking in Germany and Europe ever since the revelations began, to the extent that many EU negotiators are "losing their zeal to discuss a free-trade agreement with America without clarifying their overall relationship."<sup>36</sup> Moreover, the damage to core American relationships deriving from Obama's "war on information" continues to mount. In September 2013, President Dilma Rousseff of Brazil postponed a state visit to the United States after Brazilian news media reports – fed by material from Mr. Greenwald – that the NSA had intercepted messages from Ms. Rousseff, her aides, and the Petrobras state oil company. Additionally, other Snowden documents indicated that United States intelligence services gained access to former Mexican President Felipe Calderón's communication.<sup>37</sup>

### **Accumulation of New Classified Information: An Orwellian Oval Office**

Preceding the sensational cases discussed in the above, of course, was the expansion and sophistication of federal intelligence oversight capabilities that began in the immediate wake of the 9/11 attacks. The USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) of 2001 "cast aside longstanding constitutional limits on government investigators," altering elements of the oversight capabilities instilled within the Foreign Intelligence Surveillance Act (FISA) of 1978.<sup>38</sup> Of particular note were the sections of the legislation which addressed wiretapping, the collection of materials relevant to an investigation, and the "lone wolf" provision.<sup>39</sup> Despite some opposition by senators on both sides of the aisle, all three provisions were re-invoked by Obama before they were set to expire on May 27, 2011.<sup>40</sup> In a similar fashion, elements of the Protect America Act of 2007 were incorporated into the FISA Amendments Act of 2008 when it was set for renewal, with this Bush-era legislation reauthorized for an additional five years at the end of 2012.<sup>41</sup> A proposed amendment by Senator Jeff Merkley to increase transparency in how the bill's provisions were interpreted was comfortably defeated, 54–37, and the Senate renewed the legislation.<sup>42</sup>

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foundation for Bush's intelligence operations. Yet while congressional support for intelligence programs in the name of national security remained relatively high, public criticism mounted. Testimony by Mark Klein (a former AT&T technician) and Scott Marcus (a former senior advisor for Internet technology at the FCC) regarding the secretive rerouting of Internet traffic by the NSA formed the basis of *Jewel v. NSA*, a case filed by the Electronic Frontier Foundation in 2008.<sup>43</sup> The Obama administration sought to have the suit dismissed by invoking the "state secrets privilege."<sup>44</sup> The court rejected these claims in July 2013, allowing the case to proceed "under the supervision of a public federal court."<sup>45</sup> While the establishment of a new NSA data facility in Bluffdale, Utah renewed debate about Obama's commitment to breaking away from Bush era surveillance policies, the type of surveillance detailed by Klein and Marcus and filed under the *Jewel v. NSA* case would gain new meaning and relevance with the leaks of June 2013.<sup>46</sup>

These leaks, surrounding a classified intelligence program, revealed the full extent to which the Obama administration has pursued all angles of technology and science in its secret wars on both an international and domestic level. The presence of the PRISM program was first revealed in a series of reports from *The Guardian* and *The Washington Post*, based upon a forty-one-slide PowerPoint presentation leaked by Edward Snowden.<sup>47</sup> Representing "one of the most significant breaches in the strict secrecy of the NSA since its creation in 1952," the files sparked controversy across the United States and abroad due to the far-reaching implications of the program.<sup>48</sup> Initial reporting by *The Guardian* suggested that the NSA was able to access data "directly from the servers" relating to "customers of participating firms who live outside the US, or those Americans whose communications include people outside the US."<sup>49</sup> The leaked PowerPoint slides noted that the NSA was able to gain access to "email, video and voice chat, videos, photos, voice-over-IP chats, file transfers social networking details and more."<sup>50</sup> Participating companies noted on the slides included Microsoft, Yahoo, Google, Facebook, YouTube, Skype, and Apple.<sup>51</sup> Following the initial reporting upon the PRISM program, additional slides from the leaked PowerPoint presentation were also published by *The Guardian*, detailing, among others, the presence of the classified XKeyscore and BOUNDLESS INFORMANT programs.<sup>52</sup>

Upon release of the *Guardian* and *Washington Post* reports detailing both the phone record collection and PRISM, the administration was quick to defend their use. On June 7, 2013 President Obama addressed reporters, noting that "we have established a process and a procedure that the American people should feel comfortable about" in their oversight, and that the two programs "were originally authorized by Congress" and "have been repeatedly authorized by Congress."<sup>53</sup> When asked about the PRISM program, the administration found an unlikely ally in former president George W. Bush, who noted that "I put that program in place to protect the country," as "one of the certainties [of PRISM] was that civil liberties were guaranteed."<sup>54</sup> While promises to pursue "appropriate reforms" to the surveillance programs were made in early August by the administration (including reform of Section 215 of the PATRIOT Act and the appointment of a lawyer "to argue against the government at the Foreign Intelligence Surveillance Court"), efforts by Congressman Justin Amish which aligned with these

promises in July were downplayed and dismissed by White House spokesperson Jay Carney, calling into question the administration's commitment to reform.<sup>55</sup>

Steadfast support for the NSA programs by the Obama administration has continued despite a growing body of evidence suggesting frequent and pervasive abuse of the scope of the NSA's powers. In June, a draft report by the NSA Inspector General obtained by *The Guardian* revealed that "the Obama administration for more than two years permitted the National Security Agency to continue collecting vast amounts of records detailing the email and internet usage of Americans."<sup>56</sup> Following a lawsuit filed by the Electronic Frontier Foundation, the Obama administration, in 2011, was forced to release an eighty-six-page opinion of the secret Foreign Intelligence Surveillance Court (FISC) on August 21, 2013, which found that "the surveillance conducted by the NSA under the FISA Amendments Act was unconstitutional and violated 'the spirit of' federal law."<sup>57</sup> According to the declassified documents, Judge Bates noted that the NSA "frequently and systematically violated" its own oversight requirements, collecting up to 56,000 emails of Americans "with no known connection to terrorism."<sup>58</sup> In the ruling, Bates declared that "contrary to the government's repeated assurances, the NSA had been routinely running queries of metadata using querying terms that did not meet the required standard for querying."<sup>59</sup>

Despite Director of National Intelligence James Clapper's admission that "the court found the NSA in breach of the Fourth Amendment," the Obama administration fought against a suit that requested the opinion under Freedom of Information provisions.<sup>60</sup> *The Washington Post* highlighted the administration's reluctance to release information about the nature of the classified programs, noting that "the Obama administration has provided almost no public information about the NSA's compliance record."<sup>61</sup> Yet while many assume the NSA changed its practices following the 2011 FISA court findings, Snowden's leaks to *The Guardian* suggest the certifications required to conduct intelligence operations in cooperation with American technology firms were merely modified to allow the program's continuation, with the costs of these changes covered by Special Source Operation federal funds.<sup>62</sup> Reporting by *The Guardian* also revealed that by December 2012, a new program ("One-End Foreign (IEF) solution," codenamed EvilOlive) had been established to conduct precisely the same type of surveillance Obama administration officials claimed had ceased by in 2011.<sup>63</sup>

Among Snowden's leaks, a May 2012 internal audit revealed 2,776 incidents of "unauthorized collection, storage, access to or distribution of legally protected communications," undermining Obama's attempts to instill confidence in the privacy safeguards of the national intelligence community.<sup>64</sup> Described as "extremely disturbing" revelations by House Minority Leader Nancy Pelosi, the leak demonstrated the degree to which the public – and, in some cases, policy makers in Washington – had remained in the dark regarding the full extent of the NSA's surveillance activities.<sup>65</sup> NSA Director of Compliance John DeLong was quick to respond, claiming the number of deliberate violations was tiny and appropriate oversight mechanisms are in place. Yet Pew polls from July showed "a majority of Americans – 56% – say that federal courts fail to provide adequate limits on the telephone and internet data the government is collecting as part of its anti-terrorism efforts."<sup>66</sup> In the same week as the leak of the



internal audit, a report by *The Wall Street Journal* suggested that the NSA has “the capacity to reach” 75 percent of American internet traffic. The NSA later denied the claim;<sup>67</sup> but by early September, however, President Obama had begun to acknowledge the considerable reach of its intelligence programs. While in Sweden, Obama explained at a press conference, “the United States has enormous capabilities when it comes to intelligence – in the same way that our military capabilities are significantly greater than many other countries, the same is true for our intelligence capabilities.”<sup>68</sup> In justifying the need for such potential, Obama was quick to invoke Bush-era sentiments of the changed post-9/11 global landscape, suggesting that despite broader public discourse on the issues of transparency, accountability, and openness, much remains unchanged from the post-September 11 moment.

### Conclusion: An Unplanned Legacy

In response to the escalating debates and criticism surrounding Obama’s information drive, the President said that he would endorse more oversight, transparency, and “constraints” on the use of Section 215 of the Patriot Act, which allows for the bulk collection and storage of domestic telephone records. Additionally, he stressed that he wanted to increase public confidence in the Foreign Intelligence Surveillance Court by including a “checker” to FISC proceedings who would posit privacy and civil liberties concerns against the government lawyers – who have attained surveillance powers via the court without being challenged before the judges. The President said that the panel would “consider how we can maintain the trust of the people [and] how we can make sure that there absolutely is no abuse in terms of how these surveillance technologies are

used.” While this has been considered a positive by some commentators, the hard truth is that the new entity will be under the Office of the Director of National Intelligence, and will thus not be truly independent.<sup>69</sup> Moreover, the panel’s meetings are and will continue to be closed to the public, while its membership is comprised of officials “friendly” to the intelligence community, the president, or both. Glenn Greenwald, the lawyer-blogger who has published numerous leaked documents from the former NSA contractor Edward Snowden, has defined the panel as “a total farce,” while other civil liberty proponents question the legitimacy and any notion that it will engender change.<sup>70</sup>

Indeed, as the full extent of federal oversight capabilities continues to be revealed, the perception of the president as one to forge a new path for citizen rights and government transparency has forever been altered. Should Obama fail to adequately address mounting concerns about the reach of federal agencies, Obama’s legacy may be one not of delivering affordable healthcare or of bringing the Middle East wars to an end; rather, his

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legacy would be the entrenching of the intelligence services' powers and privileges at the expense of citizen privacy. Despite promising a dramatic shift in Washington's approach to the balance of national security objectives and privacy concerns, the Obama administration has diverged little from Bush administration policies, evoking the risk of the "unknown" to justify practices that infringe on citizens' freedom and liberty. From the treatment of whistleblowers to the expansion of NSA surveillance programs, the Obama administration has pursued "business as usual" regarding domestic surveillance. What implications does this have for the state of democracy in the United States? In some ways, this depends largely upon the nature of the Obama administration's response to the concerns outlined herein. If meaningful measures are taken to reign in the nation's vast intelligence apparatus to reinstate the necessary checks and balances that ensure transparency and accountability, the President may help create a more open federal administration. However, even if such reformist measures are taken, concerns remain. The favoring of national security priorities over citizen privacy and government transparency is a trend that binds the Bush and Obama administrations. The trend forces us to consider what position future presidents may take when confronted with the ever-present and delicate balance between these two objectives. ■

– *Dov Friedman served as Lead Editor for this article.*

## NOTES

<sup>1</sup> Barack Obama, *The Blueprint for Change: Barack Obama's Plan for America*, 55. Available from: <<http://www.miafscme.org/PDF%20Files/ObamaBlueprintForChange.pdf>>.

<sup>2</sup> The estimates for the cost of the wars in Iraq and Afghanistan range from 1.5–6 trillion dollars, while a 2010 estimate by the *Washington Post* suggests that "some 1,271 government organizations and 1,931 private companies [now] work on programs related to counterterrorism, homeland security and intelligence in about 10,000 locations across the United States." National Priorities Project, "Cost of War Project," <<http://nationalpriorities.org/cost-of/?redirect=cow>>. Ernesto Londono, "Iraq, Afghan wars will cost to \$4 trillion to \$6 trillion, Harvard study says," *The Washington Post*, March 28, 2013, <[http://articles.washingtonpost.com/2013-03-28/world/38097452\\_1\\_iraq-price-tag-first-gulf-war-veterans](http://articles.washingtonpost.com/2013-03-28/world/38097452_1_iraq-price-tag-first-gulf-war-veterans)>.

Dana Priest and William Arkin, "A Hidden World, Growing Beyond Control," *The Washington Post*, September 2010, <<http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>>.

<sup>3</sup> Scott Shane, "Increase in the Number of Documents Classified by the Government," *The New York Times*, July 3, 2005, <<http://www.nytimes.com/2005/07/03/politics/03secrecy.html?pagewanted=all&r=0>>.

<sup>4</sup> Barack Obama, "A New Standard of Openness," White House video, 9:41, January 21, 2009. Available from: <<http://www.whitehouse.gov/photos-and-video/video/a-new-standard-openness>>.

<sup>5</sup> Barack Obama, "Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies." Available from: <[http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment)>.

<sup>6</sup> The Presidential Memorandum on the Freedom of Information Act: <[http://www2.gwu.edu/~nsarchiv/news/20090121/2009\\_FOIA\\_memo.pdf](http://www2.gwu.edu/~nsarchiv/news/20090121/2009_FOIA_memo.pdf)>.

Presidential Memorandum on Transparency and Open Government: <[http://www2.gwu.edu/~nsarchiv/news/20090121/2009\\_transparency\\_memo.pdf](http://www2.gwu.edu/~nsarchiv/news/20090121/2009_transparency_memo.pdf)>. *The Presidential Memorandum on Transparency and Open Government established the Open Government Initiative, which sought to promote "transparency, openness and collaboration." This was followed by the "National Plan" for Open Government (issued on September 20, 2011), a supplementary policy which highlighted open government accomplishments to date and outlined future open government initiatives.*

The Open Government Initiative, <<http://www.whitehouse.gov/open/>>.

The Open Government Partnership: National Action Plan for the United States of America:

<[http://www.whitehouse.gov/sites/default/files/us\\_national\\_action\\_plan\\_final\\_2.pdf](http://www.whitehouse.gov/sites/default/files/us_national_action_plan_final_2.pdf)>.

<sup>7</sup> Executive Order 13489: <<http://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1712.pdf>>.

<sup>8</sup> Sheryl Stolberg, "On First Day, Obama Quickly Sets a New Tone," *The New York Times*, January 21, 2009, <<http://www.nytimes.com/2009/01/22/us/politics/22obama.html?pagewanted=all&r=0>>.

- Amanda Becker, "Obama's Transparency Efforts Achieve Mixed Results," *News, Media and the Law* 34(1) (2010), 12.
- <sup>9</sup> "About Data.gov," Data.gov, <<http://www.data.gov/about>>.
- Saul Hansell, "The Nation's New Chief Information Officer Speaks," *The New York Times*, March 5, 2009, <<http://bits.blogs.nytimes.com/2009/03/05/the-nations-new-chief-information-officer-speaks/>>.
- Open Government Directive: <[http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf)>.
- The ambitious Data.org project has come under criticism for its selective nature of releasing information. As noted by Amy Bennett of advocacy group Open the Government, what qualifies as a "high level data set" to be released on Data.gov remains largely undefined, leaving agencies the freedom to choose what information is released to the public.
- Amanda Becker, "Obama's Transparency Efforts Achieve Mixed Results," *News, Media and the Law* 34(1) (2010), 13.
- <sup>10</sup> Executive Order 13526 - Classified National Security Information: <<http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>>.
- The Open Government Partnership: National Action Plan for the United States of America: <[http://www.whitehouse.gov/sites/default/files/us\\_national\\_action\\_plan\\_final\\_2.pdf](http://www.whitehouse.gov/sites/default/files/us_national_action_plan_final_2.pdf)>.
- Executive Order 13556 - Controlled Unclassified Information: <<http://www.whitehouse.gov/the-press-office/2010/11/04/executive-order-controlled-unclassified-information>>.
- "Executive Orders for Open Government," U.S. General Services Administration, <<http://www.gsa.gov/portal/content/318105>>.
- <sup>11</sup> A copy of Holder's memo may be viewed here: <<http://www.justice.gov/ag/foia-memo-march2009.pdf>>.
- <sup>12</sup> Open Data Policy Memorandum: <<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf>>.
- <sup>13</sup> Barack Obama, "Remarks by the President to the United Nations General Assembly" (speech, New York, NY, September 23, 2010), The White House, <<http://www.whitehouse.gov/the-press-office/2010/09/23/remarks-president-united-nations-general-assembly>>.
- <sup>14</sup> The Freedom of Information Act declares that "any person has the right to request access to federal agency records or information except to the extent the records are protected from disclosure by any of nine exemptions contained in the law or by one of three special law enforcement record exclusions."
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