

A REPORT BY

OpenTheGovernment.org

Americans for Less Secrecy, More Democracy

secrecy
secrecy
report card
2007

INDICATORS OF SECRECY

IN THE FEDERAL GOVERNMENT

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ABOUT OPENTHEGOVERNMENT.ORG

OpenTheGovernment.org is an unprecedented coalition of consumer and good government groups, librarians, environmentalists, labor, journalists, and others united to push back governmental secrecy and promote openness. We are focused on making the federal government a more open place to make us safer, strengthen public trust in government, and support our democratic principles

To join the coalition, individuals are invited to read and sign the Statement of Values. Organizations are welcome to visit our site, read the Statement of Values, and contact us if interested in becoming a coalition partner. The statement of values is available at www.OpenTheGovernment.org.

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BY THE NUMBERS

CLASSIFIED DOCUMENTS

- *Classification activity still remains significantly higher than before 2001.*
In 2006, the number of original classification decisions decreased to 231,995, down from 258,633 in 2005. This is the second year in a row that the number of original classification decisions has dropped, but numbers remain significantly higher than before 2001.
- *\$185 Spent Creating & Securing Old Secrets for Every Tax Dollar Spent Declassifying*
For every one dollar the government spent declassifying documents in 2006, the government spent \$185 maintaining the secrets already on the books, a \$51 increase from last year. Although more pages were declassified this year, the total publicly reported amount spent on declassification decreased. The intelligence agencies, which account for a large segment of the declassification numbers, are excluded from the total reported figures.
- *18% of DOD FY 2007 Acquisition Budget Is Classified or "Black"*
"Black" programs accounted for 18 percent of the (FY) 2007 Department of Defense (DOD) acquisition funding of \$31.5 billion, requested in 2006. Classified acquisition funding has more than doubled in real terms since FY 1995.

NON-COMPETED FEDERAL CONTRACTS

- *More than 25% of all awards are not competed at all.*
The public has a right to know how the government is spending the public's money in order to ensure accountability and root out corruption. In 2006, 25.9 percent (\$107.5 billion) of federal contracts dollars were completely uncompleted; only one-third of contracts dollars are were subject to full and open competition. On average since 2000, more than one-quarter of all contract funding was not competed.

"STATE SECRETS" PRIVILEGE

- *Reported Invocations Continue to Rise*
The "state secrets" privilege allows the sitting U.S. president to nearly unilaterally withhold documents from the courts, Congress and the public. At the height of the Cold War, the administration used the privilege only 6 times between 1953 and 1976. Since 2001, it has been used a reported 39 times—an average of 6 times per year in 6.5 years that is more than double the average (2.46) in the previous 24 years.

FREEDOM OF INFORMATION ACT

- *FOIA Requests Continue to Rise; Backlogs Problems Persist*
The total number of FOIA requests received in 2006 is 21,412,736, an increase of 1,462,189 over last year. Agency backlogs are significant; the oldest FOIA request in the federal government has now been pending for more than 20 years.

WHISTLEBLOWERS

- *Whistleblowers Recover Billions for Taxpayers*
Over the last two decades, whistleblowers helped the federal government recover over \$18 billion according to the latest figures from the U.S. Department of Justice. In the fiscal year ending September 30, 2006, the United States obtained over \$3.1 billion in settlements and judgments.

PRIVATE ENTERPRISE

- *108 New Patents Kept Secret, 4,942 “Secrecy Orders” in Effect*
In 2006, the federal government closed the lid on 108 patents. Overall, that brings the total number of inventions kept under “secrecy orders” to 4,942.

NATIONAL SECURITY LETTERS

- *143,074 National Security Letter Requests Made 2003–2005*
A Justice Department Office of the Inspector General report on secret wiretap warrants indicated that the government made 143,074 National Security Letter requests in the period 2003–2005. The number for 2006 remains classified. These letters can be used to obtain information about individuals without the government applying for a court-reviewed warrant.

THE COURTS

- *2,176 Orders of the Secretive Foreign Intelligence Surveillance Court*
While the Foreign Intelligence Surveillance Court does not reveal much about its activities, the Department of Justice reported that the FISC approved 2,176 orders — rejecting one — in 2006. The DOJ does not identify the activities being investigated or provide basic information about how the orders are used.

PRESIDENTIAL SIGNING STATEMENTS

- *151 Signing Statements Challenging About 1149 Federal Laws in George W. Bush’s Presidency*
In six years, President Bush has issued at least 151 signing statements, challenging 1149 provisions of laws. In the 211 years of our Republic to 2000, fewer than 600 signing statements that took issue with the bills were issued.

ASSERTIONS OF EXECUTIVE PRIVILEGE

- *President Bush surpassed only by Nixon and Clinton among Presidents since Kennedy*
President G.W. Bush has asserted Executive Privilege 3 times in response to congressional requests, as of June 28, 2007. He is surpassed, so far, only by Nixon and Clinton among presidents back to Kennedy.

STATE LAWS

- *Limitations on Access Flourish in Statehouses*
Since 2001, states have continued to introduce and enact new laws that limit, rather than loosen, access to government information at the state and local level. In that period, some 339 bills were introduced in the states and 266 passed the respective legislatures. The largest number of bills introduced (114) had to do with expanded executive powers, confidentiality based on federal regulations or programs, and closure of otherwise public meetings for security meetings. Fewer than half (52) passed; the lowest percentage of passage among 6 categories of bills.

PSEUDO-CLASSIFIED INFORMATION

- *81% of “Sensitive But Unclassified” (SBU) type markings just made up by agencies*
About 81% of 107 SBU markings reviewed by the ISE Program Office are based on Department and agency policies (in other words, made up by the agencies as they go along); the remainder of the markings derive their authority from formally promulgated regulations, about half with comment and half without.

EXECUTIVE SUMMARY

OpenTheGovernment.org's fourth annual report, Secrecy Report Card 2007, shows both a continued expansion of government secrecy across a broad array of agencies and actions and some, limited, movement toward more openness and accountability.

While every administration wants to control access to information about its policies and practices, information created by or for the federal government belongs to the American public and should be open (except in strictly limited and specified contexts). As this principle is often honored more in the breach than in the observance, public access to government information has varied over time. The current administration has exercised an unprecedented level not only of restriction of access to information about federal government's policies and decisions, but also of suppression of discussion of those policies, their underpinnings, and their implications. It has also increasingly refused to be held accountable to the public through the oversight responsibilities of Congress. These practices inhibit democracy and our representative government; neither the public nor Congress can make informed decisions in these circumstances. Our open society is undermined and made insecure.

HIGHLIGHTS

- In six years, President Bush has issued at least 151 signing statements, challenging 1149 provisions of laws. In the 211 years of our Republic to 2000, fewer than 600 signing statements that took issue with the bills were issued. Among recent presidents, Reagan issued 71 statements challenging provisions of laws before him; G.W.H. Bush issued 146; Clinton, 105.
- Since 2001, the "state secrets" privilege has been invoked a reported 39 times—an average in 6.5 years (6) that is more than double the previous 24 years (2.46).
- On average since 2000, non-competed contract funding makes up more than 25 percent of all awards: 26.2% (\$559.9 billion) In 2006, 25.9 percent (\$107.5 billion) of federal contract funding was given out without any competition; another 5.1 percent (\$21.3 billion) was awarded without competition because of specific requirements. In 2000, 45 percent of contract dollars were awarded under full and open competition; by 2006, only 34 percent followed such open procedures.
- A 2007 Justice Department Office of the Inspector General report on secret wiretap warrants indicated that the government made 143,074 National Security Letter requests in the period 2003-2005. The number for 2006 remains classified.
- With 2,176 secret surveillance orders approved in 2006, federal surveillance activity under the jurisdiction of the secretive Foreign Intelligence Surveillance Court more than doubled in five years.

INTRODUCTION

Government secrecy, particularly in the Executive Branch, continues to expand across a broad array of agencies and actions, including military procurement, new private inventions, and the scientific and technical advice that the government receives. There are, however, glimmers of progress toward more openness and examples of continued determination on the part of the public and its representatives. Even as more and more categories that exclude information from access are created by agencies, the public use of the Freedom of Information Act to obtain information from our government continues to rise. There is, moreover, an effort within the Executive Branch to contain this proliferation of “sensitive but unclassified” type markings.

Openness is a keystone value of our democracy. More practically it helps root out abuse of power, bad decisions or embarrassing facts that may put lives at risk, and serves as a means to hold governments accountable. The public indicated in the 2006 elections that it values – and demands – transparency. Some progress has been made, but much remains to be done.

OpenTheGovernment.org issued the first edition of the Secrecy Report Card to call attention to the remarkable expansion of secrecy in the federal government. This year’s expanded report seeks to provide a more complete picture of secrecy in the federal government, expanding to cover non-competed federal contracts, and assertions of Executive Privilege in the face of requests from Congress.

Many aspects of secrecy are undiminished, but initiatives in Congress would countervail this tendency.

[S. 849: OPEN Government Act of 2007](#)

[H.R. 1309: Freedom of Information Act Amendments of 2007](#)

[H.R. 1362: Accountability in Contracting Act](#)

[H.R. 985: Whistleblower Protection Enhancement Act of 2007](#)

[H.R. 1255: Presidential Records Act Amendments of 2007](#)

Federal Funding Accountability and Transparency Act, [Public Law 109-282](#)

H.R. 1 Title VI, [Section 601: Availability To Public Of Certain Intelligence Funding Information](#) ([Conference Report](#) (H. Rept. 110-259) (signed into law, August 3, 2007)

[S.1](#), Title 1: Legislative Transparency and Accountability Act of 2007 (S. 1 passed by large margins in both chambers; cleared for White House, August 2, 2007)

A Note on the Indicators

OpenTheGovernment.org seeks to identify measurable indicators that can be used as benchmarks to evaluate openness and secrecy in government in the United States. We include data based on three criteria:

- data that show trends over time;
- data that have an impact across the federal government or the general public; and
- data that already exist and require little or no further analysis.

There are many indicators out there that could be included, and we will continue to add to the indicators. These indicators are not intended to be comprehensive.

What follows is a brief look at how the main indicators we examine have changed over time. We have also added two new indicators – White House assertions of executive privilege in response to congressional requests for information, and data on competition status of federal government contracts.

QUANTITY OF INFORMATION MOVING IN AND OUT OF THE CLASSIFICATION SYSTEM¹

Classification activity still remains significantly higher than before the terrorist attacks of September 11, 2001. This year, we highlight the number of new original classification decisions instead of the number of combined new classification decisions (original and derivative) to reflect changes made by ISOO. In its recent [report](#),² the Information Security Oversight Office (ISOO) clarified its count for 2006, focusing on original classification decisions. ISOO notes that derivative classifications replicate the same classified information in different ways and formats. The ISOO report says, “At best, the derivative numbers provide a rough indicator of how prolific the agencies are in producing information and how much work will need to be done by declassification review teams 20 to 25 years from now.” The large number of derivative classification actions (20,324,450 in 2006), however, reflects the proliferation of new classified documents in government. It is also a harbinger of the expanding future declassification burden.

In 2006, the number of *original* classification decisions, the “sole sources of newly classified information,” decreased to 231,995, down from 258,633 in 2005. This is the second year in a row that the number of original classification decisions has dropped. As reported by ISOO, this overall decline is due to a reported decrease of 35 percent in original classification by DOD, despite a jump in original classification from the Justice Department (mostly attributed to the expansion of counterterrorism analysis at the FBI). ISOO reports that, also for the second year in a row, the majority of original classifications decisions have been assigned a declassification date of ten years or less.

Classification Activity Remains High

Fiscal Year	Original Classification Decisions*	Number of Pages Declassified
1995	167,840	69,000,000
1996	105,163	196,058,274
1997	158,733	204,050,369
1998	137,005	193,155,807
1999	169,735	126,809,769
2000	220,926	75,000,000
2001	260,678	100,104,990
2002	217,288	44,365,711
2003	234,052	43,093,233
2004	351,150	28,413,690
2005	258,633	29,540,603
2006	231,995	37,647,993

* The 2nd column reflects different numbers, for all years, from previous Report Cards. This is due to ISOO’s changed reporting discussed above.

1. The data on expenditures and the quantity of information moving through the classification system does not include data from the Central Intelligence Agency (CIA), the National Geospatial Intelligence Agency (NGA), the Defense Intelligence Agency (DIA), the National Reconnaissance Office (NRO) and the National Security Agency (NSA)

2. Information Security Oversight Office. [2006 Report to the President](#)

Tip of the Iceberg: 4,042 “original classifiers”

Several thousand federal workers have the authority to create a new memo, analysis, or report and to classify the information contained in the document as either “top secret,” “secret” or “confidential.” In government parlance, these people have “original classification authority (OCA).” This year, the number of OCAs climbed slightly to 4,042, most of whom came from the State Department and the Office of the Director of National Intelligence (ODNI).

Once information is designated as classified by an “original classifier,” it can be used by many people in government in many different ways, creating new and possibly multiple forms of the information. This process is referred to as “derivative classification.” Derivatively classified information may potentially be generated by any of the more than 3 million persons who hold clearances for access to classified information.

Persons in Government with Original Classification Authority

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
# of Persons	5,661	5,461	5,379	4,420	4,010	3,903	3,846	4,130	4,132	4,006	3,978	4,007	3,959	4,042

Source: ISOO Information Security Oversight Office. [2006 Report to the President](#)

Declassification increases, but public access still a problem

Agencies reached a milestone this year with the arrival of the first 25-year automatic declassification date. Executive Order 12958, issued in April 1995 and amended by President Bush in March of 2003, requires all agencies to automatically declassify information that has “permanent historical value”, unless the information falls under several limited exemptions allowing continued classification. After several deadline extensions, automatic declassification came into effect on December 31, 2006. ISOO plans to conduct a detailed analysis of the declassification program, but according to ISOO’s 2006 Report to the President,³ it appears that all agencies have met their automatic declassification obligations.

In 2006, agencies declassified 37,647,993 pages, a 27 percent increase over the 2005 number. This is largely due to efforts to meet the automatic declassification deadline. In 2006, agencies reviewed 68,745,748 pages. According to the ISOO report, agencies are now declassifying close to 55 percent of the materials they review.

Although these numbers are encouraging, it is important to remember, as ISOO notes, that “declassification does not always equate to public access.” Declassified information must be reviewed for information not releasable to the public, and the declassified records need to be process by the National Archives, which is extremely under-resourced.

Abuse of the Classification System

Overclassification

As the 2006 ISOO report states, “We spend billions of dollars every year to classify information, much of which, as identified by the “9-11 Commission” and others, should never have been classified in the first place.” Example of cases of “silly secrecy” include the withholding of a reference to a possible [terrorist attack on Santa Claus](#) in a CIA intelligence report from December 1974, and classification of the identities of authors of books and newspaper articles, the names of individuals publicly convicted of espionage, the names of countries, and even an element of the United Nations.⁴

Some Congressional leaders have noted the problems with over-classification and begun exploring solutions. In July, the House Select Committee on Intelligence’s subcommittee on Intelligence Community Management held an open hearing on classification issues led by Chairwoman Anna Eshoo [D-CA]. Meredith Fuchs, General Counsel for the National Security Archive noted at the hearing that over-classification leads to disrespect of the system and leaks to the press, public suspicion, and incidents such as the reclassification of public documents taken from the shelves of the Archives in April 2006.

3. Information Security Oversight Office. [2006 Report to the President](#). National Archives and Records Administration

4. Jeffrey Richelson, William Burr and Thomas Blanton, eds. “Dubious Secrets,” National Security Archive Electronic Briefing Book No. 90. National Security Archive. Posted - May 21, 2003. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB90/index.htm>

Reclassification

In April 2006, the National Archives conducted an audit based on suspicions that previously public documents had been removed from the shelves of the Archives. The audit, which examined all re-review efforts since 1995, found that ten unrelated efforts had resulted in the withdrawal of at least 25,315 publicly available records from the shelves of the Archives. Working with NARA, agencies are still trying to restore the withdrawn materials to the shelves. ISOO will conduct a review of this process in September 2007. Many of the improperly reclassified documents have since been returned to the open shelves. In August 2006, the Pentagon and the Energy Department (DOE) stamped as national security secrets long-public numbers of U.S. nuclear missiles during the Cold War, including data from the public reports of the Secretaries of Defense in 1967 and 1971.⁵

Separately, under the 1998 Kyl-Lott amendments, DOE has spent over \$22 million while surveying more than 200 million pages of released documents. DOE has reported to Congress that 6,640 pages have been withdrawn from public access (at a cost of \$3,313 per page).⁶ This amount is likely an additional cost of classification, separate from the ISOO count. We were unable to obtain final cost numbers for 2006 (and the review overall) from DOE in time for inclusion in this report.

5. William Burr, ed, "How Many and Where Were the Nukes? What the U.S. Government No Longer Wants You to Know about Nuclear Weapons During the Cold War," National Security Archive Electronic Briefing Book No. 197. National Security Archive. Posted - August 18, 2006. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB197/index.htm>

6. Ibid

WHERE THE DOLLARS GO: EXPENDITURES ON THE CLASSIFICATION SYSTEM

Spending on Secrecy Continues to Rise; Spending on Declassification Increases Slightly

The chart and the accompanying table (page 9) show the amount of money spent on the entire classification system. These costs include the costs associated with securing facilities and personnel in the United States and abroad that hold classified information, training, technology investments and declassification efforts. The total expenditure figure includes estimates from 41 federal agencies, including the Department of Defense. The Central Intelligence Agency (CIA), the National Geospatial Intelligence Agency (NGA), the Defense Intelligence Agency (DIA), the National Reconnaissance Office (NRO) and the National Security Agency (NSA) are not included because their cost estimates are classified.

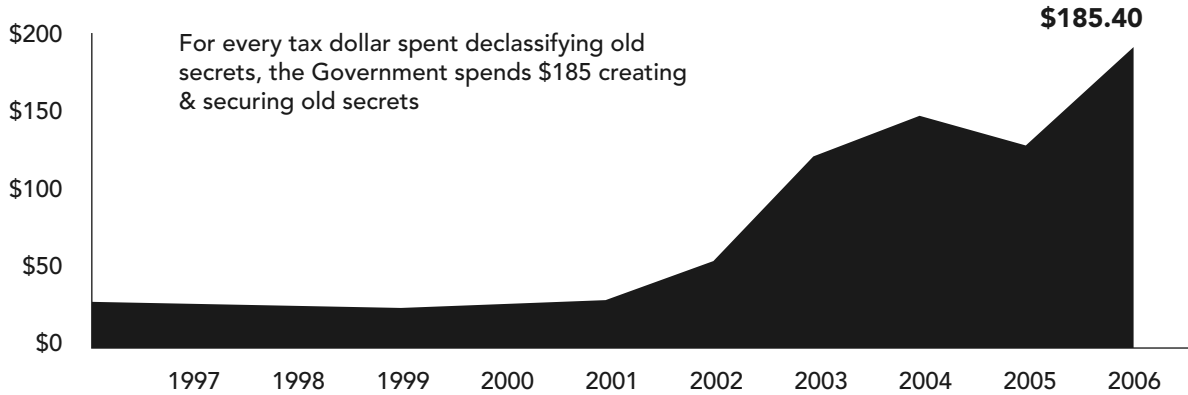
On August 3, President Bush signed the “Implementing Recommendations of the 9/11 Commission Act of 2007” Act (PL 110-053; H.R. 1) which includes a provision that requires the president and Congress to disclose total spending requested and approved for the National Intelligence Program. On August 5th, Rep. Darrell Issa (R-CA) offered an amendment to the Defense Appropriations Act that would prohibit budget disclosure; the Defense Appropriations Subcommittee chair, Rep. John Murtha (D-PA) announced the amendment was accepted—without any debate. The amendment will now be addressed in a House-Senate conference this fall.

The amount of money government agencies spend to secure classified documents continues to rise, although the rate of increase has slowed in recent years. The 2006 estimate of \$8.2 billion is a 7.5 percent increase about the costs estimates reported in 2005. In 2006, the largest increase in spending came from the Information Systems Security category, which was up 10.5 percent from 2005. ISOO notes that agencies, many of which had never before had secure information networks, are acquiring access in the interest of sharing information inside the government. Professional Education, Training and Awareness spending rose by 8.3 percent.

\$185 Spent Creating & Securing Old Secrets For Every Tax Dollar Spent Declassifying

Cost of Keeping Classified Documents*

For every one dollar the government spent declassifying documents in 2006, the government spent \$185 maintaining the secrets already on the books, a \$51 increase from last year. Although more documents were declassified this year, the total publicly reported amount spent on declassification decreased, while the amount spent of classification increased.



The amount spent on declassification dropped by 22.6 percent to 44 million this year, despite a significant increase in the number of pages reviewed and declassified. According to the ISOO report, this was possible because the intelligence agencies, which account for a large segment of the declassification numbers, are excluded from the total reported figures.

Federal Expenditures on Classification and Declassification (excluding CIA, NGA, DIA, NSA and NRO) in Millions

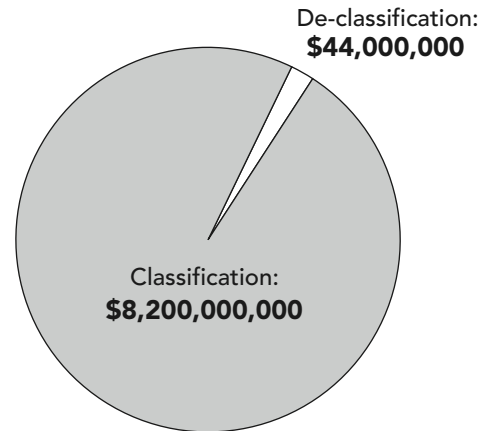
Fiscal Years	Cost of Securing Classified Information	Portion Spent on Declassifying Documents	Classification Costs Per \$1 Spent on Declassification
1997	\$3,380,631,170	\$150,244,561	\$22
1998	3,580,026,033	200,000,000	17
1999	3,797,520,901	233,000,000	15
2000	4,270,120,244	230,903,374	17
2001	4,710,778,688	231,884,250	19
2002	5,688,385,711	112,964,750	49
2003	6,531,005,615	53,770,375	120
2004	7,200,000,000	48,300,000	148
2005	7,700,000,000	57,000,000	134
2006	8,200,000,000	44,000,000	185

Source: OpenTheGovernment.org calculations based on data from the ISOO Information Security Oversight Office. [2006 Report to the President](#).

* Figure calculated by first subtracting declassification cost from total classification cost to arrive at the total cost of classification not related to declassification. Thus, we calculated for each year amount spent keeping and maintaining government secrets, then divide this figure by expenditures on declassification.

Even the publicly reported numbers may not give a complete picture: for the most part, the reported amount spent on declassification includes only the cost of the people engaged and the equipment, not the cost of physical security and personnel security. These overhead costs are shared, and agencies are not required to separate their figures. So, the dollars attributable to declassification costs may be under-reported.

Amount spent on classification and declassification



CLASSIFIED BUDGETS SKYROCKET

Classified or “black” programs account for about \$31.5 billion, or 18 percent, of the acquisition funding included in the fiscal year (FY) 2006 Department of Defense (DOD) budget.

This total includes \$15.8 billion in procurement funding and \$15.7 billion in research and development (R&D) funding. These figures represent 15 percent and 21 percent, respectively, of the total funding requested for procurement and R&D.

According to the Center for Strategic and Budgetary Assessments⁷:

- Classified acquisition funding has more than doubled in real terms since FY 1995, when funding for these programs reached its post-Cold War low.
- Since FY 1995, funding for classified acquisition programs has increased at a substantially faster rate – approximately 112% – than has funding for acquisition programs overall, which has grown by about 77 percent.
- Restrictions placed on access to classified program information have meant that DOD and Congress typically exercise less oversight over classified programs than unclassified ones.

	FY												
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total DoD Weapons Acquisition	77.7	77.4	79.4	82.1	88.7	93.2	103.9	110.9	137.9	147	167.8	178*	179.8
Classified Acquisition	11.7	12.6	13.2	14.9	15.8	15.4	18.1	18.2	26.1	27.6	29.8	31.5*	31.5
% Classified	15%	16%	17%	18%	18%	17%	17%	16%	19%	19%	18%	18%	18%
Total DoD Procurement	43.2	42.4	43.2	44.9	50.6	54.9	62.2	62.2	79.6	83.2	98.5	105.3*	103.8
Classified Procurement	7.1	7.3	6.1	6.8	7.5	7.5	7.5	8.9	13.2	14.5	16.3	16.6*	15.8
% Classified	16%	17%	14%	15%	15%	14%	10%	10%	17%	17%	17%	16%*	15%
Total DoD R&D	34.5	35	36.5	37.2	38.1	38.3	41.7	48.6	58.3	64.4	69.3	72.7*	76
Classified R&D	4.6	5.3	7.2	8.1	8.3	7.9	10.6	9.3	12.9	13.2	13	14.8*	15.7
% Classified	13%	15%	20%	22%	22%	21%	25%	19%	22%	20%	20%	20%*	21%

*The 2006 numbers were changed by CSBA to include all war-related funding.

Source: http://www.csbaonline.org/4Publications/PubLibrary/U.20070725.Classified_Funding/U.20070725.Classified_Funding.pdf

7. Steven Kosiak, “Classified Funding in the FY 2008 Defense Budget Request” The Center for Strategic and Budgetary Assessments (CSBA) <http://www.csbaonline.org>

FEDERAL CONTRACTING

Over 25% of Federal Contracts Not Competed At All

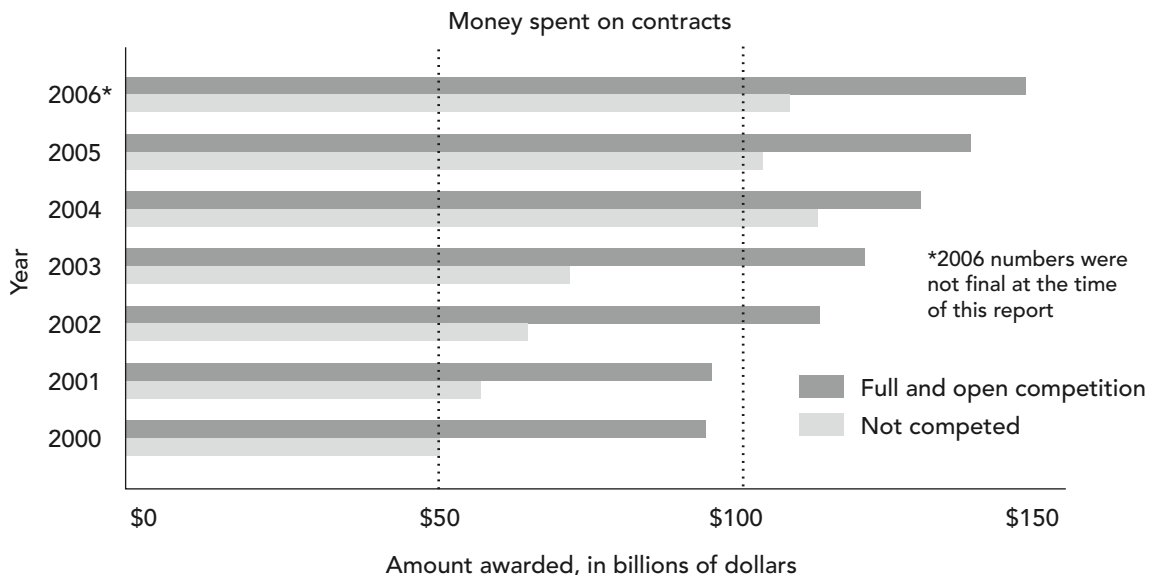
The public has a right to know about the ways the government spends its money in order to keep the government accountable and help rout out corruption. Until recently, this information has been difficult to find and more difficult to use to make comparisons. In October 2006, the nonprofit organization OMB Watch launched a website, FedSpending.org, which combines information collected from the Federal Assistance Awards Data System (FAADS) data for grants and the Federal Procurement Data System (FPDS) for contracts to allow the public to easily search for information on federal grants and contracts. As of January 1, 2008, such information will become available through the Office of Management and Budget, under requirements of a new law, in addition to OMB Watch. The Federal Accountability and Transparency Act, which became law in September 2006, requires OMB to make information on federal contracts and grants publicly accessible through a searchable website.

The accompanying charts show the sharp increase in money going to contracts since 2000. In FY 2000, the government spent \$208.8 billion on contracts. By FY 2006, it was spending \$415.0 billion, doubling expenditures over the seven years.

During this same period of FY 2000 through FY 2006, the government spent \$1.3 trillion on contracts awarded without full and open competition. In FY 2006, 25.9 percent of contract dollars were given out in no-bid, uncompleted deals. Another 5.1 percent were also no-bid deals, but were not available for competition because of various requirements.

Use of full and open competition has dropped from 45 percent of contract dollars in FY 2000 to 34 percent in FY 2006. Additionally, there has been an increase in one-bid full and open competition, raising questions of whether solicitations were structured to a particular contractor. One-bid “open” competition, went from 8.5 percent of contract funding in FY 2000 to 9.6 percent in FY 2006.

While the amount of money spent on federal contracts may have increased due to war and homeland security, taxpayer money may be misspent and projects may be hampered by waste, fraud, and abuse.



Contract Competition Types by Year In billions of dollars

Competition category	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006*	FY 00-06
Full and open competition	\$93.0	\$94.9	\$113.6	\$121.0	\$129.6	\$134.9	\$141.9	\$828.9
Not competed	\$48.7	\$54.8	\$63.2	\$71.1	\$112.0	\$102.6	\$107.5	\$559.9
Competed after exclusion of sources	\$20.4	\$21.8	\$26.3	\$30.3	\$37.3	\$56.5	\$63.0	\$255.6
Full and open competition, but only one bid	\$17.8	\$22.2	\$24.0	\$28.6	\$37.2	\$39.0	\$39.7	\$208.5
Not available for competition	\$17.6	\$16.8	\$24.2	\$19.1	\$15.2	\$20.3	\$21.3	\$134.5
Unknown	\$4.5	\$4.6	\$4.7	\$10.8	\$7.8	\$18.1	\$28.3	\$78.8
Follow-on to previous contract	\$6.9	\$8.7	\$6.6	\$14.0	\$8.7	\$12.8	\$13.3	\$71.0
Total	\$208.8	\$223.7	\$262.6	\$294.8	\$347.8	\$384.2	\$415.0	\$2,137.2

Source: FedSpending.org

* 2006 numbers were not final at time of this report. These are the best preliminary numbers from FedSpending.org staff, received by OpenTheGovernment.org on August 3, 2007. Check FedSpending.org for updated numbers.

Percentage of Contracts Completed by Type/Year

Competition category	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006*	FY 00-06
Full and open competition	44.52%	42.40%	43.25%	41.03%	37.27%	35.11%	34.19%	38.78%
Not competed	23.33%	24.48%	24.08%	24.12%	32.19%	26.71%	25.90%	26.20%
Competed after exclusion of sources	9.77%	9.74%	10.03%	10.28%	10.73%	14.71%	15.18%	11.96%
Full and open competition, but only one bid	8.52%	9.94%	9.15%	9.70%	10.70%	10.15%	9.57%	9.76%
Not available for competition	8.44%	7.51%	9.20%	6.48%	4.38%	5.28%	5.13%	6.29%
Unknown	2.14%	2.07%	1.78%	3.65%	2.24%	4.70%	6.82%	3.69%
Follow-on to previous contract	3.31%	3.87%	2.51%	4.75%	2.49%	3.34%	3.20%	3.32%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Source: FedSpending.org

* 2006 numbers were not final at time of this report. These are the best preliminary numbers from FedSpending.org staff, received by OpenTheGovernment.org on August 3, 2007. Check FedSpending.org for updated numbers

STATE SECRECY: THE EXECUTIVE BRANCH'S TRUMP CARD

The executive branch has broad, near unilateral authority to declare information “state secret”. In 1953, the U.S. Supreme Court allowed the executive branch to keep secret, even from the Court, details about a military plane’s fatal crash. This ruling, *United States v. Reynolds*, gave the executive branch power to impose secrecy with little opportunity for appeal or judicial review when the information at issue would pose a “reasonable danger” to national security.

In what could be an important landmark for how state secrets cases are handled by the court, a June 29, 2007 [decision](#) by the D.C. Circuit Court of Appeals reinstated a lawsuit that had been dismissed because the government invoked the state secrets privilege. The court concluded that there was sufficient unprivileged evidence on the record to permit the plaintiff, former Drug Enforcement Administration official Richard Horn, to argue his case.

Between 1953 and 1976, the federal government invoked the “state secrets” privilege only six (6) times. Between 1977 and 2000, administrations invoked the privilege 59 reported times (a rate of 2.46 times per year). Since 2001, the state secrets privilege has been invoked at least 38 times*, or a rate of 5.85 times each year.

Use of State Secrecy Privilege

(Years are inclusive)	1953 to 1976	1977 to 2000	2001 to 7/2007
Times Invoked in Reported Cases	6	59	39
Period (in years)	24	24	6.5
Yearly Invocations (avg.)	0.25	2.46	6

Source: William Weaver, Senior Advisor, National Security Whistleblowers Coalition.

* Numbers of orders during the George W. Bush administration vary according to the counting methods used. We believe this number to be the most current count of invocations in reported cases. According to Professor Weaver, this number includes cases on appeal. In some cases, the assertion in the reported case at trial and in a reported opinion on appeal, if there is one, for the same case are counted as two assertions.

THE FREEDOM OF INFORMATION ACT (FOIA)

Use of Freedom of Information Act Grows; Backlogs Remain Problem

Public requests for information under the Freedom of Information Act have continued to grow over the last six years, but the rate of increase has slowed. The total number of FOIA requests received in 2006 is 21,412,736. This number was substantially larger in 2005 and 2006 than in previous years due mostly to the fact that the Social Security Administration includes Privacy Act request (such as requests for an individual’s social security number) as FOIA requests.

According to an [audit](#)⁸ conducted in January 2007 by the National Security Archive, agency backlogs are significant; the oldest FOIA request in the federal government has now been pending for more than 20 years.

- Of the 57 agencies and components that responded to the January 29, 2007, FOIA request, 53 reported backlogs. Twelve of the agencies that responded had requests pending ten years or more. Of those 12, five had requests pending 15 years or more.
- Of the 507 requests provided to the Archive in response to its 2007 FOIA request, only 20 had been pending 20 business days or less. The remainder had been pending anywhere from 21 business days to over 4,000 business days, well beyond the statutory response time of 20 business days. The majority of the agencies’ oldest requests were filed between 2000 and 2006.
- A recent [report](#)⁹ by the Coalition of Journalists for Open Government (CJOG) took an in-depth look at the annual FOIA reports from 30 agencies and departments for the last nine years and found an overall bleak picture. According to the report, over the past nine years at those 30 agencies and departments, the number of FOIA requests processed has fallen 20%, the number of FOIA personnel is down 10%, the backlog has tripled, and costs of handling a request are up 79%.

Public Requests under the Freedom of Information Act

Year	# of FOIA Requests Received	Total Cost of FOIA
1999	1,908,083	\$286,546,488
2000	2,174,570	\$253,049,516
2001	2,188,799	\$287,792,041
2002	2,429,980	\$300,105,324
2003	3,266,394	\$323,050,337
2004	4,080,737	\$336,763,628
2005	19,950,547	\$334,853,222
2006	21,412,736	\$304,280,766

Calculated by OpenTheGovernment.org from individual agency Annual FOIA Reports

Legislation in 110th Congress Addresses FOIA Improvements

The House and Senate have each passed bills that hold promise for the improvement of the FOIA process. Important differences exist between the bills and will have to be addressed in the fall.

8. Catherine Nielsen, “40 Years of FOIA, 20 Years of Delay.” National Security Archive. July 2, 2007. http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB224/ten_oldest_report.pdf

9. Coalition of Journalists for Open Government. “Still Waiting After All These Years; a New Look at FOIA Delays.” <http://www.cjog.net/>

WHISTLEBLOWERS

Over the last two decades, whistleblowers helped the federal government recover over \$18 billion according to the latest figures from the U.S. Department of Justice. The large savings for taxpayers comes even as court decisions have undermined whistleblower protections passed by Congress in 1989, to the point that Congress is poised to strengthen legislative safeguards.

Recoveries dropped in 2004, while several pending lawsuits with potential large recoveries dragged into 2005. Indeed, in the fiscal year ending September 30, 2006, the United States obtained over \$3.1 billion in settlements and judgments.

Government-initiated claims accounted for \$1.8 billion of the total, while suits brought by whistleblowers under the False Claims Act qui tam provisions accounted for the remaining \$1.3 billion. “By any measure, it was a remarkable year. ... Obviously, the system is working,” according to Peter Keisler, Assistant Attorney General for the Department’s Civil Division.

Whistleblowers Recover Billions for Taxpayers

Year	Savings in \$
1989	15,111,719
1990	40,558,367
1991	69,775,271
1992	135,093,903
1993	177,416,383
1994	381,468,397
1995	247,276,827
1996	138,598,636
1997	629,882,525

Year	Savings in \$
1998	462,038,795
1999	516,778,031
2000	1,199,766,754
2001	1,286,791,859
2002	1,089,252,722
2003	1,501,554,095
2004	554,626,506
2005	1,425,853,183
2006	3,100,000,000

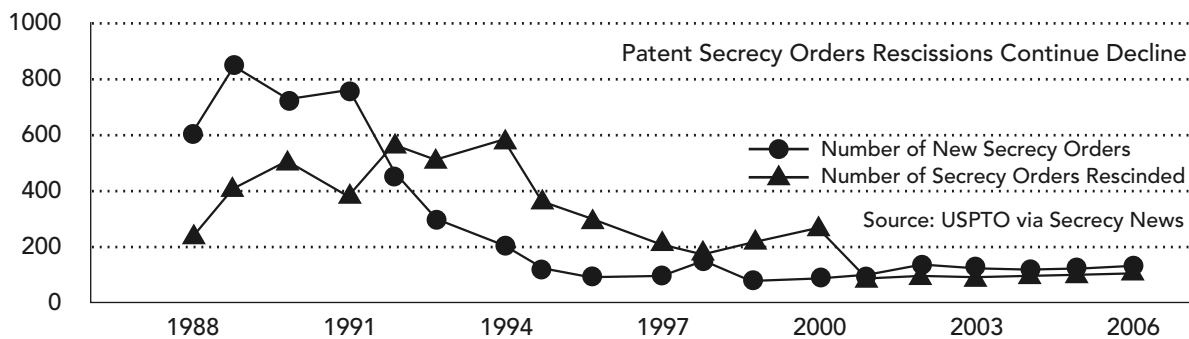
Source: US DOJ Press Release, 21 Nov 06

SECURITY ON NEW PATENTS

Patent "Secrecy Orders"

The federal government can impose secrecy on any new patent to be kept secret by issuing a "secrecy order" under federal law (35 USC 181). After over a decade of fewer and fewer new secrecy orders imposed on new patents, the number of new secrecy orders jumped just after 9/11 from 83 in 2001 to 139 in 2002. It dropped from 2003 (136) to 2005 (106), and rose slightly (to 108) in 2006.

Patent Secrecy Orders, Rescissions Continue Decline



At the same time that issuance of new secrecy orders has remained somewhat steady in recent years the number of secrecy orders *rescinded* has decreased dramatically in this decade – from 245 rescinded in 2000 to just 76 in 2005. For 2006, the number of rescissions rose very slightly, to 81. The result is a 4.3 percent increase in the total number of Invention Secrecy Act orders in effect, from a low of 4,736 in 2001 to 4,942 in 2006. The total number of newly issued patents for inventions rose 4.5 percent during the same period (from 166,036 to 173,771).

New Privately Held Patents Classified by the Federal Government

Year	# of New Secrecy Orders	# of Secrecy Orders Rescinded	Total # of Secrecy Orders in Effect
1988	630	237	5,122
1989	847	413	5,556
1990	731	496	5,791
1991	774	372	6,193
1992	452	543	6,102
1993	297	490	5,909
1994	205	574	5,540
1995	124	324	5,340
1996	105	277	5,168
1997	102	210	5,060
1998	151	170	5,041
1999	72	210	4,903
2000	83	245	4,741
2001	83	88	4,736
2002	139	83	4,792
2003	136	87	4,841
2004	124	80	4,885
2005	106	76	4,915
2006	108	81	4,942

Source: United States Patent and Trademark Office via Federation of American Scientists, www.fas.org/sgp/othergov/invention/stats.html; and USPTO accessed 7/31/07

