

AMERICA'S FOREVER WARS AND THE SECRECY THAT SUSTAINS THEM

A CITIZEN'S GUIDE



About Open the Government

Open the Government is an inclusive, nonpartisan coalition that works to strengthen our democracy and empower the public by advancing policies that create a more open, accountable, and responsive government.

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Introduction

After 17 years, three presidents, \$5.6 trillion, and hundreds of thousands of human lives lost,¹ it's time Americans started asking more questions about where, why, and for how long the country will remain at war. After all, the average taxpayer has spent more than \$23,000 on the wars, without even a comprehensive understanding of all the places where our troops are deployed, much less a clearly articulated vision for what victory might look like, or when the wars might end.²

As the wars have stretched on and expanded, public knowledge of what is happening on the battlefield has also waned. A 2018 poll found that 42% of Americans don't know the U.S. is still at war in Afghanistan,³ another poll found that most Americans vastly underestimate the military budget, and that only 15% could correctly state the year the Iraq War began.⁴ Perhaps most troubling, surveys show that Americans tend to significantly undercount the number of civilians killed in U.S. wars.⁵

While some of this unawareness can be attributed to factors like geographical distance from the battlefield and public fatigue after so many years of war, there are also mechanisms of secrecy, obfuscation, and a lack of oversight and accountability across the U.S. government deliberately keeping the public disengaged and in the dark.

In this guide, Open the Government and our partners will catch you up on some of what you need to know about the expansion of U.S. wars since 2001 and the systemic secrecy helping shield them from public view. We also provide you with ways that you can get involved in reviving the public debate and bringing transparency to issues vital to the public's understanding of military and national security programs.



What you need to know

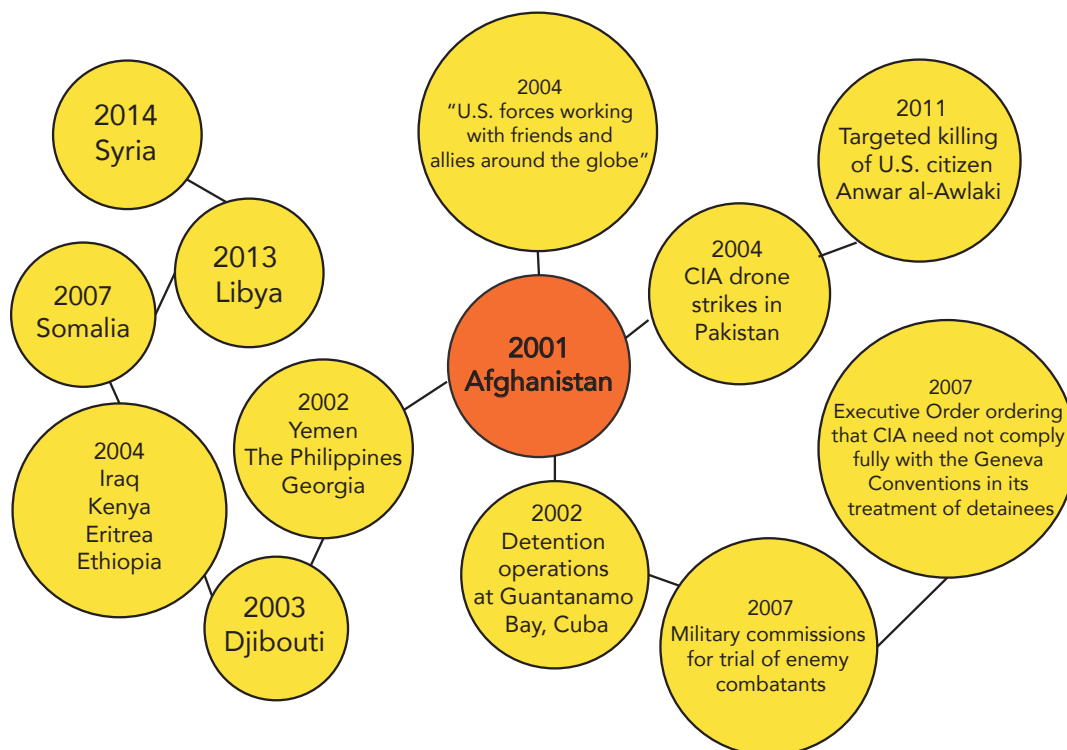
60 words, 17 years of war: the AUMF

One week after 9/11, the Authorization for the Use of Military Force (AUMF) passed in Congress and was signed into law by President George W. Bush. It contained just a single, 60-word sentence, but launched a global war that has lasted 17 years and counting:

"That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons in order to prevent any future act of international terrorism against the United States by such nations, organizations, or persons."

The expanding web of the 2001 Authorization for the Use of Military Force (AUMF)*

*The 2003 invasion of Iraq is not included because it was authorized separately



Source: Presidential References to the 2001 Authorization for Use of Military Force in Publicly Available Executive Actions and Reports to Congress, Congressional Research Service, 2016.

60 words, 17 years of war: the AUMF

There is perhaps much more that is classified. In 2018, for example, the government announced the deployment of armed CIA drones to Niger, but the authorization behind this decision has not been disclosed to the public.

Recently, Congress finally began debating the need for a replacement for the 2001 AUMF. Still, most of the proposals considered were even broader than the 2001 AUMF. Given the way U.S. wars have expanded globally since 2001, a broader authorization could have consequences that span generations to come.

Congress must engage in a robust, public debate that details all of the potential ramifications of new AUMF proposals.

Any new bill must contain clear limits so that the American people know what kind of war their government sets in motion.

Drone secrecy and the human cost



A Yemeni boy walks past a mural depicting a US drone on December 13, 2013 in the capital Sanaa.

In 2017, an investigation by New York Times journalists revealed that the Pentagon's process for assessing reports of civilian casualties is sorely inadequate.⁷ In circumstances where the military conducted multiple airstrikes at once, the report found that sometimes only one would be recorded in the official Pentagon log, so officials wouldn't acknowledge that they had even conducted the strike resulting in possible civilian casualties. Even when the military did acknowledge it had conducted a particular strike, they said they rarely had the staff or resources to visit the site and investigate reports of civilian harm themselves. This has resulted a major discrepancy between the number of civilian casualties the U.S. admits have resulted from its airstrikes, and the numbers reported by human rights organizations and journalists.

As U.S. wars become increasingly reliant on airstrikes, drones have taken the place of soldiers in many battlefields. But drone strikes are estimated to have caused hundreds or thousands of civilian casualties,⁶ and the secrecy surrounding the drone program's goals and operations along with the government's refusal to acknowledge civilian casualty cause confusion and resentment.

The case of Faisal bin Ali Jaber

After his brother-in-law and nephew were killed in a U.S. drone strike in Yemen in 2012, Faisal bin Ali Jaber received \$100,000 in U.S. dollars in a bag from a Yemeni official. Although the money seemed to confirm that the killing of his relatives had been a mistake (his nephew was a traffic cop and his brother-in-law was an Imam who preached against Al Qaeda), there was no public acknowledgement by the U.S. government that they had mistakenly killed civilians.

Faisal sued the U.S. government for restitution, and eventually offered to drop the lawsuit if the U.S. would just apologize for the deaths of his relatives and provide an explanation as to how the mistake happened, but the government refused.

Drone secrecy and the human cost

In 2017, the Columbia Law School Human Rights Clinic and the Sana'a Center for Strategic Studies recommended that the U.S. government:

- Promptly **release the results of all government investigations** into specific strikes, subject only to redactions where families of those killed or injured, have requested privacy or to ensure their physical safety, or only as strictly necessary for legitimate national security reasons.
- Provide detailed explanations for all past and future cases in which there are **credible allegations of unlawful killings or civilian harm**.
- Record, acknowledge, and **explain to families and the public every civilian death**, providing the name of the person killed.
- **Disclose the legal basis** for individual strikes, including by releasing all Office of Legal Counsel and other agency legal memoranda that set forth the basis for the use of force against all persons targeted, whether U.S. citizen or non-citizen.

You can read the full recommendations and findings in their report, *Out of the Shadows*.⁸

Find out more about the Justice Department's Office of Legal Counsel and the role of secret law in the drone program in the next section.

Secrecy prolongs war and erodes civil liberties

Secret Law

In the post-9/11 era, the U.S. government engaged in activities that violated the rights of Americans and people from other countries, including mass surveillance, torture, and use of lethal drones. How did these programs begin in the United States, when U.S. and international law prohibit such violations?

The public should be able to know the laws that govern the nation – and whether their rights are truly being protected.

The answer lies largely in secret legal opinions, created within the government and withheld from the public. Some government bodies, primarily the Department of Justice Office of Legal Counsel and the Foreign Intelligence Surveillance Court, issue legal opinions that tend to expand executive branch power.

The result is a public version of the law that anyone can see, and a secret interpretation of those laws that give government officials much freer reign. For example, torture violates rights established in the U.S. Constitution, but secret OLC memos authorized waterboarding and other torture memos.

Another detriment of secret laws is that they can shelter the executive branch from checks and balances; if Congress and the courts are unaware of secret legal opinions, they can't challenge them.

Protect Democracy successfully challenges secret law

When the U.S. military conducted airstrikes against Syrian President Assad's regime in 2017, public interest group Protect Democracy filed a Freedom of Information Act lawsuit seeking the legal rationale the White House used to justify the strikes, since the administration did not go to Congress for authorization. In the process of fighting the lawsuit, the administration acknowledged the existence of a legal memo it used to justify its strikes against the Syrian regime in 2018.

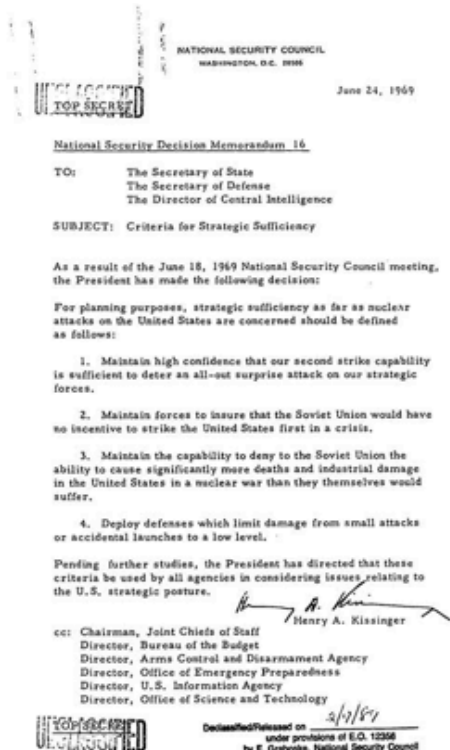
Once the existence of that memo was confirmed, the public and members of Congress were able to pressure the White House to release it, which they ultimately did, showcasing the ways that FOIA lawsuits can help deliver transparency even if the case doesn't end in the release of the original documents requested through FOIA.⁹

Secrecy prolongs war and erodes civil liberties

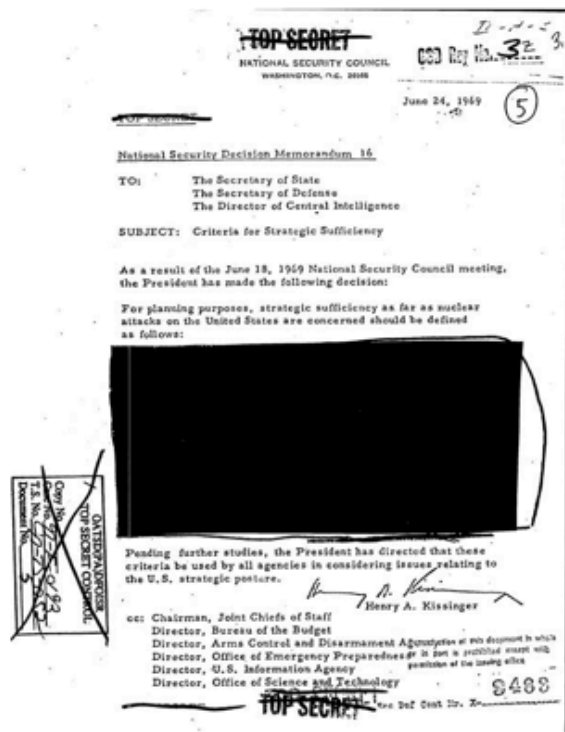
Overclassification

While it's necessary to keep some government information classified, overclassification has been a serious problem across the U.S. government for decades. Several Congressional investigations, including the 9/11 Commission, have recommended reforms to reduce unnecessary classification,¹⁰ and current and former government **officials estimate that anywhere from 50 to 90 percent of classified documents could safely be released to the public.**¹¹

Below is one example of overclassification in action. The National Security Archive received the same document, from 1969, twice in different years. In 1989, the document was released without redactions. In 2008, despite the document having been entirely declassified nearly 20 years prior, the government redacted the middle portion of the memo, demonstrating how arbitrary the classification process can be.¹²



Released February 1989



Released July 2008

The cost to veterans

Despite the skyrocketing U.S. military budget and the ever-expanding geography of U.S. wars, the Department of Veterans Affairs remains woefully unable to meet the rising healthcare needs of America's millions of returning veterans. One in four homeless Americans is a veteran, and a mental health epidemic continues to rage among former soldiers.

In 2017, there was a 10 percent increase in the number of veterans claiming they had been sexually abused while in the military over the previous year. But, a 2018 VA Inspector General report found that over the course of a few months, about 1,300 claims of Post-Traumatic Stress Disorder (PTSD) resulting from sexual trauma were denied without following proper procedure.¹³ Both the DoD and the VA have long been criticized for the secrecy surrounding how they address claims of sexual assault,¹⁴ and accountability is often lacking as a result.¹⁵

Even while still living on base, members of the military and their families can fall victim to government secrecy – and dangerous environmental toxins. An in-depth study by the Department of Health and Human Services found that a toxic chemical present in the water supply of at least 126 U.S. military installations could cause pregnancy complications, liver damage, and even birth defects. Despite the urgent need for such information to reach impacted members of the public, the White House and Environmental Protection Agency sought for months to prevent the report's release.¹⁶

The White House and the EPA sought for months to prevent the release of a report exposing the presence of toxic chemicals in the water supply of at least 126 U.S. military installations.

The cost to veterans

Burn Pits and veterans' search for truth

Even veterans struggle to get past the military's veil of secrecy. Similar to veterans' claims of cancer and other ailments from Agent Orange during the Vietnam War, many of the men and women who served in Iraq and Afghanistan suffer from illnesses they claim are a result of being exposed to "burn pits" – the open-air burning of toxic waste – during their time in the military. DoD and the VA are stonewalling by refusing to conduct a thorough study of the risks, despite medical research affirming that burn pits can, indeed, cause serious adverse health effects, and the VA still claims it has found no connection between burn pits and veterans' health concerns.

When military veterans tried to sue a private contractor that operated many of the burn pits, the courts threw out the case on the grounds that the contractor was carrying out military decisions, which were not appropriate for judicial review. Congress should act to require DoD and the VA thoroughly – and publicly – examine the health impacts of exposure to burn pits, and to grant benefits to all those who were exposed. They should act now, rather than waiting the 16 years it took to help veterans exposed to Agent Orange after Vietnam.



Senior Airman Frances Gavalis tosses unserviceable military uniform items into a burn pit at Balad Air Base, Iraq

Following the money

According to a Pentagon report released in June 2017, the American “war on terror” has cost U.S. taxpayers around \$250 million per day for more than 16 years. This amount does not include non-Department of Defense expenses, such as the cost of CIA drone strikes, nor does it include indirect costs such as care for veterans or reconstruction in conflict zones. With just a fraction of that money, the U.S. could easily house every chronically homeless person in the country,¹⁷ or rebuild our crumbling infrastructure. To put it another way, the cost of a single F-35 fighter jet could be used to develop enough vaccines to end 18 worldwide epidemics.¹⁸

The Pentagon budget has always been riddled with mismanagement and wasteful spending, evidenced by a study¹⁹ exposing \$125 billion in administrative waste and one defense agency losing track of hundreds of millions of dollars.²⁰ Oversight of this massive budget is difficult enough because of its size, but the problem is exacerbated by secrecy and obfuscation. The Pentagon is finally undergoing its first-ever complete audit, the results of which must be made public and accessible to make true reform possible.

In 2017, Lockheed Martin took home more taxpayer dollars than many federal government agencies, and these kinds of private contracts often have very little serious oversight.

Contractors and Lobbying

In 2017, Lockheed Martin took home \$35.2 billion from weapons sales to the U.S. military, meaning more taxpayer dollars went to weapons from one company than went to funding many federal government agencies. Private contractors are often some of the biggest beneficiaries of the massive defense budget, and oversight of those contracts is even worse than oversight of the Pentagon as a whole. Waste is rampant among defense contracts; one of the more famous recent examples was a contractor that charged the DoD \$10,000 for individual toilet seat covers for an Air Force cargo plane.²¹

These private contractors, as well as foreign governments that receive security assistance and purchase weapons from the U.S., dominate much of the lobbying scene in Washington, with little oversight and transparency. They have also gained influence through shadowy financial contributions to many D.C. think tanks. Some of those think tanks subsequently pushed for war in Iraq, Iran, and Syria, as well as easing restraints on drone exports and other policy goals that aligned with defense contractors.²¹

The war comes home

When a nation spends 17 years in an ever-expanding war, it's inevitable that war – and the secrecy that comes with it – will seep into everyday life. In the years since 2001, the United States has drastically changed the landscape of civil liberties, human rights, and public access to information under the guise of protecting national security.

One of the most direct impacts of endless war has been the proliferation of surplus military equipment to local police departments across

Public pressure forced a California school district to return three grenade launchers it obtained from DoD.

Years of secret NYPD surveillance yielded zero national security leads

In 2011, the Associated Press revealed that the New York Police Department had been secretly spying on New York's Muslim communities for years, including infiltrating local mosques and student groups. The CIA also had agents embedded with the NYPD as a part of the program, even though the CIA is not allowed to conduct domestic surveillance.

Although the program had existed since 2003, it failed to yield any significant leads or new terrorism-related cases.²⁴ The ineffectiveness of mass surveillance is nothing new; law enforcement agencies have been learning that selective data collection yields better results than dragnet surveillance for centuries.²⁵ Instead, shadowy spy operations weaken police relationships with the communities they serve.

the country. Under a program authorized by Congress, police have received billions of dollars in military equipment, from clothing and flashlights to ammunition, semi-automatic weapons, and armored vehicles. Although the program began in the 1990s, it grew significantly as a result of the wars in Iraq and Afghanistan, with little meaningful oversight.

The program made headlines in 2014 when public pressure forced a California school district to return three grenade launchers²² it obtained from DoD, although it held on to an armored vehicle and dozens of firearms. In 2017, the Government Accountability Office conducted a sting operation,²³ in which they created a fake law enforcement agency and successfully used it to obtain \$1.2 million worth of military equipment through the program. GAO and other watchdogs continue to call for more transparency and oversight of the DoD program.

The war comes home

Access to military-grade weapons isn't the only way that excessive national security secrecy has made its way into domestic law enforcement agencies. The creation of the Department of Homeland Security after the 9/11 brought immigration policy under the national security umbrella, shrouding U.S. immigration programs in secrecy and endowing federal law enforcement with more authority and less oversight.

Increased coordination between federal, state, and local law enforcement led to heightened surveillance by police, sowing distrust and further marginalizing minority communities. Procedures used to add people to secretive watch lists often discriminate against Arab Americans and American Muslims, who are granted no insight into how they were placed on No Fly and other lists, and have no recourse to have themselves removed from these lists.

The Arab American Institute's advocacy roadmap lists action items, including calls for transparency around government surveillance and watch list procedures:

- Demand greater **transparency from law enforcement agencies** regarding their investigative techniques and data collection.
- The basis for adding U.S. citizens to a watch list needs to require probable cause. Though the nomination criteria are classified, leaks indicate that a single social media post can be reason enough to be added to one of these lists. Through federal elected officials and direct correspondence, demand more **transparency around watch listing procedures**.
- Demand that **Congress take up effective oversight of and investigate the vast government watch listing system**. Request that Congress require the intelligence community to investigate and report why Dearborn, Michigan – a city of 90,000 people – is the 2nd most watch listed city in the country, only trailing New York City.

Read the full list of action items here: <http://www.aaiusa.org/surveillance>



What you can do

File a FOIA request

FOIA Fundamentals from Open the Government

If you want to help peel back the layers of secrecy surrounding U.S. wars, you can file public records requests from federal or state government agencies. You can read the full guide at openthegovernment.org/foiaguide

1. Do the background research

Before filing a FOIA, it is critical to do thorough background research to be able to develop a well-crafted request and to prepare to respond to FOIA offices if asked to provide additional information or narrow a request. Reaching out to other researchers, investigators, and FOIA specialists working on the same issue is an important step in the FOIA process, in order to understand what information is already available and to prepare for an administrative appeal when it is time to challenge agency denials.

2. Locate the right agency

Search the agency website for the FOIA office contact. Agencies accept requests by email, fax or mail. The Justice Department's FOIA.gov website provides directions on how to file a request, includes a portal to file directly with certain agencies, and directs users to FOIA systems of agencies that are not yet linked to the site. FOIAonline is another government site run by the EPA that gives the public the ability to file requests directly with a number of agencies, including DHS and DOJ components.

3. Describe the specific records

Provide enough details about the specific records sought in FOIA requests so that the records can be located with a reasonable amount of effort. This includes information on the type of document, title, subject area, date of creation if known, original source of the record, or other relevant details. If you do not have details about specific records, provide enough event-related information, such as the date and circumstance surrounding the event the record covers, to facilitate the conduct of an organized, non-random search for your requested records.²⁶

4. Request a fee waiver

Requesters can ask the agency to waive or reduce search and copy fees if they think the fees are too high, or if the fees are fair but the total charges make the request prohibitively expensive. The law provides that the agency "shall" waive or reduce fees if the requester meets the public interest test. Requesters may also be entitled to fee benefits if they fall within a certain category of requester.²⁷ Apart from the fee waiver request, it is important to identify yourself for fee categorization purposes, and indicate that you are a "non-commercial" requester, in order to avoid paying excessive fees.

File a FOIA request

FOIA Fundamentals from Open the Government

5. Expedite the requests

In some circumstances, agencies will grant a request for expedited processing for reporters, organizations or individuals who demonstrate they are “primarily engaged in disseminating information,” and if the request concerns a matter of “compelling need.” The Justice Department also provides for expedited processing to public interest groups for requests that concern a matter of “widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” There are additional ways to avoid long processing delays, including keeping the request targeted and specific, and offering to speak with the FOIA officer to help them locate the responsive documents.

6. Target various agencies

Requesting information from multiple agencies can often yield positive results. Additionally, filing the same request with multiple agencies can also help reduce inter-agency referrals, which can add extra time to the processing of the request.

7. Appeal the denial

Federal agencies often fail to adhere to FOIA’s disclosure requirements either procedurally or substantively. When this occurs, requesters can appeal adverse decisions to higher authorities within an agency.²⁸

Did you file a FOIA request to find out more about the U.S. military or national security agencies, or about your state and local government involvement? Do you have questions about how to file your request? We want to hear about your experience. Email us at info@openthegovernment.org

FOIA has helped shine a light on both national and local surveillance programs

Targeting multiple agencies to uncover military involvement in domestic surveillance

Researching the various agencies that could be in possession of desired information is an important step in the FOIA process. Targeting multiple agencies with the same FOIA can help the requester get the information they are looking for, sometimes unearthing records that shed light on previously unknown government monitoring practices.

Human Rights Watch researcher Sarah St. Vincent found through FOIA work that the Air Force had documents in its archives on domestic surveillance of Americans by the military. The revelations came after St. Vincent filed FOIA requests with twenty-two federal agencies,²⁹ including with other Pentagon components and the Department of Homeland Security (DHS), seeking records related to the government's use of intelligence surveillance laws for counter-narcotics or immigration enforcement purposes. The requests asked for legal, policy, and other documents relating to Section 702 of the Foreign Intelligence Surveillance Act (FISA), and Executive Order 12333, laws the government uses as the basis for large-scale U.S. surveillance programs that affect people in the United States as well as Americans abroad.

The FOIAs led to the disclosure of records from the Air Force revealing for the first time a Defense Department policy that apparently authorizes warrantless monitoring of U.S. citizens and green card holders. HRW featured the documents in its reporting, and the revelations have played a central role in raising public awareness, and fueling public advocacy campaigns aimed at enhancing oversight and accountability for warrantless surveillance programs.



Using FOIA to uncover local police activity

The Electronic Frontier Foundation (EFF) and MuckRock provide innovative platforms for the public to file their own information requests, and obtain records needed to better understand how law enforcement policies are being implemented in local communities. EFF's "Street-Level Surveillance"³⁰ documentation project is enhancing transparency relating to surveillance technologies increasingly used by law enforcement. As part of the project, EFF and MuckRock created a crowd sourcing site³¹ that provides a template for anyone to file requests to get information about local law enforcement surveillance practices, such as biometrics data collection programs. The information released through this project has been pivotal in community efforts to hold local law enforcement accountable for public expenses and incidents of police abuse.

How to write a Letter to the Editor

Tips from ReThink Media

If you'd like to respond to a local or national news article with your own perspective, ReThink Media has provided some tips to make your Letter to the Editor effective:

1. Include the title of the original article.

Always reference the article you are responding to in the first sentence of your letter and in the body of your text. Some quick examples include:

- *The Times' May 18 editorial, ["Title of Article"], omitted some key facts.*
- *I strongly agree with [author's name]'s view on the need to reform public school policies on bullying.*
- *Congressman Doe's efforts to establish new TSA procedures ["Title of Article," date] will be a blow to our civil liberties.*

2. Keep it brief.

Different publications prefer different lengths, but the maximum length accepted is usually no more than 200 words. Check previous LTE's on the publication's website for guidance.

3. Respond quickly.

Try to write and submit your LTE the same day that the original story appeared. Most outlets have a 24-hour window in which you have a realistic expectation of being published.

4. Focus on one point.

Over-complicated letters don't run. Focus on one issue or point and aim for straightforward and concise.

5. Personalize your message.

Local editors receive dozens of letters each day; national editors receive hundreds. If you really want your letter to stand out, make sure it is not copied word-for-word from a form letter. If you have a personal story that shows how the issue affects you and/or your family, share it—briefly.

6. Know your audience.

Are you writing to a local newspaper? If so, try to touch on issues specific to that state's and/or community's readership. If you're writing to a newspaper or magazine with a national readership, focus on issues of national importance, unless the specific article you are referring to is about a local event.

How to write a Letter to the Editor

Tips from ReThink Media

7. Be polite—in what you write and in your approach.

You can be critical of the paper, author, or information, but it must be written in a civil tone. Papers will never publish insulting letters. When sending the letter, personalize the approach: take the time to find the name of the editor and make it clear you're receptive to edits or revisions.

8. Proofread.

Any typo or grammatical error in a letter diminishes its chances of being published. Always double-check your letter for errors and have a colleague review it before submitting.

9. Include your contact information.

When you send your letter to the editor, you must include your name, address, and daytime telephone number. Anonymous letters are not as credible as signed letters and most newspapers will not publish them. Your address is important because papers prefer to print letters from local readers. Include your phone number because most newspapers will not run a letter without verifying its authorship.

Questions? Want to share a letter you've written?

Email us at info@openthegovernment.org

Questions to ask your public officials

Whether you are attending town halls with candidates for office, visiting your elected officials at their offices, or writing them a letter, here are some questions you can ask them to start the conversation:

Questions for state and local officials

1. What can you do to increase transparency around local police cooperation with federal law enforcement in ways that might impact our privacy or safety?

- a. How can you improve the privacy safeguards to protect our communities from mass surveillance programs?
- b. How will you work to ensure the public knows more about police investigative techniques and coordination with federal counterterrorism programs?
- c. Do you believe local police should be able to acquire military-grade weapons from the federal government? What will you do to increase oversight and transparency around the program that allows them to do so?

2. The federal government has a history of hiding environmental harm from military facilities. What are you doing to ensure local military facilities are safe for military families and surrounding communities?

Questions for national officials

1. What's your position on a new war authorization to fight ISIS or anyone else?

- a. Why do/don't you believe we need to authorize another war?
- b. If you do support a new authorization, what would you do to ensure it contains enough geographical, time-based, and other limits to prevent decades more of exploding military budget, harm to soldiers and civilians, and unchecked expansion of the war's mission?
- c. What will you do to ensure that the public has all the information about new war authorization proposals, and adequate opportunity to voice their concerns before a vote?

2. How often do you receive visits from lobbyists working for defense contractors or foreign governments?

3. Democracy is weakened when laws are made in secret, and the public deserves to know when torture, surveillance, and other abuses are made legal in the name of national security. What are you doing to ensure the public understands the laws governing the country, including secret legal opinion from the Department of Justice?

4. What are you doing to improve oversight of civilian harm from U.S. wars?

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If you would like more information on anything included in this guide, or would like to find out more about what you can do, please contact us at info@openthegovernment.org or call 202-332-6736.

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