

OPENTHEGOVERNMENT.ORG

Americans for Less Secrecy, More Democracy



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Coalition Activities 21 October 2010 – 18 January 2011

OTG engages in a variety of campaigns initiated by coalition staff, and by other partners themselves. Most of what the staff does is in coordination with partners and with others outside the coalition. We are regularly asked to coordinate other groups and to identify possible partners for campaigns.

Advance the right-to-know at the federal and state levels through legislative and other vehicles/ Strengthen coordination and engagement of organizations currently working on right to know and anti-secrecy issues

Promote and Sustain Openness and Transparency/ Promote a Culture of Openness in Government

Open Government Directive

The coalition continues monitoring and measuring federal agencies' progress toward fulfilling President Obama's commitment to "creating an unprecedented level of openness in Government." To complete this project, OpenTheGovernment.org relies on a group of volunteers with experience working with agencies and evaluating information policies from nonprofit groups, academia, and other organizations that serve the public interest. The ongoing contributors to this project include American Association of Law Libraries, American Library Association, Citizens for Responsibility and Ethics in Washington (CREW), OMB Watch, OpenTheGovernment.org, POGO (Project On Government Oversight), Sunlight Foundation, Union of Concerned Scientists, faculty and students at the University of Maryland College of Information Studies, and faculty at the Armstrong Institute for Interactive Media Studies (AIMS) at Miami University of Ohio. Individual volunteers have also participated in the project.

The project has now moved from evaluating agency's open government plans to measuring implementation of the directive and of openness more generally in the target agencies. The proposed evaluation is split into three sections: 1) the availability of information identified by the nongovernment openness community as critical for accountability, 2) progress in implementation of the agency's open government plan, and 3) the usability and technical openness of the agency's website. Section 1 evaluations are to be completed by our volunteers; section 2 evaluations are to be completed first by agency personnel and then reviewed by volunteers; section 3 evaluations are to be led by faculty from the AIMS at Miami University of Ohio.

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Development of the evaluation was led by faculty from the AIMS at Miami University of Ohio and the Center for Library and Information Innovation at the University of Maryland.

The coalition staff posted a draft of the proposed framework (<http://bit.ly/ogov-feedback>) for public comment. The staff promoted the opportunity to comment to our partners and on various social networks. Several coalition partners shared our project with their own constituencies. Coalition staff collected several dozen comments on the framework and posted a response to all relevant points (<http://openthegovernment.digress.it/response-to-comments/>).

The coalition staff and our volunteers also met twice with the Inter-agency Open Government Working Group about the proposal: once to discuss section 1 (the availability of information for accountability), and again a few weeks later to discuss section 2 (progress in implementation of the plan). After the meeting on section 1, coalition staff and our volunteers agreed to report results of the evaluation only at a government-wide level, rather than agency-by-agency (for the short-term). The decision was in response to concerns that negative evaluations on new criteria from the open government community could damp enthusiasm for open government at certain agencies. The results of the evaluation will be used as a way to highlight best practices and encourage their adoption. Evaluations will begin early in the year. In response to feedback on section 2, the methodology was streamlined and a comprehensive guidance document for how to fill out the evaluation sheet was developed. These documents have been shared with the Administration. The Administration is discussing the documents with the Inter-agency Open Government Working Group and we anticipate that evaluations will begin in late winter. Work on Section 3 is underway, and we expect results shortly.

Additionally, on December 8th, the one year anniversary of the Open Government Directive, Patrice McDermott co-authored a column with Carolyn Lukensmeyer, Founder and President of AmericaSpeaks, that was cross-posted, on [Government Executive](#), [NextGov](#), and [Federal News Radio](#). The piece highlights the successes of the OGD to date and recommends "next steps" for the Administration to take to make government more open and participatory. Dr. McDermott and David Stern of AmericaSpeaks were also interviewed about the anniversary and other open government issues on Federal News Radio's the DorobekInsider.

Coalition staff also helped promote, and attended, the First Annual International Open Government Data Conference. The conference, hosted at the U.S. Commerce Department, brought together experts on and practitioners of making government data available, usable, and meaningful from across the globe.

Ensure Electronic Records are Preserved and Managed to Protect Accountability and History

In recent years the coalition has provided leadership, especially regarding legislative and regulatory reforms to improve electronic records management. After many years of raising the issue of electronic records with Administration officials and others, OTG has identified and cultivated ties to allies in the current Administration and the National Archives and Records Administration (NARA) who understand the necessity of tackling the issue. The coalition has also made inroads with Congress.

Coalition staff helped arranged a meeting with the Archivist to discuss several issues related to the National Archive and Records Administration's (NARA) responsibilities and efforts to improve government electronic record keeping. The coalition also attended a briefing with NARA's Director of the Modern Records Program to be updated on the status of the Electronic Records Archive (ERA) and

the agency's new records management assessment program, which consists of government-wide self-assessments and a few NARA-directed audits.

The coalition organized [a letter](#) and [petition](#) thanking the National Archives and Records Administration (NARA) for calling on the Central Intelligence Agency (CIA) to account for the illegal destruction of videotapes showing the torture of detainees at CIA black sites. Giving the CIA a free pass sends the wrong message to agencies that may have information that, if released, would be embarrassing or reveal illegal activities. The letter and petition express profound disappointment the Department of Justice (DOJ) has to date declined to bring any criminal charges over this blatant violation of the Federal Records Act and destruction of evidence, and our hopes DOJ will fully support NARA's investigation and act on its conclusions. Coalition staff followed up directly with the Archivist and his staff on the issue and understand NARA continues to ask the CIA to account for its actions.

Embed Freedom of Information Act (FOIA) Reform

In mid-November, OpenTheGovernment.org, with several coalition partners, signed on to an [amicus brief](#) written by counsel from Citizens for Responsibility and Ethics in Washington ([CREW](#)) and the Electronic Frontier Foundation ([EFF](#)) urging the Supreme Court to reject "privacy" protections for corporate entities under the Freedom of Information Act (FOIA). The Supreme Court will address the question when it takes up [ATT v. FCC](#). The brief argues that: exemption 7(c) of the FOIA does not afford any protection for so-called "privacy" interests of corporations, and that applying the privacy protection of exemption 7(c) to corporations would bar access to documents long understood to be available under FOI and would afford corporate entities more privacy protections than individuals enjoy.

OTG continues to play a central role in facilitating discussion and work with the new Office of Government Information Services (OGIS), which is tasked with mediating disputes between FOIA requesters and Federal agencies, reviewing policies and procedures of administrative agencies under FOIA, reviewing agency compliance with FOIA, and recommending policy changes to the Congress and President to improve the administration of FOIA.

Patrice McDermott moderated a panel on encouraging pro-active disclosures at the American Society of Access Professionals (ASAP) Symposium. The panel discussed common records that could be posted routinely such as schedules/calendars and high value data sets, particular challenges agencies face in disclosing records, and how agencies can overcome barriers to pro-active disclosure.

The coalition has participated in several meetings with Steven Croley, the Special Assistant to the President for Justice and Regulatory Policy with the Obama Administration's Domestic Policy Council. Mr. Croley has taken over a substantial portion of the openness portfolio left open by the departure of Norm Eisen from the White House. The lack of progress on FOIA reform has been a central issue at many of these meetings, and the coalition has proposed and discussed potential policy levers to promote pro-active disclosures at the agencies with him.

OTG and a dozen organizations, including some of our partners, joined three academics in sending a [letter to the Department of Justice](#) (DOJ) regarding a serious discrepancy in DOJ's treatment of requests for data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) that is at odds with both the governing law and the Attorney General's stated commitment to improving meaningful openness in DOJ and the government at large. Patrice McDermott has discussed the issue with DOJ staff. The coalition will continue to monitor DOJ's FOIA implementation and weigh in as appropriate.

The coalition continues to lead work with our partners and allies on the Hill to bring attention to and fight back against FOIA exemptions tucked into legislation. The coalition was joined by many of our partners in sending a [letter to Senator Patrick Leahy](#), the Chairman of the Senate Judiciary Committee, to express concerns about a proposal in section 301 of the Motor Vehicle Safety Act, S. 3302, that would have authorized the Secretary of Transportation to establish categories of information that are exempt from public disclosure under the Freedom of Information Act (FOIA). S. 3302 was not brought to a vote in the Senate before the end of the 111th Congress. The coalition also worked with our partners to organize and send a [letter](#) urging the Senate Commerce, Science and Transportation Committee and House Transportation and Infrastructure Committee to not include in the final version of the National Transportation Safety Board Reauthorization (NTSB) Act of 2010 (HR 4714/S 2768) two provisions in Section 3(d) of the Senate-passed version of the bill, S. 2768, that would have unduly limited the public's ability to access critical information. We understand in both instances the agency involved sought the exemptions in part to relieve itself of the burden of processing requests. Our letters noted that exempting additional categories of information from FOIA is not an appropriate way to handle resource issues, and is not in the spirit of the law. A conferenced version of HR 4714/S 2768 was not voted on by the end of the 111th Congress. We will monitor these particular issues, and any additional efforts to exempt information from public disclosure, in the new Congress.

Public Citizen and OTG circulated a request for information from FOIA requesters on potentially a troubling pattern involving obstacles that agencies are placing before FOIA requesters. Examples of the obstacles include, agencies' refusals to search for documents before requesters agree to pay search costs, even when the requester is likely to receive a fee waiver; requesters' difficulties receiving fee waivers; exorbitant search cost estimates; agencies' attempts to pressure requesters to narrow or modify their requests; statements in agency responses that a "preliminary" response will be deemed "final" unless the requester affirmatively requests reconsideration; and agencies' efforts to elicit agreements that a requester will not appeal a partial disclosure if is promptly made. Once we have identified which agencies are using these tactics, how frequently they are using them, and whether they are also using similar tactics that have not yet come to our attention, we will be in a better position to effectively address them. OTG and Public Citizen will report on findings.

Chart a New Course on Secrecy/ Secrecy Rules

On November 4, the day the Obama Administration released a new [Controlled Unclassified Information \(CUI\) policy](#) rescinding the Bush Administration's Executive Order and standardizing and limiting the use of control markings on unclassified information, the coalition released a [statement](#) applauding the Administration for the time, effort, and thoughtful consideration of input from inside and outside government it took to make this a victory for openness. The coalition played an important role in moving the Administration away from policies that could have created a fourth level of classification, by engaging Administration officials, other openness advocates, and Congressional allies on the issue.

The coalition has taken the lead in organizing a response from the openness community to the WikiLeaks situation. OTG arranged a meeting for our partners to discuss problems raised by WikiLeaks, and to determine areas of agreement among the community. The coalition worked with our partners to develop and post a [Frequently Asked WikiLeaks Questions page](#) on its website, hosts an invitation-only Google group to facilitate communication between partners, and maintains a [site with general resources](#) on the issue. Patrice McDermott also traveled to the American Library Association's (ALA) Midwinter Meeting in San Diego to discuss WikiLeaks with ALA's membership. Additionally, the coalition also joined a broad range of advocacy organizations on an [open letter to US Government officials](#) organized by the EFF calling on government officials to respect freedom of expression in the debate over WikiLeaks.

OTG joined several coalition partners joined on a [letter](#) penned by the American Civil Liberties Union (ACLU) urging the Senate to support S. 446, a bipartisan bill to permit broadcast television coverage of open Supreme Court proceedings, while respecting all rights to due process. The bill died at the end of the 111th Congress. The coalition will support the bill if it is re-introduced in the new Congress.

The coalition continues to work with our partners to strengthen protections for whistleblowers. With several partners, the coalition joined [a letter](#) circulate by GAP urging Congress to pass the bi-partisan Whistleblower Protection Act during the lame duck session, and joined [a letter](#) organized by POGO urging Representative Darrell Issa (R-CA) to not delay passage of the bill. The bill passed the House unanimously on December 22, but, unfortunately, a last minute secret hold stopped the bill from final passage. We will continue to work with our partners to pass a strong bill to protect the rights of employees that blow the whistle on waste, fraud and abuse.

Broaden the base of national, state and local organizations active on right to know and anti-secrecy issues.

In the wake of the 2010 elections, the coalition arranged a meeting for our partners to discuss an agenda and strategies for the 112th Congress. We will soon host another meeting to further refine the agenda and strategies given the make-up of Congressional committees and determine which organizations will lead particular efforts.

The coalition used its new online organizing technology to engage our individual members in the campaign to support the National Archives and Records Administration's (NARA) decision to call on the Central Intelligence Agency (CIA) to account for the illegal destruction of videotapes showing the torture of detainees at CIA black sites. More than 125 individuals [signed the petition](#), including several people who previously had never previously participated in one of our "Action Alerts" or been a part of our advocacy list.

Patrice McDermott spoke ARMA – MD. She discussed the state of electronic record preservation and management in the federal government and the implications for history and accountability.

Patrice McDermott participated in a conference on environmental information hosted by OMB Watch. The public interest organizations represented at the conference agreed to continue to develop the policy recommendations and work for their implementation. A public release of the finalized recommendations is planned for early 2011.

OTG continues to play a role coordinating a campaign to reform the state secrets privilege. The effort died in the 111th Congress. We will work with our partners and others to re-launch an effort in the 112th Congress.

We continue to look for ways to expand our base, given the federal focus of the coalition and the resources of the staff.

Raise awareness of openness and secrecy efforts.

Patrice McDermott appeared on **Whistle Where You Work**, a multi-media program produced by coalition partner, the Government Accountability Project (GAP) to discuss progress and lingering issues with FOIA under the Obama administration.

We continue to put out the bi-weekly [Updates](#) and talk regularly to journalists. The coalition has also strengthened its relationship with reporters at trade publications, and mainstream media sources.

Coalition staff have share and discussed a modified information architecture and rough wire-frame with a web designer. The new site will be more informative, usable, and lively. It will also better feature our coalition partners, and their work to advance open government.

The staff of OTG continue to pursue opportunities to work with new media to educate them on openness and secrecy and to learn how to convey our message to and through them.

OpenTheGovernment.org in the News – October 21 2010 – January 18 2011

[Viewpoint: Happy Birthday, Open Government Directive](#)

[*Government Executive*, December 8, 2010]

[Executive order creates new CUI system](#)

[*Federal Times: FedLine*, November 4, 2010]

[Covering "state secrets" cases under the Obama administration's new policy](#)

[*Reporters Committee for Freedom of the Press*, Fall 2010]

[Obama Issues Executive Order Improving "Controlled Unclassified Information"](#)

[*National Security Archive: Unredacted*, November 4, 2010]

[Executive Order seeks to simplify document classification](#)

[*Federal News Radio*, November 10, 2010]

[National Archives rapped for weak document security](#)

[*Government Executive*, October 28, 2010]

[Obama orders uniformity in managing unclassified info](#)

[*Reporters Committee for Freedom of the Press*, November 5, 2010]

[Episode 29 - USDA/FDA Survey Results; Transparency at the State Department](#)

[*Whistle Where You Work*, October 25, 2010]

[White House Sets "CUI" Designation for Sensitive Government Documents](#)

[*Center for Public Integrity: Paper Trail*, November 5, 2010]