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SHOW US THE DATA

MOST WANTED FEDERAL DOCUMENTS

- NOT SECRET -

A REPORT BY

Center for Democracy
& Technology

OpenTheGovernment.org

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Most Wanted Federal Documents

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March 2009

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Executive Summary

In the past few months, President Obama and his appointed officials have indicated that policies around open government and information disclosure will change drastically. While each administration adopts its own standards for the management of unclassified federal documents, change at the agency level does not take place instantly nor will such change be universally accepted.

Government accountability is crucial to effective governance; a key tool for accountability is transparency. As Judge Damon Keith noted, "Democracy dies behind closed doors."[1] This report has been timed in order to inform the changes in open government policies that are now underway.

Suggestions for specific documents and data that should be released were solicited broadly, from government officials and interested parties. The list of most wanted documents and data informs our recommendations for policy changes, which are also included in this report, to make government more transparent.

Our last report on this issue, released in 2004, highlighted the obvious problems created by too much secrecy based on national security and other concerns. This year, the survey found that concerns about secrecy go well beyond the national security realm. The government has a tendency to gather information and power from that information only for itself.

- Respondents to the survey cited problems receiving information that should be publicly available from all three branches of government, such as personal financial disclosures.

- According to the survey, members of the public are overwhelming concerned with how their tax dollars are spent during trying economic times.

The project identified several major problem areas facing a more open government.

- Tools exist to open government information, but those clearly established laws have not been adequately implemented in order to fulfill their intent.

- Currently, government officials have little or no incentive to release information to the public. In order to fulfill the goal of opening the government, the administration must take fully implement existing laws, and must address the culture of secrecy pervading the government.

1 Judge Damon J. Keith, Detroit Free Press v. Ashcroft, 303 F.3d 681 (August 26, 2002)

The Top Ten Most Wanted Government Documents

1. Public Access to All Congressional Research Service Reports

2. Information About the Use of TARP and Bailout Funds

3. Open and Accessible Federal Court Documents Through the PACER System

4. Current Contractor Projects

5. Court Settlements Involving Federal Agencies

6. Access to Comprehensive Information About Legislation and Congressional Actions via THOMAS or Public Access to Legislative Information Service

7. Online Access to Electronic Campaign Disclosures

8. Daily Schedules of the President and Cabinet Officials

9. Personal Financial Disclosures from Policymakers Across Government

10. State Medicaid Plans and Waivers

Introduction

The Most Wanted Government Documents survey, our third, was a great success, with over 200 suggestions for Most Wanted documents from the public. Soliciting suggestions from the public via a website was a new step, adding collaboration and new ideas to our report. It is clear from the responses to our survey that there are wide categories of information and documents that the public would use online, but are not currently accessible.

In this survey and elsewhere, the public is speaking up to demand access to information, and public officials are listening. The 21st Century Right to Know Report, a collaboratively written government transparency report released in November 2008, makes many recommendations to Congress and the Obama Administration for fostering a culture that supports openness. A selection of these and others are highlighted in the Recommendations section.

Members of the public have the right to access the unclassified data and documents created and held by the government. After all, the information was paid for with tax dollars. The suggestions from the public make it clear that information across all branches need to be made available.

The executive branch received the most requests for information in this survey, but all three branches have the same obligation to share documents and data with the public. Simply put, in order to hold the government as accountable as possible, authoritative and accurate information must be public and the government must proactively make it available online.

In the time since this survey was launched, the Obama Administration has released some key opinions from the Office of Legal Counsel (OLC) that were used to justify torture (prior to these releases, these documents were on this Top Ten list and received a large number of votes from the public) and the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, Senator Joe Lieberman, has urged policy makers to improve public access to Congressional Research Service (CRS) reports and the Public Access to Court Electronic Records (PACER) system (first and third on the Top Ten list, respectively).

There are costs associated with making some documents and data sets available online, but most of the documents in this year's survey are already available in some form, just not in formats that are easy to

use or online. Some documents are made available or sold by third parties, making access dependent on the user's budget. Some are not made available online by the government, however. Third-party availability is not enough; it is the government's basic responsibility to make information available to and usable by the public. If the government produces an unclassified document (or an unclassified version of a classified document), that document should be made available and accessible to the public online. On a similar note, if the documents are available but difficult for the average web-user to obtain, the federal government must make a greater effort to make the documents easily available, findable and searchable.

Indeed, on his first day in office, President Obama released a Memorandum on Transparency and Open Government that directed his Administration to develop recommendations that move federal agencies toward a "transparent, participatory, and collaborative" government. As we have seen with past initiatives, however, the best policy will not accomplish anything unless it is fully and carefully implemented across government. Once the policy is in place, the open government community and the public must continue to monitor the state of open government and continue to pressure policy makers to turn over information and data that rightfully belongs to the public and would improve public health and safety.

In order to gain a sense of what unclassified federal government documents are the "most wanted" by the public, a website was established to allow users to submit requests and vote on the importance of posted documents. Members of the staff at CDT and OpenTheGovernment.org seeded the survey with some initial requests based on previous surveys, but the vast majority of submissions were from the public. Documents requested varied from Congressional Research Service reports (the only requests to make both of the previous lists and number one vote-getter this year), to information about toxic waste in local communities, to lobbyist fact sheets. As the number of requests grew beyond 200, the desire and need for transparency in all three branches became more and more apparent.

Overall, the Show Us the Data website received thousands of visits, more than 200 documents requested and nearly 2000 votes.

Overall, the Show Us the Data website received thousands of visits, more than 200 documents requested and nearly 2000 votes. While the votes of the public via the website have significantly informed the final list of Top Ten Most Wanted documents, the list that differs slightly from the documents that received the most votes. This Top Ten list highlights the best of the top vote receivers, but also later submissions that, while important, did not have as much time to generate votes. Background information about both the Top Ten Most Wanted documents and the top vote recipients is included, and policy recommendations are included based on the issues in public access to these Top Ten Most Wanted Documents.

Findings:

- Many issues pointed out in the 1999 and 2004 projects remain central; the balance between disclosure and national security, for example, remains a highly debated topic as it was in our 2004 survey and the survey website indicates there is still a general feeling that too much information is classified.

- Financial disclosure in government is a central concern, in no small part because of the current economic conditions. Numerous requests about government contracts, congressional spending, and bailout funding were made. An overwhelming demand for transparency in relation to government spending is evident.

- A key divide became apparent in information availability via third-party websites and via official government websites. Congressional voting records searchable by individual Member., for example, came up time and time again While these are available via a third party websites (and thus commercial search as well), someone searching through the official Congressional search engine on Thomas will find no results.

- On a similar note, the day to day activities of elected and appointed officials is highly sought after. Coming back to the effective use of resources, respondents want to know how government officials are using their time and who they are meeting with. While some agencies use blogs as part of their citizen outreach, it is still not the clear window in to federal meetings and use of time.

- Sometimes, the problem is not that the documents do not exist, it is that they are not easy to find, or they are available but not through an official, direct government source.

- Finally, putting information online is simply not enough; it must also be accessible, easy to use, and easy to reuse. ★

The Ten Most Wanted Documents for 2009

The Top Ten Most Wanted Government Documents

1. **Public Access to All Congressional Research Service Reports**
    Legislative Branch

2. **Information About the Use of TARP and Bailout Funds**
    Executive Branch

3. **Open and Accessible Federal Court Documents Through the PACER System**
    Judicial Branch

4. **Current Contractor Projects**
    Executive Branch

5. **Court Settlements Involving Federal Agencies**
    Judicial Branch

6. **Access to Comprehensive Information About Legislation and Congressional Actions via THOMAS or Public Access to Legislative Information Service**
    Legislative Branch

7. **Online Access to Electronic Campaign Disclosures**
    Legislative Branch

8. **Daily Schedules of the President and Cabinet Officials**
    Executive Branch

9. **Personal Financial Disclosures from Policymakers Across Government**
    All Branches

10. **State Medicaid Plans and Waivers**
    Executive Branch and State Agencies

The Top Ten Most Voted Documents

1. **Public Access to all Congressional Research Service Reports**
   418 Votes, Legislative Branch

2. **Information About the Bailout and TARP spending**
   351 Votes, Executive Branch

3. **PATRIOT Act Rationale and Usage**
   273 Votes, Executive Branch

4. **Comprehensive List of Congressional Votes**
   185 Votes, Legislative Branch

5. **Office of Legal Counsel Memos**
   184 Votes, Executive Branch

6. **Open and Accessible Federal Court Documents Through the PACER System**
   77 Votes, Judicial Branch

7. **Office of Legal Counsel Torture Memos**
   42 Votes, Executive Branch

8. **GAO Legislative Histories**
   33 Votes, Legislative Branch

9. **Electronic Campaign Finance Disclosures**
   22 Votes, Legislative Branch

10. **Daily Schedules for the President and Cabinet**
    17 Votes, Executive Branch

Background on each of the Most Wanted Documents

1. Public Access to All Congressional Research Service Reports

Legislative Branch

The Congressional Research Service (CRS) uses taxpayer dollars to produce excellent reports on public policy issues ranging from foreign affairs, to agriculture, to health care. These reports are made accessible to Congress and their staff through on an internal system, and these are never released to the public directly from the Congressional Research Service. Members of the public can ask for these reports through their member of Congress, but they must first know that the report exists. Third party websites, such as Open CRS, collect and share the reports for free but for years the only way to get reports was to buy from third party, for profit companies.

Recently, Wikileaks released thousands of CRS reports. While this is a great step in information gathering, it does not address the core problem. CRS reports should be made available through an official government website without members of the public having to work to track them down on their own time.

CRS Reports are the only document to make the Most Wanted list all three times the survey was undertaken. The public has made clear, repeatedly, the need to have access to all reports from CRS, the authoritative source. Congress should make CRS release these reports to the public proactively and directly.

2. Information About the Use of TARP and Bailout Funds

Executive Branch

The Troubled Asset Relief Program (TARP) authorized the use of taxpayer money to purchase assets from financial institutions that were struggling, and has often been referred to as 'the bailout'. After

$300 billion in bailout money was distributed, the actual use of this money by individual companies is still largely unknown.

Any credible solution to today's economic crisis must address the corruption and other abuses of power sustained by secrecy. Every time a corporation asks for another round of bailout money without disclosing the exact details of how previous money was spent, taxpayers feel taken advantage of.

It is important to note that bailout funds are not the same as the American Recovery and Reinvestment Act, often called 'the stimulus,' and the website accompanying it, recovery.gov. These funds and programs are addressed in the "Check Back" section.

3. Open and accessible federal court documents through the PACER System

Judicial Branch

The Public Access to Court Electronic Records system, also known as the PACER System, received the highest number of votes of any document not included in the previous surveys.

The PACER system provides federal court records, including opinions in cases with wide-reaching public repercussions. The public does not have access to these legal precedents, however, without high barriers. The PACER system provides federal court records, but only after the user has previously registered for a password (received via posted mail). The system also charges far more per page than it costs PACER to serve the PDF to the user. In fact, PACER makes a large profit based on these burdensome fees. When PACER offered free access to their documents at select federal depository librar-ies, a large portion of PACER documents were downloaded for use on third party, free access services. PACER subsequently shut this free access down.

> **A large portion of PACER documents were downloaded for use on third party, free access services; however, PACER shut this free access down**

Numerous requests were also made for a variety of free electronic access to court records.

4. Current Contractor Projects

Executive Branch

The federal budget includes billions of dollars for unclassified federal contracts every year, but little information is available about these contracts. These contracts vary from routine maintenance of the White House to the private security forces in Iraq. While limited information about contracts awarded is available online at USASpending.gov, details about the contracts is not. Information about deliver-

ables for each contract are not made public, and there is no public information on sub-contracts, despite a requirement under the Federal Funding Accountability and Transparency Act to begin sub-award reporting on USASpending.gov by January 2009. A full accounting of these contractors would give a more realistic estimate of the size and more information to help understand the effectiveness of government.

5. Court Settlements Involving Federal Agencies

Judicial Branch

When a dispute involving a federal agency (or even a branch of government) cannot be settled, it occasionally goes to court. A federal court always presides over these cases and, because monetary settlements are unusual, these cases rarely make the papers, and the opinions and terms of settlement are seldom released. Most cases involving agencies settle, and settlements are nearly invisible. A U.S. District Court judgment - including by settlement - against a government agency, is a matter that should be disclosed to the public, without any special request required.

6. Access to Comprehensive Information About Legislation and Congressional Actions via THOMAS or Public Access to Legislative Information Service

Legislative Branch

The public interface to legislative information is THOMAS, hosted by the Library of Congress. While THOMAS does an adequate job of sharing legislative information, it has many obvious limitations. The search functions are simplistic and hard to use, and only last year did THOMAS pages become persistently linkable. In addition, third party websites have created outstanding features like version tracking and links to sections within bills that THOMAS should include.

THOMAS's legislative information provides just a drop in the bucket of information that should be available. Voting records of Members of Congress are public information, for example, and yet countless Members continue to make efforts to prevent the creation of a government-sponsored website to make all their individually-identifiable decisions as public officials easily available. Numerous effective third-party websites exist, but full disclosure and open government require an official Congressionally-sponsored website.

Members of Congress and their staff have access to the Legislative Information Service (LIS), a much more fully featured source of legislative information. One way to easily make legislative information available is to grant public access to the LIS.

7. Online Access to Electronic Campaign Disclosures

Legislative Branch

The Senate is still using a hard copy system for filing campaign finance reports, although the reports are usually generated as electronic documents. As a result of paper filing and because of the processing time needed by Federal Election Commission, final disclosure reports of senatorial candidates only become available to the voting public after elections.

During the 110th Congress, legislation to require Senators to file FEC reports electronically was approved by the Senate Committee on Rules and Administration, but was never brought to the floor for a vote; the bill has been re-introduced in the 1111th Congress as S. 482, with wide support; at the time of this printing, the bill had 30 sponsors in the Senate.

8. Daily Schedules of the President and Cabinet Officials

Executive Branch

Presidents have made their daily schedule available to reporters for years, but have never posted them online, despite great interest in the president's actions and who the president and his advisors meet with. Griffin Bell, Attorney General under President Carter, was the first cabinet secretary to make his schedule regularly available. Only a few others have followed his lead in over 30 years. To achieve transparency, we need to know what our White House officials are doing.

9. Personal Financial Disclosures from Policymakers across Government

All Branches

An over-arching theme of the document requests was the desire for the highest level of financial disclosure possible from policymakers, including timely campaign finance information from the Senate (one of the top voted documents). During difficult economic times, the voting public is especially concerned with tracking conflicts of interest between elected and appointed officials and the entities they regulate. Requests for financial activity disclosures were made across all branches. All branches should make an accelerated effort to improve their financial disclosure efforts.

Many executive branch filings are collected by various agencies and, in the case of Senate-confirmed appointees, by the U.S. Office of Government Ethics. The public can request a copy of these forms, but only via postal mail or fax with an official request form. The personal financial disclosure reports could reveal conflicts of interest. These reports should be made available online as a searchable, reusable database.

10. State Medicaid Plans and Waivers

Executive Branch and State Agencies

Medicaid State plans amendments and waivers are documents each state has that describe their Medicaid programs and all rules and amendments that have been made and approved by the federal government. These plans are in very hard to find in their current locations. Historically, the plans have been on the Centers for Medicare and Medicaid Services website - the same goes for waivers. However, the documents on the site are usually not current, and sometimes are not accurate. More careful maintenance of the information is needed in order to make this important information easy to find and use. Previously there were links to specific state plans and their websites, but many links are missing or out of date.

> **The documents on the site are usually not current, and sometimes are not acccurate**

Additional Background for Top Ten Voted Documents

Opinions of the Department of Justice Office of Legal Counsel

Executive Branch

The Office of Legal Counsel of the Department of Justice issues memoranda that assess whether activities of agencies of the federal government comply with the law and the U.S. Constitution. Its opinions can effectively authorize or prohibit conduct that is at the legal boundary. A number of its interpretations of the Bush Administration's warrantless surveillance program, and of the applicability of the Foreign Intelligence Surveillance Act, have been kept secret from the public and even from Congress. While some facts surrounding such surveillance are necessarily classified, the government's interpretation of the law should most definitely be public. The OLC's opinions on intelligence surveillance should be made public with appropriate redactions to protect classified information.

These memos would have been on the Ten Most Wanted list, but in the time since this survey was launched, the Obama Administration has released some key opinions from the Office of Legal Counsel (OLC) that were used to justify torture. Given this move in the right direction, we have instead included these memos in the "Check Back" section.

GAO Legislative History

Legislative Branch

The GAO legislative histories are authoritative and comprehensive histories, compiled by GAO law librarians, of federal legislation after 1915. These documents are not available to the public, however. Instead, GAO contracted with a third party, Thomson-West, to digitize these histories, and the histories are now exclusively licensed to Thomson-West. GAO themselves lost access to the data digitized by this contract and now only have access through an account with Thomson-West.

These documents are incredibly valuable to the public and should be in the public domain, as they are not copyrighted. Federal contracts for digitization should not give exclusive access to one vendor, but instead should preserve the public right to know and to have no-fee access to information prepared at taxpayer expense.

PATRIOT Act Usage & Rationale

Executive Branch

The PATRIOT Act and associated civil liberties violations remain on the most wanted list from the 2004 Ten Most Wanted. The facts have not changed; the public has a right to know the details of when special investigative power is extended under the PATRIOT Act. This is especially important in investigations not directly related to terrorism. Currently the Judicial Branch is not providing statistical reports on PATRIOT Act usage, and without such reports, the public has no method of knowing when the courts might be allowing law enforcement to overstep investigative boundaries. ★

Challenges and Barriers to making Government Information Available Online

Results from the survey show that barriers to open government continue to exist across the government. Secrecy is not the sole province of any branch of government: respondents nominated and voted for information that they want to be made available by the Executive, Legislative, and Judicial branches. The tendency of government is to gather information and power to itself, and incentives are not well balanced in order to encourage public release of information. Despite recent encouraging moves by the new administration, it will take a sustained effort to ensure that a transparent and open government is advanced, and sustained.

A solid infrastructure of public access laws exists. Unfortunately, the government has failed to fully and faithfully implement public access laws and policies, and significant loopholes have eroded the public's access to and faith in government information. These include the E-Government Act of 2002, the E-FOIA Amendments of 1996, the Paperwork Reduction Act and Circular A-130, and the Freedom of Information Act.

- **The E-Government Act of 2002**: This law contains many provisions intended to make government information more findable and usable. It directs OMB to issue policies on the adoption of standards, open to the maximum extent feasible to enable the organization and categorization of government information in a way that is searchable electronically and in ways that are interoperable across agencies. The Act was intended to improve the preservation of, and public access to, electronic information by "achieving greater compliance with the Federal Records Act with respect to electronic records." It requires agencies, after solicitation of public comment, to determine what types of government information they intend to make available on the Internet and by other means, and develop timetables for

doing so. The subsection provides for public comment throughout the process, and requires that agencies update their determinations as appropriate. Section 205 requires federal courts to provide greater access to judicial information over the Internet, and amends existing law regarding the fees that the Judicial Conference prescribes for access to electronic information to read, "[t]he Judicial Conference *may, only to the extent necessary*, prescribe reasonable fees for collection by the courts for access to information available through automatic data processing equipment."

- **Electronic FOIA:** 1996 amendments to FOIA simplified access to federal government records through the use of electronic communications media. Members of the public request more than 600,000 records a year from federal agencies, a volume that threatens to overwhelm some agencies. For example, members of the public requesting information from the Federal Bureau of Investigation is likely to wait four years for the information. By requiring information to be made available electronically, Congress sought to lessen the burden on federal agencies created by paper processing and ensure the public timely and meaningful access to information by requiring agencies to make oft-requested records proactively available. E-FOIA requires agencies to create online reading rooms of frequently requested records and opinions not published in the Federal Register. The E-FOIA amendments also required agencies to include databases as FOIA records, and to make information easily accessible to users. The legislative history of the 1996 Amendments to the FOIA make it clear that Congress expected OMB to give guidance on E-FOIA, but OMB has not provided comprehensive guidance. The result has been a failure to meet the important public access goals of FOIA, as agency upon agency fails to comply with the law.

- **Paperwork Reduction Act/Circular A-130**: Circular A-130 was published by OMB to establish policy and guide the management of the informational resources of federal agencies, as mandated by the PRA. This circular reinforces the importance of efficient management of information resources, including the "free flow of information" and the effective dissemination of government information to members of the public. Circular A-130 indicates that agencies should use techniques that reduce the burden on the public to access agency materials. Agencies are required to "[d]isseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public." Since the information is already distributed via agency Web sites, it would take very little effort to ensure that the information is widely accessible to the public via search engines. While Circular A-130 delves deeply into the specifics of how to manage information resources, it is clear that at a higher level, it is a document that mandates and guides agencies in making government resources easily available. This includes making the agency resources and information available to the largest possible audience.

Since the information is already distributed via agency Web sites, it would take very little effort to ensure that the information is widely accessible to the public via search engines.

- **The Freedom of Information Act:** Signed into law in 1966, FOIA grants members of the public the right to access information held by the government — the right to obtain reproductions of records created and maintained by and for federal government agencies. FOIA affirmed the public's right-to-know as a central principle of our democratic government and open society. Each of six amendments to FOIA since 1966 broadened the act to cover more information deemed necessary to ensure the public's right to know about the activities of the federal government. The Freedom of Information Act covers almost all non-classified records (including electronic records) created within federal departments, agencies, and offices, federal regulatory agencies, and federal corporations. Journalists, public interest organizations, and members of the public view FOIA as an important tool in opening federal agency policies and practices to public scrutiny. While FOIA is one of the most important public access laws, FOIA offices are not well funded, and a backlog of requests exists in many FOIA offices throughout the government. In addition, there is no oversight within the Executive Branch of agency compliance and only intermittent oversight from Congress.★

Policy Recommendations

Many barriers stand between government information and the public. Policies and practices can be changed to open the government and disseminate the information generated by the government, and we offer recommendations that would help the government disseminate information proactively.

The Open Government Directive should direct federal government agencies to move rapidly to providing all new government information (documents, data, etc.) and data in open, structured, machine-readable formats that will permit the public – nonprofits, companies, individuals – and other government entities to grab the information, reuse it, and combine it with other information.

We are also concerned about information created or collected by the judicial and legislative branches of the federal government. The President has taken an excellent first step in directing that an Open Government Directive be drafted to further those goals. We offer this list of recommendations to the President and those responsible for the implementation of the Open Government Directive.

Public, accessible, online information is supported by the goals of government regulations and legislation, including the E-Government Act of 2002, the Paperwork Reduction Act, Electronic FOIA, and other federal materials regarding the management of public informational resources. However, interpretation and implementation of these laws can fall short without government support.

- **Open, accessible formats should be mandated for online resources:** Agencies should be required to create websites that distribute data in open formats that are accessible to all search engines and reusable by third parties. OMB should direct agencies to actively make all their online resources searchable by major public search engines and available in open formats that can be used by third parties in innovative new ways. While online availability of data does not eliminate the need for more traditional methods of information dissemination, using open formats will ensure that online government data are accessible to the widest possible audience.

- **The federal government should have an affirmative legal obligation to disclose information to the public in a timely manner.** Our federal public access laws are relatively recent in our history. Until 1966, with passage of FOIA, there was no law giving the public any right to government

information. For all its usefulness, however, FOIA is not a true right-to-know law. New openness laws and policies should require agencies to make public information available online proactively and in a timely manner. It is increasingly easy to make electronic information – in all its formats – publicly accessible.

- **Records retention rules, digitization guidelines, and model contracts should be revised to ensure public access to digital records in open formats:** The federal government needs to update a series of guidelines to firmly establish a requirement of no-fee public access to government records, whether they have been converted to digital formats by the agency or a contractor. The National Archives and Records Administration (NARA) has promulgated guidelines that substantially meet these recommendations for its digitization projects, and these guidelines or similar ones should be applied across the executive branch. Model contracts for conversion of records to digital formats should be developed that preclude private control of public information and charges for public access to such information. These templates should allow flexibility and innovative partnerships while maintaining good stewardship of the public's records.

- **Transparency and open government efforts should be well funded:** All branches of the government should have proper funding and resources dedicated to transparency efforts in order to ensure information dissemination. Recent years have seen improvements in FOIA policy but little direct help in terms of resources for agencies struggling to properly implement the law; in addition, federal government actors often are not well funded in terms of technical resources that would enable transparency.

- **A federal plan for proactive information dissemination should be developed:** The CIO Council should develop a strategic plan to rebuild government information dissemination capacity and help agencies put federal information online, beginning with creation of an index of each agency's information holdings (as required by E-FOIA and the E-Government Act). The government needs to rebuild technical capacity for information dissemination in the agencies (and government-wide), because in recent years, most technical work regarding dissemination has been outsourced, and there is not sufficient capacity among governmental personnel to even oversee the work of contractors, much less develop technical dissemination initiatives within the government.

- **Existing openness laws should be enforced:** Compounding the resource issues and issues with policies, existing laws requiring the release of information are often unenforced, leading to failures to meet the requirements of open government legislation.

- **Chief Information Officers should have a position in their office in charge of dissemination and transparency efforts.** Working with the CIO and others in the agency with information management responsibilities, this officer should be able to approve and disapprove programs and system acquisitions, as well as working with the public to evaluate the priorities for making public information held by the agency

On the Right Track

Although many federal entities have not taken advantage of the Internet's efficiencies, there are some parts of government that are on the right track. Many federal websites use innovative tools to disseminate information to the public.

Library of Congress American Memory Project

The Library of Congress has used online tools to disseminate their wealth of knowledge, not only putting information online but also proactively using online tools to make it more useful. LOC recently put thousands of archived photos from the American Memory Project, memory.loc.gov, online using Flickr, a popular photo-sharing tool, and then asked users to help them tag the images. Rather than cataloguing the pictures internally, LOC 'crowdsourced' the work after opening the information to the public. As a result of LOC releasing these images, they were soon used in blogs all over the Internet, sparking discussion about America's history. The historical value of freeing these images is immeasurable.

LOC also proactively used the Sitemap protocol to make their databases searchable. Hiding in Plain Sight, a report issues on December 11, 2007 by CDT, notes that the LOC databases were unsearchable. They have since made an effort to index their databases using Sitemaps, a common standard embraced by the major search engines. In addition, LOC uses other social media to reach out to the public and establish dialog, including blogging and Twitter. While LOC is on the right track, it is worth noting that some parts of the Library are not- the Congressional Research Service, whose reports received far and away the most votes on our survey, are still not publicly available from LOC. This just underwrites the importance of agency leadership stressing that material should be made accessible.

USASpending.gov

USASpending.gov is an example of what open government legislation can do when implemented well. While it is clearly not a perfect website, it is an excellent step. The Federal Funding Accountability and Transparency Act of 2006 requires a single searchable website of all grants, contracts, and loans from the

federal government, accessible by the public for free. In 2007, OMB implemented USASpending.gov based directly on third party open government websites tracking federal funding. USASpending.gov makes data available through an application programming interface (API), allowing others to use the information on their own website, and give access to downloads of the information as supplied by the agencies.

NASA

NASA has successfully used social media to promote its programs and educate the public on progress. Notably, the Mars Phoenix was watched by __ people on Twitter, substantially changing the way that they communicated. In addition, NASA is home to many blogs, often following a mission or a project. NASA's CIO writes a blog with the explicit goal of furthering transparency[2]. NASA's Advisory Council, often notably reticent to release data, released materials from their most recent meeting.

In addition, NASA hosts a technical reports server as a resource for the public. NASA has made available approximately 100,000 technical reports and has made 32 megabytes worth of Space Ops, Aeronautics and Biomedical Powerpoint materials available online, including materials that are still under deliberation (such as future plans for the Shuttle). It seems that NASA has taken President Obama's transparency memos to heart and, in conjunction with the NASA motto- "for the benefit of all"- is proactively releasing information in new ways. While getting this much information online has its difficulties- much of it is not full text searchable- NASA seems devoted to making the information available to the public.

NASA is home to many blogs, often following a mission or a project. NASA's CIO writes a blog with the explicit goal of furthering transparency

National Oceanic and Atmospheric Administration

The information released by NOAA is the basis of hundreds of weather services used by the public, from The Weather Channel to the weather application on phones. NOAA releases raw weather information and forecasts in raw data format for use by third parties. Weather and climate sensitive industries in the United States account for about one-third of the Nation's Gross Domestic Product, according to NOAA; these industries depend on timely, accurate information. NOAA sees proactive release of information as part of their mission, and we hope more agencies and federal entities will follow their lead.

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2 http://blogs.nasa.gov/cm/blog/Goddard-CIO-Blog.blog/posts/post_1235256550436.html

Check Back – But We're Optimistic

Here are a few government transparency efforts that are moving in the right direction, but need public and government attention to fully succeed in assuring meaningful public access. We'll be keeping an eye on them, and hope that the public does too.

Recovery.gov

Much has been made of the plan to disseminate information on the new stimulus- the American Recovery and Reinvestment Act- online. Agencies are required by the Act to collect and disseminate information on how they spend ARRA Act money, as well as sending the information to Recovery.gov to be displayed within the larger stimulus context. According to Senator Lieberman, Recoery.gov will have information about grants, contracts, and oversight activities. The public is clearly interested in how the government plans to spend our tax money. According to OMB Deputy Director, Recovery.gov receives 3,000 hits each second. While much of the information around ARRA Act spending is not available yet, we are hopeful that Recovery.gov will be a key element in keeping the public involved, and a source of data for third parties.

Data.gov

As part of the move to making information proactively available, a site has been proposed to centralize access to all feeds of information that are publically available from the federal government. While little is known about the future of this website, we are excited by the idea of a centralized repository for all feeds of government information and the ability to bulk download federal data.

Office of Legal Counsel Memos

The Office of Legal Counsel of the Department of Justice issues memoranda that assess whether activities of agencies of the federal government comply with the law and the U.S. Constitution. Its opinions can effectively authorize or prohibit conduct that is at the legal boundary. As noted earlier in the report, these were highly ranked in our Top Ten until the release of some memos.

While some of those memos have been released, the former administration kept far more memos secret. The new administration is re-evaluating whether these memos should be kept under wraps, and has released nine memos - and may well release more. As one of our top five Most Wanted documents, we are encouraged that the Obama administration is taking a new look at whether this information should be secret.

Conclusion

A few over-arching messages come from participants in this project:

- Members of the public want access. Access to unclassified documents their tax dollars have been used to produce.

- They want direct access. Put differently, the expectation is that access to these documents be through a government website, the closer to the primary source of the document, the better.

- They demand complete data sets in a timely manner. Documents should be made available without parts missing and as quickly as possible considering the resource.

- Data needs to be available to anyone, license-free and free of charge. Datasets should not be exclusively controlled by any third-party, and should not be in a format where any member of the public has to pay for the ability to view or use the document (be it through exclusive software or any other reason).

If all three branches of the federal government work to keep these ideals in mind when creating and releasing unclassified documents, the country will be one step closer towards ideal democracy.

Call To Action

The Center for Democracy and Technology and OpenTheGovernment.org encourage members of the public to hold the federal government accountable for open information on a regular basis. While the "Most Wanted" project is only conducted every five years, both organizations actively work on this topic on a regular basis, maintaining websites, blogs, twitter feeds, and even making direct policy recommendations to federal agencies. We encourage members of the public to do the same. Please call your elected officials, write letters or e-mails to departments that do not have the information you want, and do so with regularity.

Appendix

This is the third Most Wanted Government Documents survey and report, with the first being conducted in 1999 and the second in 2004. The 1999 project was a call for e-mail suggestions of documents the federal government was not providing. The 2004 project was focused more around voting on an already established list.

## List of the Ten Most Wanted Documents for 2004

1. **The 28 Pages: Secret Pages of the Congressional Joint Inquiry into 9/11 Intelligence Failures**

2. **Type of crime investigated each time a PATRIOT Act power was invoked**

3. **A list of the contaminants found in the sources of our drinking water**

4. **Number of court cases partially or totally closed to the public and an explanation of each case's need for secrecy**

5. **Industry-written reports on chemical plants' risks to communities**

6. **Identities of those detained after 9/11 on immigration charges or as material witnesses**

7. **Gifts from lobbyists to Senators and their staff**

8. **Federal contracts, grants and other agreements, their total value (in dollars), records documenting violations, and fines and other federal enforcement actions**

9. **All changes made to publicly available versions of congressional legislation before a committee vote (the "chairman's mark")**

10. **Congressional Research Service Reports**

List of the Ten Most Wanted Documents for 1999

1. **Congressional Research Service (CRS) reports**
2. **Supreme Court Web site (including opinions and briefs)**
3. **State Department's Daily Briefing Book**
4. **EPA Pesticide Safety Database**
5. **Full Text of all Congressional Hearings**
6. **DOJ Court Briefs**
7. **Congressional votes in searchable database**
8. **Endangered Species Recovery Plans**
9. **Official Gazette of Trademarks**
10. **Circuit Court Web Sites**

Methodology

In order to make a thorough list of the Most Wanted government documents, we departed from previous models of the Most Wanted survey. In this year's survey of the Most Wanted Government Documents, we created a website to accept nominations for Most Wanted documents and asked users to vote on their Most Wanted documents. Previous surveys called for emails or provided a list of documents for people to vote on. The 2009 survey website gave equal opportunity for document requests from each branch of government.
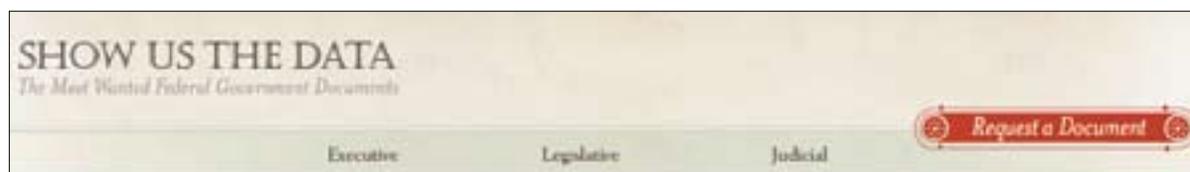
The homepage of ShowUsTheData.org has tabs for each branch centered at the top, immediately beside the "Request a Document" button.

The website was pre-populated with at least three documents per branch. Once voting began, the website shoed the documents that have received the most votes, and recently requested documents lower down on the page for each of the branches of government. While this may have created a front-loaded bias (see Caveats), it was a conscious decision with the intention of having higher quality requests immediately accessible to users, as opposed to page visitors seeing recently requested documents front and center.

The timing of this project is also a very important part of the method. Promises from the new admin-

istration concerning openness in government give the project some urgency as transparency goals are shaped. The voting period was designed to conclude within the first months of the new administration's tenure. The website voting period was from February 10, 2009 until March 10, 2009.

Each document request had a comments forum in order to allow users to add more information or sources for each document. Users could comment when a document was requested that may already exist on a government website or had already been posted on the Show Us the Data site.

Some document requests were not always legitimate or credible. Therefore, as site moderators we could either delete non-legitimate requests or requests that were not clear to users. We attempted to keep requests that were not defined but were in fact about federal information. Therefore, only spam postings were deleted. Duplicate postings were not eliminated, but voting tended to remain concentrated around the originally posted document. (For exceptions and outliers, please see Caveats.)

The website allowed users to vote for up to three documents without regard to branch or other considerations. Votes were limited based on user IP address in order to allow for voting without a login and to avoid tracking technologies.

> **We attempted to keep requests that were not defined but were in fact about federal information.**

At the conclusion of the voting period, a list of documents was compiled. In determining the list of Most Wanted documents, user votes were considered alongside recommendations from top open government and transparency experts. Those documents that were Most Wanted by users of ShowUsThe-Data.org are marks as such in the Top Most Wanted list.

Caveats

The Show Us The Data: Most Wanted Federal Government Documents survey methodology has a number of clear limitations. A major source of bias in this public survey is the website structure and navigation scheme; those limitations, and other sources of bias are addressed below.

The website allowed each user to vote three times. The restrictions on voting were controlled by tracking IP addresses. Therefore, it is fair to assume some users may have voted at more than one location or even voted numerous times through the use of proxy servers.

In order to get Show Us The Data off the ground, the website needed a foundation of documents. Internally, this foundation was referred to as the "pre-population list." The staff at the Center for Democracy and Technology, OpentheGovernment.org, and the Sunlight Foundation generated this list based on previous surveys. Consequently, the foundation of the website was biased in favor of documents suggested and then described by staff members working in the field of open government. The repopulation list included the following documents:

- **Executive**: Bailout Funds; PATRIOT Act Usage and Rationale; Full List of Contractors; Daily schedules for the President and Cabinet Officials; EPA Regional Public Health Hazard List; State Department Daily Briefing Book; Personal Financial Disclosures.

- **Legislative**: CRS reports; Exhaustive List of Congressional Members Votes; Full List of Contractors; Personal Financial Disclosures.

- **Judicial**: Supreme Court Website; FOIA Requests; Federal Court Press Releases; Opinions on OLC Rulings.

The website's search features were limited, and searched only the title of the document rather than the respective description and comments. Furthermore, the search feature did not automatically prompt the option to search again. Instead, the website assumed if a search was not successful, users would want to submit a document with the word(s) searched and therefore a "Submit a New Document" screen was prompted. This likely led to the creation of many one-word document requests that were intended as searches of existing documents. The "Submit" and "Search" keys were admittedly similar in appearance, and the "Search Again" features required scrolling to the bottom of the page. A likely consequence of this was moderate amount of document requests were one-word requests with no description and listed as "unknown department." While not all these document requests were the result of this search issue, it is likely that some of them were. They have been included in the survey results.

The homepage of the website only listed the current top five requested documents according to votes. Additionally, there was no link on the homepage to allow users to see an exhaustive list of documents. Once a specific branch was selected, users had the option of seeing a full list of that branch, but never a full list of all of the documents, without specification of government branch. The lack of such a link from the homepage led to a strong bias in favor of those documents receiving votes initially.

The Show Us the Data project voting is not intended to be empirical or a random sampling of the U.S. population, and is not a statistically sound sampling. The votes admittedly came primarily from members of the public who are highly active in open government activities. However, this year's project had a much larger audience due to publicity through blogs and social networking sites such as Twitter. ★