



SECURITY REPORT CARD 2006



Indicators of Secrecy in the Federal Government

A Report by
OpenTheGovernment.org
Americans for Less Secrecy, More Democracy

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About OpenTheGovernment.org

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

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

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BY THE NUMBERS

The Courts

2,072 Orders of the Secretive Foreign Intelligence Surveillance Court

While the Foreign Intelligence Surveillance Court does not reveal much about its activities, the Department of Justice reported that the FISC approved 2,072 orders – rejecting none – in 2005 but does not identify the activities being investigated or provide basic information about how the orders are used.

National Security Letters

9,254 National Security Letters Issued

A Justice Department report on secret wiretap warrants indicated that the government issued 9,254 National Security Letters during 2005. These letters can be used to obtain information about individuals without the government applying for a court-reviewed warrant.

Private Enterprise

106 New Patents Kept Secret, 4,915 “Secrecy Orders” in Effect

In 2005, the federal government closed the lid on 106 patents. Overall, that brings the total number of inventions kept under “secrecy orders” to 4,915.

Classified Documents

\$134 Spent Creating New Secrets for Every \$1 Spent Releasing Old Secrets

For every \$1 the federal government spent in 2005 releasing old secrets, it spent \$134 creating new secrets. The good news is that is a \$14 drop from 2004. To put this slight drop in context—from 1997 to 2001, the government spent less than \$20 per year keeping secrets for every dollar spent declassifying them.

17% of DOD FY 2006 Budget Is Classified or “Black”

“Black” programs accounted for 17 percent of the (FY) 2006 Department of Defense (DoD) budget of \$315.5 billion, requested in 2005. Classified acquisition funding has nearly doubled in real terms since FY 1995, when funding for these programs reached its post-Cold War low.

Freedom of Information Act

FOIA Requests Continue to Rise; Agencies Can’t Keep Up

Adjusted for an abnormal increase in Social Security Administration numbers, the number of FOIA requests has increased by 65,543 requests since 2004. Agencies overall have been unable to keep up with the number of requests, with 43 percent more pending requests this year than in 2002.

Used Rarely in Cold War, “State Secrets” Privilege Used At Least 22 Times Since 2001 Reported Invocations Continue to Rise

The “state secrets” privilege allows the sitting U.S. president to nearly unilaterally withhold documents from the courts, Congress and the public. At the height of the Cold War, the administration used the privilege only 6 times between 1953 and 1976. Since 2001, it has been invoked a reported 22 times—an average in 5.5 years (4) that is close to twice as high as the previous 24 years (2.46).

Presidential Signing Statements

132 Signing Statements Challenging Over 810 Federal Laws in George W. Bush’s Presidency

In the 211 years of our Republic to 2000, Presidents had issued fewer than 600 signing statements that took issue with the bills they signed. Among recent Presidents, President Reagan issued 71 statements challenging provisions of the laws before him, and President George Herbert Walker Bush issued 146. President Clinton issued 105. George W. Bush has issued at least 132 to date.

EXECUTIVE SUMMARY

OpenTheGovernment.org's third annual report, Secrecy Report Card 2006, shows a continued expansion of government secrecy across a broad array of agencies and actions.

Every administration wants to control access to information about its policies and practices. Except in strictly limited and specified contexts, however, information created by or for the federal government belongs to the American public and should be open. This principle has been honored more in the breach than in the observance and public access to government information has varied over time. The current administration has exercised an unprecedented level of restriction of access to information about, and suppression of discussion of, the federal government's policies and decisions. This regulatory framework results in the circumscription of democracy and our representative government; neither the public nor Congress can make informed decisions in these circumstances. Our open society is undermined and made insecure.

INTRODUCTION

Government secrecy continues to expand across a broad array of agencies and actions, including military procurement, new private inventions, and the scientific and technical advice that the government receives. The public use of the Freedom of Information Act to obtain information from our government continues to rise as more and more categories that exclude information from access are created by agencies.

Openness is not only a keystone value of our democracy, more practically it helps root out abuse of power, bad decisions or embarrassing facts that may put lives at risk.

OpenTheGovernment.org issued the first edition of the Secrecy Report Card to call attention to the remarkable expansion of secrecy in the federal government. This year's expanded report seeks to provide a more complete picture of secrecy in

the federal government, expanding to cover "black" military budgets, and Presidential signing statements.

Many aspects of secrecy are undiminished but initiatives in Congress would countervail this tendency. SA 4579 (to the Department of Homeland Security Appropriations Act [H.R. 5441]) which passed on unanimous consent would push back the veil on legislation that creates new "sensitive but unclassified" categories. S 2590 would direct the executive branch to let the public know where their tax dollars are being spent, and H. RES. 688 would require the House to make the text of legislation publicly available online for 72 hours before a vote.

A Note on the Indicators

OpenTheGovernment.org seeks to identify measurable indicators that can be used as benchmarks to evaluate openness and secrecy in govern-

HIGHLIGHTS

- For every dollar spent declassifying old secrets, federal agencies spent \$134 in 2005 creating and storing new secrets. The serious imbalance between taxpayer dollars devoted to generating secrets versus those spent to release records that are no longer sensitive continues.
- With 2,072 secret surveillance orders approved in 2005, federal surveillance activity under the jurisdiction of the secretive Foreign Intelligence Surveillance Court more than doubled in five years.
- Over 60 percent of federal advisory committee meetings in 2005 were completely closed to the public. More were partially closed. Such secrecy undermines one of the key purposes of the Federal Advisory Committee Act.
- Since 2001, the "state secrets" privilege has been used a reported 22 times—an average in 5.5 years (4) that is close to twice as high as the previous 24 years (2.46).
- In the 211 years of our Republic to 2000, fewer than 600 signing statements that took issue with the bills were issued. In five years, President Bush has issued at least 132, challenging 810 provisions of laws.

ment in the United States. We include data based on three criteria:

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

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

What follows is a brief look at how the main indicators we examine have changed over time. We have also added two new indicators -- the classified, or "black," Department of Defense budgets, and Presidential signing statements that challenge provisions of law.

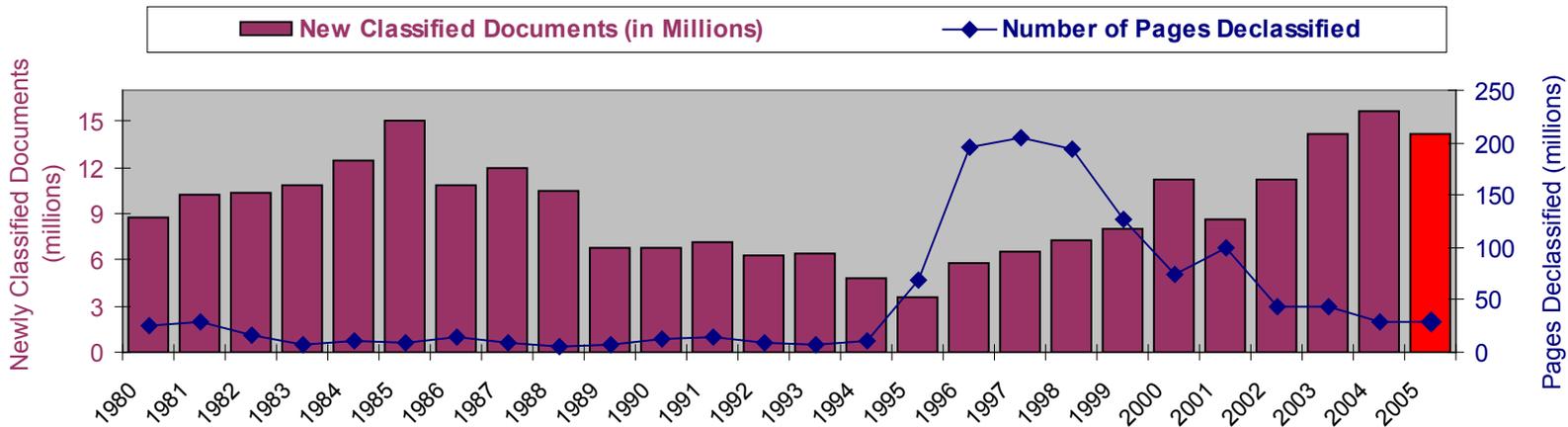
QUANTITY OF INFORMATION MOVING IN AND OUT OF THE CLASSIFICATION SYSTEM¹

Classification activity still remains significantly higher than before the terrorist attacks of September 11, 2001. In 2005, the federal government used its secrecy stamp 14.2 million times, a slight drop in classification since 2004. Increases can still be seen in the Department of Justice (DOJ) and the Department of Homeland Security (DHS). The overall drop in classification activity is a step in the right direction, but the numbers are still substantially higher than before the terrorist attacks of September 11, 2001.² Therefore, the decline in classification activity should be viewed with caution.

Classification Activity Remains High

Fiscal Year	New Classification Decisions	Number of Pages Declassified
1995	3,579,505	69,000,000
1996	5,790,625	196,058,274
1997	6,520,154	204,050,369
1998	7,294,768	193,155,807
1999	8,038,592	126,809,769
2000	11,150,869	75,000,000
2001	8,650,735	100,104,990
2002	11,271,618	44,365,711
2003	14,228,020	43,093,233
2004	15,645,237	28,413,690
2005	14,206,773	29,540,603

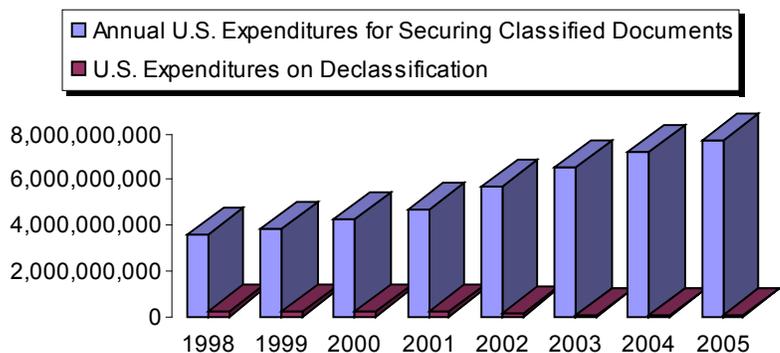
Classification Down Slightly, More Documents Released



WHERE THE DOLLARS GO: EXPENDITURES ON THE CLASSIFICATION SYSTEM

The chart to the right and the accompanying table (on page 4) show the amount of money spent on the entire classification system. These costs include the costs associated with securing facilities and personnel in the United States and abroad that hold classified information, training, technology investments and declassification efforts. The total expenditure figure includes estimates from 41 federal agencies, including the Department of Defense. The Central Intelligence Agency is not included, because its

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



Source: Information Security Oversight Office
Compiled by OpenTheGovernment.org

spending on classification activities is itself classified.

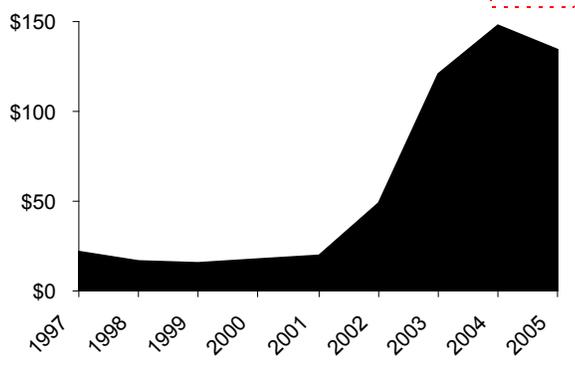
The amount of money government agencies spend to secure classified documents continues to rise, although the rate of increase has slowed in recent years. The 2005 estimate of \$7.7 billion represents a 5.8 percent rise from 2004. This year, the main increase in spending came from the Physical Security category, which was up 50 percent from 2004. The numbers for 2004 and 2005 are rounded historical data estimated to the nearest dollar because of a change in the way that ISOO reports the estimated numbers.

Abuse of the Classification System

Despite the drop in spending on securing classified information and the increase in spending on declassifying documents, the classification system still needs reform. This year, the discovery of a major reclassification program conducted by 10 agencies brought attention to the unwieldy classification system.

In April, the National Archives conducted an audit based on suspicions that previously public documents had been removed from the shelves of the Archives. The audit, which examined all re-review efforts since 1995, found that ten unrelated efforts had resulted in the withdrawal

\$134 Spent Creating & Securing Old Secrets For Every Tax Dollar Spent Declassifying



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

Federal Expenditures on Classification and Declassification (excluding CIA)

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

Source: OpenTheGovernment.org calculations based on data from the National Archives and Records Administration Information Security Oversight Office (ISOO)

of at least 25,315 publicly available records from the shelves of the Archives. The report found that 64 percent of the withdrawn records contained information that met the standards for continued classification, 24 percent of the sampled records were clearly inappropriate for continued classification, and 12 percent were questionable.

In another example of the cost of an abused classification system, a report by the National Security Archive revealed that the Pentagon and the Energy Department (DOE) have reclassified historical data relating to the size of the American nuclear arsenal during the Cold War. Under the 1998 Kyl-Lott amendments, DOE has spent \$22 million while surveying more than 200 million pages of released documents. DOE has reported to Congress that 6,640 pages have been withdrawn from public access (at a cost of \$3,313 per page).³ This number is likely an additional cost of classification, separate from the ISOO count.

Cost of Keeping Classified Documents*

For every one dollar the government spent declassifying documents in 2005, the government spent \$134 maintaining the secrets already on the books. This represents a \$14 decrease from 2004, due to the drop in classification spending and the increase in declassification spending.

Spending on declassification activities rose this year to 57 million, the first time spending on declassification has increased since 1998.

By December 31, 2006, Executive branch agencies must complete the automatic declassification of 25 year old classified information that has “permanent historical value.” According to ISOO, most agencies are on track to meet this deadline.

Tip of the Iceberg: 3,959 “original classifiers.”

Several thousand federal workers have the authority to create a new memo, analysis, report and classify the information contained in the document as either “top secret,” “secret” or “confidential.” In government parlance, these people have “original classification authority.”

Of course, this is just the tip of the iceberg. This classified information is then referred to, summarized, cited, or otherwise used in many documents by many people through-

out the federal government. In all these derivative uses, the information is still classified. Unknown is how many people actually use classified information throughout the

government, but the government does track the number of people whom the president has granted "original classification authority."

Persons in Government With Original Classification Authority

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

Source: ISOO and U.S. Department of Justice

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Classified Budgets Skyrocket

Classified or "black" programs account for about \$27.4 billion, or 17 percent, of the acquisition funding included in the fiscal year (FY) 2006 Department of Defense (DoD) budget.

This total includes \$14.1 billion in procurement funding and \$13.3 billion in research and development (R&D) funding. These figures represent 16 percent and 19 percent, respectively, of the total funding requested for procurement and R&D.

According to the Center for Strategic and Budgetary Assessments:

- Classified acquisition funding has nearly doubled in real terms since FY 1995, when funding for these programs reached its post-Cold War low.
- Since FY 1995, funding for classified acquisition programs has increased at a substantially faster rate than has funding for acquisition programs overall,

which has grown by about 60 percent in real terms.

Restrictions placed on access to classified funding have meant that DoD and Congress typically exercise less oversight over classified programs than unclassified ones.

Source: *The Center for Strategic and Budgetary Assessments (CSBA)* <http://www.csbaonline.org/>

FY	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total DoD Weapons Acquisition	77.7	77.4	79.4	82.1	88.7	93.2	103.9	110.9	137.9	147.5	167.8	157.7
Classified Acquisition	11.7	12.6	13.2	14.9	15.8	15.4	18.1	18.2	26.1	27.6	29.8	27.4
% Classified	15%	16%	17%	18%	18%	17%	17%	16%	19%	19%	18%	17%
Total DoD Procurement	43.2	42.4	43.2	44.9	50.6	54.9	62.2	62.2	79.6	83.2	98.5	86.6
Classified Procurement	7.1	7.3	6.1	6.8	7.5	7.5	7.5	8.9	13.2	14.5	16.3	14.1
% Classified	16%	17%	14%	15%	15%	14%	10%	10%	17%	17%	17%	16%
Total DoD R&D	34.5	35.0	36.5	37.2	38.1	38.3	41.7	48.6	58.3	64.4	69.3	71.2
Classified R&D	4.6	5.3	7.2	8.1	8.3	7.9	10.6	9.3	12.9	13.2	13.5	13.3
% Classified	13%	15%	20%	22%	22%	21%	25%	19%	22%	20%	20%	19%

Source: <http://www.csbaonline.org/4Publications/Archive/U.20050328.FY06BlackBudgetEst/U.20050328.FY06BlackBudgetEst.pdf>

THE FREEDOM OF INFORMATION ACT (FOIA)

Total Number of Freedom of Information Act Requests

Public requests for information under the Freedom of Information Act have continued to grow over the last six years, but the rate of increase has slowed. Excluding the Social Security Administration (SSA)*, the total number of FOIA requests received for 2005 is 2,692,661. If SSA is also excluded for 2004 (leaving 2,627,118 requests), the number of FOIA requests has increased by 65,543 requests since 2004.

The slight drop in total cost of FOIA is difficult to explain. Factors such as decreased staffing and better processing procedures may explain the drop at some agencies, but costs vary significantly among agencies.

Backlog in Fulfilling FOIA Requests

Agencies have been unable to keep up with the number of requests. According to a recent Government Accountability Office study⁴, agencies had 43 percent more pending requests this year than in 2002.

Public Requests under the Freedom of Information Act

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

Source: U.S. DOJ, OpenTheGovernment.org calculations

In OpenTheGovernment.org's study of agency improvement plans in accordance with Executive Order 13392, we reported that most recent reports available from the 50 worst laggards show the median wait for a request to be handled ranges from about three months to more than four years, depending on the agency.⁵ Agencies should find ways to reduce their backlogs so that they can be more responsive to public requests for information.

* The Social Security Administration reported an 11.9 fold increase in requests -- an additional 16 million requests -- in 2005 which it attributed to an improvement in its method of counting requests. Justice officials have suggested that SSA consider treating the bulk of these requests as non-FOIA requests and thus not include them in future reports. Source: GAO, FREEDOM OF INFORMATION ACT: Preliminary Analysis of Processing Trends Shows Importance of Improvement Plans, Wednesday, July 26, 2006. The number includes 1,914,395 requests to the Veterans Administration and 222,372 to Health and Human Services.

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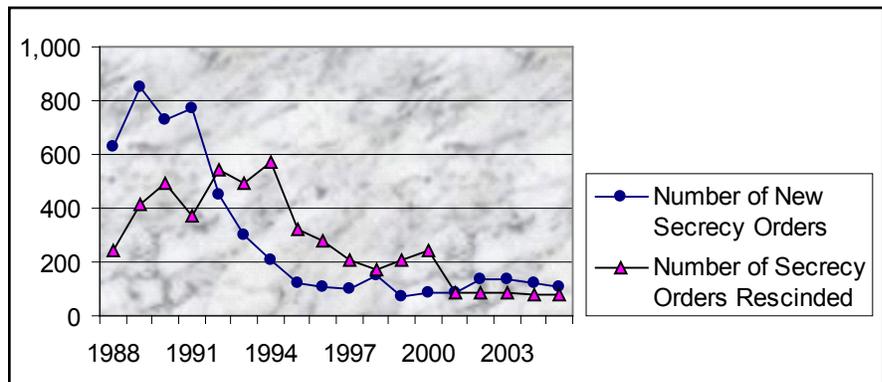
SECURITY ON NEW PATENTS

Patent "Secrecy Orders"

The federal government can impose secrecy on any new patent to be kept secret by issuing a "secrecy order" under federal law (35 USC 181). After over a decade of fewer and fewer new secrecy orders imposed on new patents, the number of new secrecy orders jumped just after 9/11 from 83 in 2001 to 139 in 2002. It dropped slightly in 2005, from 124 new orders in 2004 to 106 in 2005.

At the same time, the number of secrecy orders rescinded follows

Patent Secrecy Orders, Rescissions Continue Decline



Source: USPTO via Secrecy News

a downward trend. The result is an uptick in the total number of Invention Secrecy Act orders in effect from a low of 4,736 in 2001 to 4,915 in 2005, a 3.8 percent increase. To put that into perspective, the total number of newly issued patents rose only 2.8 percent during the same period (from 166,037 to 170,637).

According to a news report,⁶ in at least one case an interesting intersection occurred between patent secrecy and the “states secret privilege.”

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STATE SECRECY: THE EXECUTIVE BRANCH’S TRUMP CARD

The executive branch has broad, near unilateral authority to declare information “state secret.” In 1953, the U.S. Supreme Court allowed the executive branch to keep secret, even from the Court, details about a military plane’s fatal crash. That case, *United States v. Reynolds*, allowed the executive branch to withhold information that would threaten national security. This ruling gave the executive branch a power to impose secrecy with

In September 2005, a federal appeals court ruled against the Crater Coupler patent holders and upheld a sweeping interpretation of the controversial “state secrets privilege.” The order covered 26,000 documents – some of which were not only unclassified, but had already been entered into the public record.

Between 1977 and 2001, there were at least 51 civil lawsuits in which the government claimed the state secrets privilege -- in every case successfully.⁷

little opportunity for appeal or judicial review.

Between 1953 and 1976, the federal government invoked the “state secrets” privilege only six (6) times. Between 1977 and 2000, administrations invoked the privilege 59 reported times (a rate of 2.46 times per year). Since 2001, the state secrets privilege has been invoked at least 22 times*, or a rate of 4 times each year.

New Privately Held Patents Classified by the Federal Government

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

Source: *United States Patent and Trademark Office via Federation of American Scientists, www.fas.org/sgp/othergov/invention/stats.html; accessed 8/25/05.*

Use of State Secrecy Privilege

(Years are inclusive)	1953 to 1976	1977 to 2000	2001 to 7/2006
Times Invoked in Reported Cases	6	59	22
Period (in years)	24	24	5.5
Yearly Invocations (avg.)	0.25	2.46	4

Sources: Susan Burgess, legal fellow at *The Reporters Committee for Freedom of the Press*; William Weaver, Senior Advisor, *National Security Whistleblowers Coalition*; Meredith Fuchs, General Counsel, *National Security Archive*

* Numbers of orders during the George W. Bush administration vary according to the counting methods used. We believe this number to be the most current count of invocations in reported cases.

THE JUDICIAL BRANCH: THE FOREIGN INTELLIGENCE SURVEILLANCE COURT

The Foreign Intelligence Surveillance Court does not reveal much about its activities while approving orders to conduct surveillance on foreign nationals in the United States. It approved 2,072 requests in 2005, an increase of 18% in one year, from the federal government to collect information but does not identify the activities investigated or basic information about how the subpoenas are used.

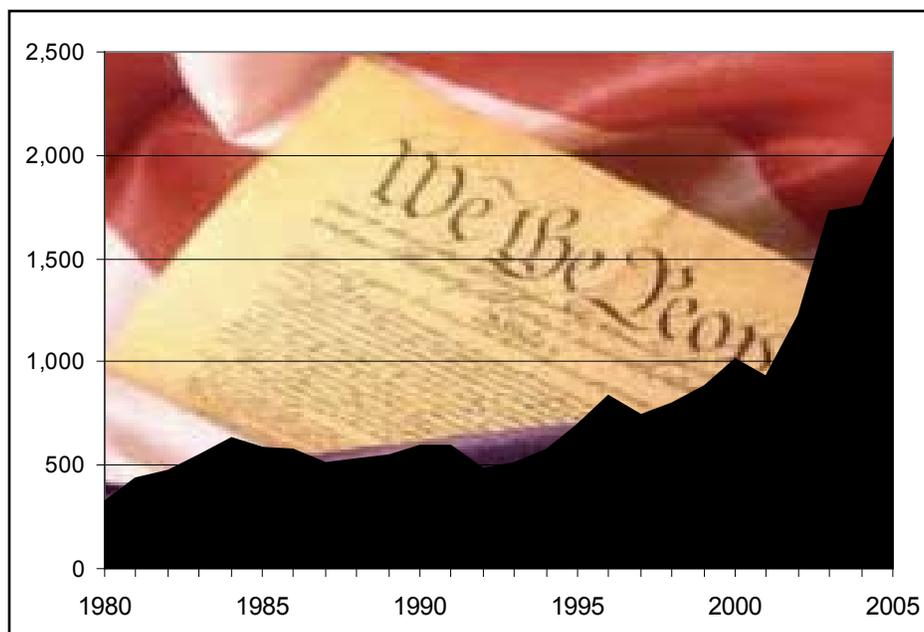
The FISC rejected zero government orders in 2005.

In fact, through its history, it has only rejected four government requests for surveillance orders. A Justice Department report⁸ on secret wiretap warrants indicated that the government issued 9,254 National Security Letters during 2005. These letters can be used to obtain information about individuals without the government applying for a court-reviewed warrant.

FISA Applications Presented and Approved

Year	# of FISA Apps
1980	322
1981	433
1982	475
1983	549
1984	635
1985	587
1986	573
1987	512
1988	534
1989	546
1990	595
1991	593
1992	484
1993	509
1994	576
1995	697
1996	839
1997	748
1998	796
1999	880
2000	1,012
2002	1,228
2003	1,724
2004	1,754
2005	2,072

Secret FISA Court Orders (Approved)



Source: Electronic Privacy Information Center

WHISTLEBLOWERS

Over the last two decades, whistleblowers helped the federal government recover \$15 billion according to the latest figures from the U.S. Department of Justice. The large savings for taxpayers comes even as court decisions have undermined whistleblower protections passed by Congress in 1989, to the point that Congress is poised to strengthen legislative safeguards.

Recoveries dropped in 2004, while several pending lawsuits with potential large recoveries

dragged into 2005. Indeed, in the fiscal year ending September 30, 2005, the United States obtained over \$1.4 billion in settlements and judgments.

“This year’s outstanding recoveries in civil fraud cases... attest to the fortitude of whistleblowers who report fraud,” according to Peter Keisler, Assistant Attorney General for the Department’s Civil Division.

Source: US DOJ Press Release, 7 Nov 05

Whistleblowers Recover Billions for Taxpayers

Year	Savings in \$
1989	15,111,719
1990	40,558,367
1991	69,775,271
1992	135,093,903
1993	177,416,383
1994	381,468,397
1995	247,276,827
1996	138,598,636
1997	629,882,525
1998	462,038,795
1999	516,778,031
2000	1,199,766,754
2001	1,286,791,859
2002	1,089,252,722
2003	1,501,554,095
2004	554,626,506
2005	1,425,853,183

Source: US DOJ

PRESIDENTIAL SIGNING STATEMENTS

In an article earlier this year, Charlie Savage of the Boston Globe⁹, highlighted a trend toward the use of presidential signing statements to claim authority to disobey laws passed by Congress. Historically these statements have been used as public announcements, containing comments from the President, on the enactment of the law.

We see this as a secrecy issue because, while the statements themselves are available,⁹ any one statement may contain challenges to multiple provisions of laws and it is, thus, difficult for the public to know that the laws are “faithfully executed” as required by the U.S. Constitution (Article II, Section 3).

In the 211 years of our Republic to 2000, Presidents had issued fewer than 600 signing statements that took issue with the bills they signed. Among recent Presidents,

President Reagan issued 71 statements challenging provisions of the laws before him, and President George Herbert Walker Bush issued 146. President Clinton issued 105.

To date, 132¹⁰ signing statements challenging over 810 federal laws have been issued by President George W. Bush.¹¹

Years or Presidencies	Statements Challenging Provisions of Laws
1789 - 1980	278
Reagan	71
G.W.H. Bush	146
Clinton	105
G.W. Bush	132*

Sources: American Bar Association, ABA Signing Statements Task Force - Final Report for Media Distribution, Jul 20, 2006; Christopher S. Kelley, “A Comparative Look at the Constitutional Signing Statement: The Case of Bush and Clinton.” mpsa.indiana.edu/conf2003papers/1031858822.pdf; Joyce A. Green, “Presidential Signing Statements.” <http://www.coherentbabble.com/signingstatements/signstateann.htm>

* Although it may be as high as 188. See John Dean, FindLaw’s Writ, July 14, 2006. <http://writ.news.findlaw.com/3dean/20060714.html>

SEEKING SCIENTIFIC AND TECHNICAL ADVICE THROUGH FEDERAL ADVISORY COMMITTEES

Over 60% of the 7,449 meetings of federal advisory committees that fall under the Federal Advisory Committee Act (FACA) were completely closed to the public. In passing the Act in 1972, Congress intended for the federal government to receive open scientific and technical advice, which is free from the undue influence of “any special interest.” 5 USC Sec. 5(b)(3) Congress allowed certain exceptions but wrote directly into the law its assumption that “(e)ach advisory committee meeting

shall be open to the public.” 5 USC Sec. 10(a)(1)

The majority of the closed committee meetings consisted of groups advising three agencies: The Department of Defense, Department of Health and Human Services and National Science Foundation. When these three agencies are excluded, the percentage of completely closed meetings remains 44% higher than 2001, and 70% higher than the average of 1997-2000.

Year	Total # of Meetings	% of Meetings Closed
1997	5,698	51
1998	5,898	50
1999	6,256	53
2000	6,211	56
2001	5,872	58
2002	6,281	61
2003	6,799	61
2004	7,045	64
2005	7,449	61

Source: Compiled by OpenTheGovernment.org from Federal Advisory Committee Act Database, www.fido.gov/facadatabase; accessed August 18, 2006.

Closed Meetings of Remaining Agencies (Excluded: Dept. of Defense, Dept. of Health & Human Services, National Science Foundation)

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Meetings Completely Closed	240	233	257	255	130	262	318	396	149
Total number of Meetings	2,100	2,233	2,159	2,028	1,837	2,062	2,297	2,237	2,438
Portion Completely Closed	11.4%	10.4%	11.9%	12.6%	7.1%	12.7%	13.8%	17.7%	16.4%

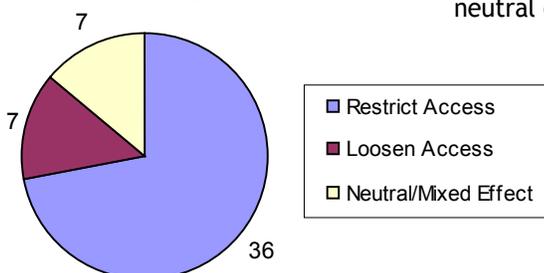
Source: Compiled by OpenTheGovernment.org from Federal Advisory Committee Act Database, www.fido.gov/facadatabase; accessed August 18, 2006.

SECURITY LAWS FLOURISH IN STATEHOUSES

Throughout the country, states continued this year to enact new laws which, more often than not, limited rather than loosened access to information.

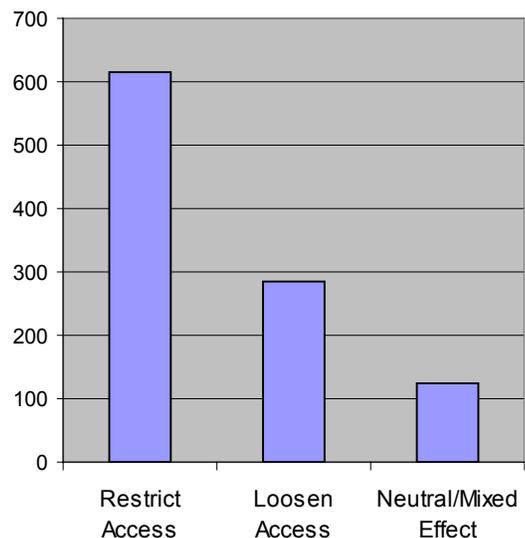
In a study¹² conducted by The Associated Press during Sunshine Week

Number of States Which Passed Access Legislation



2006, AP looked at access laws in all 50 states since September 11, 2001. Of the 1,023 new laws dealing with public access to government information, AP found that states passed 616 laws that restricted access, 284 laws that loosened access, and 123 laws that had either a neutral or mixed effect.

State Access Laws Passed Since 9/11



SENSITIVE BUT UNCLASSIFIED: AN INCOMPLETE ENCYCLOPEDIA

Last year we identified 50 types of restrictions on unclassified information, implemented through laws, regulations or mere assertions by government officials that information should not be released to the public. These designations fall entirely outside the national security classification system, governed by executive order, and are subject to none of its constraints or timelines.

On May 10, 2006, Ambassador Thomas E. McNamara¹⁴ told the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment of the House Committee on Homeland Security that more than 60 different marking types are used

across the Federal Government to identify SBU, including various designations within a single department. Of these, only seventeen are statutory. While different agencies may use the same marking to denote information that is to be handled as SBU, a chosen category of information is often defined differently from agency to agency, and agencies may impose different handling requirements. Some of these marking and handling procedures are not only inconsistent, but are contradictory.

We have been unable to identify the additional 10+ designations. The compilation below remains a step toward identifying and counting the many uses of SBU. Only through identifying and counting

SBU can their creation and use be limited.

Some protections are necessary for unclassified information, such as personal privacy information or trade secrets.

The federal government, however has greatly expanded its ability to control unclassified, public information through vague restrictions that give government officials wide latitude to declare information beyond the public's reach. Such unchecked secrecy threatens accountability in government and promotes conflicts of interest by allowing those with an interest in disclosure or concealment to decide between openness or secrecy.

Ultimately, these efforts to control and restrict information make it harder for authorities to inform the public about potential dangers in their own communities and block the free flow of information necessary in a democratic, open society.

The following compilation lists terms the government uses to keep unclassified information secret. Some of these terms are duplicative or overlapping. For example, "controlled unclassified information" (CUI), consists of several of the other categories in our list. As one Library of Congress researcher noted recently, "Key terms often lack definition, vagueness exists regarding who is authorized to applying markings, for what reasons, and for how long. Uncertainty prevails concerning who is authorized to remove markings and for what reasons."

continued...

Some Sensitive But Unclassified Designations

1	"Information [held by DHS] that could be sold for profit"	
2	"Information that could pose a physical risk to personnel"	
3	Chinese Space Program Equipment or Technology	
4	Computer Security Act Sensitive Information	(CSASI)
5	Confidential Business Information	(CBI)
6	Contractor Access Restricted Information	(CARI)
7	Controlled But Unclassified	(CBU)
8	Controlled Unclassified Information	(CUI)
9	Critical Energy Infrastructure Information	(CEII)
10	Critical Infrastructure Information	(CII)
11	DEA Sensitive	(DEA-S)
12	Defense Information (Formerly Restricted Data)	
13	Department of Homeland Security Information Technology	(DHS IT)
14	Export Administration Regulation Information	(EAR)
15	Federal Information Security Manangement Act Information	(FISMA)
16	Financial Institution Information	(FOIA b8)
17	For Official Use Only	(FOUO)
18	General Services Admin. Sensitive But Unclassified Building Information	(GSA-SBU-BI)
19	Grand Jury Information	
20	Internal Personnel Rules and Practices	(FOIA b2)
21	International Traffic in Arms Regulation	(ITAR)

22	Law Enforcement Sensitive	(LES)
23	Limited Official Use Only	(LOU)
24	Missile Technology Control Regime Annex	(MTCR)
25	Missile Technology Control Regime MTCR U.S.-Nominated Agents	(MTCR)
26	Nonpublic Information (Office of Government Ethics)	
27	Nuclear Nonproliferation Act Information	(NNAI)
28	Official Use Only	(OUO)
29	Operations Security Protected	
30	Secret Patents	
31	Personal Privacy Information	(FOIA b6)
32	Privacy Act Protected Information	(PAPI)
33	Privileged Information	(FOIA b5)
34	Proprietary Information	(PROPIN)
35	Safeguards Information (Nuclear Regulatory Commission)	(SGI)
36	Select Agent Sensitive Information	(SASI)
37	Sensitive But Unclassified (Department of Homeland Security)	(SBU DHS)
38	Sensitive But Unclassified (Department of State)	(DOS-SBU)
39	Sensitive But Unclassified Technical Information	(SBUTI)
40	Sensitive Homeland Security Information	(SHSI)
41	Sensitive Security Information	(SSI)
42	Sensitive Unclassified	(SU)
43	Special Nuclear Material	(SNM)
44	Specifically Exempt from Disclosure by Statute	(FOIA b3)
45	Trade Secrets	(FOIA b4)
46	Unclassified Controlled Nuclear Information	(UCNI)
47	Unclassified Export-controlled Department of Defense Technical Data	
48	United States Munitions List	(USML)
49	Voluntarily-provided Information (Federal Aviation Administration)	(FAA)
50	Well Information	(FOIA b9)

CITATIONS

- 1 The data on expenditures and the quantity of information moving through the classification system does not include data from the CIA because the agency has classified that information.
- 2 Fiscal year 2001 actual ended 19 days after the terrorist attacks of September 11, 2001. Thus, number of classified and declassified documents for FY2001 includes activity during 19 days after 9/11. The number of new documents created that were classified during that 19 period is likely higher than during September 12 to Sept. 30, 2000, so the actual number of documents classified in the 365 days prior to 9/11 is likely lower than the cited figure.
- 3 Information provided by Mr. Kenneth Stein, Office of Classification, Department of Energy in e-mail, 8 August 2006. Mr. James Wendt, Office of Document Reviews, provided an annual breakdown for the expenditures: FY 99: 1.992M; FY 00: 3.582 M; FY 01: 3.653M; FY 02: 3.852M; FY 03: 3.072M; FY 04: 2.482M; FY 05: 1.761M; FY 06: 1.313M; Total: 21.707M. E-mail, 10 August 2006.” Cited in “How Many and Where Were the Nukes?” <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB197/index.htm>. RD/FRD classified information does not come under the purview of E.O. 12958; it is under the purview of DoE and DoD pursuant to the Atomic Energy Act.
- 4 “Freedom of Information Act: Preliminary Analysis of Processing Trends Shows Importance of Improvement Plans.” July 26, 2006. <http://www.gao.gov/new.items/d061022t.pdf>
- 5 OpenTheGovernment.org, “FOIA’s 40th Anniversary: Agencies Respond to the President’s Call for Improved Disclosure of Information.” <http://www.openthegovernment.org/otg/FOIaplans.pdf>
- 6 Kevin Poulsen, “Secrecy Power Sinks Patent Case,” Wired News, September 20, 2005. <http://www.wired.com/news/technology/0,68894-0.html>
- 7 Id.
- 8 Foreign Intelligence Surveillance Act Report, April 28, 2006. <http://www.fas.org/irp/agency/doj/fisa/2005rept.html>, via Electronic Privacy Information Center.
- 9 Charlie Savage, “Bush challenges hundreds of laws,” The Boston Globe, April 30, 2006. http://www.boston.com/news/nation/articles/2006/04/30/bush_challenges_hundreds_of_laws/.
- 10 Joyce A. Green “FAQs About Signing Statements” <http://www.coherentbabble.com/signingstatements/FAQs.htm#3.%20%20How%20many%20has%20George%20W.%20Bush%20signed>
- 11 Id.
- 12 Although it may be as high as 188. See John Dean, “The Bush Administration’s Adversarial Relationship with Congress - as Illustrated by Its Refusal to Even Provide the Number of Signing Statements Issued by President Bush” FindLaw’s Writ, July 14, 2006. <http://writ.news.findlaw.com/3dean/20060714.html>
- 13 Robert Tanner, “AP Enterprise: States steadily restricting government information available to public,” The Associated Press, March 12, 2006. http://www.ap.org/FOI/foi_031306a.html
- 14 Thomas E. McNamara, “Building on the Information Sharing Environment: Addressing Challenges of Implementation,” Hearing of the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment of the House Committee on Homeland Security, May 10, 2006. http://www.fas.org/irp/congress/2006_hr/051006mcnamara.pdf#search=%22Thomas%20McNamara%20DNI%22