

# **Ten Most Wanted Documents for 2004**

**A Report for**

**OpenTheGovernment.org**

**by**

**OMB Watch**

**&**

**Center for Democracy & Technology**

**April 2004**

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# Ten Most Wanted Documents for 2004

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## **Executive Summary**

Today we are witnessing a broad expansion of government secrecy that runs counter to core democratic values this country was founded upon. We must reverse course and make it easier to access government information so that the public has the means to hold its government accountable, make our families safer, and generally strengthen democracy. To address this problem, a new coalition, comprised of groups that have mostly been working independent of one another on freedom of information issues, is being formed. This coalition is called OpenTheGovernment.org, and it advocates for less government secrecy and more openness.

As a beginning step, the coalition is releasing the Ten Most Wanted Documents for 2004, a list of documents that the government should disclose to the public but does not. From the 28 pages of the congressional joint inquiry into 9/11 that President Bush has until recently refused to release (#1) to secret court cases only discovered because of a filing error (#4) to secret versions of congressional legislation (#9), the list targets secrecy in all three branches of government. (The President's Daily Brief from August 6, 2001, entitled "Bin Laden Determined to Strike in U.S.," originally ranked #7 on the Ten Most Wanted, but has been dropped since the White House declassified the document on April 10, 2004.)

Through an Internet survey, we asked the public to rank documents covering a broad spectrum of issues, from women's rights to animal welfare to our government's fight against terrorism. Staff first developed the items on the survey after reviewing literature and talking to colleagues. To augment the list, roughly 50 or so experts on government disclosure issues were asked to "nominate" items. The survey was then refined based on this input. Additionally, within the survey, the public could write in names of documents not present in the final list. Survey respondents were also asked about first-hand problems accessing government information generally. Although not a random or representative sampling, roughly 500 people completed the online survey. Of these, 76 percent said they have personally accessed federal government information within the last two years.

An overwhelming number of respondents raised concerns about current policies regarding disclosure of federal government information. Roughly nine in ten thought the following were important factors limiting public access:

1. The government uses the threat of terrorism and national security concerns to withhold information not specifically classified (83 percent thought this was very important);

2. The government abuses legitimate privacy protections to withhold information (74 percent thought this was *very important*);
3. The government classifies too much information (62 percent thought this was *very important*); and
4. Trade secrets and business confidentiality too often shield information the public should know about (59 percent thought this was *very important*).

Additionally, survey respondents added many comments about the ease of finding and obtaining information. Even when information is obtained, respondents raised concerns about the quality of information, citing timeliness of the information and other concerns. Respondents also raised concerns about the permanency of information on the Internet, expressing worry that the government is doing an inadequate job of archiving such information for historical purposes.

This report highlights the need to make the federal government more open to the public. Survey respondents identified a deep-seated concern that the government has created an artificial debate between access to information and security, especially since September 11, 2001. Respondents voiced the perspective that access to information can enhance security, and that the increase in secrecy is unnecessary. In fact, four of the top five items in the Ten Most Wanted list dealt directly with what the government is doing to make our communities safer.

Survey respondents showed a remarkable desire for government to be more open, especially in this post-9/11 environment, in order for the public to help make our families safer and hold government accountable. For example, respondents placed information about contaminants in drinking water supplies, as well as information about risks posed by chemical plants, in the top ten documents that should be publicly available. The government increasingly restricts these data.

Respondents also wanted access to information that goes beyond concerns about safety. This includes information on government contracts and grants, gifts to elected leaders from lobbyists and whether civil liberties are being violated.

The top 10 also includes key congressional information. For example, respondents expressed frustration that they cannot obtain reports produced by the Congressional Research Service, an arm of the Library of Congress that serves members of Congress. These reports are often influential in the legislative process. Respondents also noted the importance of disclosure of bills and other legislative items as they move through the congressional process, including changes made before a committee vote. The democratic process demands full disclosure before votes are taken.

Across the many issues covered by the list of the Ten Most Wanted Documents, three themes stood out:

- **First, respondents expressed a deep skepticism about the information the government provides.** Respondents were most concerned that government unnecessarily withholds information from the public and the public does not get full and complete information.
- **Second, the government should do more to make its day-to-day operations open to the public.** From phone numbers for government offices and officials to mission statements for federal agencies, the public still has trouble obtaining information about basic government operations.
- **Finally, and perhaps most importantly, the government should reverse an unprecedented expansion of secrecy and give the public a more open and complete accounting for its efforts to make our communities safer and country more secure.**

While the following items comprise the Ten Most Wanted Documents for 2004, this list is a proxy for the present public demand for government to be more open to make our communities safer, our government more accountable, and our democracy stronger.

### **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

**The People's Choice (Write In):** Documents from the 2001 National Energy Policy Development Group (a.k.a., Cheney Energy Policy Task Force)

**RELEASED!**  
**President's Daily Brief from August 6, 2001**  
**Originally Ranked #7 on the Ten Most Wanted List**

Before its release by the White House, the August 6, 2001 President's Daily Brief (PDB) regarding al Qaeda ranked #7 on the list of the Ten Most Wanted Documents. Its release by the White House prompted its removal from the Ten Most Wanted. The manner and quick timing of its release reinforces the fundamental conclusion of our survey: Documents are too often unnecessarily kept from public scrutiny in the name of national security.

As is clear by now, on August 6, 2001, President George W. Bush was given a review about Osama bin Laden and possible terrorist attacks upon the United States through his daily intelligence report, the President's Daily Brief. Until recently, the Bush administration resisted providing the PDB even to members of the 9/11 Commission. In fact, only three members of the 9/11 Commission had access to the complete text of the PDB when National Security Advisor Condoleeza Rice publicly testified before the Commission on April 8, 2004 (*Washington Post*, 4/10/04). Two days after Dr. Rice's public testimony before the Commission and Commission members' call to declassify the document, on Saturday, April 10, the White House released the document to the public.

Despite several public comments to the contrary, this is not the first time a President's Daily Brief has been released to the public. The National Security Archive, an independent archive of government documents located at George Washington University, notes that at least 10 PDBs have been declassified. (They are available on the Archive's web site along with public statements by former White House spokesman Ari Fleischer, members of the 9/11 Commission, and others.)

It is notable, despite claims otherwise, that a near complete version of the document could be declassified in a relative short amount of time without harming national security. The document was released only two days after the White House publicly committed to disclosing the document. And more striking was the fact that only three short phrases had to be redacted to protect sources and methods of intelligence gathering. The demand for the PDB of August 6, 2001, the significance of its contents, and the speed and completeness of its declassification illustrate the fundamental point that government unnecessarily classifies many documents of significant public interest. Much more information currently classified could be publicly released without harming national security.

For more information about President's Daily Briefs, see:

- Thomas Blanton, "Who's Afraid of the PDB? Why Bush should show the 9/11 commission his briefs," *Slate*, March 22, 2004, available at <http://slate.msn.com/id/2097476/>, accessed April 7, 2004.
- "The President's Daily Brief: National Security Archive Electronic Briefing Book No. 116," March 22, 2004 (updated April 8 and April 12, 2004). Available at [www.nsarchive.org](http://www.nsarchive.org).

## Introduction and General Findings

“Secrecy and a free, democratic government don’t mix.” -- Harry S Truman<sup>1</sup>

Government is holding back information from the public and should be more open to foster public accountability and trust in government decision-making, according to results from the Ten Most Wanted survey. Specifically, responses coalesced around three major themes:

**1. Respondents were concerned the federal government provides an incomplete story or unnecessarily withholds information from the public.**

When asked about the most important problems the public faces in obtaining information from government (Question 4), respondents consistently ranked highest those items that dealt with shielding information in government’s possession.<sup>2</sup> Respondents cited the federal government’s efforts to use national security to hide information as the most important problem or obstacle facing the public right to know. Respondents were nearly unanimous on the importance of this item. Slightly fewer of the survey respondents ranked abuse of privacy protections (92.2%), over-classification (91.4%), and confidential company data (88.2%) as either “very important” or “somewhat important.”

When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.

-- Judge J. Damon Keith

Those potential problems dealing with information the public should at least in theory be able to access consistently ranked lower, including difficulty users face locating information from government sources, trouble using the data because of inherent limitations in the data or the lack of supporting documentation, and poor data quality. Many expressed concern that the government had too much discretion to withhold information from the public.

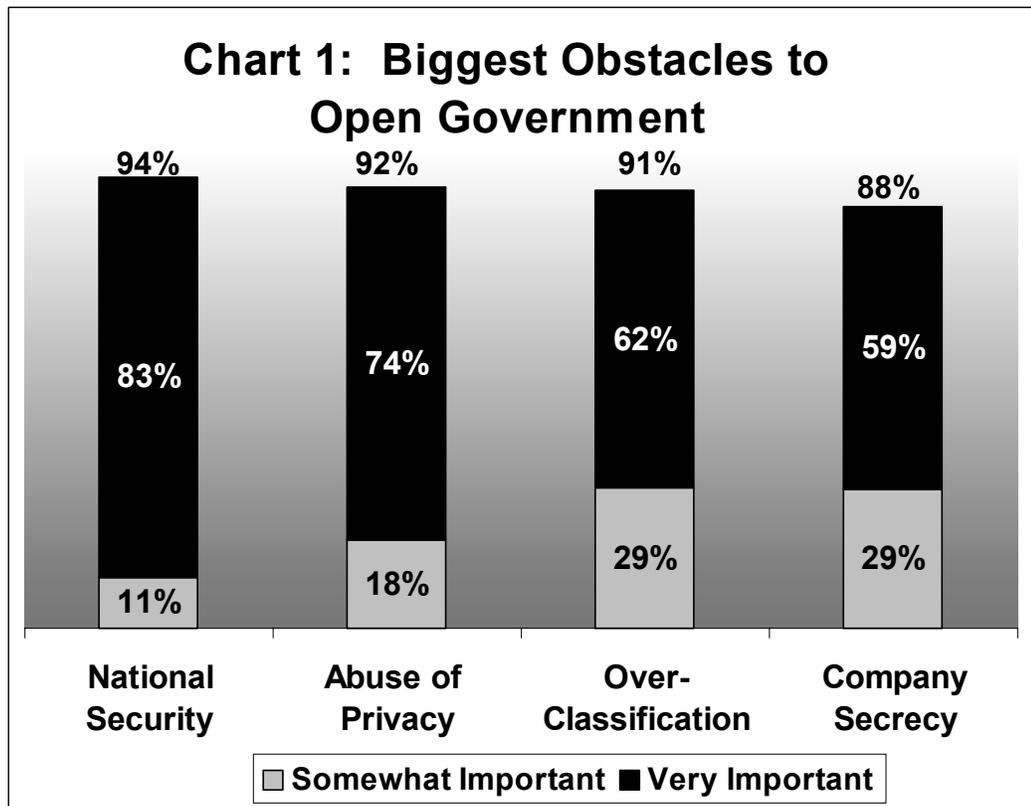
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<sup>1</sup> Harry S. Truman (1884–1972), from Plain Speaking, Merle Miller. Quoted in *The Oxford Dictionary of Political Quotations*, edited by Anthony Jay (Oxford University Press: New York, 1996), referred in “Quotes about Libraries and Democracy,” Nancy Kranich, ed., Spring 2001. Available at [www.ala.org/ala/ourassociation/governancecb/pastpresidents/nancykranich/cornerstonequotes.htm](http://www.ala.org/ala/ourassociation/governancecb/pastpresidents/nancykranich/cornerstonequotes.htm), accessed April 2, 2004.

<sup>2</sup> See Appendix B for the survey instrument.

While respondents expressed concern that government has too much ability to withhold information, recent years have witnessed government expand, not restrict, opportunities for secrecy. For example, in the wake of September 11, 2001, Congress carved a tenth exemption out of the Freedom of Information Act that allows companies to stamp as secret any information that it voluntarily shares with government. Congress also instructed the president to improve the way intelligence agencies share intelligence information, but in so doing provided the statutory justification for federal agencies to withhold a whole new category of previously public information. On October 12, 2001, Attorney General John Ashcroft, instructed federal agencies to withhold information from the public whenever agencies had a sound legal basis for doing so.

2. **Respondents are still having difficulty obtaining basic information about government operations.** Comments focused on difficulties respondents were facing in accessing specific information that was theoretically available to the public, as opposed to the government's refusal to disclose certain information to any member of the public. Government web site users complained more in their comments about having trouble using the data in ways they want than any other obstacle. (More than three of four respondents, 76.1 percent, indicated they have obtained information directly from government sources within the last two



years.) Comments articulated problems finding basic information about government agencies and programs, such as contact information for federal employees and mission statements from federal agencies. Other comments included complaints that government web sites too often contained broken links, poor design, and inadequate search tools. Other shortcomings cited included the lack of reliable guidance on the removal and archiving of content on government web sites.

Skepticism about the information the government provides will persist if there

continues to be no effective standards for removing and preserving information on web sites. The lack of standards likely contributed to thousands of pages of information being removed unnecessarily from government web site after September 11, 2001. Many agencies took down web site information for a post-9/11 review, yet in many cases it is unclear what information was removed and whether government actions were appropriate.

*They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.*  
-- Benjamin Franklin

This gap in standards also presents enormous challenges for preserving information for future historians. Many respondents complained about the decades-long gap in our historical record created by the lack of standards for preserving information created in digital format. These “born digital” documents are not systematically preserved for future analysis.

- 3. Government should especially give the public an open accounting for its efforts to make our country more secure and our communities safer.** Respondents want a public accounting of government efforts to make our nation and communities more secure. Four of the top five items (and six of the top seven) in the Ten Most Wanted list dealt directly with what the government is doing to make our country and communities safer. In the wake of September 11, terrorism has been a key issue of concern for the public. Writing in their most wanted document, six respondents wrote in items related to terrorism, including what protective measures the government is taking against agents such as anthrax, how it is using legislation like the Patriot Act, and various documents regarding U.S. involvement in Iraq and the U.S. reaction to 9/11.

## Background Summaries of the Ten Most Wanted Documents

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

Congress spent months preparing a 900-page report examining our efforts to fight terrorism before September 11, 2001, and negotiated with the White House for many more months over what portions of the report to keep secret. Ironically, the report concluded that the U.S. government failed to benefit in efforts to fight terrorism from “an alert, mobilized, and committed American public.”

Officially titled the “Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 2001,” the public version of the report

stripped out 28 pages dealing with the role of foreign governments in the tragic events of 9/11.<sup>3</sup> Strikingly, two senators who had a hand in writing the report fought for public disclosure of the omitted section. The ranking Republican on the Senate Intelligence Committee, Senator Richard Shelby of Alabama, estimated

*Senator Bob Graham of Florida asserted the section was redacted only to protect a foreign government, presumably Saudi Arabia, ... Saudi Arabia publicly requested that the U.S. government release of the blacked-out section ...*

that “95 percent of that information could be declassified” without harming the security of our country.<sup>4</sup> The committee’s ranking Democrat, Senator Bob Graham of Florida, asserted the section was redacted only to protect a foreign government, presumably Saudi Arabia, from embarrassment rather than for legitimate national security concerns. For its part, the government of Saudi Arabia publicly requested that the U.S. government release of the blacked-out section to the public.<sup>5</sup> “I think it is of the highest order of concern for the American people that they have access to this information and then they will do with that information what they believe is appropriate,” Graham told his colleagues on the Senate floor. “But ignorance and secrecy serves no national purpose.”<sup>6</sup>

<sup>3</sup> “Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001,” public version released July 24, 2003. Available at [www.gpoaccess.gov/serialset/creports/911.html](http://www.gpoaccess.gov/serialset/creports/911.html).

<sup>4</sup> As quoted by Sen. Byron Dorgan, Congressional Record: October 29, 2003 (Senate), S13432.

<sup>5</sup> Statement of HRH Prince Saud Al-Faisal, Foreign Minister of Saudi Arabia, July 29, 2003. Posted online by Secrecy News at [www.fas.org/irp/news/2003/07/sa072903.html](http://www.fas.org/irp/news/2003/07/sa072903.html), accessed March 12, 2004.

<sup>6</sup> Congressional Record, S13434.

## 2) **How and When the Government Uses the Patriot Act**

Several provisions of the Patriot Act have attracted criticism as unnecessary infringements upon civil liberties. For example, the Patriot Act expands the government's ability to delay notifying targets of secret searches ("sneak and peek" searches) and allows government investigators to compel businesses and other organizations to turn over records on their customers. Despite U.S. Attorney General John Ashcroft's disclosure under pressure that the Justice Department has not used its powers under Section 215 to gather information from libraries, library groups continue to press Congress to reverse this provision.<sup>7</sup>

For this survey, we avoided focusing on any single provision but instead asked the public to rate how important it is for the government to publicly release more information on its use of investigative powers expanded under the Patriot Act, especially in investigations not directly related to terrorism.

The secrecy surrounding the government's use of these powers exacerbates the concerns that these powers unnecessarily sacrifice civil liberties and accountability in the name of security. Librarians, business owners and anyone subject to a Section 215 warrant is prohibited from telling anyone of that fact. As a consequence, there is no legal way for the public to know how many times Section 215 is used unless government discloses the information. Attorney General Ashcroft's single disclosure does not go far enough. In 2005 several Patriot Act tools expire. Some voices in Congress have complained the Justice Department has not been sharing enough information even with Congress to allow a fair evaluation of how well or poorly the USA Patriot Act is working.<sup>8</sup>

The Justice Department should provide statistical reports on the use of Patriot Act powers on criminal, terrorism-related and any other cases or investigations. Without such regular reporting, the public has little way of knowing how broadly the government is applying its controversial Patriot Act powers, government's actions to fight terrorism, and what investigative tools are in fact needed.

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<sup>7</sup> See American Library Association Washington Office, [www.ala.org/ala/washoff/WOissues/civilliberties/theusapatriotact/usapatriotact.htm](http://www.ala.org/ala/washoff/WOissues/civilliberties/theusapatriotact/usapatriotact.htm), accessed March 24, 2004. In addition, journalists have expressed concern that the government may be able to compel disclosure of reporters' confidential sources and computer equipment. See "Questions for Attorney General John Ashcroft on the USA PATRIOT Act and its effect on the news media," Reporters Committee for Freedom of the Press, August 20, 2003. Available at [www.rcfp.org/news/documents/20030820ashcroft.html](http://www.rcfp.org/news/documents/20030820ashcroft.html), accessed March 28, 2004.

<sup>8</sup> "Permanent Patriot Act?" *OMB Watcher*, April 21, 2003. Available at [www.ombwatch.org/article/articleview/1476/1/173/](http://www.ombwatch.org/article/articleview/1476/1/173/).

3) **Contaminants Found in the Sources of Our Drinking Water**

A safe source of drinking water is essential for human health. When drinking water sources are polluted with contaminants such as lead, rocket fuel and arsenic, the consequences can be devastating to young children unless the contaminants are tracked, assessed, and stopped before reaching the tap. When members of Congress passed the Safe Drinking Water Amendments of 1996 (SDWA), they required states to map sources of drinking water, list actual and possible contaminants, assess the risks of possible contaminations, and share the results with the public.

The government has an uneven record in publicly disclosing these records, largely due to a lack of a national database of the source water assessments required under SDWA. Independent researchers cannot access the maps showing water sources for communities or lists of possible contaminants to verify the conclusions of water utility companies and government agencies. Residents in Aberdeen, Maryland were forced to sue in court to continue working with the Army to track perchlorate, a rocket fuel, in the town's water sources. Once it travels through the water system, water may pick up other problems. In Washington, DC, the local drinking water authority delayed notifying residents of elevated lead levels detected in routine tests of the city's tap water. Lead causes developmental problems in young children, so children under six years of age, pregnant women, and nursing mothers are especially vulnerable. As Paul Schwartz, policy coordinator for Clean Water Action, noted, "[The Washington Area Sewer Authority] was very well aware of the problem and purposely looked to obscure the public health problem," he said. "The biggest part of the problem is the cover-up, and this is why we now have a lack of trust."<sup>9</sup>

4) **Number of Court Cases Partially or Totally Closed to the Public and an Explanation of Each Case's Need for Secrecy**

Since September 11, 2001, the courts in several high-profile cases have shown a willingness to close the legal system to public observers. They have also provided an extraordinary deference to the claims by the executive branch that national security requires closed court records and proceedings. One case, moving through the courts in near total secrecy, was discovered only after a clerical error allowed a reporter to find the case in the public docket.<sup>10</sup> Government lawyers claimed total secrecy was necessary to protect national

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<sup>9</sup> "WASA Violated Lead Law, EPA Says," Washington Post, April 2, 2004, A01, available at [www.washingtonpost.com/wp-dyn/articles/A43246-2004Apr1.html](http://www.washingtonpost.com/wp-dyn/articles/A43246-2004Apr1.html), accessed April 5, 2004.

<sup>10</sup> The case is identified as M.K.B. v. Warden. See Dan Christensen, "Scrutinizing 'Supersealed' Cases," *Miami Daily Business Review*, December 2, 2003. "Secret 9/11 Case Before High Court," *Christian Science Monitor*, October 30, 2003.

security (a claim undermined when the government released the defendant on \$10,000 bail). In other cases, immigration hearings of those detained after 9/11 were closed to the public and the press. Two court cases challenging this judicial secrecy yielded mixed results. In *New Jersey Media Group v. Ashcroft*, the Third Circuit federal appeals court upheld the closed hearings. In a separate case, *Detroit Free Press v. Ashcroft*, the Sixth Circuit federal appeals court ruled the hearings must be open. "Democracy dies behind closed doors," wrote Judge Damon J. Keith.

This is not the first time the government used national security concerns to justify secrecy. A half century ago government lawyers won a landmark Supreme Court giving the government wide latitude in keeping documents secret in the name of national security. Relatives of several of the men killed in a 1948 Air Force plane crash filed a lawsuit trying to get information about the crash immediately afterward. The case (*United States v. Reynolds*) has been used frequently to justify strict limits on the release of government information, including in recent homeland security cases. Recently declassified documents show the plane crash resulted from poor maintenance and training and would have revealed little about national security threats.

But perhaps the most troubling recent court action was the Supreme Court's refusal to force the executive branch to release the names of individuals detained as part of the government's investigation into September 11, 2001 (see #6, below).<sup>11</sup>

##### 5) **Industry-Written Reports on Chemical Plants' Risks to Communities**

Risk Management Plans (RMPs) are filed by each facility that uses or stores extremely hazardous chemicals, and are required to be publicly available under Section 112(r) of the Clean Air Act. These plans are comprised of three elements: a hazard assessment, a prevention program, and an emergency response plan. Shortly after the 9/11 attacks, the Environmental Protection Agency (EPA) hastily removed the RMPs from the agency's web site under the assumption that terrorists could use the information to locate a potential target.

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<sup>11</sup> See "Secret Justice: Secret Dockets," Reporters Committee For Freedom of the Press, Summer 2003, available at [www.rcfp.org/secretjustice/secretdockets/index.html](http://www.rcfp.org/secretjustice/secretdockets/index.html), accessed March 23, 2004; "Litigation Round-Up: Secret Detentions and Immigrants," Friends Committee on National Legislation, February 24, 2004, available at [www.fcnl.org/issues/item.php?item\\_id=716&issue\\_id=78](http://www.fcnl.org/issues/item.php?item_id=716&issue_id=78), accessed April 7, 2004; "Assessing the New Normal: Liberty and Security for the Post-September 11 United States," Lawyers Committee For Human Rights, 2003.

However, this was not the first time the RMPs were examined for potential use by terrorists. Before the RMPs were first posted, the chemical industry mounted an aggressive lobbying effort to prevent public disclosure by arguing the data would increase the risk of terrorist attacks. In response, Congress restricted access to an RMP section outlining a “worst-case scenario,” making it available only in 50 reading rooms around the country. Both the FBI and Congress have acknowledged that disclosure through the Internet of the remainder of the RMP information presented no unique increased threats of terrorism.

While the usefulness of RMP information to terrorists is murky or perhaps nonexistent, the usefulness to the public is crystal clear. With this information, the public is able to hold facilities accountable for making upgrades to reduce or even eliminate any potential harm to neighboring communities. One of the clearest examples of these benefits came when the journalists used RMP data to highlight the potential consequences of the safety lapses they found at the Blue Plains Wastewater Treatment Plant in Washington, D.C. A toxic plume of chemicals from Blue Plains at the time could have reached the White House, Congress, and Bolling Air Force Base. Within days of the published reports, government and plant officials were taking steps to address the problems.<sup>12</sup>

### **Providing Environmental Data Post 9/11**

OMB Watch believes the public has a right to know about potential risks to our health and safety. In 1999, OMB Watch posted on the Internet roughly 15,000 industry-written summaries of plans (known as “Risk Management Plans,” or RMPs) to prevent and respond to accidents and attacks at industrial facilities that manufacture, process or store toxic chemicals.

OMB Watch filed a request under the federal Freedom of Information Act (FOIA) for updated company-written RMP executive summaries, some of which contain estimates of casualties and the geographic area affected in a worst-case chemical accident at a chemical facility.

In denying the request for the executive summaries, EPA claimed the information was used as part of internal agency deliberations and therefore exempt from disclosure under FOIA. The agency also noted that the exemption was “applied in light of recent terrorism events and heightened security awareness, and in recognition of the concomitant need to protect the nation's critical infrastructure (both its elements and records about them).” The EPA gave no explanation how the information can be exempt from FOIA when the Clean Air Act explicitly states that the RMP information should be made public and EPA does so through reading rooms around the country.

OMB Watch has appealed the FOIA denial.

<sup>12</sup> More information about this and similar stories is available at [www.openthegovernment.org](http://www.openthegovernment.org).

Congress continues to debate requiring chemical plants to reduce their vulnerability to accidents or terrorist attacks. Some industrial plants storing or using hazardous chemicals, such as some wastewater treatment facilities, are moving to adopt inherently safer processes, but chemical plants remain inadequately secured.<sup>13</sup>

Putting the clamps on this safety information, as EPA is currently choosing to do, stifles dialogue and removes the necessary incentives that might lead to real improvements. After all, removing the information does not remove the inherent dangers these chemicals pose in our communities. More likely, it will invite complacency and a false sense of security.

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

*“Secret arrests are ‘a concept odious to a democratic society,’ and profoundly antithetical to the bedrock values that characterize a free and open one such as ours. ... In enacting [the Freedom of Information Act], Congress recognized that access to government records is critical to earning and keeping citizens’ faith in their public institutions and to ensuring that those institutions operate within the bounds of the law.*  
-- Judge Gladys Kessler

Secret arrests are an anathema to democracy. Over 1,000 individuals were detained as part of the government’s investigation into the 9/11 attacks. None were ever charged in connection with the terrorist attacks on 9/11, family members had no idea of their whereabouts, and many of those secretly jailed were physically and psychologically abused during their incarceration.<sup>14</sup> A handful at most were even alleged to have any terrorist links. The roundup efforts “sowed resentment in the communities in America and abroad

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<sup>13</sup> See also Environmental Defense, “Eliminating Hometown Hazards: Cutting Chemical Risks at Wastewater Treatment Facilities,” December 3, 2003. Available at [www.environmentaldefense.org/go/hometownhazards](http://www.environmentaldefense.org/go/hometownhazards), accessed April 6, 2004. Executive summaries of the Risk Management Plans are available on The Right-To-Know Network (RTK NET) at [www.rtknet.org](http://www.rtknet.org).

<sup>14</sup> Office of the Inspector General, United States Department of Justice, “The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks,” June 2003. Available at [www.usdoj.gov/oig/igspeccr1.htm](http://www.usdoj.gov/oig/igspeccr1.htm). See also, “A Year of Loss: Reexamining Civil Liberties Since September 11,” Lawyers Committee for Human Rights, 2002.

### The Secret List of Secret Arrests

The following "INS Special Interest List" is all the government has released on the names of those secretly arrested after 9/11.

Source: Center for National Security Studies

**INS Special Interest List**  
**Joint Terrorism Task Force Working Group**  
LIMITED OFFICIAL USE—LAW ENFORCEMENT SENSITIVE

| A Number  | Name       | POB                          | Arrest Date | Arrest Location       | Date Charging Document Served | Immigration Charge       | Date filed w/EOIR | Custody Location | SIOC FBI Interest | Legally Sufficient |
|---|------------|------------------------------|-------------|-----------------------|-------------------------------|--------------------------|-------------------|------------------|-------------------|--------------------|
| (b)(7)(A)   | (b)(7)(C)  | Pakistan                     | 9/22/2001   | [REDACTED]            | 9/22/2001                     | 237(a)(3)(D)             | 9/25/2001         | [REDACTED]       | [REDACTED]        | [REDACTED]         |
| Federal Bureau of Investigation / Other Agencies 29 |            |                              |             |                       |                               |                          |                   |                  |                   |                    |
| JTF Comments: [REDACTED]                            |            | Counsel Comments: [REDACTED] |             | Bond Info: [REDACTED] |                               | DRO Comments: [REDACTED] |                   |                  |                   |                    |
| [REDACTED]  | [REDACTED] | Jordan                       | 9/28/2001   | [REDACTED]            | 9/30/2001                     | 237(a)(1)(B)             | 10/1/2001         | [REDACTED]       | [REDACTED]        | [REDACTED]         |
| JTF Comments: [REDACTED]                            |            | Counsel Comments: [REDACTED] |             | Bond Info: [REDACTED] |                               | DRO Comments: [REDACTED] |                   |                  |                   |                    |
| [REDACTED]  | [REDACTED] | India                        | 9/13/2001   | [REDACTED]            | [REDACTED]                    | 241(a)(5)                | [REDACTED]        | [REDACTED]       | [REDACTED]        | [REDACTED]         |
| JTF Comments: [REDACTED]                            |            | Counsel Comments: [REDACTED] |             | Bond Info: [REDACTED] |                               | DRO Comments: [REDACTED] |                   |                  |                   |                    |
| [REDACTED]  | [REDACTED] | Egypt                        | 10/31/2001  | [REDACTED]            | 12/6/2001                     | 237(a)(1)(B)             | [REDACTED]        | [REDACTED]       | [REDACTED]        | [REDACTED]         |
| JTF Comments: [REDACTED]                            |            | Counsel Comments: [REDACTED] |             | Bond Info: [REDACTED] |                               | DRO Comments: [REDACTED] |                   |                  |                   |                    |

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that are needed to thwart potential terrorists, deepening suspicions held by Muslims that the U.S. government is anti-Islam.”<sup>15</sup>

These secret arrests are yet another example of the government too often using terrorism as an excuse to shield its activities from scrutiny. When groups brought a lawsuit to force disclosure of the names of the jailed, Judge Gladys Kessler ruled the government must disclose the names. An appeals court overruled her on a 2-1 decision in which the majority abdicated judicial oversight over the

<sup>15</sup> Cam Simpson, Flynn McRoberts and Liz Sly, "Immigration Crackdown Shatters Muslims' Lives," *Chicago Tribune*, November 16, 2003.

executive branch's national security assertions. The Supreme Court declined to hear the case without giving a reason.<sup>16</sup>

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

Disclosures of gifts that Senators and their staffs receive from lobbyists are already disclosed to the public – but it takes a trip to Washington (the Senate Office of Public Records, to be exact) to view them at one of five computer terminals available during normal business hours (9:00 a.m. to 5:30 p.m. Monday through Friday).

On February 11, 2003, Republican Senator John McCain and Democratic Senators Tom Harkin and Patrick Leahy introduced in the Senate a resolution, S.J.R. 54, which would provide public access to documents showing when lobbyists give charitable contributions or pay travel expenses for senators or their staffs. (The resolution would also provide full, unrestricted public access to Congressional Research Service reports, described below.) This is not the first time this resolution has been introduced. In 1999 and 2001, nonprofit organizations supported similar resolutions calling for the Senate to be a more open body.

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

The government spends taxpayer dollars on contracts and grants that these same taxpayers cannot read. For example, last year the federal Department of Homeland Security awarded \$245 million in grants for security upgrades along industrial ports and waterways, but these grants have been shrouded in secrecy. One oil refinery in Lake Charles, La., received a grant totaling \$13.5 million, which amounted to more than the sum of all nine grants that went to the country's busiest container port in Los Angeles, Calif., according to the *Philadelphia Inquirer*.<sup>17</sup> Why a single remote refinery would receive such a large grant has not been explained to taxpayers.

Fortunately, other secret contracts have attracted greater public scrutiny. The Bush administration awarded secret, no-bid contracts for post-war reconstruction and maintenance operations in Iraq. One contract worth up to \$7 billion went to Kellogg Brown and Root, a subsidiary of Halliburton. In fact, the federal

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<sup>16</sup> For more information about the case, including legal briefs and court decisions, see the Center for National Security Studies at [www.cnss.org](http://www.cnss.org).

<sup>17</sup> Jennifer Lin, "Big grant to oil firm shrouded in secrecy," *Philadelphia Inquirer*, June 19, 2003. Available at [www.philly.com/mld/inquirer/news/local/6119307.htm](http://www.philly.com/mld/inquirer/news/local/6119307.htm), accessed June 19, 2003.

government does not even pull together the records of suspensions and debarments in one place for its own use. According to the Project On Government Oversight (POGO), a military and security watchdog organization, last year the federal government bought approximately \$265 billion worth of goods and services to provide government programs and services to the American public. While the government may suspend or permanently bar companies from receiving future contracts, the government continues to conduct business with companies that repeatedly violate federal and state laws and regulations. All contracts and grants should be available for public inspection to allow the public to judge how the federal government spends taxpayer dollars.

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

The real work of Congress happens in committees, according to the well-known axiom of Congress. However, the public rarely sees the text of legislation on which congressional committees vote. The free, online congressional information system, THOMAS, provides the text of bills as introduced in Congress, the version passed by the full House or Senate, and the final text signed into law by the president. However, committee chairs can amend bills just

**Responsible Contracting**

The government continues to conduct business with companies that repeatedly violate federal and state laws and regulations, but the public will have a hard time finding out which companies have good and bad records. In order to protect the governments and taxpayers' interests, the government can suspend or debar irresponsible contractors from receiving future government contracts.

Because suspensions and debarments can limit the government's ability to buy goods and services, the system has not been adequately enforced. The Project On Government Oversight (POGO) recommends the following changes to improve the suspension and debarment system: (1) create a centralized information database that should be consulted before awarding a contract or making a suspension or debarment decision; (2) require a contractor to disclose current suspensions or debarments, litigation initiated against them in the past three years on either the federal or state level, and any Administrative Agreements it is currently implementing; (3) require an agency debarment official to use suspension and debarment actions equally against large and small contractors or to justify in writing a determination to do business with a non-responsible contractor; (4) require mandatory suspension or debarment for a contractor that either had been criminally convicted or had a civil judgment rendered against them more than once in a three-year period; and (5) empower the Interagency Committee on Debarment and Suspension (ICDS) to coordinate with the federal agency taking the leadership role in a suspension or debarment case (especially in the case of a repeat offender) and require ICDS to submit semiannual reports to Congress regarding suspension and debarment decisions.

prior to a vote, and this version of the bill is often what goes to the full House and Senate for a vote. This zone of secrecy in congressional committees frustrates even experienced Washington lobbyists.

Perhaps a more inviting target for malfeasance is the process by which Congress spends money. After months of negotiating, appropriations bills thicker than a big city phone book are dropped on legislators just before a vote. As the *Washington Post* recently noted, this practice persists "because exposing the document to public scrutiny would hurt the cause of those who seek to have it passed by any means."<sup>18</sup> Such practice undermines the public's ability to hold its leaders accountable and the public's trust in its government. Before a bill goes to a vote in Congress, it should first be held to the light of public scrutiny.

#### 10) **Congressional Research Service Reports**

"Censorship should occur only in the rare cases where security of the American people may be impaired," says the nominator of Congressional Research Service (CRS) reports for the Ten Most Wanted survey. Recently called "among the best [research reports] produced by the federal government," CRS reports clearly explain the ins and outs of current policy debates.<sup>19</sup> Currently, Congress allows the general public to access these reports only through congressional offices. Proponents of this "selective dissemination" model argue that unfettered public access to taxpayer-funded CRS reports would pose "legal and institutional dangers."<sup>20</sup> The General Accounting Office, the investigatory arm of Congress, provides unrestricted public access to its audits and reports and could serve as a model for CRS reports.

#### **Accessing CRS Reports on the Web**

##### **Secrecy News Publication of the Federation of American Scientists**

[www.fas.org/irp/crs](http://www.fas.org/irp/crs).  
CRS reports on national security policy

##### **National Council for Science and the Environment**

[www.cnie.org/NLE/CRS](http://www.cnie.org/NLE/CRS)  
CRS reports on environmental and related topics

##### **Law Library Resource Exchange**

[www.llrx.com/features/crsreports.htm](http://www.llrx.com/features/crsreports.htm)  
Background and history on CRS reports

##### **The Memory Hole**

[www.thememoryhole.org/crs](http://www.thememoryhole.org/crs)

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<sup>18</sup> "Government by Juggernaut," *Washington Post*, 11/26/03, A24.

<sup>19</sup> Letter from the American Library Association, et al, to Representatives Mark Green and Christopher Shays, November 3, 2003.

<sup>20</sup> Letter from Reps. Bob Ney and John B. Larson to Rep. Devin Nunes, September 10, 2003.

## Analysis of the Survey Results

### **Methodology**

In order to get the best possible list of documents in our survey, we began by establishing several criteria for the set of documents. First, we sought to represent a broad range of issues affected by the government's recent expansion of government secrecy, such as national security, environmental protection, constitutional protections, and public health.

Second, we wanted to represent a broad range of agencies, offices and branches of the federal government. Such breadth of issues shows that, while some entities have made substantial efforts to advance openness and provide public access to government information, the basic point is that secrecy is a problem throughout the government. The 19 items in the survey represented the courts, Congress, and the executive branch. And the final list of the Ten Most Wanted also shows these problems reach across the federal government.

Third, while the Bush administration has certainly been at the heart of efforts to close the doors of government and the Ten Most Wanted list is dominated by the executive branch, secrecy in government has been a problem across administrations and, as previously noted, goes beyond the executive branch.<sup>21</sup>

We then invited experts to nominate documents or sets of documents for the list. We distributed a call for nominations that was redistributed to numerous email lists targeting regular users of government information such as researchers, librarians, public interest organizations, and others. We received dozens of suggestions, added a few items of our own, and developed a list of 34 documents.

From that list we applied our criteria – breadth of issues, breadth of entities across the federal government, and nonpartisanship – and compiled the final list of 19 items. We selected 19 items to allow respondents to select from among a list of items that would eventually be narrowed to 10 items. In creating a list of 19 rather than 20 items we wanted to emphasize the importance we placed on the write-in nomination. Those items were included in the online survey.

We were also interested in gauging the biggest problems respondents identified in using government information. In developing that survey question, we identified several of the major problems and obstacles that users face in obtaining information from their

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<sup>21</sup> At the same time, some agencies are doing better than others in providing public access to information in the possession of government. This report is not a broad, uniform indictment against the federal government. For example, the U.S. Census Bureau in recent years has developed user tools that vastly expand the public's ability to use and analyze information paid for by taxpayers. Recent changes in law, including the Electronic Government Act of 2002 (E-Gov Act), have promoted advances in public access to government information.

government. Respondents were asked to rank whether the given item's release to the public was "very important," "somewhat important," "somewhat unimportant," or "very unimportant."

### ***A Few Caveats: Limitations of the Ten Most Wanted Survey***

Several caveats are in order. First, the population of respondents is not a random or representative sampling of the U.S. population. This survey was not intended as public opinion research. Therefore, the opinions of respondents expressed in the Ten Most Wanted survey cannot in a statistically valid way be generalized to the U.S. population as a whole. The rankings and results reflect the priorities of those who responded to the survey. Response to the survey would be affected by many factors, including whether a person received the message announcing the Ten Most Wanted survey. The survey was distributed on many email lists and redistributed over a two-week period from March 18 to April 1, 2004. Survey responses could be affected by the news of the day. For example, the August 6, 2001 President's Daily Brief, which would have ranked seventh had it remained on the list, likely would have ranked higher had our survey been open while the press and public figures focused attention on the document.

### ***Ranking the Most Wanted Government Documents***

We asked the public to rank each of 19 documents in a survey we made available on the Internet for two weeks. The public was given the opportunity to rank each document on a four-point scale as either "very important," "somewhat important," "somewhat unimportant," or "very unimportant." Respondents also were given the option of selecting "don't know" or simply not rating a given item.

To create our list of the Ten Most Wanted, for each item we first added together "very important" and "somewhat important" responses and ranked the items in descending order. Where two items received scores close to one another, we ranked higher the item that received a greater proportion of "very important" responses.

Between first and second place in our list (the 28 pages of the 9/11 joint inquiry and reporting on the Patriot Act, respectively) a slightly greater percentage of those expressing an opinion about the Patriot Act reporting considered it important overall. However, respondents felt more strongly about the importance of releasing the 28-page section of the 9/11 congressional joint inquiry than they did about reporting on when Patriot Act powers are used. Thus, the two items nearly tied on our first criteria but the 28 pages received a greater share of "very important" rankings than did the Patriot Act choice, so we ranked the 28 pages of the "Congressional Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 2001" as the top-ranking Most Wanted Document for 2004.

The separation between #2 and #3 (contaminants in drinking water sources) was even slimmer. From place #2 to place #3 there was a two-percentage point drop in respondents who ranked these items as either “very important” or “somewhat important.” Those who felt strongly that public release of the documents was “very important” fell by six percentage points from second to third place.

The third- and fourth-place documents (explanations for closing court proceedings) received nearly identical ranks. The drinking water data attracted slightly fewer respondents (n=482) compared with the court cases (n=490).<sup>22</sup> Of those who gave an opinion about each item, the drinking water data was considered slightly more important by one percentage point.

| <b>Rankings of the Ten Most Wanted Documents</b> |                   |                    |                       |                    |                            |                  |                     |                               |                   |                    |
|--|-------------------|--------------------|-----------------------|--------------------|----------------------------|------------------|---------------------|-------------------------------|-------------------|--------------------|
|  | <b>“28 Pages”</b> | <b>Patriot Act</b> | <b>Drinking Water</b> | <b>Court Cases</b> | <b>Chemical Plant Risk</b> | <b>Detainees</b> | <b>Senate Gifts</b> | <b>Contracts &amp; Grants</b> | <b>Bill Texts</b> | <b>CRS Reports</b> |
| <b>Very Important</b>                            | 382<br>77.0%      | 356<br>71.9%       | 325<br>66.5%          | 322<br>65.3%       | 298<br>61%                 | 300<br>60.5%     | 280<br>56.6%        | 259<br>53.3%                  | 245<br>50.7%      | 203<br>43%         |
| <b>Somewhat Important</b>                        | 80<br>16.1%       | 106<br>21.4%       | 118<br>24.1%          | 125<br>25.4%       | 142<br>29%                 | 147<br>29.6%     | 155<br>31.3%        | 168<br>34.6%                  | 152<br>31.5%      | 187<br>39%         |
| <b>Somewhat Unimportant</b>                      | 22<br>4.4%        | 21<br>4.2%         | 32<br>6.5%            | 36<br>7.3%         | 33<br>7%                   | 28<br>5.6%       | 47<br>9.5%          | 43<br>8.8%                    | 56<br>11.6%       | 57<br>12%          |
| <b>Very Unimportant</b>                          | 9<br>1.8%         | 8<br>1.6%          | 7<br>1.4%             | 7<br>1.4%          | 5<br>1%                    | 17<br>3.4%       | 8<br>1.6%           | 10<br>2.1%                    | 15<br>3.1%        | 10<br>2%           |
| <b>Don't Know</b>                                | 3<br>0.6%         | 4<br>0.8%          | 7<br>1.4%             | 3<br>0.6%          | 10<br>2%                   | 4<br>0.8%        | 5<br>1.0%           | 6<br>1.2%                     | 15<br>3.1%        | 20<br>4%           |
| <b>TOTAL Responses</b>                           | 496<br>100%       | 495<br>100%        | 489<br>100%           | 493<br>100%        | 488<br>100%                | 496<br>100%      | 495<br>100%         | 486<br>100%                   | 483<br>100%       | 477<br>100%        |

From disclosure of information about secret court cases (ranked #4) to information about our communities’ vulnerabilities to chemical accidents (ranked #5), the distribution of responses for each item follows a similar pattern. While there is little difference between the percentage of each question’s respondents ranking the items as either “very important” or “somewhat important,” individuals who expressed an opinion about the court documents felt more strongly about these documents’ release than did those who responded to chemical vulnerabilities item.

The recently released President’s Daily Brief garnered a response that proved an exception to this general pattern. Although it would have ranked seventh overall among the Ten Most Wanted documents, it received the fourth highest percentage of “very important” rankings.

<sup>22</sup> These figures do not include respondents who chose “don’t know.”

In part, the especially strong support (given its ranking) for release of the President's Daily Brief related to 9/11 reflects the sensitivity of survey responses to news events and the day's headlines. Beyond that, however, the strong support for declassifying the 9/11 PDB reflects the general skepticism among survey respondents about the information the government releases.

### **Problems Obtaining Government Information**

The biggest threat to open government remains the mistaken assertion that national security and the war against terrorism requires expanded secrecy, according to respondents. Answers to the Ten Most Wanted survey show the public's greatest concern is that the government does not make public important information that it possesses. In other words, respondents are skeptical of the information that government releases and believes there is more information to the story.

It should also be noted that our respondents have experience accessing information from government. Roughly three of four respondents said they have accessed information directly from government, either through official government web sites or directly from government entities themselves. For the purposes of this question, we distinguished between the public using government as a source of information and transactions public conducts with government, such as obtaining a business license. The survey asked respondents to exclude from their answers information they gathered from government in the course of conducting a transaction.

| <b>Rankings of the Biggest Barriers to Openness</b> |                   |                  |                     |                 |               |            |          |
|---|-------------------|------------------|---------------------|-----------------|---------------|------------|----------|
|   | National Security | Abuse of Privacy | Over-classification | Company Secrecy | Locating Info | Using Info | Bad Data |
|   | 411               | 361              | 303                 | 290             | 220           | 224        | 175      |
| Very Important                                      | 83.4%             | 73.8%            | 62.0%               | 59.2%           | 44.9%         | 46.0%      | 36.2%    |
|   | 53                | 90               | 144                 | 142             | 187           | 173        | 146      |
| Somewhat Important                                  | 10.8%             | 18.4%            | 29.4%               | 29.0%           | 38.2%         | 35.5%      | 30.2%    |
|   | 16                | 15               | 22                  | 40              | 57            | 67         | 76       |
| Somewhat Important                                  | 3.2%              | 3.1%             | 4.5%                | 8.2%            | 11.6%         | 13.8%      | 15.7%    |
|   | 8                 | 10               | 8                   | 8               | 13            | 7          | 18       |
| Very Unimportant                                    | 1.6%              | 2.0%             | 1.6%                | 1.6%            | 2.7%          | 1.4%       | 3.7%     |
|   | 5                 | 13               | 12                  | 10              | 13            | 16         | 69       |
| Don't Know  | 1.0%              | 2.7%             | 2.5%                | 2.0%            | 2.7%          | 3.3%       | 14.3%    |
|   | 493               | 489              | 489                 | 490             | 490           | 487        | 484      |
| TOTAL   | 100%              | 100%             | 100%                | 100%            | 100%          | 100%       | 100%     |

Concern about reasons for withholding information the government has in its possession consistently ranked as more important than impediments to using already-accessible information.

The Freedom of Information Act, long considered the “backstop” tool of last resort to obtain information from government, received both commendations and condemnations. Respondents cited instances when they requested specific information under the Freedom of Information Act and were told either the information did not exist, or received heavily redacted information or blank pages. One respondent simultaneously dismissed the federal Freedom of Information Act as inadequate in opening the doors of government while reasserting its fundamental premise, noting “[t]he presumption should be that the public has a right to the information and government has the burden of proving otherwise consistent with the law.”

## Conclusion

Our country is based on the long-standing principle that in a democracy government cannot lead without the consent of the governed. As Paul McMasters notes, “The government’s obsession with secrecy creates a citizen’s obsession with conspiracy.”<sup>23</sup> Conversely, openness – providing more information to the public, allows the public to assess the record and come to its own judgments.<sup>24</sup>

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<sup>23</sup> Paul McMasters, quoted in Daniel Patrick Moynihan, *Secrecy*, New Haven: Yale University Press, 1998, citing Eleanor Randolph, “Is U.S. Keeping Too Many Secrets?” *Los Angeles Times*, May 17, 1997.

<sup>24</sup> For example, the JFK Assassination Records Review Board was empowered to compel federal agencies to disclose documents related to the assassination of President John F. Kennedy. This Board is credited with providing the public with access to thousands of pages of records which agencies would not have otherwise disclosed. See OMB Watch, “A Presumption of Disclosure: Lessons from the John F. Kennedy Assassination Records Review Board, December 2000.

## Appendices

***Invitation to Nominate Documents For the Ten Most Wanted Survey***  
***Invitation to Take the Survey***  
***Survey Instrument***  
***Summary Results for All Documents in the Survey***

### ***Invitation to Nominate Documents For the Ten Most Wanted Survey***

We are looking for a few good documents. The Ten Most Wanted Documents for 2004, to be precise. And we're hoping you, as an expert in this area, can help.

The Ten Most Wanted Project 2004

As part of an effort to fight increased government secrecy, we would like your help in identifying:

(1) the ten or twenty government documents -- or categories of documents -- you would most like to see the government make available to the public

(2) problems you have faced finding government information

Send your ideas to <info@openthegovernment.org>. Examples of the Ten Most Wanted Documents for 2004 may include:

- The 28 pages kept classified from the report by Congress on the 9/11 attacks
- Risks to communities posed by chemical plants and efforts to make plants safer
- Taxpayer-funded Congressional Research Service reports available to the public only through members of Congress
- Federal contracts for goods and services paid for with taxpayer dollars
- Local government spending for each of the 50 states

It doesn't matter what the topic is; if you're interested in it, chances are others are, too.

We will cull through your ideas, make a list of the 20 or so best ideas, and ask the public to vote on which documents the public most wants the government to make available to the public. We will publicly announce the results and push the government to release the documents.

### Who We Are and Why We're Doing This

The Ten Most Wanted Project 2004 is being prepared by OMB Watch and the Center for Democracy and Technology for OpenTheGovernment.org. OpenTheGovernment.org is a new, unprecedented coalition of over 30 organizations created to fight increased

secrecy and promote open government. The Center for Democracy and Technology ([www.cdt.org](http://www.cdt.org)) works to promote democratic values and civil liberties in the digital age. OMB Watch ([www.ombwatch.org](http://www.ombwatch.org)) advances social justice, government accountability and citizen participation in federal policy decisions.

By the way, if the Ten Most Wanted Project 2004 sounds familiar to you, it should. When the Center for Democracy and Technology and OMB Watch conducted the 10 Most Wanted survey a few years ago (in 1999), we came up with good results. At that time, the Supreme Court did not have a web site (but Mongolia's Supreme Court did). By the 2000 election, the new U.S. Supreme Court Web site ([www.supremecourtus.gov](http://www.supremecourtus.gov)) was ready to handle the heavy demand to download the Bush v. Gore decision, allowing thousands from around the world to read the decisions for themselves at the time that it was published. In another victory, the government's plans to recover endangered species were not available online. After the 10 Most Wanted survey, resources were made available to step up the time frame to get these important documents online.

Today, the problems are bigger, and our response will be bigger as well. We have broadened the range of information the Ten Most Wanted Project will cover. The Ten Most Wanted Project 2004 will help launch a broad national coalition called [OpenTheGovernment.org](http://OpenTheGovernment.org) to return our government to a commitment to openness. Both OMB Watch and CDT participate in the coalition.

To start, though, we need a good list. So send your good ideas or questions about the project to [<info@openthegovernment.org>](mailto:info@openthegovernment.org).

It's simple. It's quick. And it'll help open the government.

Thanks for doing your part.

### ***Invitation to Take the Survey***

What would you most want government to show the public? The 28 secret pages of Congress' joint inquiry into intelligence failures leading up to 9/11? Threats to community safety posed by chemical plants? How the government has used Patriot Act powers? Or a mailing address for the nation's "spy court"? We are looking for a few good documents. The Ten Most Wanted Documents for 2004, to be precise. And we're inviting the public to help.

We've talked with experts and compiled a list of documents that government keeps secret and should be disclosed. Now we're asking the public to rank the experts' choices and suggest other documents for the list. So please go to [www.ombwatch.org/TenMostWanted/survey.phtml](http://www.ombwatch.org/TenMostWanted/survey.phtml), take the survey and encourage your friends and colleagues to do so as well. The deadline is March 31, 2004.

The survey consists of two short parts. First, you'll have the chance to rate documents suggested by experts and tell us which documents you would most like government to show the public. (Our list has 19 items. You can nominate the 20th.) Second, we're also asking the public to identify the biggest problems you face in getting information from government.

What will we do with your vote? After announcing the results in April as part of the unveiling of OpenTheGovernment.org, a new coalition that will push for more democracy and less secrecy, we'll push government to release the documents.

So please, take a few minutes to take the survey at [www.openthegovernment.org](http://www.openthegovernment.org).

Also, please redistribute this announcement to lists you think may be appropriate.

It's easy, it's quick, and it'll help open the government. Thanks for your help.

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Today, the problems are bigger, and our response will be bigger as well. We have broadened the range of information the Ten Most Wanted Project will cover. The Ten Most Wanted Project 2004 will help launch a broad national coalition called OpenTheGovernment.org to restore openness and accountability in our government. Both OMB Watch and CDT participate in the coalition. Thanks for doing your part.

So vote for the Ten Most Wanted Documents at [www.ombwatch.org/TenMostWanted/survey.phtml](http://www.ombwatch.org/TenMostWanted/survey.phtml). It'll help open the government.

### **Survey Instrument**

Question 1: What would you most want government to unveil?

Please rate how important it is to you that the government provide the following documents to the public. Please indicate whether the release of each of the following documents is:

- 1 "Very Important"
- 2 "Somewhat Important"
- 3 "Somewhat Unimportant"
- 4 "Not Important"
- N/A "No Opinion"

NOTE: In the next question, we'll give you a chance to nominate a document or set of documents not included in this list.)

Unclassified, topical reports to Congress from the Congressional Research Service

Industry-written reports on chemical plants' risks to communities

Sections of the congressional joint inquiry into the intelligence failures leading up to September 11, 2001 that leaders in Congress have called for release (the so-called "28 pages")

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

Type of crime investigated each time a Patriot Act power was invoked

A mailing address for our nation's "Spy Courts" -- the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Review Court

Gifts from lobbyists to Senators and their staff

Policies on treatment of those detained after 9/11 on immigration charges or as material witnesses

Total amount spent annually on U.S. intelligence gathering

The Presidential Daily Brief showing the advice given to the President, if anything, before September 11, 2001, about Al Qaeda's plans & capabilities

A list of the contaminants found in the sources of our drinking water

Electronic versions of federal regulations, policy guidance, and other documents published in the Federal Register before 1994

An unclassified overview of our nuclear weapons program

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

Unclassified records of former U.S. presidents

Inspection reports of licensed animal facilities

Reports on wildlife control programs

The Justice Department's re-review of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

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

Question 2: What other document(s) *not currently disclosed* should government make public? (Please include a brief description.)

Question 3: In the last two years, have you accessed a federal government web site or obtained information (other than tax forms, business licenses, etc.) directly from the courts, Congress, or federal agencies?

NOTE: Do not include information you obtained through the media or other nongovernmental sources that mention public health warnings, product recalls, or other government reports, advisories or other communications.

Question 4: How important are the following potential limitations on the federal government's disclosure of information to the public?

- 1 "Very Important"
- 2 "Somewhat Important"
- 3 "Somewhat Unimportant"
- 4 "Not Important"
- N/A "No Opinion"

Government abuses legitimate privacy protections to withhold information

The government classifies too much information.

The government uses the threat of terrorism & national security concerns to withhold information not specifically classified.

Trade secrets & business confidentiality too often shield information the public should know about.

Government information is too hard to find.

Government information is too hard to use (e.g., combining information from different agencies or sources is difficult or supporting material is not available).

The data or information has errors.

Question 5: Please use this space to identify other obstacles or explain your experiences obtaining information from government, particularly at the federal level.

If you would like a copy of the survey results, please provide your email address below.

**Summary Results for All Documents in the Survey<sup>25</sup>**

|                    | 28 Pages | Patriot Act | Drinking Water Data | Court Cases | Chemical Threats | Detainees | Aug. 6 PDB | Senate Gift Reports | Contracts & Enforcement |
|--------------------|----------|-------------|---------------------|-------------|------------------|-----------|------------|---------------------|-------------------------|
| Very Important     | 382      | 356         | 325                 | 322         | 298              | 300       | 328        | 280                 | 259                     |
| Somewhat Important | 80       | 106         | 118                 | 125         | 142              | 147       | 107        | 155                 | 168                     |
| Unimportant        | 22       | 21          | 32                  | 36          | 33               | 28        | 39         | 47                  | 43                      |
| Very Unimportant   | 9        | 8           | 7                   | 7           | 5                | 17        | 16         | 8                   | 10                      |
| Don't Know         | 3        | 4           | 7                   | 3           | 10               | 4         | 6          | 5                   | 6                       |
| TOTAL              | 100%     | 100%        | 100%                | 100%        | 100%             | 100%      | 100%       | 100%                | 100%                    |

|                    | Bill Texts | CRS Reports | Presidential Records | Nuclear Overview | Intel Budget | Women's Rights Treaty | FISA Court | Federal Register | Wildlife Control Programs | Animal Facility Inspections |
|--------------------|------------|-------------|----------------------|------------------|--------------|-----------------------|------------|------------------|---------------------------|-----------------------------|
| Very Important     | 245        | 203         | 229                  | 199              | 196          | 188                   | 158        | 136              | 116                       | 118                         |
| Somewhat Important | 152        | 187         | 151                  | 180              | 187          | 178                   | 166        | 176              | 186                       | 177                         |
| Unimportant        | 56         | 57          | 86                   | 71               | 77           | 81                    | 103        | 113              | 117                       | 122                         |
| Very Unimportant   | 15         | 10          | 18                   | 28               | 27           | 22                    | 28         | 38               | 40                        | 46                          |
| Don't Know         | 15         | 20          | 6                    | 11               | 5            | 14                    | 30         | 20               | 23                        | 19                          |
| TOTAL              | 100%       | 100%        | 100%                 | 100%             | 100%         | 100%                  | 100%       | 100%             | 100%                      | 100%                        |

<sup>25</sup> These results include the Presidential Daily Brief of August 6, 2001, which was a classified document at the time respondents were taking the survey.