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Obama's disappointing secrecy

**He promised openness. Instead, like Bush's, his administration wants the power to keep Congress in the dark on some intelligence activities.**

By Benjamin Friedman

*WASHINGTON*

The Obama administration promised an "unprecedented level of openness in government."

The White House website says that citizens have a right to know what their government is doing and that accountability makes government more effective. That's absolutely right. In some areas, such as the liberalization of policy on Freedom of Information Act requests, the administration has embraced this principle.

Disappointingly though, the administration's commitment to openness and accountability does not extend to intelligence activities.

The administration recently threatened to veto the intelligence authorization bill, the annual legislation that funds the Central Intelligence Agency.

The trouble with the bill, according to the administration, is a requirement that intelligence officials brief some secret intelligence activities to Congress's full intelligence committees rather than just the "gang of eight" (each party's leader in each house and the chairmen and ranking members of those committees). The administration wants to keep the power to determine whom it briefs.

This veto threat, and its implicit plea to shut up and trust the executive branch, comes at an awkward time. It arrives just as we have learned about more secret, possibly illegal, doings that the Bush administration launched as part of its panicked reaction to the Sept. 11 attacks.

This month, because of a leak, we heard that the Bush administration long blocked the CIA from revealing to the gang of eight a proposed program to assassinate Al Qaeda members. Thanks to a report written by the inspector generals of several federal agencies, we also learned last week that the National Security Agency's controversial, warrantless wiretapping program (the "terrorist surveillance program" to its Orwellian creators) found few, if any, terrorists, contrary to its advocates' claims.

That's the same surveillance program conducted for years in violation of a federal statute, the one that Congress last year legalized, rather than investigate. Had the program remained a secret, as the Bush administration wanted, we wouldn't know that our laws and liberties had been abused for essentially no

gain.

The inspector generals' report about the recent NSA program pointed out a related secret NSA program, one involving massive data mining of domestic e-mail traffic. That program is not particularly controversial because no one knows much about it. Does it violate the Fourth Amendment or a statute? Is it over? Those unwilling to take the assurances of the Bush administration that it was kosher are left to wonder.

We don't know the full extent of these programs. This poses a huge problem.

We hear a lot about whether the Obama administration will investigate the Bush administration for this or that abuse, torture in particular. What about the abuses we don't know about?

It is time Congress established a select committee with subpoena power to force a full accounting of activities undertaken in the name of counterterrorism.

More than that is needed though. We need a national refresher on the theory of democratic government, which tells us that secret government is always undemocratic and generally unwise.

True, secrecy prevents enemies from learning about something that damages them. In the case of intercepting e-mails or phone calls, disclosure warns terrorists dumb enough to still use those forms of communication to stop. In the case of assassination, disclosure probably doesn't much matter since terrorists are already hiding.

In practice, however, secrecy has another purpose: It protects government agencies and elected officials from the consequences of reckless or immoral decisions.

Because the public cannot hold their representatives accountable for secret acts, secret government is undemocratic. Moreover, even when Congress is informed about secret programs, or a portion of them, the programs are subject to weak checks and balances. The real overseer is the public.

Members of Congress lack much of their power when they are not permitted to talk about what they know. They can try to block funding, but the main tool for generating support for their position – publicity – is missing. That is why those who object to programs generally leak information about them. We should thank them for it.

The requirement to justify a proposal in public requires its advocates to consider it more carefully. Debate reveals hidden assumptions and sloppy thinking. The compromise necessary to please multiple masters helps eliminate the more reckless proposals.

This is the theory of divided government that you find in The Federalist Papers. Washington

commentators, particularly in national-security circles, tend to forget this, dismissing debate as partisan bickering that hinders those protecting us. But the Constitution divides power over national security to produce dissent, debate, and compromise – critical elements of a healthy democracy.

Experience bears out the theory. The history of secret government programs meant to produce security is dominated by failure and outrageous acts. Books chronicling the history of covert CIA programs, such as Tim Weiner's "Legacy of Ashes," suggest that secrecy, by shrouding bad programs from scrutiny, does more harm than good.

Rather than restrict information on intelligence agencies to an inner circle, the Obama administration should stick to its original promise of openness, and, with Congress, err on the side of openness.

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