



America's Secret Government Crisis

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America's founding generation believed that an informed citizenry was vital to the survival of the Republic. Writing to theologian and philosopher Richard Price on January 8, 1789, Thomas Jefferson observed with satisfaction how his countrymen had come to largely embrace the new constitutional form of government just recently adopted.

“A sense of this necessity, and a submission to it,” Jefferson told Price, “is to me a new and consolatory proof that wherever the people are well informed they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.”

But what if that same government takes deliberate, calculated steps to try to ensure that the public is not well informed about the government's own actions, especially those carried out under a legal cloak of secrecy?

Over 200 years after Jefferson's missive to Price, the United States now has a sprawling national security bureaucracy that has created tens of millions of classified documents. In 2017 alone (the last year for which figures are available), federal employees created some **50 million** classified records. Estimated cost to you, the taxpayer? Around **\$18 billion**.

What's worse is that many of the classified records created since World War I (when the U.S. government classification system essentially began) – tens of millions of pages – remain classified to this day, out of the reach of the public, historians, journalists and others interested in understanding the totality of America's history. Here are some examples, based on just the last six years of my own research at the National Archives and Records Administration (NARA) and from using the Freedom of Information Act (FOIA).

Martin Luther King, Jr.: According to National Archives locator documents I examined, at least 17,000 pages of material on King remain classified to this day, over 50 years after his murder by James Earl Ray.

Frank Wilkinson: Founder of the National Committee to Abolish the House Un-American Activities Committee, Wilkinson's file is over 130,000 pages and would take years to review and release, according to an August 2019 email exchange I had with a NARA archivist.

TALON/CIFA programs: The Department of Defense's Counterintelligence Field Activity (CIFA) and the Threat and Local Observation Notice (TALON) report program were major sources of controversy during George W. Bush's presidency, as they targeted domestic dissidents

opposed to the Iraq War. According to the G.W. Bush Presidential Library, there are potentially over 60,000 pages of relevant records on CIFA and TALON that, per January 2022 letters to me from NARA officials, will take anywhere from 12 to 20 years to process and release.

Operation VULGAR BETRAYAL: A massive and illegitimately predicated FBI counterterrorism investigation of Arab and Muslim Americans dating from the mid-1990s through the early 2000s, which a November 23, 2021 FBI letter to author revealed that the Bureau has at least 1,290,010 pages of records potentially responsive” to the Cato Institute’s FOIA request.

Since the Bureau will never release more than 500 pages per month to a FOIA requester, absent the rare order from a federal judge, it would take **215 years** for Cato to receive all the records.

Existing federal agency and department records review and release polices practically ensure that requesters will be either very old or long dead before the mountain of previously secret government records they seek see the light of day. And while federal courts could compel agencies and departments to produce the records at a far faster rate, they rarely do. The effect is to keep the public in the dark about lots of potentially dirty deeds done in secret, in their name, at taxpayer expense.

The late Senator Daniel Patrick Moynihan (D-NY), who co-chaired the Clinton-era Commission on Protecting and Reducing Government Secrecy, wrote in his 1998 book Secrecy (pp. 216-217) that “Eighty years from the onset of secrecy as an instrument of national policy, now is the time for a measure of definition and restraint.”

We are now over 100 years into the American Age of Secrecy, with even fewer restraints on the federal government’s ability to keep its citizens in the dark about what it is doing secretly in the name of national security. The commission Moynihan led proposed legislation to address the problem, but in the author’s view it still left entirely too much discretion to executive branch officials about what, why, and for how long a given document could be classified.

It’s important to remember that the Constitution only mentions secrecy once, and not in connection with the executive branch but Congress – Article I, Section 5. Congress was the original arbiter of what should or should not be kept from the public, and if America’s governmental secrecy sickness is to be cured, it must reclaim that leading role.

Any secrecy reduction legislation must do, at a minimum, several key things.

First, it should be a felony to classify a document to conceal waste, fraud, abuse, negligence, mismanagement, criminal conduct, or anything deemed “embarrassing” to the executive branch entity.

Second, in no case should a record remain classified unless it deals with current or projected military operations; cryptologic systems in active use by the United States or a foreign power; an active, ongoing, and legitimately predicated criminal investigation; the need to protect a current, confidential human source; or matters dealing with an ongoing treaty negotiation process.

Third, it should repeal existing, sweeping agency- or department specific legal carve outs that allow those governmental entities to withhold entire bodies of information.

Fourth, the Government Accountability Office should be given the mandate and the resources to monitor, on an annual basis, executive branch compliance with the statute.

Finally, the new law should apply to the operations of House and Senate committees, many of which deal with classified issues on a daily basis.

Prior to the COVID-19 pandemic, neither the House or Senate Intelligence Committees had sent a single one of their records to NARA for review and release, according to NARA officials with whom I spoke. If the American people are ever to know whether or not Congress is doing a proper job of preventing executive branch overreach on secrecy, it should open its own records for public inspection.

Jefferson's vision of an informed citizenry holding its government accountable will only be realized when government secrecy becomes the exception, not the rule.

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