



For good government groups, what did all that access earn?

By: Mark Lisheron – April 7, 2013

For the members of the self-described transparency community, the first two years of President Obama's White House tenure felt a lot like the realization of his most extravagant promises of open and accountable government.

The past six months has felt more like an abrupt backhand across the face.

The federal government under Obama had in 2012 rejected a third of all the Freedom of Information Act requests from the public. When Bloomberg made requests of 57 federal agencies, nearly half weren't answered.

The government rejected or censored in the name of national security more of those Freedom of Information requests than it had in each of the first three years of the Obama administration.

Nowhere was this sharp pivot to government secrecy more apparent or maddening than in Obama's refusal to explain to the American people his executive guidelines for the dispatch of killer aerial drones.

When the New York Times and the American Civil Liberties Union teamed to challenge executive authority to withhold drone documents, federal court Judge Colleen McMahon reluctantly sided with the government.

"The Alice-in-Wonderland nature of this pronouncement is not lost on me," McMahon wrote in her summary judgment. "I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for their conclusion a secret.

"But under the law as I understand it to have developed, the Government's motion for summary judgment must be granted, and the cross-motions by the ACLU and the *Times* denied."

To the fixtures in the Washington, D.C., world of good government advocacy, particularly among the left, this lurch toward a national security state feels like an incomprehensible betrayal by a president in whom much had been invested.

Little wonder with all that he had been promised from the beginning. Obama opened the doors of the White House, offering historic access to the transparency community.

In return, to be sure, Obama took significant steps forward in making government data available to citizens. To a person, those interviewed said this progress is being obliterated by national security secrecy.

“His record on national security is somewhere between bad and abysmal,” said Gary Bass, the founder of the progressive Center for Effective Government, formerly OMB Watch.

“On the domestic side, he has a remarkable story to tell that I don’t think he’ll get credit for. Because on the national security side he doesn’t get high marks,” Bass said.

If anyone would have reason to be bitter, it’s Bass, who left OMB Watch in 2011 to lead the Bauman Foundation, a nonprofit group that directs grants to open government, environmental and public health advocacy projects.

Bass isn’t. After 30 years of advocacy, he still considers himself a glass-half-full guy. He regularly refers to the transparency community as “transpartisan,” drawing together advocates from across the ideological spectrum.

Bass has been invited to the White House at least 65 times, more than any other person in the transparency community, according to a search of a database of more than one million official visits during the past four years created by the Watchdog.org.

Between September 2009 and the end of 2012, White House staff and, in rare instances, the president and Vice President Joe Biden hosted at least 828 visits from the executive directors, staff and board members of 21 of the most influential good-government groups, according to the database.

By any measure, the hundreds of visits to the White House by good-government advocates is unprecedented. During the two-term Clinton administration, Bass said, he recalls few meetings in the White House. During President George W. Bush's eight years, none were invited.

“I think that is to this president’s (Obama's) credit. None of us is a political powerhouse,” Bass said. “We did have access.”

Not to Obama himself, really, but to an old Harvard classmate, political donor and friend, Norman Eisen.

Obama had campaigned on unshackling the government from the security excesses that developed out of Bush’s Patriot Act. One of his first official memoranda after his swearing in declared that government should be transparent and collaborative with the public.

To help him achieve these goals, Obama named Eisen his special counsel on ethics and government reform. What set Eisen apart from any other political crony was that he was a true believer, the co-founder of Citizens for Responsibility and Ethics in Washington, in the left’s vanguard of transparency advocates.

“Norm had a deep personal belief in what we were doing,” said Patrice McDermott, who would visit the White House at least 21 times as executive director

for OpenTheGovernment.org. “And he was someone who had the president’s ear. Yeah, we got meetings and we were appreciative of the meetings.”

How many meetings in the first nine months of the administration cannot be determined precisely by White House visitors logs, however. In his first major decision on a transparency issue, Obama refused to allow the logs to be released to Judicial Watch, a right-leaning government corruption nonprofit, because the U.S. Secret Service advised that the logs presented a security risk.

After Judicial Watch sued the Secret Service, the administration announced with great fanfare that it would begin releasing a limited and scrubbed version of the logs beginning in September 2009.

Judicial Watch’s lawsuit for the full release of the January-August 2009 records continues, as do the administration claims that its release of the visitors logs is one of its transparency triumphs.

Still, in the last four months of 2009 alone, good government officials logged 151 visits to the White House, according to the Watchdog.org database. That number would jump to 326 in 2010.

Lucy Dalglish, former executive director of the Reporters Committee for Freedom of the Press, said good government officials and open government journalists had, before Obama’s election, produced a wish list of all the good he could do if elected.

The pent-up energy was released when the White House doors swung open.

“At the beginning, there is always going to be an onslaught. You usually try to be among the first in the door and you’re doing it very optimistically,” Dalglish said.

Far more important than White House visitors logs was Obama’s directive to all federal agencies, in particular the Department of Justice, to reverse its policy of erring on the side of withholding documents requested through the Freedom of Information process.

As a memo from Attorney General Eric Holder from March 19, 2009, put it, “In the face of doubt, openness prevails.”

Before the year was out, the administration had launched the Open Government Initiative, which invited citizen input into its transparency policymaking; the Open Government Directive, directing agencies to offer up more and better data on its websites while attempting to change the culture of secrecy; and the Open Government Partnership, an international open government effort.

In addition, the Obama administration set up the Office of Government Information Services to act as a kind of referee to prod federal agency compliance with the Freedom of Information Act and to help citizens get their information requests.

This is the remarkable part of the story, but it has another side, Bass said.

“On the Freedom of Information Act, I think he did exactly the right thing with a presumption of openness,” Bass said. “I think we got good policies. But there is a gap between those policies and support for those policies.”

The public sometimes thinks that a change in administrations means a change in the direction of the ship of state. But in most matters — in particular government openness — it is more helpful to think of government as an endless flotilla of ships, Bass said.

On each of those ships — the agencies — there is little if any incentive to err on the side of openness and a well-documented path of reprisal for erring, according to Bass.

Therein lies the biggest problem, the ever-growing size of the federal government, Mark Tapscott said.

Tapscott is the executive editor of the Washington Examiner and a member of the National Freedom of Information Act Hall of Fame. He also comes from the free-market, small-government neighborhood of the transparency community. As such, Tapscott has not received an invitation to the White House.

“I always tell my liberal friends in the community that you can either have big government or transparent government, you can’t have both,” Tapscott said. “You are putting the entire responsibility for FOIA in the hands of career people who have an institutional interest in protecting as much material as they possibly can.”

As a result, agencies have stressed dumping a lot of data onto their websites to establish their transparency bonafides while choosing to ignore legally binding requests for specific data from the public, he said.

In White House meetings, this would manifest itself in conversations in two separate arenas, McDermott said.

“It would be like speaking two separate languages,” she said.

Steven Aftergood, director of the Project on Government Secrecy for the Federation of American Scientists, while appreciating the opportunity to meet with White House staff, said he doubts a correlation between access and influence.

“Rarely, essentially never, is a government official prepared to act,” Aftergood said. “An even deeper problem is that the idea of this administration, any administration, as a uniform entity is an illusion.”

That many of his colleagues disagree with Aftergood was made clear after Eisen accepted the president’s appointment to serve as the ambassador to the Czech Republic at the start of 2011.

Robert Bauer, a White House counsel, and Steven Croley, former special assistant for Justice and Regulatory Policy on the president’s Domestic Policy Council, have since split Eisen’s duties.

Meetings with White House staff dropped from 326 in 2010 to 196 in 2011, according to the Watchdog.org database. In 2012 the number of meetings dropped again, to 155.

“The effect of Norm’s absence has been profound,” McDermott said. “There is nobody for whom it is his sole responsibility to deal with these issues. We miss Norm enormously and that level of access.”

It isn't likely the president or his staff would much welcome any additional access given the growing hostility to his policy decisions in the transparency community.

Just months after Eisen's 2010 departure, Bass, McDermott, Dalglish, Tom Blanton, director of the National Security Archive, and Danielle Brian, executive director of the Project on Government Oversight, agreed to present Obama with an award for his work so far on transparency matters.

The presentation was to have occurred during Sunshine Week, an annual call for expanding public access to government. Without notice, Obama canceled the meeting and when the group returned two weeks later, he accepted the award in a private meeting that had not been included on his printed schedule.

Years later, Dalglish is still irked.

"We were literally standing outside the White House not knowing if we were going to get in," she said. "There were no reporters, not even a pool photographer. I honestly believe they just screwed up. I flew back to the office in a taxi and blogged about it."

In May 2011, Obama drew criticism for withholding photographs of Osama bin Laden's corpse.

In the fall of 2011, when the administration set about touting the Open Government Partnership, the State Department refused to release the names of the officials doing pushing for open government.

And with the release of details of a secret White House memo outlining when aerial drones could be used to kill American citizens and the pursuit of the New York Times reporter's sources in October 2011, the president found himself using Bush-era strategies to defend government secrecy.

Most everyone in the community cheered Obama's signing the Whistleblower Protection Enhancement Act in late November 2012. Good government advocates had been pressing for passage of a bill that would buttress legal and internal protections for federal workers who report crimes like fraud and other government misconduct.

But by then Freedom of Information response stories appeared to suggest that all of the initiatives, directives and partnerships were not having the desired effect. The Department of Justice appeared to have ignored them all.

"Despite all the good intentions, federal agencies were left to decide what high-value data sets they were going to make available to public, allowing them to shy away from true transparency," said Jim Harper, director of information policy studies for the libertarian Cato Institute.

Harper is working with Bass and others on something he calls his "hobby horse," a new database format that would allow the average taxpayer to follow his money from the agency, to a bureau, to a program and, finally, to a project.

You'll find nothing like it on a federal government website, Harper said, though he said he isn't optimistic we'll see it any time soon.

“It’s time to bring some order to it, like putting cards in the card catalog, not cards all over the floor like they are now,” Harper said.

Harper said he is well aware his effort will be dwarfed by the fight against this president’s national security secrecy.

Aftergood said he wants to give Obama his due, wants the public to know that disclosing for the first time the size of the American nuclear arsenal and the release of the Abu Ghraib torture memos are big deals. In general, this president has been a more transparent chief executive than his predecessors.

None of that will matter if this president cannot command the national security leadership dictating his policies, Aftergood said.

“The drone issue has become an exemplar of all that is wrong with this administration’s secrecy policies,” he said. “This has come to represent secrecy run amok. And if something like this treated as common knowledge needs to be secret, the public has a right to ask what else this administration is keeping a secret.”