



# Nine people who know how to make government work better, more honestly

By: Mark Tapscott - January 3, 2013

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When The Washington Examiner recently asked leading transparency in government advocates in the nation's capital what should be the top 2013 priority on the issue, every one of them responded with detailed proposals.

Their ideas ranged from the familiar, including congressional passage of a shield law to protect whistleblowers in government who help journalists and providing fines and other penalties for violations of the Freedom of Information Act (FOIA), to the more arcane, such as opening up the Senate and House appropriations committee bills and forcing governments to be honest about their public pension debts.

Some of their ideas could become law with the stroke of a presidential pen on an executive order, others require congressional action and still others changes in the technological culture and information mindset of the federal bureaucracy that likely wouldn't be completed for a generation.

But with public approval of government at all levels near historic lows, transparency advocates who have devoted years to the search for ways to make things work better likely have ideas and observations that are well worth being given thought by everybody involved.

Following is a selection of illustrative quotes from nine of the advocates:

## **Daniel Epstein**

**Executive Director,**

**Cause of Action**

Five most needed victories:

1. Passage of the Data Act and digitalization of all federal spending data.
2. Creation of a private right of action under the Information Quality Act.

3. Creation of judicial review procedures under the Administrative Procedures Act for review of decisions of the IRS whistleblower office.
4. Uniform database of FOIA requests and processing, following current online tracking used by the Department of Labor and the FBI.
5. Legislative action based on the District of Columbia Circuit's *Aera v. Salazar* decision, which would require disclosure of political influence on agency decisions, including disclosure of administrative earmarks under Executive Order 13457 - protecting taxpayers against wasteful earmarks.

**Patrice McDermott**

**Executive Director,**

**OpenTheGovernment.org**

Stop classifying everything under the sun:

"The overuse and misuse of classified national security markings, characterized by a predisposition towards secrecy by those in the intelligence community and other areas of the federal government focused on national security, is a long- and widely-discussed problem. An increased reliance on secrecy in judicial matters, including the too-frequent invocation of the state secrets privilege, is a related trend.

"The Public Interest Declassification Board (PIDB) has called for persistent presidential leadership to break through bureaucratic stasis and resistance; the creation of a White House-led Steering Committee called for by the board would be an important step in 2013."

**Jason Stverak**

**President,**

**Franklin Center for Government and Public Integrity**

Tell the truth about public employee pensions:

"Many overlook waste and corruption at the state level because they're so focused on what's happening on the national stage. It's easy to forget that billions of dollars are being spent at the state level with little to no accountability. The colossal bureaucracy that we call government doesn't just allow for wasteful spending, it encourages it.

"There aren't many legitimate ways for members of Congress to oversee states and localities, but Congress should revisit measures that would require that local government pension funds honestly to disclose their debts in order to take advantage of tax-free financing."

**Gene Policinski**

**Vice President and Executive Director,**

**The First Amendment Center**

Pass a 'shield law' to protect whistle blowers:

"Congressional passage of a federal shield law for confidential sources to encourage 'whistleblowers' to speak to journalists. A lack of such protection may well encourage leaks of classified information to non-journalism outlets.

"Such outlets simply perform 'data dumps' without regard to typical journalists' efforts such as determining risks to the safety of persons identified in such documents, establishing the veracity of the information, and providing context for the public for specific information involved in such disclosures."

**Jim Harper**

**Director of Information Policy Studies,**

**The Cato Institute**

Open up appropriations committees:

"For better or worse, the movement of money is a reflection of our values, but the appropriations process is the cloudiest mirror America ever gazed into. More than a trillion dollars move each year based on appropriators' instructions, but Congress's spending decisions are so cloistered in arcane language and inaccessible documentation, the appropriation committees might as well be a pair of mountain monasteries.

"Why not publish proposed spending in appropriations bills using digital formats and uniform codes to indicate what agencies, bureaus, programs, and projects would get the money, as well as what they're supposed to do with it? So far, appropriators have deeply lagged their colleagues in Congress and the rest of the government. There's no sign they plan to change that."

**Anne Weismann**

**Counsel,**

**Citizens for Responsibility and Ethics in Washington**

Bring FOIA into 21st Century:

"The Freedom of Information Act should be amended to mandate what is now expressed as administrative policy, specifically, a presumption of disclosure and requirement of foreseeable harm before withholding anything not required to be withheld by statute or classified.

"In addition, FOIA should be amended to require a balance of the public interest in disclosure against harm to government from disclosure, especially for exemption 5. These amendments would breath life into a statute intended to be a vehicle for public disclosure and access to government information, but all too often one used as a shield to prevent the public from knowing what our government is up to."

**Christopher C. Horner**

**Senior Fellow,**

**Competitive Enterprise Institute**

Time for some FOIA scalps:

"Demonstrate that actions to evade the law have consequences. The taxpayer needs to see a scalp or three among administration employees -- both political and career -- engaging in impermissible practices hiding how they use, and abuse, the authority and money granted them by taxpayers. They actively avoid creating records by using private email accounts, private computers and third-party servers to discuss what they are up to. They are destroying records

"Provide for sanctions for public servants found to have willfully violated FOIA. Recently, in the wake of the obvious abuses at the University of Virginia involving the 'Hockey Stick' and 'Climategate' scandals, the Virginia legislature doubled its fine from a maximum of \$1,000 per incident to \$2,000. Only when someone other than the taxpayer has to pay a fine will you get the attention of those who seek to keep the taxpayer from finding out what they are up to."

**Gary Bass**

**Executive Director,**

**Bauman Foundation**

Make FOIA the last resort, not the first:

"Improve the way FOIA operates. The key is the litigation strategy pursued by the Justice Department needs to be consistent with Obama's policy objectives. Also legislative clarity is need to stop the ping-pong policy shifts from administration to administration. There are a host of other improvements needed.

"Proactive dissemination needs to be strengthened. The transparency community gave the White House a list of minimum standards on what every agency should be disclosing such as lists of personnel and how to reach them, communications with Congress, non-classified IG reports. The objective is make FOIA the vehicle of last instead of first resort."

**Steven Aftergood**

**Director, Project on Government Secrecy**

**Federation of American Scientists**

Time to restore congressional oversight muscles:

"The second structural change that is needed is the reinvigoration of congressional oversight as an engine of public disclosure and accountability. (I am less interested in 'gotcha' investigations, though these certainly have their place.) What contributes to transparency more than FOIA requests or investigative reporting is routine, thoughtful, probing oversight, day in and day out.

"But this year, for the first time in at least 25 years, the Senate Intelligence Committee held only one public hearing. It has retreated almost entirely into a classified shell. Its major legislative initiative (now thankfully rolled back) was to try to limit official disclosures of intelligence to the press. This is completely backwards. We expect the executive branch to be secretive. We need Congress to work actively every day to pierce unnecessary secrecy."