



U.S. Secrecy and Lies

By Kate Doyle

Secrets and lies have always been intrinsic to the functions of states. In a democracy, public tolerance of official secrecy tends to shift with the tides: in times of national emergency, such as war or civil unrest, people are willing to forgo open governance in exchange for safety and victory; in peace, the citizenry becomes more assertive, claiming its right to knowledge of past misdeeds and to informed participation in current affairs. Today that right is being asserted against continuing government efforts to bolster the secrecy system.

During the long, dark winter of America's cold war, a system of secrecy first devised in the crucible of the Second World War flourished. It took root and grew, reaching beyond the corridors of power in Washington to taint government operations across the country and around the globe. It served to hide not only the individual misdeeds and misadventures of successive administrations but, under the guise of "national

security," to conceal the rationales behind them. Presidents, policymakers, and legislators used the advent of the national security state as an excuse for their evasiveness. They assumed they could abrogate the people's "right to know" without prior consultation—just as if the United States were engaged in an open, armed conflict.

U.S. citizens accepted this curtailment, to a degree. Fearful of the prospects of a nuclear face-off, Americans allowed the erosion both of freedoms and of the presumption of openness that they had once taken for granted. As a result, secrecy spread its shadow over the crafting of foreign policy, the

building of weapons, the birth of entire government agencies, the spending of federal funds, and, inevitably, the play of public debate.

In the early 1970s, as public opposition to the U.S. war in Vietnam mounted, publication of the *Pentagon Papers* revealed the military's misdeeds in Vietnam, and FBI documents obtained by antiwar activists exposed COINTELPRO, a covert domestic surveillance program. Two seminal congressional investigations, named for their chairs, Congressman Otis Pike and Senator Frank Church, helped document government abuses and partially lifted the lid on state secrets.

With the end of the cold war, however, the first broad-based movement for openness, accountability, and an end to secrecy grew, as librarians and archivists, academics and historians, Republicans and Democrats, human rights and public interest advocates, scientists, jurists, and even some members of the defense and intelligence establishment demanded declassification. Forged in the wake of a half century of covert operations, black budgets, and information controls, this new constituency is demanding, in the words of the bipartisan Moynihan Commission, that "it is time for a new way of thinking about secrecy."

Sensing this shift, the national security bureaucracy scrambled to renounce old habits. Agencies long submerged in the black waters of secrecy realized that they needed to surface and become part of the growing public debate over changing missions and shrinking resources. In February 1992, CIA Director Robert Gates announced the advent of "CIA openness" ("an oxymoron," he admitted), promising more media briefings, academic conferences, and documents. In 1993, a scathing newspaper series documenting four decades of nuclear establishment radiation experiments on unwitting human subjects compelled the Department of Energy to launch its own "openness initiative."

Bill Clinton, the first post-cold war president, also took some important first steps to challenge the system he inherited. In 1995, after launching a government-wide review of the country's secrecy policies, he signed Executive Order 12958, a directive to overhaul the classification system of U.S. national security information. The order drove a stake in the heart of one of the national security establishment's most cherished beliefs—that secret documents must remain secret indefinitely—by requiring the "automatic declassification" of most historically valuable records older than 25 years. The executive order established an interagency review panel with the power to reverse agency classification decisions. In its first two years of operation, the panel declassified (in full or in part) more than 80% of the classified records it reviewed—a sharp indictment of past secrecy practices.

Driving the executive branch's incipient reform efforts was mounting public pressure for change. Simultaneously, Congress played a more limited role by opening discrete record collections where a compelling public interest existed—such as documents on the assassination of John F. Kennedy, on U.S. citizens missing in Vietnam, and on Nazi war crimes. In the wake of the detention of Chile's ex-dictator Gen. Augusto Pinochet in 1998, both overseas activists and foreign governments joined the call for declassification of CIA and other U.S. government files.

Key Points

- During the cold war, a system of secrecy, first devised during World War II, continued to flourish, tainting U.S. operations around the globe.
- Under the guise of "national security," this system of secrecy has affected crafting of foreign policy, building of weapons, birth of entire government agencies, government spending, and play of public debate.
- In 1995, under pressure from a growing broad-based movement for an end to secrecy, President Clinton signed Executive Order 12958 to overhaul the classification system.

Problems with Current U.S. Policy

Between six and seven million U.S. government documents are stamped “classified” every year; about 17,000 daily. The president’s own Information Security Oversight Office (ISOO) does not know precisely how many millions—or billions—of secret records are stored in agency vaults. The cost of keeping so many secrets—what with salaries, safes, locks, security training, record management, computer programs, and the like—is equally staggering. The ISOO figured that the government spent some \$4.1 billion in 1997 alone on “security classification.” And that amount does not include the CIA’s share, which is ... secret.

How does one explain this orgy of classification? One reason is the culture of secrecy that dominates the military and intelligence agencies, a culture that rewards obfuscation and opacity and profoundly discourages transparency. Equally importantly, no penalty for overclassifying government information exists, although those who challenge the secrecy system risk censure, sanction, or worse. In the course of a 1995 investigation into human rights abuses in Guatemala, for instance, State Department official Richard Nuccio found classified CIA documents indicating that a Guatemalan army colonel—who was also a paid CIA informant—was helping cover up the murder of an American innkeeper and the torture and murder of the husband of an American citizen. After making what he believed to be an ethical choice to inform Congress of the facts, Nuccio was stripped of his security clearances by the CIA for disclosing classified information, a decision supported by the Justice Department. Nuccio resigned in 1997, sending a chilling message to those facing comparable dilemmas.

Restrictive secrecy practices also cheat history. Despite a variety of legislative safeguards designed to protect the historical record (such as the Federal Records Act), there are few rules and little oversight to guide the preservation of government documents. Currently, only about 3% of U.S. government records are preserved for posterity. Agencies can make unilateral decisions to “disappear” records permanently with little fear of punishment—either by deliberately destroying them or by ceasing to create them. For instance:

- * Many of the original files documenting the CIA’s 1953 covert operation in Iran—the agency’s first successful overthrow of a government—were destroyed, a CIA historian revealed in 1997.
- * To guarantee the secrecy of its covert “MKULTRA” program, which for twenty years ran behavior modification experiments on unwitting human subjects, the CIA destroyed most of these documents in 1973.
- * The Reagan White House did its best to delete its electronic mail files both during the Iran-Contra scandal in the mid-1980s and again when the administration was preparing to leave Washington in 1989. The discovery of an unknown backup collection led to a lawsuit to prevent the wholesale destruction of electronic information, and the courts have since upheld the government’s duty to preserve such records. Yet in practice, computerized records are easier to delete, and it is more difficult to discern

various versions of a document or to access files among several generations of computers.

In each case, an irreplaceable piece of American history has disappeared forever into the black hole of secrecy. The official remedy for such vanishing acts is the Freedom of Information Act, or FOIA, which Congress enacted in 1966 to guarantee citizens the right of access to government records. With the exception of a brief heyday in the 1970s, however, FOIA has been profoundly dysfunctional, as government agencies consider it an unwelcome trespass on their prerogatives and a drain on their resources. In 1974, for instance, CIA Director William Colby bluntly told a House subcommittee, “The Central Intelligence Agency is not a public information agency.”

Today, the CIA exemplifies the ability of national security agencies to substitute public relations spin for substance. “CIA openness” has devolved into an in-house initiative to publish carefully selected collections of some of the agency’s oldest documents, such as reports on the former Soviet Union and intelligence records from the Truman era. Efforts to impose real openness on the agency quickly meet powerful institutional barriers, what former CIA Director Robert Gates described as “rigid agency policies and procedures heavily biased toward denial of declassification.” The CIA has also been able to use its mandate to protect “intelligence sources and methods”—its informants and modes of operation—as a legal shield against disclosure.

The extremism of the CIA’s position is evident in its refusal to release its budget, repeatedly citing its right to secrecy under the 1949 Central Intelligence Agency Act. The aggregate intelligence budget, which includes the CIA, the National Security Agency, the National Reconnaissance Office, and a handful of other agencies, has long been sought by critics of secret government spending. These critics charge that black budgets violate every citizen’s constitutional right to a full account of the expenditure of public monies. Yet Congress has refused to order the budget’s release. A lawsuit filed in 1997 forced the CIA’s hand at last, revealing the total aggregate intelligence budget for that year at \$26.6 billion. Director George Tenet disclosed the budget in the following year (\$26.7 billion) and then reversed himself by withholding the figure for 1999. A federal court upheld his decision, saying that yearly disclosures could provide dangerous “trend information” to enemies of the United States.

In fact, much of what we know about the CIA today entered the public realm against the agency’s will. From the Bay of Pigs bloodbath to the Iran-contra debacle, excessive secrecy gave birth to and then covered up epic policy failures.

Key Problems

- Under restrictive secrecy practices, 6 to 7 million government documents are stamped “classified” every year, and no penalty exists for overclassifying information.
 - With few rules and little oversight to guide preservation of documents, currently only 3% of U.S. government records are preserved for posterity.
 - Except for two years, even the aggregate intelligence budget has been classified as secret.
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Toward a New Foreign Policy

President Clinton and Congress have, without a doubt, achieved a measure of change. Signposts have been laid pointing toward a more rational system, and even the most closed agencies have made concessions to openness heretofore deemed unthinkable. But popular pressure—ranging from hunger strikes to lawsuits—remains the single most effective weapon we have against excessive secrecy. Working in alliance with public interest groups dedicated to freedom of information, a growing wave of openness advocates has compelled some extraordinary

disclosures and has helped expand the limits of what may be released without damaging current U.S. security interests.

If the United States seeks to mature as a democracy, U.S. citizens must reject the obsession with secrecy that dominated government operations during the cold war. The public must demand that Congress and the president broaden the incipient structural reforms already achieved in the secrecy and classification system, with the goal of finally dismantling the national security

state. A few key proposals for change would help move America toward embracing the transparency and accountability required by a truly democratic society.

First, an appropriate balance must be struck between openness and secrecy in national security matters. Such a balance will require the presumption of openness, a public interest balancing test, and the capacity for outside review. Although the Clinton executive order does incorporate a presumption of openness for most government records, the order is inapplicable to intelligence information and should be expanded accordingly. Indeed, for all of Clinton's achievements, he has failed to bring the country up to the standards set by President Jimmy Carter's executive order in 1977. The Carter order had a crucial element that Clinton's lacks: the public interest balancing test. Such a test must be subjected to judicial review, so that courts are forced to consider the public's interest when deciding declassification requests under the Freedom of Information Act.

Second, the declassification practices of intelligence agencies require immediate reforms. Most importantly, the authority of the intelligence community to withhold information on the basis of "intelligence sources and methods" must be radically revised. Although agencies

have the responsibility to protect legitimately sensitive information, the CIA's mere claim that disclosure would expose sources and methods cannot be sufficient cause to withhold information automatically. The agencies must also move to institute a historical review process that results in the release of their oldest and most historically significant files to the National Archives. That means agreeing on document priorities and a schedule for declassification.

In addition, intelligence agency budgets should be declassified annually. The CIA's obstinacy on this point—and the complicity of Congress and the courts in refusing to compel disclosure—illustrates the extent to which the intelligence community remains apart from the normal practices of America's democratic system.

Third, FOIA offices must be adequately staffed and funded. If the Freedom of Information Act is to function as it was intended, agencies must allocate increased funding for the operations of their declassification units. Agency reviewers must not be permitted to use a lack of resources as an excuse for inordinate delays or improper denials in responding to FOIA requesters. Fourth, there should be a prohibition of the destruction of files of operational material regarding policy decisions, activities, and guidelines.

And finally, there should be a clearly defined process regulating targeted declassification reviews. In the event of intense public interest in a specific collection of documents—such as that surrounding past human rights abuses in Latin America—or legal actions—such as those against General Pinochet—there should be a clear and expeditious process whereby such documents can be reviewed for declassification. (For example, the Human Rights Information Act, currently before Congress, would require the government to declassify documents regarding human rights abuses when such information is requested for legal efforts.) The process should include an outside review board, use precisely defined declassification standards, and be held to a specific timetable for document releases.

As President James Madison, framer of the U.S. Constitution, wrote in 1822, "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both."

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Key Recommendations

- Declassification practices of intelligence agencies, including withholding information on the basis of "intelligence sources and methods," must be radically revised.
- Intelligence agency budgets should be declassified annually.
- The Freedom of Information Act (FOIA) office must be adequately staffed and funded and destruction of files should be prohibited.

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