

2009 “Secrecy Report Card” Tracks Trends in Government Secrecy

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Now in its sixth edition, OpenTheGovernment.org’s annual “Secrecy Report Card” has become an essential source for measuring secrecy in the federal government. This year’s report card found slight decreases in government secrecy as measured by a variety of indicators. For example, *Freedom of Information Act (FOIA)* backlogs declined; the number of original classification decisions decreased; and whistleblowers continued to save the government billions of dollars by speaking out against waste, fraud, and abuse.

Unfortunately, several other secrecy trends continued. For example, over-classification remains a significant problem across the government, and the FBI continues to use National Security Letters to gather information about innocent Americans.

As a special addition to this year’s report, OpenTheGovernment.org examined President Obama’s transparency record in his first seven months in office. President Obama began his term with a promise that his administration would begin “a new era of open government” with increased public participation and collaboration. Demonstrating his intended shift toward greater government openness, Obama issued an executive order on presidential records, a memorandum on the *Freedom of Information Act*, and a memorandum on transparency and open government, all on his first day in office. In addition, his administration launched several efforts to increase public participation in policymaking to help craft his open government directive. AALL and other open government advocates applauded these initial steps toward greater transparency, and we participated in the public discussions.

Despite these promising efforts, the new administration has disappointed open government groups, including AALL, with a number of decisions that are perpetuating secrecy. For example, as a presidential candidate, Senator Obama opposed President Bush’s use of signing statements and promised to curb the practice if elected president. However, according to the “Secrecy Report Card,” President Obama has issued seven signing statements as of the August 2009 congressional recess. In addition, Senator Obama also campaigned in favor of a law that would regulate the use of the

state secrets privilege. His administration, however, has repeatedly asserted the state secrets privilege in several cases.

Here are some key highlights of the 2009 “Secrecy Report Card.” The report is available at www.openthegovernment.org/org/SecrecyRC_2009.pdf.

The federal government processed 17,689 more FOIA requests than it received in 2008.

The net improvement is in part the result of efforts by a number of agencies, including the Department of Justice, to reduce their FOIA backlogs. In addition, few agencies added a significant number of new requests to their backlog over the past year.

In 2008, the number of original classification decisions decreased to 203,541, a 13 percent drop from 2007, but the classification numbers remain high.

Although the drop in original classification decisions is good news, the number of “derivative classifications” continues to climb. Derivatively classified information can be used by anyone who holds a security clearance for access to classified information to create new forms of classified information. AALL supports legislation (H.R. 553 and H.R. 854) to prevent over-classification and promote the sharing of unclassified information.

In FY2008, suits brought by whistleblowers accounted for \$1.04 billion of the \$1.34 billion the United States obtained in settlements and judgments concerning fraud on the United States.

By speaking out against waste, fraud, and abuse, whistleblowers play a vital role in ensuring government accountability and effectiveness. AALL strongly supports the House version of the *Whistleblower Protection Enhancement Act of 2009* (H.R. 1507) to ensure adequate protections for federal government employees who reveal government abuses of power.

The Department of Justice reports 24,744 National Security Letter (NSL) requests pertaining to roughly 7,225 different U.S. persons were made in 2008, an 18 percent increase over requests in 2007—but a 50 percent decrease from reported 2006 numbers.

AALL’s recent “Statement on the Public Policy Positions of AALL” expresses our belief that the library exemption in the *USA PATRIOT Reauthorization Act* (P.L. 109-177) should be clarified so that libraries providing computer access are not, by that fact alone, subject to an NSL.

AALL supports the *National Security Letters Reform Act of 2009* (H.R. 1800), which would prevent the FBI from seeking records about innocent people who are not subject to specific investigations.

Conclusion

The 2009 “Secrecy Report Card” concludes that although there has been progress in some areas, secrecy remains a pervasive force in the federal government. AALL is committed to ensuring that the new administration follows through on its promises of “a new era of open government.” The Government Relations Office will continue to promote the Association’s policies that foster increased access to government information. ■

Mary Alice Baish, director of the AALL Government Relations Office, 25 Massachusetts Avenue, NW, Suite 500, Washington, D.C. 20001 • 202/942-4237 • Fax: 202/737-0480 • E-mail: mbaish@aall.org • www.aallnet.org/aallwash.

We’ve moved!

New contact information for the Government Relations Office:

25 Massachusetts Avenue, NW,
Suite 500
Washington, D.C. 20001
Fax: 202/737-0480

Mary Alice Baish
Director, AALL Government
Relations Office
mbaish@aall.org
202/942-4237

Emily Feldman
Advocacy Communications
Assistant AALL Government
Relations Office
efeldman@aall.org
202/942-4233