

New Federal Open Government Directive Overlooks E-Records Management

WASHINGTON, D.C., January 4, 2010—On December 8, the Office of Management and Budget (OMB) released the much-anticipated “Open Government Directive” (OGD), following through on goals outlined in President Obama’s January 21, 2009, “Memorandum on Transparency and Open Government” to make the government more transparent, participatory, and collaborative.

The OGD is designed to direct agencies to develop specific actions to make the government more open. The directive incorporates recommendations from Federal Chief Technology Officer Aneesh Chopra, who received comments from members of the public through a months-long process conducted by the White House Office of Science and Technology Policy.

The OGD requires each agency to:

- Publish more government information online in open formats;
- Improve the quality of government information related to federal spending;
- Create and institutionalize a culture of open government by publishing for public comment an “Open Government Plan” explaining how the agency will improve transparency, public participation, and collaboration; and
- Create an “enabling policy framework” for open government by reviewing impediments to open government and the use of new technologies.

The directive reflects many of the transparency recommendations in the 2008 collaborative report, *Moving Toward a 21st Century Right-to-Know Agenda*, which AALL endorsed. We are also eagerly anticipating the publication of agencies’ Open Government Plans, which are required to be released in an open format on each agency’s new Open Government web page within 120 days.

Cabinet departments responded immediately to the call for increased openness. For example, the Department of Justice became the first agency to release its annual *Freedom of Information Act (FOIA)* report in a machine-readable format, and the department’s Office of Legal Counsel (OLC) is now routinely releasing opinions from current and previous administrations on the OLC website. In addition, the U.S. Patent and

Trademark Office committed to making all published patents available for download during the first quarter of 2010. The administration’s report that accompanied the OGD, *Open Government: A Progress Report to the American People*, includes other specific steps the administration has taken the past year to increase government transparency.

AALL is very concerned, however, that OMB missed an important opportunity to address the serious e-records management challenges that agencies face. The OGD’s discussion of e-records management is limited to a two-sentence requirement outlined in the attachment on the Open Government Plan specifying that each agency’s plan must include a link to a publicly accessible website that shows how the agency is meeting records management requirements. This requirement does not address the inconsistent e-records management practices across agencies or the lack of stronger guidance from OMB.



OMB should have followed several of the recommendations in the *Right-to-Know* report to ensure better compliance with e-records management requirements. For example, one of the recommendations called for the administration to establish a Presidential Task Force on Implementation of Electronic Records Management. The task force would be charged with coming up with recommendations on preservation and usability, and it would work with agencies to ensure that all electronic records are retained in a searchable form available for permanent public access.

OMB should have also considered recommendations outlined in a report organized by OpenTheGovernment.org and endorsed by AALL in late 2008, *Managing the Public’s Records for Accountability and History*. The recommendations, which were developed with input from current and former government employees concerned about the preservation and management of government records, include reinstating regular agency audits by chief information officers (CIOs) and the National Archives and Records Administration (NARA); instituting an agency report card for agency recordkeeping; and clearly defining relationships and shared responsibilities

among those offices charged with knowledge management and preservation.

AALL continues to monitor the progress of the OGD and work with officials from the White House and NARA to ensure that agencies meet their e-records requirements. Under the direction of new U.S. Archivist David S. Ferriero, NARA will become much more proactive in working with agencies on their e-records management responsibilities.

Obama Administration Releases Executive Order on Classification

AALL has long supported the need for reform of the declassification system. In November 2008, we endorsed recommendations drafted by the National Security Archive and the Constitution Project, which were submitted to the Obama-Biden Transition Team. These recommendations outline the need for declassification policies that expand public access to government information.

In late December 2009, just days before the deadline for the automatic declassification of more than 400 million pages of federal records, President Obama issued a new Executive Order (E.O. 13,526) on Classified National Security Information. The E.O. follows months of substantive input from experts, members of the public, and other key stakeholders.

The executive order emphasizes public access and the free flow of government information. It establishes a National Declassification Center (NDC) within NARA to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training. The NDC will be crucial in making public by the December 31, 2013, deadline the declassified records from the backlog of more than 400 million pages of records previously subject to automatic declassification.

U.S. Archivist Ferriero welcomed the creation of the NDC at NARA, stating that, “The current backlog is so huge that Americans are being denied the ability to hold government officials accountable for their actions. By streamlining the declassification process, the NDC will usher in a new day in the world of access, allowing the National Archives to make more records available for public scrutiny much more quickly.”

Importantly, the executive order also holds that “no information may be excluded from declassification...based solely on the type of document or record in which it is found.” According to Steven Aftergood at the Federation

(continued on page 27)

of American Scientists, this will mean the elimination of the permanent classification of the President's Daily Brief, which the CIA has consistently asserted is classified. The executive order also restores language that directs agencies to err on the side of openness if there is doubt about whether to classify, and it makes clear that "no information may remain classified indefinitely."

In the coming months, we will follow the implementation of this important executive order to make sure agencies follow through on its requirements. ■

*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.*