

2009 "Secrecy Report Card" Tracks Trends in Government Secrecy

WASHINGTON, D.C., September 4, 2009— 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. ■

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Statement of Ownership, Management, and Circulation
(All Periodicals Publications Except Requester Publications)

1. Publication Title AALL Spectrum		2. Publication Number 1 0 8 9 - 8 6 8 9		3. Filing Date September 10, 2009	
4. Issue Frequency Monthly except Jan. and Aug., combined Sept./Oct.		5. Number of Issues Published Annually nine		6. Annual Subscription Price \$75	
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®) American Association of Law Libraries 105 W. Adams Street, Suite 3300, Chicago, IL 60603-6225				Contact Person Hillary Baker Telephone (include area code) (312) 205-8038	
8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer) American Association of Law Libraries 105 W. Adams Street, Suite 3300, Chicago, IL 60603-6225					
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)					
Publisher (Name and complete mailing address) Kate Hagan, Executive Director American Association of Law Libraries 105 W. Adams Street, Suite 3300, Chicago, IL 60603-6225					
Editor (Name and complete mailing address) Mark Estes, Editorial Director American Association of Law Libraries 105 W. Adams Street, Suite 3300, Chicago, IL 60603-6225					
Managing Editor (Name and complete mailing address) Hillary Baker, Marketing and Communications Manager American Association of Law Libraries 105 W. Adams Street, Suite 3300, Chicago, IL 60603-6225					
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PS Form 3526, September 2007 (Page 1 of 3 (Instructions Page 3)) PSN 7530-01-000-9931 PRIVACY NOTICE: See our privacy policy on www.usps.com

13. Publication Title AALL Spectrum		14. Issue Date for Circulation Data Below July 2009	
15. Extent and Nature of Circulation Association Membership		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		5,469	5,400
b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	4,942	4,869
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	0	0
	(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®	0	0
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)	195	206
c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))		5,137	5,075
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541	0	0
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	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	11	100
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))		36	125
f. Total Distribution (Sum of 15c and 15e)		5,174	5,200
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))		295	200
h. Total (Sum of 15f and g)		5,469	5,400
i. Percent Paid (15c divided by 15f times 100)		99%	97.6%
16. Publication of Statement of Ownership <input checked="" type="checkbox"/> If the publication is a general publication, publication of this statement is required. Will be printed in the <u>November 2009</u> issue of this publication. <input type="checkbox"/> Publication not required.			
17. Signature and Title of Editor, Publisher, Business Manager, or Owner <i>Hillary Baker, Marketing + Communications Manager</i>		Date Sept. 10, 2009	
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