

PROMISES, PROMISES: Records Not So Open with Obama

SHARON THEIMER | Associated Press Writer

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WASHINGTON (AP) - One year into its promise of greater government transparency, the Obama administration is more often citing exceptions to the nation's open records law to withhold federal records even as the number of requests for information declines, according to a review by The Associated Press of agency audits about the Freedom of Information Act.

Among the most frequently cited reasons for keeping records secret: one that Obama specifically told agencies to stop using so frequently. The Freedom of Information Act exception, known as the "deliberative process" exemption, lets the government withhold records that describe its decision-making behind the scenes.

Obama's directive, memorialized in written instructions from the U.S. Justice Department, appears to have been widely ignored.

Major agencies cited the exemption at least 70,779 times during the 2009 budget year, up from 47,395 times during President George W. Bush's final full budget year, according to annual reports filed by federal agencies. Obama was president for nine months in the 2009 period.

The government's track record under the Freedom of Information Act is widely considered a principal measurement of how transparently it makes decisions. When Obama promised last year to be more open he said doing so "encourages accountability through transparency," and said: "My administration is committed to creating an unprecedented level of openness in government."

In a new statement Tuesday, Obama noted the release of White House visitor logs and federal data online in recent months said his administration was recommitted "to be the most open and transparent ever."

"We are proud of these accomplishments, but our work is not done," Obama said. "We will continue to work toward an unmatched level of transparency, participation and accountability across the entire administration."

Also Tuesday, White House Chief of Staff Rahm Emanuel and White House Counsel Bob Bauer urged agencies to improve their handling of information requests and assess whether they are devoting the resources needed to respond to requests promptly and cooperatively.

The AP's review of annual Freedom of Information Act reports filed by 17 major agencies found that the administration's use of nearly every one of the law's nine exemptions to withhold information from the public increased during fiscal year 2009, which ended last October.

The agencies cited exemptions at least 466,872 times in budget year 2009, compared with 312,683 times the previous year, the review found. Over the same period, the number of

information requests declined by about 11 percent, from 493,610 requests in fiscal 2008 to 444,924 in 2009. Agencies often cite more than one exemption when withholding part or all of the material sought in an open-records request.

The administration has stalled even over records about its own efforts to be more transparent. The AP is still waiting – after nearly three months – for records it requested about the White House's "Open Government Directive," rules it issued in December directing every agency to take immediate, specific steps to open their operations up to the public.

The White House on Tuesday described the directive as "historic," but the Office of Management and Budget still has not responded to AP's request under the Freedom of Information Act to review internal e-mails and other documents related to that effort.

The Federal Aviation Administration cited the deliberative process exemption in refusing AP's request for internal memos on its decisions about data showing collisions between airplanes and birds. The FAA initially tried to withhold the bird-strike database from the public, but later released it under pressure.

The FAA claimed the same exemption to withhold nearly all records about its approval for Air Force One to fly over New York City for publicity shots – a flight that prompted fears in the city of a Sept. 11-style attack. It also withheld internal communications during the aftermath of the public relations gaffe.

Other exemptions cover information on national defense and foreign relations, internal agency rules and practices, trade secrets, personal privacy, law enforcement proceedings, supervision of financial institutions and geological information on wells.

One, known as Exemption 3, covers dozens of types of information that Congress shielded from disclosure when passing other laws.

In provisions often vaguely worded and buried deep in legislation, Congress has granted an array of special protection over the years: information related to grand jury investigations, additives in cigarettes, juvenile arrest records, the identities of people applying restricted-use pesticides to their crops, and the locations of historically significant caves. All can be legally withheld from the public.

The chairman of the Senate Judiciary Committee, Sen. Patrick Leahy, D-Vt., was so concerned about what he called "exemption creep" that last year he successfully pressed for a new law that requires exemptions to be "clear and unambiguous."

The federal government cited Exemption 3 protections to withhold information at least 14,442 times in the last budget year, compared with at least 13,599 in the previous one.

Earlier this week, Attorney General Eric Holder said the government is making progress. In a speech Monday at the start of Sunshine Week, when news organizations promote open

government and freedom of information, Holder noted that the Justice Department turned over all documents in information requests in more than 1,000 more cases than it had the previous year.

"Put simply, I asked that we make openness the default, not the exception," Holder said. "I'm pleased to report that the disturbing 2008 trend – a reduction in this department's rate of disclosures – has been completely reversed. While we aren't where we need to be just yet, we're certainly on the right path."

Much of the Obama administration's early effort seems to have been aimed at clearing out a backlog of old cases: The number of requests still waiting past deadlines spelled out in the open-records law fell from 124,019 in budget year 2008 to 67,764 at the end of the most recent budget year. There is no way to tell whether people whose cases were closed ultimately received the information they sought.

The AP examined the 2008 and 2009 budget year audits from the departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury and Veterans Affairs; the Environmental Protection Agency; and the Federal Reserve Board.

On the Net:

Freedom of Information Act annual reports: <http://www.justice.gov/oip>

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