

## Annotated List of Government Documents

What follows is an annotated list of presidential memoranda, executive orders (E.O.), and public laws (P.L.) relevant to transparency and information policy. Each section is organized chronologically, and provides instructions for locating the documents on freely accessible government websites.

### **George W. Bush, 2001-2008**

#### Presidential Memoranda:

*Presidential memoranda for the Bush administration can be found in the Weekly Compilation of Presidential Documents. This government publication also includes materials released by the White House Press Secretary, and is available through the Government Printing Office's website at:*

*<http://www.gpoaccess.gov/wcomp/index.html>*

*All materials are available to be searched from 1993-January 29, 2009, or browsed from 2001-January 29, 2009 (when the materials began to be published as the Daily Compilation of Presidential Documents). The University of California, Santa Barbara, has archived these materials in their "Presidential Documents Archive" as a part of The American Presidency Project:*

*[http://www.presidency.ucsb.edu/index\\_docs.php](http://www.presidency.ucsb.edu/index_docs.php)*

*Persistent URLs to the correct volume are included in the citation.*

Bush, George W. "Memorandum on Development of an Interagency Disability Web Site, Aug. 27, 2002." *Weekly Compilation of Presidential Documents*. Vol. 38, no. 35 (Sept. 2, 2002). <<http://www.gpoaccess.gov/wcomp/v38no35.html>>

As an example of Bush's measures to increase access to government information, this memorandum establishes a comprehensive, inter-agency website for information pertinent to individuals with disabilities.

Bush, George W. "Memorandum on Review of Recommendations from the Public Interest Declassification Board, Jan. 29, 2008." *Weekly Compilation of Presidential Documents*. Vol. 44, no. 4 (Feb. 4, 2008). <<http://www.gpoaccess.gov/wcomp/v44no4.html>>

In response to criticism regarding the Bush Administration's classification procedures, this memorandum calls for a number of agency directors to review the recommendations from the public interest declassification board and share their views, taking into account possible public interest of national security information, effective records management, and effective government conduct. It is not clear to what extent the directors would be required to heed such recommendations.

Bush, George W. "Memorandum on Designation and Sharing of Controlled Unclassified Information (CUI), May 7, 2008." *Weekly Compilation of Presidential Documents*. Vol. 44, no. 18 (May 12, 2008). <<http://www.gpoaccess.gov/wcomp/v44no18.html>>

Following the September 11 attacks, the Bush administration adopted a new category of documents to be withheld from public access: "Sensitive But Unclassified" (SBU). Responding to criticism, this memorandum designates materials previously defined as such, and "all information within the scope of that definition," as "Controlled Unclassified Information" (CUI). Though technically unclassified, this information "requires protection from unauthorized disclosure, special handling safeguards, or prescribed limits on exchange or dissemination." Decisions regarding a document's release under the Freedom of Information Act, for example, might be predicated on its marking as CUI.

#### Executive Orders:

*Like presidential memoranda, Executive Orders (E.O.) for the Bush administration can be found in the Weekly Compilation of Presidential Documents, as well as The American Presidency Project. Persistent URLs to the correct volume are included in the citation.*

Bush, George W. "E.O. 13231—Critical Infrastructure Protection in the Information Age, Oct. 16, 2001." *Weekly Compilation of Presidential Documents*. Vol. 37, no. 42 (Oct. 22, 2001). <<http://www.gpoaccess.gov/wcomp/v37no42.html>>

Following the September 11 attacks, President Bush established the President's Critical Infrastructure Protection Board to "ensure protection of information systems for critical infrastructure, including emergency preparedness communications, and the physical assets that support such systems." To this end, Bush authorized the Chair of the board to classify information, whether it originated in the public or private sector, judged to be sensitive to the security of critical infrastructure.

Bush, George W. "E.O. 13233—Further Implementation of the Presidential Records Act, Nov. 1, 2001." *Weekly Compilation of Presidential Documents*. Vol. 37, no. 44 (Nov. 5, 2001). <<http://www.gpoaccess.gov/wcomp/v37no44.html>>

All but negating the original intent of the Presidential Records Act, E.O. 13233 allows former presidents to protect requested records under executive privilege, insofar as the records might fall under the following privileges: state secrets, presidential communications, attorney-client, and the deliberative process. This provides a twelve year period following the presidency in question that records are to remain privileged. Former presidents may designate a representative to make judgments if the former president dies or becomes disabled. The Order also extends such privileges to the Vice President.

Bush, George W. "E.O. 13292—Further Amendment to Executive Order 12958, as Amended, Classified National Security Information, Mar. 25, 2003." *Weekly Compilation of Presidential Documents*. Vol. 39, no. 13 (Mar. 31, 2003).  
<<http://www.gpoaccess.gov/wcomp/v39no13.html>>

In an amendment to E.O. 12958, which called for a commitment to open government, President Bush again expands the influence of the Vice President. As such, the Vice President, in the performance of executive duties, is authorized to classify information. Apparently as a gesture to the war in Iraq, information regarding weapons of mass destruction is added as a concern for classification. Also, Bush removed Sec. 1.2(b) of E.O. 12958, that had asserted that "if there is significant doubt about the need to classify information, it shall not be classified." Furthermore, Sec. 3.7 of Bush's E.O. does not include the original provision requiring that all declassified information be available on a database available to the public.

Bush, George W. "E.O. 13392-Improving Agency Disclosure of Information, Dec. 14, 2005." *Weekly Compilation of Presidential Documents*. Vol. 41, no. 50 (Dec. 19, 2005).  
<<http://www.gpoaccess.gov/wcomp/v41no50.html>>

In a reversal of policy trends regarding the release of information, E.O. 13392 urges agencies to respond to FOIA requests in a citizen-centered and results-oriented approach. It calls for the appointment of senior officials of agencies to act as Chief FOIA Officer to monitor the agency's handling of FOIA requests, and creates FOIA requester service centers so requesters have somewhere to go to check on the status of their requests. Chief FOIA Officers are to report to the Attorney general on the implementation of the order, who is then to report to the president.

#### Public Laws:

*All Public Laws (P.L.) passed under the Bush presidency are available through the Government Printing Office's (G.P.O.) website:*

<http://www.gpoaccess.gov/plaws/search.html>

*More often than not, the easiest way to search for P.L.s is to select the relevant congress (the first three digits of the P.L. number), and search for the full law number in double quotes (i.e. "Public Law 107-306").*

*Intelligence Authorization Act for Fiscal Year 2003. P.L. 107-306. (Nov. 27, 2002).*

Among other things, P.L. 107-306 prohibits intelligence agencies from processing Freedom of Information Act (FOIA) requests made from outside of U.S. territory. Furthermore, the Director of the National Reconnaissance Office, coordinating with the Director of Central Intelligence, is authorized to exempt certain operational files from the provisions of FOIA. It is worthwhile to quote President Bush at length from his statement upon signing the law: "Many provisions of the Act, including section 342 and title VIII, establish new requirements for the executive branch to disclose sensitive information. As I have noted in signing last year's Intelligence Authorization Act and other similar legislation, the executive branch shall construe such provisions in a manner

consistent with the President's constitutional authority to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.”

*E-Government Act of 2002*. P.L. 107-347. (Dec. 17, 2002).

Though the law is said to increase citizen access to government information and services, the presidential signing statement echoes that of P.L. 107-306. Bush declares that the executive branch will implement the act in such a way to “protect sensitive national security, law enforcement, and foreign relations information,” preserving “the authorities of the Secretary of Defense, the Director of Central Intelligence, and other agency heads with regard to the operation, control, and management of national security systems.”

*National Defense Authorization Act for Fiscal Year 2004*. P.L. 108-136. (Nov. 24, 2003).

Among other things, this law allows the Director of the National Security Agency, in coordination with the Director of Central Intelligence, to exempt certain operational files of the National Security Agency from disclosure under the National Security Act (see Sec. 922).

*Federal Funding Accountability and Transparency Act of 2006*. P.L. 109-282. (Sept. 26, 2006).

Indicating a tendency towards transparency as far as finances are concerned, P.L. 109-282 requires all entities receiving Federal funds to provide full disclosure of their uses of such funds. To that end, the Office of Management and Budget is called on to create and maintain a website, searchable by the public, providing information on the distribution of Federal funds to public and private organizations.

*Implementing Recommendations of the 9/11 Commission Act of 2007*. P.L. 110-53. (Aug. 3, 2007).

Thought P.L. 110-53 calls for greater Congressional oversight of intelligence agencies, requiring that they disclose annual expenditures, the president reserves the right to waive or postpone such disclosures as he or she sees fit.

*Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007*. P.L. 110-175. (Dec. 31, 2007).

The OPEN Government Act of 2007 strengthens FOIA in a number of ways: 1) it redefines the phrase 'representative of the news media' to be more inclusive; 2) strengthens the disciplinary actions for agencies that reject requests unnecessarily; 3) clarifies the time period in which the agency must act to fill the request; 4) requires that agencies create a system of tracking numbers for requests that will take longer than ten days to fill; and 5) creates an Office of Government Information within the National Archives and Records Administration to help ensure the effective implementation of FOIA policies.

*Foreign Intelligence Surveillance Act (FISA) of 1978 Amendments Act of 2008*. P.L. 110-261. (Jul. 10, 2008).

Responding to the reported abuses of power regarding warrantless wiretaps, the FISA Amendments Act requires agencies to apply to the Foreign Intelligence Surveillance Court for approvals of domestic electronic surveillance, allowing for emergencies so long as application is made within seven days. Furthermore, the act “directs the inspectors general of all intelligence community agencies that participated in the President's Surveillance Program to review and report to Congress on their agencies' electronic communication surveillance since Sept. 11, 2001.”

### **Barack H. Obama, 2009-**

#### Presidential Memoranda:

*Presidential memoranda for the Obama administration can be found in the Daily Compilation of Presidential Documents, as well as [whitehouse.gov](http://www.whitehouse.gov)'s 'Briefing Room,' under 'Presidential Actions' ([http://www.whitehouse.gov/briefing\\_room/PresidentialActions/](http://www.whitehouse.gov/briefing_room/PresidentialActions/)). The Daily Compilation of Presidential Documents is available through the Government Printing Office's website at:*

<http://www.gpoaccess.gov/presdocs/index.html>

*Persistent URLs to the memoranda are included in the citation.*

Obama, Barack H. “Memorandum on the Freedom of Information Act, Jan. 21, 2009.” *Daily Compilation of Presidential Documents*. (Jan. 2009).  
<<http://www.gpoaccess.gov/presdocs/0109.html>>

Invoking the belief that “accountability is in the interest of the government and the citizenry alike,” President Obama calls for agencies to adopt a presumption in favor of disclosure. This, in effect, repudiates the former Attorney General, John Ashcroft's October 12 memorandum calling on agencies to err on the side of classification. The memorandum urges agencies to use technology to make information available quickly, and directs the Attorney General to issue new FOIA guidelines, reviewing reports produced as a result of E.O. 13392.

Obama, Barack H. “Memorandum on Transparency and Open Government, Jan. 21, 2009.” *Daily Compilation of Presidential Documents*. (Jan. 2009).  
<<http://www.gpoaccess.gov/presdocs/0109.html>>

Issued on the first full day in office, Obama commits his administration “to creating an unprecedented level of openness in government,” as “openness will strengthen our democracy and promote efficiency and effectiveness in government.” In order to increase transparency in the government and participation from the citizenry, President Obama calls for recommendations for an Open Government Directive. This directive will serve to instruct agencies on specific ways to implement the principles set forth in the memorandum.

Obama, Barack H. "Memorandum on Scientific Integrity, March 9, 2009." *Daily Compilation of Presidential Documents*. (Mar. 2009).

<http://www.gpoaccess.gov/presdocs/2009/DCPD200900137.pdf>

In the context of President Obama's E.O. 13505 regarding the use of human stem cells, Obama released this memorandum. In a break from what many saw as Bush's politicized view on scientific inquiry, Obama asserts that "the public must be able to trust the science and scientific process informing public policy decisions." To that end, President Obama assigned to the Director of the Office of Science and Technology Policy the responsibility of guaranteeing integrity in the government's involvement with science and technology.

#### Executive Orders:

*Like presidential memoranda, Executive Orders (E.O.) for the Obama administration can be found in the Daily Compilation of Presidential Documents, as well as [whitehouse.gov](http://www.whitehouse.gov)'s 'Briefing Room', under 'Presidential Actions'. Persistent URLs to the E.O.s are included in the citation.*

Obama, Barack H. "E.O. 13489—Presidential Records, Jan. 1, 2009." *Daily Compilation of Presidential Documents*. (Jan. 2009).

<http://www.gpoaccess.gov/presdocs/2009/DCPD200900003.pdf>

Revoking President George W. Bush's E.O. 13233, E.O. 13489 leaves executive privilege in the hands of the current president when it comes to restricting access to the release of presidential records. This is seen to be in keeping with the original Presidential Records Act, amended by President Bush to allow former presidents the privilege of restricting access to their records.

#### Public Laws:

*Public Laws (P.L.) for the current congress can be found on [thomas.gov](http://www.thomas.gov):*

<http://www.thomas.gov/bss/d111/d111laws.html>

*Click on the link below 'Select a Range of Public Laws' that corresponds to the appropriate P.L. number and scroll down to the law in question.*

*American Recovery and Reinvestment Act of 2009. P.L. 111-5. (Feb. 17, 2009).*

As a part of the larger stimulus package, Title XV of the Appropriations Provisions (Accountability and Transparency) calls for recipients of federal funds, including States, to report the amount of money received and how it was used. This information is to be posted on a website available to the public.