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Obama's FOIA directive brings praise, bit of skepticism

By Andrew Noyes *CongressDaily* January 22, 2009

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In a nod to his campaign promise to facilitate government transparency, President Obama issued a Freedom of Information Act memorandum as one of his first official orders Wednesday. In it, he instructed all members of his administration to operate under principles of openness, transparency and of engaging citizens.

The heads of the Office of Management and Budget and the General Services Administration, as well as his yet-to-be-named chief technology officer, will write an open government directive within 120 days directing actions to implement the principles. Obama also instructed the attorney general to issue guidelines to federal agencies within the same time frame.

Obama "is turning the page and moving away from the secrecy of the last administration," Senate Judiciary Chairman Patrick Leahy, D-Vt., said in a statement. Leahy and Sen. John Cornyn, R-Texas, introduced a bill last year to strengthen FOIA by adding transparency and accountability standards when Congress considers adding new exemptions to withhold documents.

"It's wonderful that priority one on day one for this administration is transparency and it is the first of many steps to strengthen transparency in government," Sunshine in Government Initiative coordinator Rick Blum said, adding that agencies lack the resources and policies to keep data and documents open to the public.

Melanie Sloan of Citizens for Responsibility and Ethics in Washington and Ellen Miller of the Sunlight Foundation also lauded the move.

But Miller said the devil will be in the details and that it was ironic that several hours after the announcement, the memo was not on the White House Web site.

Former President George W. Bush signed a bill in late 2007 that Leahy and Cornyn shepherded, which made the first changes to FOIA in a decade. That bill restored deadlines for agency action under FOIA and imposed consequences for agencies that missed the law's 20-day statutory time limit.

The memo, which quotes Justice Louis Brandeis' line that "sunlight is said to be the best of disinfectants," states that all agencies should adopt a presumption in favor of disclosure in FOIA decisions.

That means agencies should make information public in a timely fashion and not wait for specific requests from the public.

The memo also instructs agencies to use technology to help citizens keep tabs on government activity. The announcement was an about-face from a directive by former Attorney General John Ashcroft instructing agencies to withhold information by using exemptions if an argument could be made to do so.

The order reversed a 1993 policy by former Attorney General Janet Reno that directed agencies to disclose information unless it resulted in "foreseeable harm."

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Well of course the new President is all for openness in government so he can allow the use of FOIA to expose the evildoings of the Bush Administration. We'll see how he views FOIA a few years into this term when advocacy groups are requesting agency records on how HHS is developing a national health care plan or whatever. FOIA staffing in most agencies will continue to be an afterthought; underfunded, understaffed and unappreciated.

FOIA Professional Posted January 23, 2009 2:51 PM

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Pretty funny that political hacks criticize W's alleged secrecy, when it was Clinton's attorney general and her justice department who put in place the most suppressive and secretive government information policies ever.

Ron Posted January 23, 2009 1:25 PM

Phoey FOIA. I made FOIA requests that on appeal went clear to Washington D.C. The USDA never responded. The USDOJ lost a request, and then when resubmitted, the FOIA Officer sent a letter stating that there would be an attempt to respond within the legally mandated timeframe; however, over six months have passed with no production of documents. At the same time, FOIA Officers will deny FOIA requests that are received by fax one minute after the deadline to submit such requests. Also, I submitted a FOIA request for e-mails and the BLM claims they do not have them (these records should have been maintained). On appeal, the USDOJ notified me that the estimated bill for retrieving the e-mails would be \$43,000! Hopefully with the change in administration there will be greater oversight, accountability, transparency, and staffing to better handle workloads.

Paula Sutton Posted January 23, 2009 12:30 PM

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