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Implications of Information: An Analysis of How State Secrecy Prevails Over The Rights of Free People

Cassandra Kostal
University of Nebraska - Lincoln

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AN ANALYSIS OF HOW STATE SECRECY PREVAILS OVER THE RIGHTS OF FREE PEOPLE

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by
Cassandra Kostal, BA
Journalism and Broadcasting
College of Journalism and Mass Communications

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Faculty Mentors:
John R. Bender, PhD, Journalism
Maria Marron, PhD, Journalism

Abstract

This thesis is an analysis of the withholding of information at the hands of the federal government and the subsequent creation of a culture of secrecy that threatens the freedom of information. The primary research question was: How does the government keep information classified in the age of information and how does this penchant for secrecy and nondisclosure undermine the public's faith in their leadership? Research into this question was conducted through two means: printed and online publications. The printed publications were books recommended to me by Dr. John Bender and the online publications were sources found through searches using Google Scholar and databases from the University of Nebraska–Lincoln libraries.

My research found the culture of secrecy in the United States existed long before modern technology increased the speed of information sharing. When the system of classification created to protect the government's secrets went beyond the public's interests, measures were taken to preserve public access. Meanwhile, unauthorized leaks served to undermine the strained relationship between those with information and those who wanted it. The press became entwined in the world of secrecy early on and fought to maintain a balance between the government it watches over and the people it serves. These struggles have not been contained in the United States, but have impacted nations such as Great Britain. The power of information has strong implications that are revealed through this thesis as it breaks down the culture of secrecy.

Key Words: secrecy, information, government, FOIA, press

Implications of Information:
An Analysis of How State Secrecy Prevails Over The Rights of Free People

Secrecy, pervasive in modern society, is the antithesis of the open government that has been demanded by, and seemingly presented to, the American public. Secrecy has become entrenched in American culture, dominating citizens' expectations ~~o~~f their government and controlling their government's actions in an age of mis-and disinformation where knowledge is power. Where secrecy was once necessary, used strictly in the interests of national security, the past few decades have proved that it has become pervasive and detrimental to the continued functioning of a nation built on freedom.

This thesis will analyze the events of the past that (1) led to the dominating culture of secrecy and the system for maintaining information as it stands today, (2) break down avenues for access to the government's information and how it has been shared with the public, both with and without proper authorization, (3) explore the role of the press in communicating between the government and the public it serves and (4) draw comparisons between the cultures of secrecy found in the United States and Great Britain, connecting international patterns in governmental access to information.

At the heart of this analysis is an examination of the lack of transparency at the hands of the United States federal government and Great Britain's parliamentary system of governance and how systems built to safeguard national secrets have created greater issues by hindering public knowledge of government operations and even limiting government insight into its system of power. As major events home and abroad have taken place over the past decades, stricter standards for classifying government information have been employed, pushing public awareness further into darkness.

CULTURE OF SECRECY

Secrecy, justified as vital to keep information from the hands of America's enemies, is being used to keep information from Americans, the press, Congress, government watchdog groups, agencies with rival agendas – anyone who threatens to question and challenge the administration's policies and presumptions (Gup 50). What was once a "right to know" standard for obtaining information held by the government has turned into a new standard of a "need to know" (Gup 9). Secrecy, however, was not itself the cause of the culture that emerged to keep certain information under wraps. Instead, the perversion of secrecy, the rote invocation of classification, the habitual dependence of the United States government and its industries upon the art of secrecy and a general aversion to accountability by those in power led to the normalization of secrecy (ibid.).

The urge by those in power to keep information hidden, down to the minute detail, led to the prevailing attitude of "When in doubt, classify." This mindset of keeping government information from the eyes of the public and members of Congress led to secrecy labels being applied to seemingly innocent data. The amount of peanut butter consumed by members of the armed forces was once classified as secret as the government feared the revelation of such information would enable enemies to determine the preparedness of the United States military (Jones and Lemov).

The reasons for strict confidentiality within the ranks of government are various, though military secrecy in times of war has been cited often, and diplomatic communications have been commonly restricted (Henkin 275). But even along with defense security in times of peace, these restrictions do not begin to explain all the information that the United States government has regularly withheld from the general public (ibid). According to Henkin, confidentiality and

privilege have been recognized as being essential to many working relationships, including those involving the United States government, and that many believe that government would become impossible if all communications became public knowledge.

Once a system of secrecy took hold, it effectively prevented the government from accurately assessing and dealing with its enemies (Moynihan 80). As the early twentieth century saw the United States enter World War I, secrets and conspiracy quickly became instruments of statecraft. Much of the structure of secrecy known in the United States was formed in a matter of 11 weeks in 1917 as the Espionage Act was debated and then signed into law on June 15 (Moynihan 84). The Espionage Act did not refer to "classified" information but prohibited the disclosure of certain information that was connected or related to the national defense. It ultimately presented statutory and constitutional uncertainty (Bellia).

Despite the efforts of President Woodrow Wilson, the Espionage Act did not contain a censorship provision. It did, however, contain two provisions that covered unlawful obtaining of national defense information and unlawful disclosure of such information to a foreign government or its agents, with more severe penalties assigned to the latter, which were harsher in times of war (Moynihan 96). Wilson was ultimately dissatisfied with the Espionage Act and its lack of a censorship provision. Wilson's dissatisfaction led to the passing of new provisions, collectively known as the Sedition Act of 1918. The act defined eight specific offenses, making it a crime to "utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States." Congress, concerned that the act was too strenuous, repealed the Sedition Act in 1921, on Wilson's last day in office (Moynihan 97).

Government secrecy grew during World War II with the dramatic growth of the federal government and the wartime need for a high degree of secrecy – namely regarding military-security information. After the war ended, though the military's need to guard and control information declined, secrecy and censorship continued, limiting the flow of government information to the public (Jones and Lemov). The Second World War also saw what may have been the first instance of the Executive Branch using the power of secrecy for its own purposes by "leaking" confidential government information to the press. On December 4, 1941, the *Chicago Tribune* revealed President Franklin D. Roosevelt's plans for fighting the war. What appeared to be the unauthorized release of information actually may have been an example of the government rationing secret information in order to affect third parties (Moynihan 133).

The start of the Cold War saw secrecy expand, reach significantly beyond military information, and become institutionalized as a part of the bureaucracy in the United States (Aftergood). In September 1951, President Harry S. Truman issued Executive Order 10290, establishing for the first time a classification system that was able to encompass both civilian and military agencies. The order also authorized any Executive Branch agency to classify information and defined a vague standard for classified information as "official information the safeguarding of which is necessary in the interest of national security" (Aftergood 84).

The United States had a good reason to fear for its national security in the form of classified information. World War II saw the attack on Pearl Harbor in Hawaii as an external threat to the United States. With the Cold War, however, Soviet spies invaded the nation's system of information as internal threats (Moynihan 142). Secrecy became the norm during the years of the Cold War, as a culture of bureaucracy will tend to foster a culture of secrecy (153). Even after the Cold War ended, secrecy as a mode of governance continued (202). The Cold War

gave the United States a vast secrecy system that shows no signs of receding and has since become a characteristic mode of governance in the United States Executive Branch. Intelligence agencies and budgets have grown as the military has subsided (Moynihan 214).

The pervasive nature of secrecy that developed during the World Wars and the Cold War left a lasting impact on the structure and functionality of the United States government that has carried through to modern times. Today, government departments and agencies hoard information and have thus turned the government into a market where secrets have become organizational assets, used bargaining chips to be exchanged for other assets (Moynihan 73). The tragic consequences of this information hoarding were displayed following the events of September 11, 2001, when it was revealed that government agencies and departments had failed to share vital information (Gup 7). The perils of unrestrained secrecy have been shown time and again to not be abstract. It is clear excessive secrecy discredited security processes and undermined social values and interests such as national security, privacy, intellectual property rights, medical confidentiality, fair trials, diplomatic and business negotiations, and journalistic enterprises (Gup 9-10).

Government has used secrecy for its advantage, often cloaking controversial acts by high-ranking officials. It is believed by some that greater coordination and fewer restrictions on secrets could have led to the September 11 attacks being uncovered and even foiled. The threat of weapons of mass destruction and the government's justification for invading Iraq are testaments to the abuse of secrecy employed by those with the highest authority as they keep the truth wrapped in classification (Gup 7). Additionally, most critical national policies, whether they concern issues of national security, are the products of secret government meetings. The

information presented is denied to the press, citizens and even Congress and yet is upheld by the courts (7).

Within its pervasive nature, secrecy at the governmental level has also presented strong instances of irony. At times, while employed in the interest of national security, secrecy has ultimately resulted in that security being put in harm's way. Despite unauthorized disclosures of classified information and programs since September 11, military and intelligence sources have been unable to demonstrate any instance where national security has been strongly damaged due to the release of information (Priest and Arkin, xx). On the contrary, by allowing the government to operate in the dark, much harm has been inflicted on the United States and its counterterrorism efforts, its economy, and its strategic goals (xx). While serving as the director of the Central Intelligence Agency, George Tenet kept his mouth shut when it came to the nation's secrets and classified topics. Upon his retirement, however, he profited from speeches that revealed this same information and made four million dollars on a "tell-all" book deal years after the events he detailed had come and gone (Gup 65).

Information is withheld from the public ostensibly because it is perceived that its disclosure would damage national security. Meanwhile, files under classification consistently contain records of policy decisions, historical and budget documents and environmental data - information that could in no way compromise the safety of the nation (Aftergood). While the government's realm of secrecy extends far beyond the measures needed for reasonable protection of national security, the full scope of the government's classification system cannot even be determined as that information itself is classified (Aftergood).

The Executive Branch plays a crucial role in the transparency of the nation's government and its willingness to reveal otherwise secret information to the general public. With each acting

president and his administration, the expectation for the sharing of information is altered. Under George W. Bush from 2000 to 2008, the United States experienced eight years of secret decisions, classified memos and covert operations by the president (Priest and Arkin 55). In February 2006, the Justice Department found itself resisting the Senate Judiciary Committee's demands to turn over legal memoranda that were said to legally justify Bush's domestic surveillance program (Gup 2). Despite going forward in secrecy without warrants or recourse to the courts, a violation of the requirements of the Foreign Intelligence Surveillance Act of 1978, Bush insisted his secret surveillance within America was legal. Meanwhile, the legal memos to support his claim were labeled as classified, even to members of Congress (2).

Many hoped to see changes under President Barack Obama when he took office after Bush. Despite an initial show of improvement over the Bush administration, behind the scenes the situation was actually much worse when it came to transparency and sharing information with the public (Priest and Arkin xxi). Under Obama, the Justice Department took a "more aggressive tack against the unauthorized disclosure of classified information by pursuing more so-called leak investigations than the Bush administration" (xxi). On the other hand, Obama declared a new day following Bush's actions by signing off on instructions for all agencies and departments to "adopt a presumption in favor" of the Freedom of Information Act. He also issued a Presidential Memorandum on Transparency and Open Government (55). Despite his idealism during his early days in office, only a few of Obama's transparency initiatives were ever realized. The hidden world of secrecy continued to grow behind the veil of classification.

THE SYSTEM OF CLASSIFICATION

The culture of secrecy in the United States flows from the system for classification put in place by the government to regulate the general public's access to information. The big question to

come out of this system for classifying information is “why?” To put it simply, information is classified by the government because although there are no disincentives for classifying the specified material, at the same there exist considerable risks for letting sensitive information slip through (Gup 45). The standards for what information is classified have changed and expanded over the years. Information deemed secret at any level and necessary to keep from the public’s eye is the obvious material requiring classification. Derivative classification decisions are also made, meaning that if any secret is included in another document in whole or in part, the document that contains that secret must also be classified (35). Once information is classified, there are numerous government measures in place to protect it. These measures include nondisclosure agreements (enforced through injunctive relief) and various criminal statutes that are in place to prohibit government employees from disclosing certain types of classified information (Bellia).

Much like the determination of classification authority, the boundaries for the classification of security-related information are not founded on any statutory law but instead are defined by executive order. This is true with the exception of nuclear weapons design information and related topics which are protected under the Atomic Energy Act of 1946 (Aftergood). Commitment to openness peaked under President Jimmy Carter who established that information could not be classified unless its disclosure could cause “identifiable” damage to national security. Carter also mandated a program of systematic declassification reviews by Executive Branch agencies (Aftergood). Despite his efforts, the steps Carter took while in office were quickly undone by his successor, Ronald Reagan. In 1982, Reagan issued Executive Order 12356, the basis for the modern classification system (Aftergood). The order eliminated the Carter-era threshold of identifiable damage and effectively put an end to systematic

declassification review, instead only allowing the National Archives to conduct such reviews. Regan's order made it clear that when in doubt, information is to be classified and if there are questions regarding the level of classification for certain information, higher levels of classification are to be adopted (Aftergood).

The system of classification used by the United States government consists of three tiers: "Confidential," "Secret" and "Top Secret." This three-tier system was borrowed from British forces in France in 1917 by the American military. At the time, the system was: "For Official Use Only," "Confidential" and "Secret" (Moynihan 111). Over the years, definitions were created for each level to determine what information fell within each category of classification. Most recently, Executive Order 13526, issued by President Barack Obama in 2009, defined the three levels of classification.

- "The 'Confidential' tag shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.
- The 'Secret' tag shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.
- The 'Top Secret' tag shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe" (United States, Executive Office of the President [Barack Obama] 707-708).

Top Secret is itself so wrapped in secrecy that the only time top secret work is recognized in public is when something goes wrong or when an unauthorized disclosure of classified information goes into the media (Priest and Arkin 160).

For government information to be marked and filed under the proper classification level, classification authority must first be determined. According to Section 1.3 of Executive Order 13526, the authority to classify information originally may be exercised only by 1. the President and the Vice President, 2. agency heads and officials designated by the President, and 3. U.S. Government Officials delegated this authority (United States, Executive Order of the President [Barack Obama] 708).

Executive Order 12356 also issued definitions for the three increasingly stringent classification levels. At the time, "Confidential" could be expected to cause damage, "Secret" could be expected to cause "serious damage" and "Top Secret" could be expected to cause "exceptionally grave damage" to national security (Aftergood). To see information at any level, the appropriate security clearance is required, as is an identifiable "need to know."

Numerous issues with such classification come with an established system for classifying secret government information. A lack of uniformity, widely diverging standards for what constitutes a secret and the sheer volume of secrets kept under wraps by the government create a system that is undoubtedly vulnerable to mistakes, misjudgments and abuse (Gup 41). These issues also consistently lead to the overclassification of information. High-level government officials suggested that between 50% and 90% of national security information is not classified properly (Bellia). The government is seen as undermining its own notion of freedom by keeping too much information, often unnecessarily, from the public.

According to Bellia, part of the problem of overclassification lies in its internal structure, meaning that the current system that is in place to handle classification is tilted in favor of overclassification. It is less risky for lower-level bureaucrats to err on the side of classification and follow the notion of "When in doubt, classify." While those who issue classifications on government information and materials are threatened with repercussions by their superiors for failing to protect sensitive materials, their superiors are unlikely to rescind the decisions they make in favor of classification (Bellia).

The complexity and understated failings of the system have come at a cost and have led to more uncertainties than answers. By the time Barack Obama became president it was estimated by the government's count that there was an $81 billion per year budget in place for national intelligence (Priest and Arkin 39). Even with billions of taxpayer dollars being poured into the government's attempts to curtail the release of information to its citizens, it can be inferred that the United States government still does not know how to protect its sensitive data. The government does not know what information is unprotected, who can access the information and who should not, who already has and how much information has been retrieved without authorization (267). While issues abound with the government's classification of information, there are avenues that exist to provide access to information so that the nation's citizens are not left in the dark.

THE FREEDOM OF INFORMATION ACT AND GRANTING ACCESS TO INFORMATION

The Freedom of Information Act (FOIA) in the United States was the first federal open government law enacted in the world with the exception of a Swedish law from the 18th century and a similar information law in Finland in 1951 (Jones and Lemov). For the first time, the American public was granted an avenue into uncovering the information that its own government

had been trying for so long to keep secret. When the FOIA was enacted in 1966 by President Lyndon B. Johnson, it became the American public's primary method for gathering information on the activities and even the agents of the state (Wagner). At the same time, the United States Supreme Court repeatedly identified FOIA as a crucial element in the functioning of a democratic government and acknowledged its primary function as a transparency tool for civilians (Wagner).

The impact of the Freedom of Information Act has been clear and steadfast, but the path to its enactment was a struggle. FOIA was the product of a 12-year battle by John Moss, a representative from California's Third Congressional District who took office in 1953. Determined to be a one-term representative, Moss found himself in a second term, being appointed as chairman of the newly established Special Subcommittee on Government Information in 1955 (Jones and Lemov). Moss issued reassurances about not wanting to open government files and exposed national defense plans to hostiles forces. However, Moss knew that the government could not censor routine information and began to look for a compromise. The result was the Freedom of Information Act, which Moss then spent the next decade trying to move out of the House of Representatives. Once an identical bill was presented to both the House and the Senate, it was finally passed unanimously in full body on June 20, 1966, and was sent to the White House to face its biggest hurdle at the hands of President Johnson (Jones and Lemov).

Rep. John Moss had a good relationship with Johnson's predecessor, John F. Kennedy, but Johnson did not like the idea of increased access to government information by the public because of his blatant distrust of the press. According to one *New York Times* columnist, Johnson was convinced that the press hated him and wanted to bring him down (Jones and Lemov).

Ironically, Johnson's wife, Lady Bird, had used her family's money to purchase a small radio station in Austin, Texas, in 1943 and turned it into the Texas Broadcasting Corporation, a multimillion-dollar radio and TV enterprise (Commire and Klezmer 975). Moss issued reassurances to Johnson, making it clear that he was not looking to use the FOIA to open government files in order to expose national secrets, such as defense plans to hostile forces. At the same time, Moss made it clear that he was not OK with the government's ongoing tendency to censor routine information and was looking to use the act as a compromise (Jones and Lemov).

Moss knew that if FOIA made it to Johnson's desk at the White House and the president opted to veto the act, he would not have enough votes in Congress to override the veto. The FOIA was presented to Johnson to sign on June 26, 1966, while he was staying at his Texas ranch. Johnson had until midnight on July fourth to sign the act into law. After intense pressure from the press and Congress and a last-minute recommendation from press secretary Bill Moyers, Johnson signed FOIA into law on July 4, 1966, opening the doors to public access to government information for the first time in the United States (Jones and Lemov).

The FOIA took effect in 1967 and established for the first time a statutory right of access by any person to the records of any federal agency (Hammitt et al. 7). Through the act, all records of agencies within the federal government must be accessible to the general public unless the information in question was specifically exempt from the requirement of disclosure (Hammitt et al. 1). At its core, the act promoted openness and while the discussion surrounding FOIA would inevitably lead to what information is ultimately withheld from the public, the dominant object of the act was disclosure, not secrecy (1). In order to be an effective source of government information to the press and the general public, the Freedom of Information Act not only allowed

for the release of previously secretive information through formal requests, but also outlined specific administrative procedures for the processing of such requests and provided options for the enforcement of the rights of access (19).

Despite the initial perceived success of FOIA, the act was far from perfect and underwent its first amendment in 1974 to close loopholes and strengthen provisions outlined in the act. FOIA was amended again in 1976, 1986 and 1996 to address issues and concerns regarding access to information. According to former Supreme Court Justice Antonin Scalia, the Freedom of Information Act was given the same respect as the First Amendment to the United States Constitution for the parallels it drew to the amendment in addressing the freedom of speech and the freedom of the press (Scalia 15). Scalia also pointed out that any person who wished to request information from the government through FOIA did not require a "need to know" in order to have their request fulfilled. A requester did not even have to be a United States citizen to access information from the American government (17). Due to its prominence as binding the relationship among the government, the public and information, FOIA appeals, when requests are denied, are given priority in courts. These cases take precedence on dockets over all other cases and are given the earliest date possible in court after being expedited in every way, with some exceptions (17).

The promise of openness and transparency into secured government information was not granted without numerous restrictions, making it clear that openness and transparency were limited. Along with the access granted by FOIA came nine exemptions that permitted government agencies to withhold access to the records being requested and to deny them either in whole or in part. These exemptions are made to be specifically exclusive and therefore must be narrowly construed (Hammitt et al. 5). The nine exemptions to FOIA are as follows:

Exemption 1: National Security Information - FOIA does not apply to matters that are authorized to be kept secret in the interest of national defense or foreign policy and are in fact properly classified.

Exemption 2: Internal Agency Rules - FOIA does not apply to matters that are related to the internal personnel rules and practices of an agency.

Exemption 3: Information Exempted by Other Statutes - FOIA does not apply to matters that are specifically exempted from disclosure by statute.

Exemption 4: Business Information - FOIA does not apply to matters that are trade secrets and commercial or financial information that is obtained while privileged or confidential.

Exemption 5: Inter- and Intra-Agency Memoranda - FOIA does not apply to matters that are memorandums or letters which would not be available to a party other than an agency in litigation with the agency.

Exemption 6: Personal Privacy - FOIA does not apply to personnel and medical files and similar files the disclosure of which would invoke an unwarranted invasion of personal privacy

Exemption 7: Law Enforcement Records - FOIA does not apply to records or information that has been compiled for law enforcement purposes, the release of which would interfere with law enforcement proceedings.

Exemption 8: Records of Financial Institutions - FOIA does not apply to matters related to examination, operating, or condition reports prepared for the regulation or supervision of financial institutions.

Exemption 9: Oil Well Data - FOIA does not apply to geological or geophysical information and data concerning wells (Hammitt et al. 34-197).

With these nine exemptions embedded in FOIA, the government can place limits on what information can and will be released to the public. Over the years, the fifth exemption has received negative backlash among members of the press and public for its opaque definition of what information is truly exempt from disclosure and what information is withheld by the government without the proper justification. The b(5) exemption within FOIA has since notoriously become known as the "Withhold it because you want to" exemption (Jones 2014).

The term "withhold it because you want to" was first coined by John Podesta, special advisor to President Barack Obama during Sunshine Week in 2011. The term, and the exemption it is applied to, invokes deliberative process privilege and has been increasingly cited among government agencies to trigger exemptions to FOIA. Agencies are therefore authorized to withhold any inter-agency or intra-agency communication along with any agency-claimed draft from the public eye (Jones, "Next FOIA Fight"). Jones points out that when looking at the information that the b(5) exemption is applied to and the number of times it is utilized, it can be inferred that it is not always cited properly.

As of 2014, the United States government and its Freedom of Information Act ranked as the 44th-worst nation in the Global Right to Information World Wide Index (Jones). Accompanying the dismal ranking of the United States were egregious examples of b(5) exemption withholdings that were slowly being made public. One such example was a 600-page report produced by the United States Department of Justice that was kept a secret for four years--until 2010-- that examined the secret history of American Nazi-hunting intelligence officials giving Nazis and other collaborators a haven in the United States following the end of World

War II (Lichtblau 2010). The secrecy surrounding the handling of the report posed a political dilemma for President Obama and his pledge to run a transparent administration. After the Justice Department resisted making the report public, a full, unredacted version was eventually obtained by the *New York Times* that spilled the government's secrets regarding the matter (Lichtblau).

Another infamous attempt by the United States government to prevent access to information otherwise granted to the public by FOIA was the creation and consequent implementation of a concept that came to be known as "Glomarization." The Glomar response to FOIA requests is presented as: "We can neither confirm nor deny the existence or nonexistence of records responsive to your request" (Wagner). While the current Executive Order on Classified National Security information recognizes an agency's ability to confirm or deny the existence or nonexistence of requested information, unless the fact of its existence or nonexistence is itself classified, "Glomarization" was once a novel response (Hammitt et al. 6).

To be "Glomarized" means to be left in total darkness. The term "Glomarization" was coined after the salvage ship *Glomar Explorer* in 1974 when it was used in a joint operation involving the Central Intelligence Agency and billionaire Howard Hughes to secretly attempt to raise a sunken Soviet submarine carrying nuclear weapons from the seafloor out in the Pacific Ocean (Gup 82). Following the operation in 1975, the United States government first refused to confirm or deny the existence of documentation in response to a FOIA request after a reporter from *Rolling Stone* magazine sought documents relating to a suspected covert mission by the CIA (Becker). While the *Glomar* response should be used sparingly to preserve trust in the government, the response is appropriate when the existence or nonexistence of government records is itself a classified fact. In the context of national security, even if FOIA does not say so

directly, every appellate court that has considered the issues has agreed with the appropriateness of “Glomarization” when necessary for the protection of classified information as long as that information is not already in the public domain (Becker). When the information is already in the public domain, or widely disseminated among the public, applying “Glomarization” to try and keep that information becomes hypocritical at the hands of the government and undermines the government’s authority when it comes to keeping information secretive.

Using the various exemption methods at their disposal, American government agencies are able to withhold up to 60% of requested information either in whole or in part (Jones and Lemov). While the exemptions remain very broad and easy to apply to requests, substantial delays and fees are also used to deter requesters from accessing information. In 2011, the Department of Justice’s announcement that it had achieved a 94.5% release rate of FOIA requests was seen as a significant stretch compared to the agency’s annual FOIA statistics report (Jones 2012). The initial estimate of 94.5% did not include all FOIA requests that the DOJ had denied throughout the past year. Factoring in 11 reasons for denying a request, the agency’s release rate dropped drastically to 56.7% (Jones, “FOIA Statistics”). When not outright denying information requested, agencies are notorious for enacting delays, shunting FOIA requests to the side or outright neutering them though the imposition of fees for the cost of record searches and copying, even where there is a clear public interest in the information that is being sought (Gup 57).

The Freedom of Information Act has created a lasting impact that has stretched beyond the border of the United States. Since the United States passed FOIA in 1966, more than 117 nations around the world have passed freedom of information laws or similar administrative regulations (Jones and Lemov). Even within the United States, Congress has refined certain

sections of the act through its amendments, improving access in areas where John Moss was forced to compromise in order to win its original passage. Governments have rarely volunteered to open their files to the eyes of citizens, so much of the legislation that allows for these information acts has been brought to fruition through the efforts of journalists, environmentalists, historians, anti-corruption advocates, and others who wish to see their governments held accountable (Jones and Lemov).

To keep the United States government in check since the enactment of FOIA, agencies are required to release an annual report every year, detailing their administration of the FOIA. These reports contain statistics on the number of requests each agency receives and processes every year, how long the agency takes to respond to the requests they receive, and the outcome of each request. The reports serve as a window into the inner-workings of each agency, holding them accountable every year for the steps they take toward transparency. Below are FOIA report statistics from the CIA and Department of Defense from the 2010-2019 fiscal years.

The annual FOIA reports provide statistics for the agency overall as well as each component within the agency. For the CIA, there is only one component within the agency. For the DOD, however, there are 33 components within the agency. These components include all the branches of the Armed Forces, the National Security Agency, the United States Strategic Command, and more. The following statistics reflect both agencies overall.

FOIA Requests - Received, Processed and Pending FOIA Requests - CIA

	Number of Requests Pending as of Start of FY	**Number of Requests Received in FY**	**Number of Requests Processed in FY**	**Number of Requests Pending as of End of Fiscal Year**
FY 2019	2,332	2,563	2,261	2,634
FY 2018	1,949	2,726	2,345	2,330

FY 2017	1,469	2,572	1,988	2,053
FY 2016	1,130	2,547	2,208	1,469
FY 2015	1,034	3,618	3,181	1,471
FY 2014	1,092	3,737	3,795	1,034
FY 2013	1,144	4,573	4,625	1,092
FY 2012	985	3,745	3,586	1,144
FY 2011	880	3,269	3,164	985
FY 2010	775	3,094	2,989	880

Trends in the CIA's statistics for received, processed and pending requests show that the number of requests pending at the start and end of each fiscal year has consistently increased over the past decade. Meanwhile, the number of requests received and processed increased from 2010 to 2013 and then showed a relatively consistent decline, with a slight increase in the last two years for the number of requests processed. The increasing number of requests pending at the start and end of each year indicated that the CIA is falling behind in its fulfillment of these FOIA requests. With the exception of 2014 and 2013, the CIA has consistently received more requests in a fiscal year than it has been able to process, putting them further and further behind in addressing each request.

(Central Intelligence Agency Annual FOIA Report 2010-2019; Department of Defense Annual FOIA Report 2010-2019)

FOIA Requests - Received, Processed and Pending FOIA Requests - DOD

	Number of Requests Pending as of Start of FY	**Number of Requests Received in FY**	**Number of Requests Processed in FY**	**Number of Requests Pending as of End of Fiscal Year**
FY 2019	16,686	56,524	54,545	18,665

FY 2018	14,194	57,032	54,323	16,903
FY 2017	13,467	55,198	53,760	14,905
FY 2016	12,469	53,544	52,332	13,681
FY 2015	11,704	57,498	56,507	12,695
FY 2014	9,938	61,055	59,321	11,672
FY 2013	9,527	68,014	67,679	9,862
FY 2012	10,025	66,078	66,651	9,452
FY 2011	11,755	74,117	75,648	10,224
FY 2010	13,332	73,572	74,790	12,115

The Department of Defense reports indicate a similar pattern to the CIA, with a few slight differences between the two agencies. This table shows a steady increase in the number of requests pending at the start and end of each fiscal year starting with the year 2013. Prior to that, there was a decrease in requests pending. Also like the CIA, the DOD has, with the exception of 2010-2012, fallen behind in its ability to process the FOIA requests that it receives, leading to an increased wait time for requesters and general delays in how quickly information is able to reach the public.

Disposition of FOIA Requests - All Processed Requests - CIA

	Number of Full Grants	**Number of Partial Grants/Partial Denials**	**Number of Full Denials Based on Exemptions**
FY 2019	157	331	607
FY 2018	129	348	888
FY 2017	156	273	859
FY 2016	247	218	983
FY 2015	442	925	980
FY 2014	470	1,006	1,317

FY 2013	462	1,052	1,951
FY 2012	356	761	1,584
FY 2011	413	890	960
FY 2010	443	864	737

Evaluating the number of full grants, partial grants/partial denials and full denials based on exemptions from the CIA, there is no clear pattern of increases or decreases over the past decade. The most significant change to be noted here is the drop from 2015 to 2016 in the number of partial grants/partial denials from 925 to 218. All other numbers have fluctuated from year to year within reasonable parameters.

Disposition of FOIA Requests - All Processed Requests - DOD

	Number of Full Grants	**Number of Partial Grants/Partial Denials**	**Number of Full Denials Based on Exemptions**
FY 2019	14,907	18,055	2,846
FY 2018	18,571	15,801	2,652
FY 2017	19,613	15,307	2,617
FY 2016	18,247	14,546	2,548
FY 2015	20,524	13,249	2,338
FY 2014	20,888	13,577	3,267
FY 2013	24,368	15,396	5,183
FY 2012	25,672	15,318	3,148
FY 2011	30,923	14,868	2,267
FY 2010	29,491	16,133	2,260

Much like the CIA, the DOD also reported fairly consistent numbers over the past ten years for its number of full grants, partial grants/partial denials, and full denials based on

exemptions. There were two more significant changes in the statistics between two fiscal years that are worth taking note of here. First, there was a noticeable decrease in the number of full grants issued between 2018 and 2019. Meanwhile, there was a noticeable increase in the number of partial grants/partial denials between 2018 and 2019.

(Central Intelligence Agency Annual FOIA Report 2010-2019; Department of Defense Annual FOIA Report 2010-2019)

Disposition of FOIA Requests - Number of Times Exemptions Applied [1-5] - CIA

	Exemption 1	**Exemption 2**	**Exemption 3**	**Exemption 4**	**Exemption 5**
FY 2019	959	7	1,028	12	34
FY 2018	1,179	5	1,255	9	40
FY 2017	1,045	0	1,127	4	29
FY 2016	1,142	1	1,201	2	25
FY 2015	1,623	2	1,843	2	44
FY 2014	1,974	2	2,224	9	82
FY 2013	2,702	7	2,890	7	88
FY 2012	2,112	0	2,208	1	110
FY 2011	1,546	26	1,746	6	57
FY 2010	1,105	44	1,525	5	46

Relating to the previous tables, when requests are denied in part or in full, it is due to the nine exemptions outlined in the Freedom of Information Act. In this table are the first five of the nine exemptions, as they are the most-cited exemptions seen in FOIA request denials. The five exemptions pertain to the following:

Exemption 1: National Security Information

Exemption 2: Internal Agency Rules

Exemption 3: Information Exempted by Other Statutes

Exemption 4: Business Information

Exemption 5: Inter- and Intra-Agency Memoranda

While it is expected that the two most frequent exemptions are cited for national security concerns and to protect information that is already protected by other legislative statutes, it is also important to note the third most frequently cited exemption. The "withhold it because you want to" exemption, the fifth exemption of FOIA, has been questionable in the past in how it has been used to block the release of information sought in FOIA requests.

Disposition of FOIA Requests - Number of Times Exemptions Applied [1-5] - DOD

	Exemption 1	**Exemption 2**	**Exemption 3**	**Exemption 4**	**Exemption 5**
FY 2019	1,975	242	3,710	3,414	4,188
FY 2018	1,737	262	3,252	1,108	3,716
FY 2017	1,432	275	3,449	989	3,706
FY 2016	1,543	215	2,900	958	4,107
FY 2015	1,662	236	2,398	1,140	3,486
FY 2014	2,625	165	3,384	1,018	3,331
FY 2013	4,594	182	6,024	1,219	2,986
FY 2012	2,390	681	3,276	1,395	2,331
FY 2011	1,510	2,163	2,827	1,870	1,975
FY 2010	1,279	3,364	2,512	2,020	1,895

Though Exemption five, relating to inter- and intra-agency memoranda, is cited noticeably less than exemptions one and three by the CIA, it is the most-cited exemptions employed by the DOD to counter FOIA requests since 2014 while still being cited consistently in

previous years. Exemptions one, three, and four, pertaining to business information, have all been cited consistently at approximately the same rate over the past decade.

(Central Intelligence Agency Annual FOIA Report 2010-2019; Department of Defense Annual FOIA Report 2010-2019)

FOIA Requests - Response Time for All Processed Perfected Requests - CIA

	Simple				**Complex**			
	Median Number of Days	**Average Number of Days**	**Lowest Number of Days**	**Highest Number of Days**	**Median Number of Days**	**Average Number of Days**	**Lowest Number of Days**	**Highest Number of Days**
FY 2019	14	20.11	<1	100	191.5	329.7	4	2,641
FY 2018	12	32.21	1	1,317	306	368.49	4	2,555
FY 2017	12	28.91	1	695	201.5	319.36	4	2,713
FY 2016	30	38.72	<1	792	153	251.53	7	2,299
FY 2015	17	39.85	4	2,449	53	116.22	<1	2,454
FY 2014	16	32.87	<1	1,361	49	134.24	1	2,327
FY 2013	13	35.18	1	2,411	62	186.02	1	3,055
FY 2012	12	32	0	1,846	30	93	0	1,939
FY 2011	10	23.95	0	1,242	32	113.76	0	3,104
FY 2010	10	19	0	1,711	32	109	0	2,917

Outlined here are the statistics for how long it takes the CIA to respond to the requests that it processes in a given year. The statistics are divided between the types of requests that the agency processes, separating them into simple and complex requests, depending on the amount of detail and information that is called for in each request. Significant changes to be noted are the jumps in 2018 in the median number of days and the average number of days for complex requests before the figures lowered again in 2019.

FOIA Requests - Response Time for All Processed Perfected Requests - DOD

	Simple				Complex			
	Median Number of Days	**Average Number of Days**	**Lowest Number of Days**	**Highest Number of Days**	**Median Number of Days**	**Average Number of Days**	**Lowest Number of Days**	**Highest Number of Days**
FY 2019	6	26.48	<1	1,780	64	204.73	<1	3,478
FY 2018	15.39	24.6	<1	1,780	115.54	178.42	<1	3,478
FY 2017	9.84	16.34	<1	1,486	104.81	156.53	<1	3,678
FY 2016	13.44	19.46	<1	1,758	99.02	158.97	<1	3,885
FY 2015	11.91	16.58	<1	3,036	89.72	165.14	<1	3,517
FY 2014	N/A	13	<1	1,345	N/A	97	<1	4,060
FY 2013	N/A	10	<1	3,061	N/A	93	<1	4,585
FY 2012	N/A	11	<1	2,939	N/A	115	<1	4,099
FY 2011	N/A	19	<1	3,760	N/A	111	<1	4,475
FY 2010	N/A	24	<1	2,306	N/A	127	<1	4,314

The statistics for the DOD in processing requests have been consistent as well with one significant drop in the median number of days for complex requests from 2018 to 2019 after a steady increase in the preceding years.

(Central Intelligence Agency Annual FOIA Report 2010-2019; Department of Defense Annual FOIA Report 2010-2019)

THE UNAUTHORIZED SHARING OF INFORMATION

Bypassing the Freedom of Information Act and government authorization, information is released and circulated without such proper clearance. In the age of information, a single person has the power, though perhaps not the authority, to derail government policy with a single leak of

classified information (Gup 49). Though the government has been known to keep information classified that would otherwise cause no conceivable harm to the public or to national security through the misuse of the Freedom of Information Act and its exemptions, there is a plethora of information that is kept secret by the government for valid reasons. If released to citizens and, consequently, enemies of the United States, the state of the nation's security could very well be at risk.

Most often, those who deal frequently in information that is vital to the national security of the country are not obtaining this information through secretive, illicit means, but rather through routine, unsuspecting channels (Moynihan 168). At one time, officials were known to release classified information to journalists in order to establish greater prestige, gain an advantage, or even to let the public become aware of information that they felt the public had a right to know (168). While this matter has since been quantified, it remains reasonable to believe that many leaks of classified information continue to come from higher reaches of power. In 2011, Senator Benjamin Cardin from Maryland introduced a bill that made it a felony to disclose information to someone who does not have the proper authorization (Priest and Arkin, xxii). Prior to Senator Cardin's bill, there were few major repercussions for leaking classified government information to the public.

Perhaps the most notorious leak in United States history is the case of the Pentagon Papers in the early 1970s, which rattled the government and its ability to contain the information it aimed to keep secret. The Pentagon Papers were pages taken from the government report *United States-Vietnam Relations, 1945-1967: A Study Prepared by the Department of Defense* (Kahin). Following the end of the war, Secretary of Defense Robert McNamara ordered a study of the United States and its intervention in Vietnam (Moynihan, 203). The DOD's 7,000-page

study contained documentation and analysis that broke down how four administrations had become entrapped in a war effort in Vietnam for more than two decades (204). Daniel Ellsberg, at the time employed by the RAND Corporation, was the leaker in question and distributed the study to select media outlets in the summer of 1971 (Moretti).

The *New York Times* published the first set of leaked files from the Pentagon Papers on June 13, 1971 (Moretti). Immediately, the Nixon administration sought to halt the publication of the Pentagon Papers, suggesting that America's national interests were at stake and that the nation would be damaged diplomatically if the publication of the documents were to continue (Moretti). After the second installment from the *New York Times*, Attorney General John Mitchell called for a cease to the publication of the Pentagon Papers, citing the Espionage Act of 1917 and echoing Nixon in saying that the continued publication of the files would cause "irreparable injury" to the United States (Bellia).

Realistically, the Nixon administration's attempts to suppress the Pentagon Papers were doomed from the start as there was no law that prohibited the publication of the documents. Such a law had been proposed by former President Woodrow Wilson, but Congress had ultimately decided against it. Wilson's failed efforts to achieve a sweeping ban on the publication of defense information in espionage laws in 1917 meant a lack of recourse for Nixon (Moynihan, 204). After the third installment by the *New York Times*, the Department of Justice filed suit in the federal district court of New York, moving for a temporary restraining order and preliminary injunction against continued publication. (Bellia). A temporary restraining order was granted against the paper, so Ellsberg moved to give portions of the leaked report to the *Washington Post* which began publishing on June 18. The Department of Justice then sought a temporary restraining order against the *Washington Post* as well. The judge refused to issue the restraining

order, but this decision was reversed by a panel of the D.C. Circuit Court after the *Post*'s second installment (Bellia).

The case moved quickly to the Supreme Court and on June 30, the court ruled 6-3 in favor of the newspapers' right to publish. The argument was that in the absence of explicit Congressional authorization, there was a lack of constitutionality for a prior restraint on the publication of the Pentagon Papers unless the disclosures in question would result in "immediate and irreparable damage to our nation or its people" (Moretti). In the end, the Pentagon Papers became a testament to the power of information and the rights of the press at the hands of the government and the information it worked to keep hidden.

Today, the Pentagon Papers and Ellsberg's actions have raised red flags regarding the information superhighway that has developed at the hands of modern technology. In 1971, Ellsberg spent six weeks secretly photocopying the thousands of documents contained in the report while in 2002, former treasury secretary Paul O'Neill walked out of his office with more than 19,000 documents one CD in a single day (Gup 24). Ellsberg was far from being the last person to leak classified documents about United States government activities. Comparisons were drawn to Ellsberg and the release of portions of the Pentagon Papers 40 years later in 2010/2011 when WikiLeaks co-founder Julian Assange used his platform to publish hundreds of thousands of leaked documents about the Afghanistan and Iraq wars and other diplomatic cables (Quinn). The Supreme Court's decision in the Pentagon Papers case signaled that the task of weighing whether to publicly disclose leaked national security information would fall to publishers and not to executives or the courts (Bellia). Publishers under United States law began having to weigh the potential harms and benefits of disclosure against potential criminal penalties and journalistic norms.

Both cases posed the same institutional question: Who decides when the need for public access to certain leaked national security information outweighs the potential harm that dissemination might cause? (Bellia). Edward Snowden did little to answer this question in 2013 when the former National Security Agency contractor deliberately leaked classified documents pertaining to the operations of the NSA to journalists (Moretti). As Snowden fled to Hong Kong and then Russia where he was granted temporary asylum, politicians branded him a traitor. One reporter from the British publication, the *Guardian,* labeled Snowden a "whistleblower" – a positive term. While other news organizations adopted this term, the *Washington Post* kept their terminology neutral by labeling Snowden a "source" (Moretti).

Seven years after Snowden blew the whistle on the NSA by leaking information regarding the agency's mass surveillance of Americans' telephone records, his actions raised questions of morality when in 2020 a U.S. Court of Appeals ruled that the surveillance program he exposed was illegal (Satter). Though Snowden still faces espionage charges in the United States, he responded to the court's ruling on Twitter, saying that the ruling was a vindication of his decision to go public with the evidence of the NSA's domestic eavesdropping operation (Satter). After the program was exposed, top intelligence officials fell back on their public claim that the NSA never knowingly collected information on Americans, instead attempting to justify the operation by insisting that the spying that they had conducted through the program had played a crucial role in fighting domestic extremism (Satter).

The controversies in which Ellsberg, Assange and Snowden were embroiled highlighted increasing pressure for the leaking of information and brought into question where the responsibility for the publication of such information landed: with the leaker or with the press? The question first raised by the Pentagon Papers was whether publication by the press is different

and if the press had a duty to fulfill "the right of the people to know" what the government was up to. Aside from the press, the perceived right of the people to know was not considered violated if the government took it upon itself to maintain secrecy in some matters. In principle, as in practice, the "right of the people to know" the government's actions always has been reduced by "the right - or duty, or responsibility - of the Government to withhold" for the public's interest (Henkin). This has led to the role of the press being called into question as it continues to serve as a buffer between those who have the information and those who want it.

THE ROLE OF THE PRESS

The duty of the press has always been to bridge the gap between the government and the people, serving as a watchdog over the government to shine a light in dark corners and keep the public informed. With the increase in government secrecy, the press has unwittingly transformed into a carrier of that secrecy whenever the government decides to operate behind closed doors. As channels that were once open are filled with denials, journalists have been forced to follow less conventional methods of access (Gup 137). Kent Cooper, former executive director of the Associated Press, popularized the term "right to know" with his 1956 book by the same name (Jones and Lemov). The term was introduced in 1953, however, when leading newspaper lawyer Harold Cross published "The People's Right to Know" and simultaneously confirmed the press' fears about the systematic denial of government information. Cross asserted that the press and the public alike have an enforceable legal right to have access to inspect government records (Jones and Lemov).

The First Amendment to the Constitution of the United States sought to protect the freedom of the press and its right to report on and to criticize the government's actions and

remains one of the press's biggest weapons in its fight to access information. With the Pentagon Papers, the press asserted something more: the right to publish documents that were prepared by, belonged to, and emanated from the Executive Branch (Henkin). There is a narrow range of circumstances where the government may be entitled to injunctive relief to prohibit the publication of national security information, namely when the publication of such information would carry the risk of irreparable damage to the United States (Bellia). The Supreme Court has invalidated state attempts to impose civil or criminal penalties on the publication of information that is both lawfully obtained and truthful over assertions that penalties were necessary to safeguard certain state interests (Bellia).

To date, *United States v. Progressive* remains the sole instance where a court granted injunctive relief that prohibited publication based on the claim that disclosure was a threat to national security. The injunction against *Progressive* magazine prevented it from publishing certain technical information regarding the construction of thermonuclear weapons (Bellia). Later, however, the government dropped its objection to the publication and the *Progressive* was able to publish its article on thermonuclear weapons. A possible benchmark to ascertain what information should be restrained from publication is the "clear and present danger" test. This test, to a degree, addresses questions of scope, immediacy, and proximity that the Pentagon Papers case first raised. The threat of criminal penalties may also have some deterrent effect against the publication of leaked information, but they can only be used against entities that are within the realm of United States enforcement jurisdiction (Bellia).

Prior restraints are a source of contention in the relationship between the government's laws and the press when the perceived right of the press to publish certain information is called into debate. The question to be asked here is: Can the courts ever block the press from publishing

truthful information that is of interest and value to the public? When a temporary restraining order was granted against the *New York Times* in the case of the Pentagon Papers, the premise was that a court could, at times, lawfully enjoin the publication of information if they could claim that the information in question would threaten national security. On the other hand, this same premise was rejected just a few days later when the *Washington Post* was facing the same scrutiny for publishing the information that Daniel Ellsberg had leaked. The premise was rejected on the ground that criminal sanctions are the government's sole remedy against the publication of such information (Bellia).

The Supreme Court relied on the 1931 case of *Near v. Minnesota* where the Supreme Court had invalidated as an unlawful prior restraint an injunction that prohibited the publication of a newspaper that was alleged to be "malicious, scandalous, and defamatory" under Minnesota's public nuisance law (Bellia). The court's reasoning was that the prior restraint had violated the publication's right to freedom of the press under the First Amendment. In the case of the Pentagon Papers, neither the *New York Times* nor the *Washington Post* pushed for a First Amendment argument that would forbid all prior restraints. Both publications agreed that the courts could enjoin the publication of harmful national security information, but only in narrow circumstances. They then argued that those specific circumstances had not been presented in their cases (Bellia).

Government suppression of the press and its commitment to the expansion of the sharing of information has not been limited to the use of prior restraints and violations of the First Amendment. The numbers, resources, and laws that exist and can be presented as evidence point in favor of the government being able to withhold information (Gup 137). Attempts by the press to counter this imbalance with revelations of information are met with resistance and even

intimidation. Instances exist of papers not running stories for fear of being subpoenaed to reveal sources and the consequent threat of possible jail time if they continue (Gup 170). By refusing to reveal anonymous sources, journalists might also face contempt-of-court charges, fines for refusing to reveal and mandates to appear before grand juries. For years, false accusations of damage done to the country's national security have been aimed at the press by both the Pentagon and the White House (160).

Despite the scrutiny and pressure imposed by the government, the press is viewed differently by the courts. Publication by the press, even of government documents, cannot be enjoined by the courts unless the courts "balance" in favor of the government. More often, however, the balance perceived by the courts leans heavily toward the side of the press and of freedom (Henkin). At the heart of this three-way tension among the government, courts, and press is one fundamental question: can the courts justifiably weigh the government's "need" to conceal with the press's "need" to publish with the people's "need" to know? (Henkin). The contention between the executive and the press comes down to the dilemma that is faced by each side. For the government, the penchant to classify information is based on the knowledge that the consequences of over-concealment are less grave than those of over-disclosure. Despite the best efforts of the press, there is a realm of secrecy surrounding the government that is not easily penetrated. But this problem, pervasive as it is, is certainly not limited to the United States.

SECRECY IN GREAT BRITAIN

In Great Britain, parallels can be drawn to the United States and balancing between the protection of government information and the public's right to know. These parallels aside, however, the guidelines are much stricter outside of the U.S for what the public is able to know.

Britain's first Official Secrets Act, originally titled the "Breach of Official Trust Bill," was drafted in 1888 and passed in 1889 after numerous unauthorized disclosures of information from government departments (Bartlett and Everett 12). The next century was not without incident. As leaks continued, attempts to strengthen the act were made in 1896 and 1908 but were quickly abandoned due to public criticism (Griffith 273). New versions of the act were drafted in 1911, 1920, 1939, and most recently in 1989, each one replacing its predecessor. The Official Secrets Act outlines six categories that it protects: security and intelligence, defense, international relations, law and order, information about or obtained by activities under warrants issued under the Interception of Communications Act 1985 and the Security Service Act 1989, and foreign confidences (279).

Many of the offenses that are described in the act arise when a "damaging discourse" is made. Creators of the act sought to replace this descriptor in the 1989 revision with greater specifics. The new standard became "a disclosure which would cause serious injury to the interests of the nation" (283). The first major defect in the act, from a freedom of information standpoint, was that the bill created absolute defenses where no "damage" to the state needed to be shown, enabling a blanket of perpetual confidentiality over all degrees of disclosures: serious, trivial, urgent, outdated and by members of the security and intelligence services alike (287). The act also failed to adequately represent the relationship between constitutional and representative government and freedom of the press as this relationship was being evaluated in two contrasting ways. The first saw the freedom of the press as the strongest existing force in the promotion of political democracy and the continued freedom of the press as essential to the preservation and expansion of that democracy. The other saw the freedom of the press as a sort of privilege that was made possible only in and because of the government (287).

Years after the Official Secrets Act came the Investigatory Powers Act and the government's justification for discovering the secrets of its subjects. Passed in 2016, the act quickly became known as the "Snooper's Charter" as it gave British intelligence agencies and police the most sweeping surveillance powers in the western world (MacAskill). After being met with only a token of resistance from inside parliament over the course of 12 months and hardly any resistance from outside, the act legalized a range of tools for snooping and hacking by security services that were unmatched by any other country in western Europe or even the United States. The act was passed so smoothly that the government did not have to make a single substantial concession to the privacy lobby in order to get it passed (MacAskill).

Most alarming in the passing of the Investigatory Powers Act was the fact that it simply legalizes powers that the security agencies and police had been using for years without making this information clear to either the public or to parliament. On the journalistic side, the legislation fails to provide acceptable protection for journalists' sources who wish to remain anonymous, effectively deterring ethical checks and balances found in whistleblowing (MacAskill). Though the act made it a requirement for judges to sign off on police requests to view journalists' calls and web records, the new law was still viewed as "a death sentence for investigative journalism" (Travis). While a positive element of the act was that it, for the first time, clearly set out the surveillance powers that are available to the intelligence services and police, privacy advocates argued that giving the act royal assent to become law would set a new international standard to authoritarian regimes to justify their own surveillance powers (Travis).

The passing of the Investigatory Powers Act into law raised concerns worldwide, even drawing the criticism of notorious NSA leaker Edward Snowden. At the time Snowden revealed the scale of mass surveillance being conducted by the NSA in the United States, he

simultaneously revealed similar information implicating Britain's Government Communications Headquarters (GCHQ), as the two agencies are known to work in tandem (MacAskill). The first and most explosive of Snowden's revelations was published by the British publication, the *Guardian* in 2013 (Satter). While the leaked information was considered damaging to national security in the United States, it was not considered as such in Britain due to the nation's more liberal approach to how the government is able to conduct its official business. Still, the revelations generated a great deal of political embarrassment which led to the British government becoming noticeably hostile toward the *Guardian*. The government's hostility was expected, given the circumstances, but joining them in calls for the publication to be prosecuted were British papers the *Sun, Mail*, and *Telegraph* (Petley). The *Guardian* has traditionally held great power as a key provider of investigative reporting and has been recognized by Britain, the United States and Australia for its work (Carson and Farhall 1903). The success of the *Guardian* and its investigative powers has not gone unnoticed among British media, leading to these acts of hostility.

During this period, British newspapers had collectively complained about what they perceived to be "statutory control" of the press. Given these circumstances, Britain's papers may have been expected to come to the defense of the *Guardian* following the publication of Snowden's revelations. Instead, the *Mail, Sun* and *Telegraph*, along with the weekly publication *Spectator*, did everything they could to bolster the government's case by working to undermine the *Guardian*'s case (Petley). Other papers that did not participate in this attack contributed by underplaying the impact of the revelations made by Snowden as well as the impudence of the government against the *Guardian*. The *Guardian* has been no stranger to faux libel charges and has been fearlessly defending itself for years. In 1995, the publication fought and won libel

action brought by former Minister for Defence Procurement Jonathan Aitken after the *Guardian* reported a Saudi Arabian businessman had paid for Aitken's stay at the Paris Ritz hotel in 1993 - a breach of ministerial rules (Donnelly). The *Guardian* covered the story when other newspapers did not, setting itself apart with its investigative efforts to uncover hidden stories. The British national press, specifically the mainstream broadsheets and respectable tabloids, is considered a key part of the Establishment, not a watchdog over the government and its actions (Petley). The acknowledged role of the press in relation to the British government produces a lack of surprise when the government and security services declare that particular journalistic activity endangers "national security" or damages "national interest." Newspapers, in these instances, often act accordingly, though they accept the judgement with reluctance (Petley).

The dissension amongst the British publications was not inherently a question of freedom, but rather a matter of national security. For the *Sun* and the *Mail* it was undeniable that Snowden's revelations via the *Guardian* had caused irreversible damage to the state of Great Britain's national security. It is no surprise that no other publications offered resistance to the government's appraisal of the situation. In many British publications, dissenting sources are rarely quoted and pronouncements by government officials are most often taken at face value (Petley). The airing of "Parliamentary Questions" has given the British public insight into their government and officials' stances on debated issues. The instrument of parliamentary questions serves as a check on ministers, Commissioners, and other officials in power by allowing Members of Parliament the opportunity to ask questions of the executive (Proksch and Slapin).

National security in Britain is ultimately defined by whatever the papers say it is. There is a different ethos in the British press than in the American press when it comes to how pertinent information is obtained for publication. A 2014 survey found that slightly more than half of U.K.

journalists are okay with occasionally paying for information, a practice known as checkbook journalism (Smith). Like other products, information is treated as a commodity to be traded in the marketplace. State secrecy in Britain is viewed as a form of censorship and rests on the assumption that "there is a wide difference between what is interesting to the public and what is in the public interest to make known" (Griffith 289). It appears, with some exceptions, that there is a reluctance among those with authority in the press to push through and claim the freedoms that have been trusted to them.

It is imperative to understand the differing reactions of the United States and Great Britain in response to Snowden's leaked information. While Americans were generally shocked by the revelations regarding the NSA, Britons were relatively unmoved. The stark difference illustrates in great detail how each nation approaches the relationship between the government and its people, the role of the press aside. Many Americans claim that the government is meant to work for them and they demand transparency, but what they have come to accept often looks quite different. Governments are supposed to fear their people, but survey results have found that the reverse is true in the United States. According to Chapman University's annual Survey of American Fears in 2018, 73.6% of Americans fear corruption in government, more than any other fear on the list and showing a 13% increase from 2016 (Ponsi). With this fear, Americans accept the lack of transparency and culture of lying that they are presented with by their so-called open government as journalists find themselves stuck in the void of misinformation.

Snowden's actions led to an exposure of an arm of the government that was acting without the permission and/or knowledge of the American people and the members of Congress (Petley). On the contrary, British subjects with their parliamentary, not popular sovereignty, tend to accept that power flows from the top down. This approach, however, doesn't limit the press or

its penchant for disclosing government activity to the people. The Profumo affair, which exposed former Secretary of State for War John Profumo's affair with a 19-year-old model, was broken to the public via the press. The story of Profumo's affair in 1963 opened the door for talking publicly about sex and set the stage for the coverage of future scandals (Kettle). The contrast between the United States and Britain and the media coverage their people expect is a key indicator in highlighting what is deemed acceptable by each nation.

On January 4, 2021, Judge Vanessa Baraitser ruled against the extradition of WikiLeaks co-founder and accused leaker Julian Assange to the United States to face charges (Quinn). Judge Baraitser rejected arguments that Assange would not get a fair trial in the United States but blocked the extradition on the basis that procedures in American prisons would not prevent Assange from taking his own life if he were to be returned to the United States (Quinn). Baraitser noted that Assange's mental health would become worse under the prison conditions he would surely face in the United States and his extradition would be oppressive. British law states that when a person's mental or physical health makes extradition unjust or "oppressive," the judge is required to order the person's discharge (Macfarlane). The state of Assange's mental health means that he cannot be extradited to face charges of espionage and of hacking government computers for his role in the classified information revealed by WikiLeaks.

A CONCLUSION ABOUT THE IMPLICATIONS OF INFORMATION

Former President Donald Trump and his compatriots denounced a lack of transparency in the government and it propelled him into the White House. His supporters voted him into office because they believed his claims that the United States government was no longer accountable and had been making decisions without the public's knowledge or consent (Fenster 173). In a

push for transparency and truth, the four years of Trump's presidency set a record for more FOIA requests filed than at any other time in American history. During the Trump administration, the media led unprecedented efforts to uncover the truth in the wake of Trump's constant spew of lies. In those four years, the media filed a total of 386 FOIA cases to federal court – more than all of the cases that were filed by the media during the 16 combined years of the Bush and Obama administrations (Fischer).

Despite the best efforts of a relentless media, it is undeniable that Donald Trump found himself in the Oval Office because millions of Americans voted to put him there, acquiescing to countless falsehoods and a culture of hatred under his leadership. The contemporary culture of lying in the United States was not necessarily introduced during Trump's presidency, but it was certainly normalized. The country as a whole became far too comfortable with not knowing what was true and what was not. The media fought against falsities but were met with claims of fake news and the perception that the press had become the "enemy of the people." Naïvely, many Americans still believe that they are not okay with the system of concealment that the government has in place while simultaneously subscribing to the barrage of lies from those in the highest seats of power. They have become complacent, not hesitating to embrace the lies that are disguised as freedoms.

Secrecy is, at times, legitimate and even necessary, but an established culture of secrecy does not need to remain the norm in American government as far as the interest of national security is concerned. Analysis, not secrecy, is the key to true security (Moynihan 221). The evolution of government secrecy was seen through phases and can be phased out in the same way that it came in. While the culture of secret information began reasonably, driven by threats to safety in the era of world wars, times have changed and the continued withholding of

information that the public has a right to know only serves to damage the relationship between the American people and their government.

In this thesis, the events of the past that led to the creation of the pervasive culture of secrecy have been brought to light and the current system of classification thoroughly explained, the points of access within the government's iron-clad vault of secrecy have been uncovered and evaluated in terms of how that information is then dispersed to the public, the role of the press has been measured in detail to breakdown how the Fourth Estate executes its responsibilities, and a connection was made on a global level between the United States and Britain to establish a global system for withholding valuable information. Trust and transparency go hand-in-hand. One cannot be expected without the presence of the other. Secrecy may be used as a form of government regulation, but it cannot be used to silence the rights of free people.

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