



Transparency and technological change: Ensuring equal and sustained public access to government information

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ABSTRACT

The Obama administration campaigned on the platform of increased transparency and access to government information after the limitations of the Bush years. As part of this focus on transparency, the Obama administration is emphasizing the use of e-government and new social media services to open up access to government. This paper explores the considerations and challenges of this approach, such as the inclusion of members of the public with limited access to the internet, the use of non-governmental channels to disseminate government information, the permanence of digital-born government information, and the design of e-government.

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1. History and intent of freedom of information

The importance of widely distributed and accessible government information in a democratic society, along with an informed citizenry which can actively participate in their civic obligations, remains the foundation of the American constitutional republic. The Declaration of Independence specifically notes the separation of public records and legislative bodies as one of the reasons for the revolution, while the Constitution established a national postal system for distribution of information and the First Amendment of the Bill of Rights focuses on information access and exchange through freedoms of exchange, assembly, and press. As Quinn (2003) notes, “The idea of public information was a radical concept at the time of the American revolution” (p. 283). However, the framers of the Constitution clearly considered this issue to be a major priority.

Many of the constitutional founders of the United States, including James Madison, Thomas Jefferson, and George Mason, placed great value on the necessity of the new government to foster a culture of open official publishing and information by the government, distributing these publications for easy duplication in regional newspapers, along with their collection in other public institutions at the local level (McDermott, 2008). These values of access and exchange served the development of a participatory democracy well, as the key underlying concept of these democratic rights is necessity of access to meaningful social and political information (Jaeger, 2005; Jaeger & Burnett, 2005). Without access to important information, it is possible to have free expression yet not have a democratic government (Berlin, 1996).

Among its first acts, Congress mandated the printing and distribution of laws and treaties, the preservation of state papers, the creation of official places where the public could access printed government information, and the maintenance of files in government agencies (Relyea, 2009a; Shuler, Jaeger, & Bertot, 2010). These mandates were unified by the goal of making government information available to the public, with the intentions of ensuring an informed electorate and bringing transparency to the process of governance. The right to access government information has long been viewed as essential to participation in the democratic process, trust in government, prevention of corruption, informed decision-making, the accuracy of government information, and provision of information to the public, companies, and journalists, among other essential functions in society (Bertot et al., 2009; Cullier & Piotrowski, 2009; Mulgan, 2007; Quinn, 2003; Relyea, 2009a; Shuler et al., 2010).

This goal of transparency was formalized with the passage of the Freedom of Information Act (FOIA) in 1966. Even within the historical context of promoting access to government information, the legislative branch was far more enthused about FOIA than the executive branch. Prior to FOIA, many government agencies were reluctant or unwilling to release unpublished information (Relyea, 2009a). When FOIA was passed by Congress, “no agency or department supported the legislation, and the President signed it into law with no small amount of reluctance” (Relyea, 2009b, p. 314). As a result of FOIA, the United States became the first nation with a law guaranteeing a legal right to request government information.

As an international issue, transparency came to prominence after World War I in the post-war negotiations (Braman, 2006). It took a long period of time for other nations to begin following the lead of the United States, however. In the mid-1980s, only 11 nations had freedom of information laws, but by the end of 2004, 59 nations had adopted freedom of information laws (Rely & Sabharwal, 2009;

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Roberts, 2006). Transparency is now held to be a key part of democratic governance. Democratic countries not only are more likely to be transparent, they also tend to produce more information than authoritarian governments (Lord, 2006). And transparency serves to keep government honest—“Good government must be seen to be done” (Kierkegaard, 2009, p. 26).

In spite of its position as the pioneer in government openness and transparency, the United States is exiting a period under the George W. Bush administration that witnessed the executive branch aggressively working to restrict government openness and transparency. The Bush administration worked to keep as much information as possible related to their activities away from public view and other parts of government, the executive branch went to federal court to fight against Government Accountability Office (GAO) requests for information about administration activities (Relyea & Halchin, 2003). Additionally, information requests by the GAO or Congress itself that were rejected by the administration included information about energy policy-making task forces, communications between the Vice President and the Department of Defense about contracts to Halliburton, documents about prisoner abuse in Iraq, cost estimates for the Medicare prescription drug plan, air pollution data, presidential advisor Karl Rove’s meetings with executives of companies in which he owned stock, and information requested by the Congressional Committee investigating the 9/11 attacks (Committee on Government Reform, 2004).

The Bush administration also limited access to information by frequently ignoring and refusing to acknowledge FOIA requests, while members of the Cabinet and advisors took the unusual step of routinely refusing to testify before Congressional Committees (Relyea & Halchin, 2003). Administration officials were given specific talking points about issues from which they were ordered not to deviate when discussing policies (Suskind, 2004). When members of the cabinet, such as Treasury Secretary Paul O’Neill, did not closely follow the assigned script, they were forced out of their jobs (Suskind, 2004). Perhaps the most telling policy of the Bush administration in relation to transparency was announced by Attorney General John Ashcroft in October 2001, reinterpreting FOIA so that “he gave a green light to the entire federal government to resist disclosure if there was any plausible reason to do so” (Gup, 2007, p. 18). Unfortunately, Congressional oversight of transparency slacked at the same time that Bush administration was working to severely limit transparency in many ways (Jaeger, 2007, 2009; Relyea, 2009b).

2. Technology, transparency, and the Obama administration

After the Bush years, transparency advocates greeted the Obama campaign and election with great anticipation. Obama campaigned with a heavy focus on information policy in his platform, including promises of greatly increased government transparency and the use of new technologies to new means of access to government information (Jaeger, Paquette, & Simmons, 2010). A day after he took office, Obama issued two executive orders requiring government agencies to err on the side of openness when considering FOIA requests for government records and opening presidential records to the public.

Since those initial executive orders, much of the focus of the Obama administration has been on increasing government transparency through the use of technology. This approach is in keeping with the development of technology and with international practices in transparency. In terms of access, the internet has greatly reduced the cost of collecting, distributing, and accessing government information (Roberts, 2006). As a result of these capacities, recent years have seen trends toward using e-government for greater access to government records and increased focus on the proactive release of information (Cullier & Piotrowski, 2009). As a result of this use of e-government for dissemination, transparency is now seen to include a legal right to

request access to specific documents that are not being provided online (Fuchs, 2006).

Using the internet to promote transparency is reasonable, not only in terms of the technological capacity, but also because it meets the expectations of many members of the public. The vast majority of government information is now born digital, and many users want access to it in electronic form (Kubicek, 2008; Priebe, Welch, & MacGilvray, 2008). The internet has also increased interest in accessing government information. There are positive correlations between the use of the internet for gathering news and support for access to government information (Cullier & Piotrowski, 2009). And, increasingly, individuals seek government information and services electronically (Smith, 2010).

However, new government initiatives in using the internet to promote access to government information are being shaped by the realities of the information behavior of internet users. Among college-educated individuals searching for government information, 77.4% regularly used Google or another commercial search engine (Burroughs, 2009). Since that survey was completed, Google launched a new product that allows for the search of laws, statutes, cases, law review articles, and other legal materials, which will likely serve to increase reliance on Google to search for government information.

Based on the platform of the Obama campaign, the Obama administration seemed well-positioned to adapt open government practices to the expectations of the internet era. These approaches include encouraging agencies to emphasize transparency, participation, and collaboration by:

- Developing the www.data.gov site to provide direct access to enormous amounts of unrefined government data with the hope that the visitors to the site will find new uses for the data and that these new uses can create previously unavailable insights into government activities and larger societal issues.
- Using social media—such as blogs, wikis, social networking sites, RSS feeds, cloud applications, and virtual worlds—to make government information available and to provide means of direct contact with the government. These same tools have been used to encourage citizens to generate content for the government, such as Department of Health and Human Services’ contest for best H1N1 flu prevention YouTube videos.
- Creating sites that allow access to the data of government processes, particularly spending, such as the www.recovery.gov; www.usaspending.gov; and it.usaspending.gov sites, which are intended to promote public monitoring of government spending.
- Holding online meetings and soliciting online comments to get public feedback on proposed policies and regulations. The White House has even held online meetings to discuss and promote its open government initiatives.
- Mandating that agencies create their own open government plans and web pages.
- Developing open government plans and initiatives based on the Open Government Directive (OMB, 2009).

The administration also appointed a Chief Technology Officer and a Chief Information Officer to spearhead these approaches (Lipowicz, 2009; Thibodeau, 2009). These efforts are apparently working. The use of social media to create records, disseminate information, and communicate with the public and between agencies began before the Obama administration took office (NARA, 2006). The use of social media, however, has already considerably expanded on their watch (Barr, 2008; Chang & Kannan, 2008; Kauffman, 2007; Laris, 2009; Osimo, 2008; Sternstein, 2006; Snyder, 2009; Wyld, 2008).

Before the end of its first year in office, the Obama administration issued a report, entitled *Open Government: A Progress Report to the American People*, which disclosed their efforts to increase government openness, including a list of future openness projects that federal

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