



Written by [Beverly K. Eakman](#) on November 4, 2011

Justice Dept. Targets Freedom of Information Act

With the U.S. Justice Department and Attorney General Eric Holder continually under fire these days, it was something of a surprise, even to Capitol Hill insiders, that the Freedom of Information Act, or FOIA, is now in the crosshairs, and that new rules are being advanced not only to deny the public access to documents, but to lie outright, telling requesters that either the documents never existed or don't exist now. Washington Times reporter Luke Rosiak quoted portions of the nonprofit Electronic Privacy Information Center's (EPIC) letter to the Justice Department lambasting its 180-degree turn: "These changes [to FOIA] ... are contrary to law and exceed the authority of the agency." EPIC's letter called the move a "retreat from current practice."



"The administration's proposed changes to the Freedom of Information Act guidelines would allow the Department of Justice to deny the existence of documents and [even] prevent judicial oversight," wrote Seth Mendel in [Commentary Magazine](#). He noted that even the American Civil Liberties Union (ACLU) agreed that Obama was "authorizing agencies to lie."

The changes were announced October 30 and promptly picked up by most major news outlets. Legal Counsel for the Sunlight Foundation, John Mr. Wonderlich, wrote a strongly worded letter to the Department decrying the blatant retreat from open-government policies.

As recently as September 23, the White House approved the post to FOIA's website, officially releasing its [Status Report on Open Government](#), which one can still see as of this writing. It boasts "substantial steps to increase participation and collaboration in government, and to make government more transparent," citing "the Administration's unprecedented [efforts](#) to promote greater disclosure..., [with] a focus on improving the FOIA process through the use of technology."

If the FOIA office, a component agency of the Justice Department, is provided the specific exemptions it wants, especially giving staff *carte blanche* to lie outright about the existence of records as opposed to merely declining to provide them, requesters would be prevented from even appealing the decision — technically called "challenging the application of the exemption" — in court. Heretofore, petitioners have had the option of appeal. A [Washington Examiner](#) editorial further explained that "[b]y thus creating an area of federal activity that is completely exempt from judicial review, the proposal undercuts due process and other constitutional protections."

The attempt to transform FOIA would also make it more difficult to obtain "fee waivers," something typically provided to the media, part-time reporters, and online journalists to circumvent the often prohibitively exorbitant fees associated with FOIA requests.

[FOIA](#) was initially signed into law by President Lyndon B. Johnson on July 4, 1966, and was [amended](#) so



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as to cover electronic records in 1996. Congress actually sought to strengthen FOIA in the wake of the Watergate scandal in 1974. After negotiations between Congress and the Ford Administration broke down, Congress passed the strengthening amendments to FOIA, which the President then vetoed. But the majority-Democrat Congress swiftly voted to override the veto. Clearly, it was in their interest following Watergate and the unpopular Vietnam War to at least make a pretense of openness.

But conservative watchdog organizations — e.g., Judicial Watch, Accuracy in Media, etc. — soon discovered how to make the new openness policy (a.k.a. “transparency”) work for *them*. Traditionalists, values-voters, constitutionalists and especially the conservative print media made it abundantly clear to Democrats in the scandal-ridden Clinton era that they might have miscalculated on FOIA. This eventually presented a huge problem for Big Government liberals and leftists, who were not so keen on being held accountable to the “unwashed masses,” on the grounds that average citizens (“nonprofessionals”) didn’t understand the issues. On the other hand, saying so in public was a political suicide.

But today, despite Barack Obama’s approval ratings — or maybe because of them, as the President actually saw his campaign funds [rise](#) with falling poll numbers — the Left worries that the enormous gains they are making in institutionalizing socialism, trouncing Christian values, and running roughshod over the Constitution may see a backlash unless it does something to stem FOIA.

Abridgements to liberty that would have shocked Americans into a serious frenzy just 20 years ago don’t seem to earn more than a “tsk-tsk” today: tearing down or covering privately funded Christian memorials visible to the public, revenue cameras erected in zones where the speed limit is lowered implausibly (or amber light-times shortened to surprise and entrap motorists); ridiculous pat-downs at airports and other travel hubs by TSA agents who have never caught a single terrorist; same-sex “marriage” and adoptions legitimized and even mandated; bans on light bulbs, refrigerants, and pesticides that actually work and are safer than their “approved” replacements, which don’t work; schools that teach perversion and glorify promiscuity but ban patriotic hats; federal land grabs of private property.... People are overwhelmed. They just want to get on with their lives.

Thus, the perfect time to put the axe to FOIA.

The downside to the economic security of government workers? None. If the changes are passed, bureaucrats will have to redo entire websites, retrain staff to dither and lie, retool entire offices to divert requests, reconfigure the FOIA reading room, and quash the predictable avalanche of complaints.

One wonders just how long it will take the leftist front organization, the ACLU, to back off its present resistance to these FOIA changes.

UPDATE: Due to the outcry over license to lie to the public concerning existence of documents, [the Justice Department has backed off](#) that particular section of the proposed changes to FOIA. But insiders close to the issue say that the Department is still forging ahead with a stronger version of plans to make fees so exorbitant, quality of documents so poor (i.e., as little digital reproduction as possible), and “exemptions” applied so liberally as to make it extremely difficult or impossible for requesters to secure information.

Beverly K. Eakman began her career as a teacher in 1968-1974. She left to become a science writer for a NASA contractor, and became editor-in-chief of NASA’s newspaper in Houston. She later served as a speechwriter and research-writer for the director of Voice of America and two other federal agencies,



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including the U.S. Dept. of Justice and the late Chief Justice Warren E. Burger. She has since penned six books and scores of feature articles and op-eds covering education policy (including two award winners), data-trafficking, science, privacy, mental-health, and political strategy. Her detailed bio, speaking appearances, e-mail, and links to her books all can be found on her website:

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