

SECRETS AND LIES

US freedom of information law was born of a national scandal. The debate about its scope continues

BY ANTHONY COLEY, BRUNSWICK,
WASHINGTON, DC

There are a few bedrock principles on which the American political system is built. Freedom is one of them. And this sacred, unalienable right is secured several ways – freedom of assembly, freedom of religion, freedom of petition, freedom of the press. After the Watergate scandal and cover-up, a fierce debate on freedom of information began. It continues nearly a generation later.

At the time, few had reason to believe President Richard Nixon was aware of, much less involved with, the break-in at Democratic National Committee headquarters. Private audio recordings, lawsuits, and reliable newspaper leaks that implicated Nixon soon changed that. On August 8 1974, he became the first and only US president to resign the office.

Watergate occurred during a special moment in American political history. The 1960s saw the assassination of a US president and, after much unrest in the American South, civil rights victories. Moreover, a seemingly endless war in the Far East preoccupied America's collective consciousness.

But Watergate stands apart. It so seared America's psyche that even now, a generation later, political scandals of even minor importance routinely carry the suffix "gate." Watergate became the impetus for improvements in government openness and transparency. Previous efforts, such as the 1966 Freedom of Information Act (FOIA), fell short. It took Nixon's resignation and a veto override by Congress to secure amendments that gave freedom of information rights real teeth – and that version exists, only slightly amended, today.

Watergate-inspired amendments to the FOIA made in 1974 were designed to make the US government more transparent and accountable. Federal agencies are now required to release requested government records, with certain exceptions. To date, millions of documents have been given to the public. Requests are often submitted via the internet, and are frequently completed in less than 30 days.

The Presidential Records Act (PRA) in 1978 was also born of the Watergate scandal. The public can now access millions of White House records, including internal memos and handwritten notes, as well as external communications from the public and others, including CEOs and lobbyists. These records are available as soon as five years after a president



and vice-president leave office. (It is worth noting that former presidents may request as many as six restrictions that could delay release of certain White House records by up to 12 years.)

To be sure, the legislation is not perfect. Much like the US Constitution, it is dynamic and changes with time. Consider this: the PRA was passed more than a decade before e-mail became commonplace and a quarter century before the emergence of Facebook and Twitter. Still, legal scholars agree that electronic communication is covered under the law's broad definition of presidential records. As such, all e-mails sent to and received by the White House are automatically saved.

Critics complain that open government laws are not nearly as comprehensive as proponents suggest. Congress, for example, exempted itself when it wrote the law. And presidents of both political parties routinely cite executive privilege to avoid releasing documents. In addition, certain provisions exist to prohibit the disclosure of trade secrets, along with financial and commercial information.

On the other hand, there have been many instances where individuals and organizations have claimed to have been the victims of abuse of freedom of information legislation. Indeed, one of the most important debates on the subject centers on the recent Dodd-Frank Wall Street reform law and the Securities and Exchange Commission – Wall Street's regulator. Several American companies and hedge funds argue they should be exempt from certain freedom of information rules in order to protect personal or proprietary information.

Still, compared to the United Kingdom, the United States gives access to government documents much sooner. The FOIA and the PRA are the primary tools that have made this possible. And while neither provision goes as far as some would like, both have ushered in a new era of transparency, while helping secure that most basic of American ideals – freedom. ☈

"When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and – eventually – incapable of determining their own destinies."
President Richard Nixon in 1972, two years before he resigned.

Photograph: Getty Images

Anthony Coley is a Director in Brunswick's Washington, DC office. He is a former communications director for US Senator Ted Kennedy and New Jersey Governor Jon Corzine and advises on critical issues involving public affairs, crisis communications and public advocacy.