

**Statement of Thomas Blanton, Director, National Security Archive,  
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**To the United States Senate  
Committee on Homeland Security and Governmental Affairs,  
Subcommittee on Federal Financial Management, Government  
Information, Federal Services, & International Security**

**“Removing the Shroud of Secrecy: Making Government More  
Transparent and Accountable”**

**Tuesday, April 13, 2010**

Mr. Chairman and members of the Subcommittee, thank you very much for holding this hearing today. You got off to a great start back on March 23, and I really appreciate your followup to complete that hearing’s discussion today.

If there’s one lesson I’ve learned from nearly 25 years of watchdogging the federal government on freedom of information issues, it is that paying attention matters. Congress has a lot on its plate these days, but **the kind of attention and focus that this hearing represents is truly indispensable** to making the government more transparent and accountable. So I applaud your initiative today, and I appreciate your invitation to testify.

Here I’d like to introduce briefly the three areas of expertise my organization has developed that are most on point for this hearing. First, since 1985 we have filed more than **40,000 Freedom of Information Act requests**, mostly in the difficult area of national security matters, where reflexive secrecy is the norm rather than a careful balancing of the need to protect real secrets versus the need for accountability and transparency. But those topics, the crisis of overclassification, excessive secrecy, and the government’s tendency to hide vulnerabilities rather than expose and fix them – those are subjects for another hearing. Some of the lessons we’ve learned, though, from watching agencies improve or backslide on our FOIA requests, do apply to the current challenges.

Second, since 1989 we have led a series of lawsuits under the Federal Records Act to **save the White House e-mail**. We had to sue Presidents Reagan, Bush 41, and Clinton to establish that e-mails are records; and now hundreds of thousands of e-mail messages from the Reagan-Bush period are saved, along with 32 million (!) from the Clinton White House. Then we had to go back into court against President George W. Bush to compel the White House to recover their missing e-mail.

I am proud to say that the computer files handed off to the National Archives from the Bush 43 White House contain an estimated 220 million e-mail messages – even though some of David Ferriero's staff may utter curses in our direction about the burden. Best of all, our lawsuit got the White House to install an on-going e-records archiving system – which today captures for posterity even President Obama's Blackberry messages. So we've had 20 years of experience now, struggling with the electronic records crisis inside government.

Third, and perhaps most on point today, since 2002 we have carried out **eight government-wide Audits of how agencies are performing** under the Freedom of Information Act. For example, we tested whether Attorney General John Ashcroft had succeeded in his efforts to close down FOIA requests. Then we saw agency reports to Congress claiming their backlogs were only a year, when we ourselves had requests pending much longer at those agencies, so we asked for and published the oldest FOIA requests in the government – some of them had been hanging for 20 years! We tested whether agencies were complying with Congress's intent in the 1996 E-FOIA amendments, and found only a quarter of the agencies met all the criteria for online openness.

And on March 15, just a month ago, we released our findings on how many agencies really responded to the new White House orders to change their FOIA processes. We asked for actual agency documents on their responses to President Obama's Day One memo, and to Attorney General Holder's March 2009 guidance on FOIA. **Only 13 out of 90 agencies, we found, had made concrete changes in how they handled FOIA requests.** There's a lot of agency-level detail in that most recent audit, and I don't want to take the Subcommittee's time today going through it all, so I'd like to ask the Chairman's permission to submit the Audit results for the record.

You have already heard today from some of the administration's leaders on open government, so I don't need to repeat here all the positive steps, declarations, directives and orders that the White House and the Justice Department, among others, have produced over the past year to move us forward. I've said elsewhere that **this President has made the earliest and most emphatic call for open government of any President**, and I am happy to see that White House push continuing.

In fact, on **Monday March 15 we made headlines** with those Audit results, that only 13 out of 90 agencies had really responded to the Obama orders; and on **Tuesday March 16, the White House chief of staff and the White House counsel put out a new memo** to all agency heads, telling them to make concrete changes in their FOIA guidance and training materials! I am impressed with that responsiveness and that leadership. And my bet is, a year from now we'll have data showing the number of agencies with real change going up from 13 to 30, or even 50. But change doesn't happen overnight.

That's the real takeaway from all our Audit experience, and indeed from all the thousands of FOIA requests we've done. There is no magic wand we can wave that will make government open. Transparency and accountability are a constant struggle. **Change takes pressure and leadership from inside and outside government.** It takes more hearings like this one today. It takes more FOIA requests from us and from across the country. It takes orders from the White House and internalization by agencies.

Look at what we found when we tested the effects of the infamous Ashcroft memo back in 2001, when the Attorney General told agencies that if they could find a reason, any reason, to deny FOIA requests, then the Justice Department would defend them in court. When we audited what agencies had actually done with the Ashcroft memo, indeed, we found four or five that told their staff this is the end of FOIA. But the majority of agencies just sent the memo around to their components without much in the way of concrete changes to their FOIA guidance, training materials, regs, or actual practice. And most striking of all, several agencies wrote us back, asking us, **what Ashcroft memo?** Could you send us a copy? We never got that one.

Imagine John Ashcroft's frustration. He's trying to close down FOIA processes, but not much changes and some folks don't even get the word. Now imagine Eric Holder's and Barack Obama's frustration. They are

trying to open up the government, and at least no one wrote us back to say, what Obama memo? But only a fraction of the agencies made any real change to date.

This is the management challenge of opening the federal government. This administration has used the **supertanker metaphor** to describe the ship of state, the pilot can turn the wheel all the way over but the ship steams onward, only beginning to turn onto the new course. Plus I would say it's a long way from the bridge where the captain is, down to the engine room where the props are, lots of other folks down there who play a role in the ship's speed and direction, and lots of opportunities for things to go wrong with the rudder cables. Plus, the ship of state is not a single vessel – our Audits show it's **more like a fleet, so there are multiple captains, multiple wheels, different prop speeds, and uneven sonar.**

Our Audit concluded that “**One year is too early to render a final judgment** on how far President Obama can move the government toward openness....” We applauded those 13 agencies that did change in this first year. The departments of Defense and of Health & Human Services stopped applying one of the more trivial exemptions, and HHS and Commerce required that any denial had to address the “foreseeable harm” standard. The EPA changed its policy on drafts and e-mails so they won't be withheld categorically. Most of the 13 made specific plans for posting more records on line, and all showed a distinct change in tone in their internal FOIA materials.

The Justice Department won high scores on both major parts of our Audit, and this is particularly important because **Justice sets the FOIA tone**, provides the legal guidance, represents the agencies in court against FOIA requesters, and needs to have the cleanest windows in its glass house. We found that Justice not only made concrete changes in practice, but also produced the results in more releases and fewer denials, according to Justice's annual report on FOIA.

A caveat about those annual FOIA reports, which cover fiscal year 2009 ending last September: At least three months of that data dates from the end of the Bush administration, and only six months of that data is from the period after the Holder memo came out. So we and others will be looking closely at the numbers for FY2010 – that will be the real test of the Obama-Holder guidance at the level of releases, denials, and exemptions.

But the mixed results from the FY2009 reports – **only four agencies were in the Justice category of higher releases and lower denials** – should give us pause about the challenge, even though they certainly do not yet justify any headline claiming the Obama administration compares unfavorably to the previous one. I would say flatly that **the Obama administration gets an “A” for effort, and an “Incomplete” for results to date.**

I believe the same is true for the Open Government Plans that agencies submitted on April 7, as a result of the December directive from the Office of Management and Budget. The public interest coalition **OpenTheGovernment.org**, that I am proud to be a part of, has **pioneered an evaluation tool for the plans** and recruited a wide range of partners to pitch in on a cooperative effort to assess just how good or bad they are, and that process is underway right now. I strongly recommend to you, Mr. Chairman, that you invite the director of OpenTheGovernment.org back before this subcommittee to show you the results of that evaluation – perhaps as soon as the end of this month.

On first glance, the Plans displayed the same kind of diversity that we found in our FOIA audit. **Some of the agencies had some impressive commitments** to show and tell in those Plans. My colleague Gary Bass of OMB Watch, for example, has singled out the Department of Health and Human Services for its “flagship” initiatives and its promise to release a dozen “high-value” data sets by year-end that have never been public before. Other agencies were much less impressive, promising apparently only **more planning as their Plan.**

Again, this is the management challenge. Your role in providing oversight and asking the tough questions is essential for the government to make progress on transparency. I believe the roles represented by the folks on this panel, from civil society and from the private sector, are also essential. Inside and outside pressure.

This administration has made an admirable commitment on open government, and is breaking some old bad habits. For example, last week’s release of the new Nuclear Posture Review took place in unclassified form. As my colleague Steve Aftergood of the Federation of American Scientists pointed out, this is a first, and a real signal to the bureaucracy about the need for transparency even in areas like nuclear policy that have long been almost

completely shrouded. **This administration has set in motion a series of really useful dynamics**, both inside the agencies and in various inter-agency settings, with real deadlines – for deliverables like the Open Government Plans – and online publication of the results so people can judge for themselves. I applaud this new energy, and even with the diversity and incompleteness of the results to date, I can say with certainty that we are going in the right direction!

Finally, I want to return to the issue of electronic records. Last month for Sunshine Week, we bestowed our “**coveted**” **Rosemary Award on the Federal Council of Chief Information Officers**. This is our annual recognition for the worst open government performance by a federal entity, and I want to be clear about what we’re recognizing here. The distinguished current head of the Council testified to you at the March 23 hearing, and given his leadership on a variety of open government initiatives, he doesn’t really deserve to have on his wall a color photograph of President Nixon’s secretary, Rose Mary Woods, in her stretch that erased some of the White House tapes. But he could use that photo and that award as a reminder of what’s at stake.

We’ve been fighting the e-records issue since 1989, and the CIO Council has been in charge of best practices for federal government IT since 1996. **Yet the Council has never, to my knowledge, engaged with the e-mail preservation issue**. These folks, the CIOs, preside over \$71 billion a year of the government’s IT purchases, and **what they really need to do is build in the archiving and preservation and access capacities right up front** in all that investment. So we gave the CIO Council the Rosemary Award as a wake-up call, and if the administration responds on e-records the way the White House has responded on FOIA, we can expect some change and some leadership.

I hope we are all back in front of you in the coming months, Mr. Chairman, with much more success to point to. With your help, we will.

Thank you!

**Tom Blanton** is the director (since 1992) of the National Security Archive at George Washington University ([www.nsarchive.org](http://www.nsarchive.org)), winner of the George Polk Award in April 2000 for “piercing self-serving veils of government secrecy, guiding journalists in search for the truth, and informing us all.” He is series editor of the Archive’s Web, CD-DVD, fiche and book publications of over a million pages of previously secret U.S. government documents obtained through the Archive’s more than 40,000 Freedom of Information Act requests. He co-founded the virtual network of international FOI advocates [www.freedominfo.org](http://www.freedominfo.org), and is co-chair of the steering committee of the public interest coalition OpenTheGovernment.org. A graduate of Bogalusa (La.) High School and Harvard University, he filed his first FOIA request in 1976 as a weekly newspaper reporter in Minnesota. He won the 2005 Emmy Award for news and documentary research, for the ABC News/Discovery Times Channel documentary on Nixon in China. His books include *The Chronology* (1987) on the Iran-contra scandal, *White House E-Mail* (1995) on the 6-year lawsuit that saved over 30 million records, and *Masterpieces of History* (2010) on the collapse of Communism in 1989; his articles have appeared in *The New York Times*, *Washington Post*, *Wall Street Journal*, *USA Today*, *Boston Globe*, *Los Angeles Times*, *Slate*, *Foreign Policy*, *Diplomatic History* and in languages ranging from Romanian to Spanish to Japanese to Finnish (inventors of the world’s first FOI law). The Archive relies for its \$3.5 million annual budget on publication royalties and donations from foundations and individuals; the organization receives no government funding and carries out no government contracts.