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## The Promise of Open Government, for the Nation and for Oregon

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# The Promise of Open Government, for the Nation and for Oregon

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The library community has long been a leader, through the depository library system and such initiatives as CyberCemetery (<http://govinfo.library.unt.edu/>), in ensuring ongoing public access to government publications. Moreover, in a 2009–2010 assessment (American Library Association, 2010) of public access to computers and the Internet in U.S. public libraries, 88 percent of libraries reported that ensuring access to government information and services is either important or the most important Internet service they offer to the library community. And 89 percent of reporting libraries offer as-needed assistance to patrons for accessing and using e-government Web sites. Of course, libraries cannot provide access to government information unless the government makes it open, accessible, and usable.

## Open Government, in the Nation

Efforts are being made to increase this openness. On his first full day in office, President Obama issued a Memorandum on Transparency and Open Government (White House, 2009, January 19a), committing his Administration to:

Cre[at]e an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

The three key principles he laid out are transparency, participation, and collaboration. The Memorandum further states that:

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. (White House, 2009, January 19a)

This article focuses on transparency as the fundamental underpinning for open government.

On January 21, 2009, the President also issued a Memorandum on the Freedom of Information Act (White House, 2009, January 19b), which opens by noting:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, 'sunlight is said to be the best of disinfectants.' In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike. (White House, 2009, January 19b)



The Memorandum directs that the Freedom of Information Act should be administered with a clear presumption: if in doubt, openness prevails. Agencies are directed to presume in favor of disclosure with all decisions involving FOIA, and to take affirmative steps to make information public, without waiting for specific requests from the public.

On March 19, 2009, Attorney General Eric Holder issued much-anticipated comprehensive new guidelines to the heads of executive departments and agencies governing the Freedom of Information Act (FOIA), directing them to presume openness when administering the FOIA. It expressly rescinded guidelines issued on Oct. 12, 2001, by former Attorney General John Ashcroft.

To begin making these commitments actual, on December 8, 2009, the Administration issued a Directive to agencies to develop and publish open government plans by April 7, 2010 (Office of Management and Budget, 2009, December 8). In April, a consortium of volunteers coordinated by OpenTheGovernment.org evaluated the plans submitted by a number of agencies on how they met the requirements of the Directive. The evaluations revealed wide variation in the quality of the plans, especially in terms of specificity. Some were exceptional; others were quite weak.

Many of the agencies have revised and improved their plans since initial publication in April (OpenTheGovernment.org, 2010). The government is now beginning to implement these plans and change the default setting, the “normal” mode to openness. If properly implemented, the plans could serve as vehicles for fundamentally changing the way the federal government interacts with the public. This, in turn, may prove to be a catalyst for shifting public trust in government.

Even when all agencies meet the minimal requirements identified in the Directive, though, more needs to be done to improve openness in government. First and foremost, the public must be assured that they can obtain certain information—such as visitor logs for key agency personnel and specific contract information—consistently across government, regardless of agency. This core information, designed to ensure accountability and promote informed participation, should become a “floor” for all agencies.

Many agencies have put large amounts of data on Data.gov and have held online forums, but the harder work will be getting them to disclose records and other kinds of information proactively, to make the Freedom of Information Act work more effectively, and to create greater public engagement in governance.

Moreover, too little thought has been directed at permanent preservation and public access to government information in all forms, including records, data, publications, video, etc. Agencies were required in their Open Government Plans to provide a link to “a publicly available Web site that shows how the agency is meeting its existing records management requirements, ... which includes such activities as identifying and scheduling all electronic records and ensuring the timely transfer of all permanently valuable records to the National Archives” (Office of Management and Budget, 2009). Most agencies’ sites are anemic, at best. Their electronic records management is worse yet.

According to a recently-released report by the National Archives and Records Administration (2010), 79% of agencies are at moderate (43%) to high (36%) risk of improper disposition of Federal records.

On the Freedom of Information Act front, audits by the National Security Archive (2010) and the Associated Press (Theimer, 2010) have revealed that the effect of the President’s Memorandum and the Attorney General’s guidelines has varied widely—and less than



spectacularly—government-wide. On March 16, 2010, during Sunshine Week, Chief of Staff Rahm Emanuel and Counsel to the President Bob Bauer issued a Memorandum for Agency and Department Heads to request better implementation of the President’s memorandum, asking agencies to:

Take action as follows to ensure full implementation of the President’s Memorandum on FOIA. First, you should update all FOIA guidance and training materials to include the principles articulated in the President’s Memorandum. Second, you should assess whether you are devoting adequate resources to responding to FOIA requests promptly and cooperatively, consistent with the requirements for addressing this Presidential priority. (Emanuel and Bauer, 2010)

Will the Administration’s promises be ones on which the public can collect? All of these initiatives are in the early stages, but, at least in some top layers, there also appears to be commitment and enthusiasm.

With these initiatives, the opportunities exist for real change in how the federal executive branch works with the public. The Obama Administration is taking the building blocks of statute and regulation to begin to construct a culture of openness in the federal executive branch. This deployment of these existing tools is, in itself, a major step forward. As the Administration is fond of noting, though, it is going to take a lot of effort and time to turn the government (an aircraft carrier in their metaphor) around. The process has begun; many of the agencies have embraced openness and are working to figure out how to “bake it in” and sustain it as part of their missions and strategies.

It is going to take the involvement of all members of the public who care about ensured access to government information to work with and on the agencies and the White House to keep this process on track and in the direction we want it to go.

### **Open Government, in Oregon**

The commitment to open government at the federal level is being echoed here in Oregon. A new transparency page on Oregon.gov makes Oregon public expenditures easier to track, as required by the 2009 Legislature. Attorney General John Kroger has launched a Government Transparency Initiative and declared enforcement of transparency laws a “major priority” for the Department of Justice (Oregon Department of Justice, 2010). A new position has been created, the Government Transparency Counsel, to improve enforcement of Oregon’s open government laws. In coordination with the Oregon Newspaper Publisher’s Association, the Attorney General’s office sponsored a series of public meetings as part of a systematic review of Oregon’s transparency laws, with the goal to identify areas for improvement to address in the 2011 legislative session.

In Oregon, the right of public access to government information was codified by the 1973 Legislature in a set of comprehensive public records laws, which serve some of the same functions as the FOIA (Freedom of Information Act) on the federal level (Open Oregon, 2007). Oregon public records that should be open for inspection include those of any “public body,” defined in the statutes as “every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state” (ORS 192.410(3)). Exemptions to



these disclosure requirements are also part of the statutes, including one close to the hearts of library staff: ORS 192.502(23), which exempts library records from public disclosure laws, allowing libraries to keep patron records confidential.

While some exemptions to disclosure laws are essential to protect privacy or safety, open government watchdogs groups are concerned that the growing number of exemptions in Oregon (450 by the Transparency Counsel's count with more passed each biennium) may be creating pockets of government secrecy. Advocates of open government in Oregon are also concerned about the mishmash of fee structures and timelines for compliance, as agencies determine individually what is fair and appropriate.


Another potential barrier to access for those uninitiated in the structure of government information is simply knowing where to start, as record requests need to go to the specific city, county, or state agency (or bureau, commission, division, etc.) that keeps those files. All of these issues are under review as part of the Government Transparency Initiative.

What does this transparency initiative mean for libraries? Potentially, this effort could make it easier for library staff assisting patrons seeking public records by making more records available and making those records easier to access. This would be a terrific gain, as libraries are on the frontline of making the promise of open government a reality. Libraries provide the computers and assistance that give everyone access to e-government on different levels.

Library staff can help promote open government in Oregon by helping our patrons navigate the process of requesting a public record, which involves determining which agency is likely to have the needed records, and locating information (often deep in the agency's Web site) about the process and fee structure for requesting records. We can also support open government by participating in the process currently underway to overhaul the rules on public records and public meetings, with the goals to make more records available and reduce barriers to accessing those records.

A detailed primer on the process of requesting an Oregon public record, including an automated form for creating a records request letter, is available at the Web site for Open Oregon, A Freedom of Information Coalition: <http://www.open-oregon.com>. Another great resource is the Department of Justice's public records Web site, which includes an online copy of the Attorney General's Public Records and Meetings Manual, a form for appealing a denial of a public records request, and a quite fascinating list of Public Records of High Profile Investigations: [http://www.doj.state.or.us/public\\_records](http://www.doj.state.or.us/public_records).

For examples of how to request specific records, visit the Web sites for DEQ (<http://www.deq.state.or.us/records/requestingPublicRecords.htm>) or the City of Salem (<http://www.cityofsalem.net/Departments/Legal/Pages/PublicRecordsPolicy.aspx>). The Oregon government transparency Web site, which is designed to show "how government works, what your taxes buy, and how purchasing decisions occur," is available at <http://oregon.gov/sites/transparency>.

The Department of Justice Web site is currently accepting comments about the transparency initiative, and the library community is encouraged to voice our support for open government to the DOJ and our state representatives as this initiative in support of openness progresses. The forecast of more sunshine on both the state and federal level is very welcome, but the devil is always in the details, so the library community's continued vigilance is needed to ensure that this promise of open government is fulfilled. 



## References

- American Library Association. (2010). *Libraries Connect Communities: Public Library Funding & Technology Access Study, 2009–2010*. Retrieved from <http://www.ala.org/ala/research/initiatives/plftas/index.cfm>
- Emanuel, R. & Bauer, B. (2010, March 16). *Memorandum for agency and department heads: Freedom of Information Act*. Retrieved from [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/foia\\_memo\\_3-16-10.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/foia_memo_3-16-10.pdf)
- Holder, E. (2009, March 19). *Memorandum for heads of executive departments and agencies: The Freedom of Information Act (FOIA)*. Retrieved from <http://www.justice.gov/ag/foia-memo-march2009.pdf>
- National Archives and Records Administration. (2010). *Records management self-assessment 2009: An assessment of records management programs in the federal government*. Retrieved from <http://www.archives.gov/records-mgmt/resources/self-assessment.pdf>
- National Security Archive. (2010). *Sunshine and shadows: The clear Obama message for freedom of information meets mixed results*. Retrieved from <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB308/2010FOIAAudit.pdf>
- Office of Management and Budget. (2009, December 8). *Memorandum for heads of executive departments and agencies: Open government directive*. Retrieved from [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf)
- Open Oregon. (2007). *A quick reference guide to Oregon's public records law*. Retrieved from [http://www.open-oregon.com/New\\_Pages/publicRECORDSreader.pdf](http://www.open-oregon.com/New_Pages/publicRECORDSreader.pdf)
- OpenTheGovernment.org. (2010). *Evaluating open government*. Retrieved from <http://sites.google.com/site/opengovtplans/home>
- Oregon Department of Justice. (2010). *Attorney General's Government Transparency Initiative*. Retrieved from [http://www.doj.state.or.us/public\\_records/government\\_transparency.shtml](http://www.doj.state.or.us/public_records/government_transparency.shtml)
- Theimer, S. (2010, March 16). Promises, promises: Records not so open with Obama. *The Associated Press*. Retrieved from [http://www.ap.org/FOI/foi\\_031610a.htm](http://www.ap.org/FOI/foi_031610a.htm)
- White House. (2009, January 19a). Memorandum of January 21, 2009: Transparency and open government. Retrieved from <http://edocket.access.gpo.gov/2009/pdf/E9-1777.pdf>
- White House. (2009, January 19b). Memorandum of January 21, 2009: Freedom of Information Act. Retrieved from <http://edocket.access.gpo.gov/2009/pdf/E9-1773.pdf>

