

SECTION 5 *of* WHAT DEMOCRACY LOOKS LIKE

Restoring Executive Branch Transparency

Federal transparency and recordkeeping laws are the bedrock of accountability. When our government makes influential or controversial decisions, transparency laws give the American people the important ability to scrutinize and challenge those decisions. The governmental obligation to record agency business is equally necessary for public scrutiny of executive branch actions, and for attempts by inspectors general and Congress to understand how decisions were made.

Recordkeeping obligations are also a critical component of our living history. Without a historical record, the American people cannot expect to understand the decisions we have made as a people or to make better ones in the future.

In practice, federal transparency and recordkeeping laws fall well short of their promise. Agency and presidential obligations to create records are often unenforceable. The executive branch has grown more aggressive in claiming that entire categories of records are beyond the reach of the Freedom of Information Act (FOIA), including Secret Service records of visits to the White House and the Department of Justice memoranda that establish legal policies for the executive branch. And the obligation of federal agencies to respond to FOIA requests expeditiously, as the law requires, is undermined by severe backlogs caused by poor administration and inadequate resources, as well as improper interference by political appointees.

In this section, we lay out a vision for renewing the executive branch's commitment to transparency. We propose reforms to the FOIA to expand the classes of records that agencies must affirmatively disclose. We propose methods for agencies to process records more expeditiously. We propose legislation that would address efforts by the executive branch to circumvent transparency requirements, including establishing an affirmative obligation to produce White House visitor logs and scaling back the overclassification of executive branch records. And we propose enhancing the enforcement mechanisms to ensure that public litigants can challenge recordkeeping failures under the Federal Records Act and Presidential Records Act.

Issue 1: Systemic recordkeeping failures

The Federal Records Act (FRA) imposes an obligation on federal agencies to create records that document agency actions and decisions, and it prescribes whether and how records may be destroyed if or when no longer needed. Similar to the FRA, the Presidential Records Act (PRA) imposes an affirmative obligation on the president, vice president, and White House officials to create records that document virtually everything done in office, and it dictates the process a president must follow to destroy presidential records.

In both cases, records are made available to the American people via the Freedom of Information Act (FOIA). Members of the public can utilize the FOIA to request and obtain agency records unless they are subject to specific exemptions, such as an ongoing law enforcement interest in their confidentiality. Presidential records are not immediately available to the public; instead, they can be obtained through FOIA requests starting five years after the end of an administration. Both are meaningless, however, without a guarantee that records in the public interest will be responsibly created, maintained, and destroyed.

Both the FRA and the PRA have taken on increased importance under the Trump Administration. White House officials [reportedly use](#) messaging applications that automatically delete messages, and [agencies intentionally fail to create records](#) that would hold them accountable. The Trump Administration's failure to create records necessary to reunite children with their families following the "zero tolerance" family separation policy is an egregious example of how recordkeeping failures can have a profound impact on the lives of those impacted by government action.

Even where courts have [recognized](#) these recordkeeping failures, however, the absence of clear enforcement measures in the FRA and the PRA have left the public with little relief for violation of the governing records laws. In many cases, the public depends on litigation or the threat of it to compel the government to abide by its recordkeeping, ethics, and procedural obligations. The absence of a cause of action for citizen suits in both the [PRA](#) and the [FRA](#) are enormous obstacles to compelling compliance—even with clear evidence of a recordkeeping violation.

As a result, individuals and public interest groups must rely on causes of action that lie in other statutes—namely, the [Administrative Procedures Act \(APA\)](#), or the [Mandamus Act](#)—to challenge government violations of the FRA and the PRA. Both causes of action severely limit the scope of claims that can be brought. As a preliminary matter, the [APA](#) does not apply to the president, so it cannot be used to challenge violations of the PRA. Additionally, the APA can only be used to [challenge agency actions](#) that are final and for which there are no other adequate remedies. And a court entertaining an APA challenge is [limited](#) in what it can review.

Mandamus [jurisdiction](#) is even more restricted. It is unavailable when a litigant has an alternative remedy, and can only be used to compel officials to perform non-discretionary duties that are clearly established. And even when those conditions are met, a court can decide, in its discretion, not to issue the requested relief. In practice, mandamus relief is extremely difficult to secure, and is only available to enforce the most straightforward, ministerial obligations that a statute imposes.

Absent adequate enforcement measures, federal agencies, presidents, vice presidents, and White House officials may continue to frustrate efforts to hold them accountable by circumventing recordkeeping requirements.

Solutions

- **Congress should establish an express right of action in the Federal Records Act through a constructive exhaustion provision.** This provision should be one that allows private citizens to file suit for violation of the law’s recordkeeping requirements:

Should an agency head decline to initiate an action through the archivist upon becoming aware of the actual, impending, or threatened unlawful removal of destruction of records, or failure to create records; or

In the event that the archivist initiates action through the attorney general either in response to an agency head request or on its own and the attorney general declines to act within a prescribed period of time.

- **Congress should establish a cause of action under the Presidential Records Act that is tailored to preempt constitutional concerns.** The cause of action should have the following components:

A simple exhaustion process requiring a prospective litigant to issue a warning letter to the White House and a sixty day warning period in which the White House can respond or take corrective action; and

Differentiated causes of action based on different types of conduct that make it easier to challenge categorization decisions (i.e. determination that certain records are personal records, presidential records, or agency records) and record destruction issues, which do not interfere with executive branch functions. Actions challenging the failure to create records could be limited to knowing or willful violations. Actions challenging the facial adequacy of the White House’s recordkeeping policies and guidelines should also be permitted, as these types of claims are already reviewable in the FRA context.

- **Congress should amend the Presidential Records Act and the Federal Records Act to effectively ban the use of auto-deleting messaging apps.** Require the establishment of records management controls to capture, manage, and preserve electronic messages and ensure that electronic messages are readily accessible for retrieval through electronic searches.
- **Congress should create a White House agency responsible for presidential records management.** One of the challenges with enforcing the PRA is that courts are reluctant to enjoin the president. For that reason, Congress should establish or designate an agency within the White House—such as the Office of Administration—with the responsibility of carrying out the statutory responsibilities created by the PRA.

- **Congress should designate a White House official to certify the White House's compliance with the Presidential Records Act on a quarterly basis.** Instead of relying on the White House to respond to congressional or archivist inquiries about compliance with the PRA, a White House official should be required to certify its compliance with recordkeeping laws proactively. The certificant should note any instances in which records were not created, maintained, or disposed in accordance with the requirements of the PRA.

Resources

Rep. Cummings' [Electronic Message Preservation Act](#), H.R. 1582 (116th Congress, 2019).

Rep. Maloney's [Presidential Records Preservation Act](#), H.R. 6542 (116th Congress, 2020).

[CREW asks Government Oversight to rework proposed Federal and Presidential Records Acts Bill](#), CREW, April 21, 2009.

Anne Weismann, [Recordkeeping laws matter, especially in this administration](#), CREW, March 15, 2019.

Memorandum Opinion, [Citizens for Responsibility and Ethics in Washington v. U.S. Department of Homeland Security](#), No. 2018-cv-02473 (D.D.C., May 24, 2019).

Jared P. Cole, [An Introduction to Judicial Review of Federal Agency Action](#), *Congressional Research Service*, December 7, 2016.

Kel McClanahan, [Trump and the Demise of the Presidential Records Honor System](#), *Just Security*, March 22, 2019.

Meghan M. Stuessy, [The Presidential Records Act: An Overview](#), *Congressional Research Service*, December 17, 2019.

Issue 2: Slow processing of FOIA requests

The Freedom of Information Act (FOIA) simultaneously created a public right to government information and an access mechanism, but its implementation hinders those missions. Agency backlogs have reached an all-time high, and requesters who may not have the resources to litigate often wait years to receive documents. Those who are willing and able to litigate expend precious resources enforcing statutory deadlines that agencies rarely meet. At a time when the tenets of our democracy are under attack and the public's need for information is at an apex, the FOIA is failing.

At agencies such as the Department of Homeland Security (DHS) and the Department of Justice (DOJ), for example, FOIA requests are being processed at a much slower rate than they are filed. The DHS receives more FOIA requests than any other federal department or agency, with 400,245 requests alone and 31,454 backlogged requests in [FY 2019](#). As of yet, the DHS has not developed a strategy to fully rectify these issues, and continues to let requests accumulate. Similarly, as of FY 2019, the [DOJ](#) had a total of 121,441 active requests and a FOIA backlog of 25,558.

According to the 2018-2020 FOIA Advisory Committee's final [assessment](#), "[t]he number of FOIA requests filed annually across all agencies has generally increased every year during the past decade, reaching a record 863,729 requests filed in Fiscal Year (FY) 2018, with only a slight drop to 858,952 requests filed in FY 2019." Backlogs will continue to stay at a high level in the foreseeable future if agencies do not address this institutional issue.

Technological solutions, such as the e-discovery tools routinely used by the DOJ and other agencies in their litigation work are available for more efficient responses to FOIA requests. Yet, [agencies have fallen short](#) and continue to utilize outdated methods to process requests. Only a [modest](#) number of agencies have access to e-discovery solutions to ease their processing burdens. Further, agencies are not fully leveraging existing processes that would reduce their FOIA load, including proactive disclosures and compliance with the FOIA's requirement that a release to one requester should result in the release of those records to all.

FOIA backlogs create an impediment to the public's right to scrutinize and hold the government accountable for their actions. In many situations, the delay of releasing information even makes the information no longer relevant. The FOIA is supposed to help the public scrutinize executive branch decisions, but the backlog undermines its utility.

Solutions

- **Amend the Freedom of Information Act to broaden categories of records for mandatory, proactive disclosure.** Proactive disclosure of categories of records that are often requested will reduce the burden of FOIA offices that are currently processing individual requests for these types of records. Additionally, the Office of Government Information Service—the governmentwide FOIA ombudsman housed at the National Archives and Records Administration—should be tasked with the responsibility to conduct regular audits of agency compliance with existing proactive disclosure requirements.

- **Implement a governmentwide automated processing program for Freedom of Information Act offices.** Begin with an e-discovery pilot program and task the Office of Government Information Services with evaluating the overall success of the program, including identification of any challenges, and making specific technological recommendations with the ultimate goal of implementing governmentwide automated FOIA processing.
- **Modernize the creation and management of immigration records in digital format with all law enforcement information either maintained in separate records or segregated into easily redacted fields.** In 2018, the four immigration offices (three within DHS and one within DOJ) received more than 400,000 FOIA requests for Alien Files (A-files), which represented more than 46 percent of all FOIA requests received by the entire federal government that year. The majority of these requests are from individuals seeking their own A-files. Ensuring that these files are created in a digital format will facilitate their integration into a less labor-intensive electronic process for a shorter turnaround period for document production. Moving this entire process outside of the FOIA would also free up bandwidth for the applicable FOIA offices to process non-immigration requests, greatly reducing their backlogs.

Resources

Rep. Quigley's [Transparency in Government Act of 2019](#), H.R. 5150, § 701 et seq. (116th Congress, 2019).

[Testimony of David A. Powner, U.S. Government Accountability Office, Senate Judiciary Committee](#), March 13, 2018.

[Freedom of Information Act: Federal Agencies' Recent Implementation Efforts](#), U.S. Government Accountability Office, March 11, 2020.

[Draft Report to the Archivist of the United States, Freedom of Information Act Federal Advisory Committee](#), May 19, 2020.

Issue 3: Legal standards that favor non-disclosure

The primary tool for the public to obtain information is the [Freedom of Information Act \(FOIA\) request](#). The public's right to obtain records via the FOIA is undermined, however, when the law's exemptions are routinely weaponized and abused to shield the government from disclosing politically harmful or embarrassing information. Congress established specific categories of records that are exempt from the FOIA and do not have to be furnished by an agency in response to a [FOIA request](#). Those [exemptions](#) are intended to balance the transparency interests served by the FOIA with legitimate privacy and security interests of the executive branch, such as protecting sensitive information relating to ongoing investigations, litigation privileges, and the personal privacy interests of those whose information is gathered by the government.

The [most frequently abused](#) exemption is [Exemption 5](#), which permits federal agencies to assert litigation privileges, including the "deliberative process privilege." This privilege exempts agency records reflecting pre-decisional deliberations. In theory, the deliberative process privilege is not supposed to be deployed to withhold records that would create embarrassment or shed light on governmental misconduct. Yet, in practice, it is used to do precisely that. A notable example of such abuse can be found in the government's response to a FOIA request for emails related to the Trump Administration's withholding of aid to Ukraine, an action for which President Donald Trump was later impeached. In response to the request, the Administration relied on FOIA exemptions to [heavily redact emails](#) and thereby conceal information shedding light on why and how the aid was withheld.

Just Security [obtained unredacted copies](#) of these records through other means, offering a rare insight into how the exemptions were applied. The withheld portions of the emails revealed that officials at the Department of Defense and the Office of Management and Budget were grappling with the serious implications of President Trump's unilateral decision to withhold the aid for political gain. As is often the case, the government most heavily relied on FOIA's deliberative process privilege.

Solutions

- **Congress should amend the Freedom of Information Act to add a public interest balancing test to all discretionary exemptions (exemptions agencies can elect to assert depending on the factual circumstances).** This would mirror how the deliberative process privilege is treated in the litigation context, where the same governmental interests exist, but there is an acknowledgement that those interests should be weighed against the value of the information sought to the litigator, and in the case of the FOIA—the value of the information sought to the public.

- **Congress should amend the Freedom of Information Act to codify the court-recognized government misconduct exception to the deliberative process privilege.** There is [established case law that rejects the use of the deliberative process privilege](#), outside of the FOIA context, “where there is reason to believe the documents sought may shed light on government misconduct” and shielding such documents would “not serve the public’s interest in honest, effective government.” In applying this exception, the deliberative process privilege [“disappears altogether when there is any reason to believe government misconduct occurred.”](#) Courts have [diverged](#) on whether the government misconduct exception applies in FOIA cases, and other courts have construed the exception very narrowly in the FOIA context. Congress should amend the FOIA to clarify that the exception applies in FOIA cases just as it does in the non-FOIA context.

Resources

Sen. Grassley’s [Open and Responsive Government Act of 2019](#), S. 2220 (116th Congress, 2019).

Sen. Warren and Rep. Jayapal’s [Anti-Corruption and Public Integrity Act](#), S. 3357, § 621 et seq. (115th Congress, 2018).

Anne Weismann, [How Should FOIA Be Reformed to Prevent Further Abuse of Redactions?](#), *Just Security*, January 9, 2020.

Nick Schwellenbach and Sean Moulton, [The “Most Abused” Freedom of Information Act Exemption Still Needs to Be Reined In](#), *Project on Government Oversight*, February 6, 2020.

Issue 4: The Office of Legal Counsel’s secret interpretations of law

The Department of Justice’s (DOJ) Office of Legal Counsel (OLC) provides legal advice to the White House and executive branch agencies, including DOJ. The OLC’s legal opinions are binding on federal agencies and employees. In this sense, the OLC acts in a pseudo-legislative capacity by producing its own far-reaching body of law and legal directives that can only be overridden by the attorney general or the president. The explicit power and implicit influence of these formal opinions extend far beyond the executive bureaucracy. The OLC has issued opinions on a broad range of critical issues, such as justifying the legality of [warrantless surveillance](#), the [targeted killings of Americans on foreign soil](#), and the [torture of enemy combatants](#).

Congress has long endeavored to protect our democracy from the detrimental effects that result from allowing bodies of law to function in the dark. In 1965, upon noting a disturbing trend of agencies exploiting the various loopholes in the Administrative Procedure Act (APA) to “[deny legitimate information to the public](#),” and “[as an excuse for secrecy](#),” Congress proposed legislation to clarify that “section 3 of the Administrative Procedure Act is not a withholding statute but a disclosure statute[.]” These concerns eventually led Congress to strengthen the [reading room provision](#) and incorporate it into the then newly-enacted Freedom of Information Act (FOIA), with the goal of eliminating secret law.

Despite this long history of Congress’s unambiguous intent to eliminate secret laws, most of the OLC’s work remains secret. The OLC considers itself to be largely exempt from FOIA requests. In 1980, the OLC publicly released memos and documents for the first time ever, and disclosed only 25 percent of its rulings from the previous few years. According to a high-ranking OLC official, “[t]he [majority of OLC memorandum remains confidential](#).” Only in [exceptional circumstances](#) are OLC memos even shared with Congress.

The secrecy of the OLC’s binding interpretations of law is unparalleled in our democracy. When Congress makes laws, the courts issue decisions, or the president takes executive action, each almost always does so on the record. Without this transparency, dubious legal assertions could affect government decisions without being challenged and morally repugnant decisions like the endorsement of torture could escape public scrutiny.

Solutions

- **The president should issue an executive order requiring the Office of Legal Counsel to proactively disclose its binding interpretations of law.** The OLC should be required to identify records falling within the scope of the FOIA’s reading room provision, § 552(a)(2). The executive order should specifically clarify the OLC’s ongoing duty to:

Make those records available for public inspection and copying without a triggering a FOIA request; and to

Make publicly available “current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by § 552(a)(2) to be made available or published[.]”

- **Congress should require that the attorney general publish all Office of Legal Counsel opinions on the public website of the Department of Justice to be accessed by the public free of charge.** This proposal is contained in the [DOJ OLC Sunlight Act](#), which applies retroactively to previously unpublished final opinions, and provides for limited redactions and exceptions for national security and foreign policy concerns.
- **Amend the Freedom of Information Act to include final Office of Legal Counsel opinions among the categories of records subject to mandatory proactive disclosure.** This requirement would impose on each agency the duty to proactively disclose OLC opinions applicable to the respective agency.

Resources

Rep. Cartwright’s [See UNdisclosed Legal Interpretations and Get Honest Transparency Act of 2019](#), H.R. 4556 (116th Congress, 2019).

Rep. Quigley’s [Transparency in Government Act of 2019](#), H.R. 5150, § 611 et seq. (116th Congress, 2019).

Rep. Schiff’s [Protecting Our Democracy Act](#), H.R. 8363, § 524 (116th Congress, 2020).

Sen. Duckworth’s [DOJ OLC Transparency Act](#), S. 3334 (116th Congress, 2020).

[CREW Calls on OLC to Disclose Legal Opinions](#), *CREW*, July 3, 2013.

[Office of Legal Counsel: Opinions](#), *United States Department of Justice*, June 5, 2016.

Daniel Van Schooten and Nick Schwellenbach, [Justice Department’s “Secret Law” Still Prevalent, Documents Show](#), *Project on Government Oversight*, March 22, 2017.

Issue 5: Secret presidential visits

Logs of official visitors to the White House, Camp David, and other places frequented by the president must be publicly available. These logs provide the public with insight into which government officials, outside interests, and lobbyists shape the presidents' views, policies, and actions. Yet, these records are governed by a [series of agreements](#) between the White House and the Secret Service that effectively prevent their public release under the Freedom of Information Act (FOIA). Although the Secret Service, an agency within the Department of Homeland Security, is subject to the FOIA, most components of the White House, including the Executive Office of the President, are not.

A series of judicial decisions under both the Obama and Trump Administrations have further constrained the public's access to presidential visitor records. In 2013, the D.C. Circuit Court of Appeals [held](#) that most White House visitor logs were not agency records subject to the FOIA, but instead presidential records subject to the Presidential Records Act (PRA). The Court foreclosed public access to presidential visitor logs until at least five years after the end of a presidential administration. This precedent was confirmed by the Second Circuit Court of Appeals in a [2020 lawsuit](#) seeking records of presidential visits to the White House and President Donald Trump's resort at [Mar-A-Lago](#). And in early 2017, the White House announced that it would [end access](#) to visitor logs that the Obama Administration [voluntarily produced](#) in response to December 2009 litigation.

While most presidential visitor logs are withheld, a recent court [settlement](#) mandated the release of visitor logs of the Office of Management and Budget, Office of Science and Technology Policy, U.S. Council on Environmental Quality, and Office of National Drug Control Policy. All of these offices are agencies with independent statutory authority and are therefore subject to the FOIA.

Congress and the American people should demand access to visitor logs of presidential visitors. The public has a right to know who is influencing the highest levels of our government; it is appropriate to require that records of those visits be disclosed. The disclosure can occur after the fact to avoid security risks, and the White House or Secret Service could still assert existing privileges to protect information that implicates law enforcement, national security, or other sensitive interests.

Solutions

- **Create a White House Office of Recordkeeping and grant it authority to assist the president and the archivist in managing presidential and federal records and to make affirmative disclosures.** One of the challenges facing any attempt by Congress or members of the public to enforce recordkeeping and transparency laws at the White House is that courts are reluctant to issue orders requiring the president to comply with the law. Creating a subordinate office responsible for White House transparency obligations would help ensure that the White House fulfills obligations that Congress establishes.

- **Congress should require the White House and/or the Secret Service to affirmatively disclose information about official visits to the White House, Camp David, and other locations frequented by the president.** The American people have a right to know who is influencing government policy, which includes those who lobby or participate in decisions made at the White House. While there can and should be reasonable exceptions for personal visits and information that could undermine specific law enforcement or national security interests, Congress should require the White House to affirmatively disclose official visits to the White House, Camp David, and other properties frequented by the president.
- **Congress should clarify that agency records that contain presidential schedule information are subject to the Freedom of Information Act and the Federal Records Act.** Congress should also clarify the definition of “agency records” under the FOIA and “federal records” under the Federal Records Act to ensure that recent court decisions do not erode timely public access to information that has come into the agency’s possession in the course of conducting its official duties. Congress should clarify that no special exceptions should be made for agency or federal records that contain presidential schedule information or other information that the White House would prefer not to disclose. To the extent that those interests need to be protected, agencies can assert one of the existing FOIA exemptions that Congress has already established to protect privileged or personal information.
- **The president should direct the Secret Service to publish a searchable, sortable, downloadable online database of visitors to the White House, the vice president’s residence, and any location where the president and/or vice president are meeting with individuals or groups to conduct official business.** It should include at least: the name of each visitor, the name of the individual who requested clearance for each visitor, the date and time of entry for each visitor, a brief and accurate description of the nature of the visit, and confirmation that the guests were actually present.

Resources

Sen. Heinrich’s [White House Visitor Logs Transparency Act of 2017](#), S. 953 (115th Congress, 2017).

Rep. Quigley’s [Transparency in Government Act of 2019](#), H.R. 5150, § 602 (116th Congress, 2019).

Sen. Udall and Representative Quigley’s [MAR-A-LAGO Act](#), S. 769 (116th Congress, 2019).

Rep. Cicilline’s [White House Open Data Act](#), H.R. 7580 (116th Congress, 2020).

Anne Weismann, [Mar-a-Lago is a national security risk](#), *CREW*, April 10, 2019.

[As a Result of Public Citizen Lawsuit, the Trump Administration Is Releasing Visitor Logs for Four Agencies in the White House Complex](#), *Public Citizen*, April 11, 2018.

Tom Blanton and Lauren Harper, [2nd Circuit Helps White House Hide Visitor Logs](#), *National Security Archive*, May 18, 2020.

Issue 6: Abuse of security classifications

Security classifications exist to protect national security, but the system design and implementation often hinder that mission. The framework is hampered by over-classification and, not coincidentally, by the increasing concealment of politically sensitive disclosures. This undermines the integrity of the classification system, makes vague what truly requires protection, and contradicts the public interest.

The Trump Administration has egregiously exploited the security classification system to sidestep public knowledge of politically damaging misconduct. Many of the most prominent events and controversies of Donald Trump's presidency have been plagued by unethical cover ups and concealment. In the Ukraine scandal, for example, Administration [officials acted swiftly](#) to classify all transcripts of President Trump pressuring Ukraine to provide political 'dirt' on then-candidate Joe Biden. [The Administration took unusually stringent](#) measures to limit access to the call record, and [placed the transcript on a separate system](#) used to handle especially sensitive information. The release of the information did not pose any national security threat, but did pose a political threat to the Trump Administration. And troublingly, a key witness in the Ukraine scandal [alleged](#) a pattern of similar concealment throughout the Administration's tenure.

Part-and-parcel of this pattern is the federal response to the COVID-19 pandemic—a jarring example of misclassification. In mid-March 2020, President Trump [ordered the Department of Health and Human Services](#) to conduct meetings in a classified manner. This period marked the beginning of the pandemic in the United States, and the public release of up-to-date accurate information was critical to the public interest and good. This classification of information, however, had just the opposite effect. Matthew Collette, a former longtime Department of Justice attorney with experience litigating classification matters, [argued](#) that the classification was baseless and irrelevant to national security. That President Trump baselessly classified information about *an infectious disease* for political gain is telling of the gravity and flagrancy of the situation.

The Trump Administration's violations have culminated in an unmatched disregard for government integrity and personal ethics, and are the latest manifestation of the unremitting insult to the American public's right to knowledge, national security, and our democratic system. Reform is needed now more than ever.

Solutions

- **Simplify and standardize the classification process.** Misuse of the classification system is made possible in part by its complexity, and the lack of transparent, consistent standards in its application. Congress should amend the National Security Act to require the president to issue new guidelines for security classifications.

- **Require original classifying officers and other White House officials to certify that legitimate national security concerns underlie top-secret classifications or the placement of any records on “code word” or other highly restricted servers.** The certification requirement would foster accountability by exposing individuals to potential criminal liability if they intentionally file a false certification.

Resources

Sen. Wyden and Rep. Thompson’s [CORRECT Act](#), S. 2683, (113th Congress, 2014).

Sen. Warner’s [A bill to protect integrity, fairness, and objectivity in decisions regarding access to classified information, and for other purposes.](#), S. 838 (116th Congress, 2019).

Sen. Wyden’s [Declassification Reform Act of 2020](#), S. 3733, (116th Congress, 2020).

[Transforming the Security Classification System: Report to the President](#), *Public Interest Declassification Board*, November 27, 2012.

Kelly Magsamen, [I helped classify calls for two presidents. The White House abuse of the system is alarming.](#), *Washington Post*, September 29, 2019.