

The Washington Post

[Back to previous page](#)

Agencies lag on transparency, report says

By [Josh Hicks](#), Published: December 4

President Obama promised a more transparent government on Day One of his first term, and his attorney general followed suit less than two months later with a memorandum urging all heads of executive departments to err on the side of openness when it comes to disclosure requests.

But a recent audit by the George Washington University-based National Security Archive found that nearly 70 percent of government agencies have not updated their Freedom of Information regulations since U.S. Attorney General Eric H. Holder Jr. sent out that letter, and well over half have not done so since Congress and President George W. Bush approved the Open Government Act of 2007, which mandated certain changes.

The study, released Tuesday, also found that 17 out of 99 agencies have not properly posted their regulations on their FOIA Web sites, as required by the Electronic FOIA Amendments law of 1996.

The National Security Archive, a nonprofit institution that collects and publishes declassified U.S. government files, sent FOIA requests to those 17 agencies asking for their FOIA regulations. Only seven had responded after three months. The law requires a reply within 20 business days.

The group noted that, even among agencies that have updated their FOIA regulations, the revised guidelines do not always reflect current law or the president's pledge.

Tom Blanton, the archive's director, said the audit findings "demonstrate with some tangible measures the level of bureaucratic resistance to open government." But he described the lack of agency compliance as an opportunity for executive action rather than a condemnation of the Obama administration.

"Outdated agency regulations really mean there's an opportunity here for a second-term Obama to standardize best practices and bring all the agencies up to his day-one openness pledge," Blanton said in a statement posted on the archive's Web site.

The Department of Justice said Tuesday that Holder required federal agencies to report annually to the public on steps they have taken to improve transparency.

"All these various policy initiatives that have been undertaken by agencies as a result of the new FOIA guidelines

did not require revising their FOIA regulations,” a spokesperson said.

The Freedom of Information Act is intended to provide the public with a reasonable means to obtain information about the workings of the government. The Justice Department’s Office of Information Policy is in charge of encouraging agencies to review their FOIA regulations and assisting them with updates.

In 2001, Bush-appointed Attorney General John D. Ashcroft issued a controversial memo saying the Justice Department would defend agency determinations to withhold information unless those decisions were found to “lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.”

Critics interpreted that as encouragement for agencies to resist compliance with freedom of information laws.

In 2007, Congress and Bush approved the Open Government Act, a bipartisan measure requiring government agencies to update their FOIA guidelines, reform their fee-for-documents structure and publish data on FOIA output.

Holder rescinded Ashcroft’s memo in 2009, shortly after Obama took office. He issued a memo calling on agencies to be more true to the spirit of FOIA laws, in part by releasing documents that might technically be exempt, by proactively posting records of interest and by removing bureaucratic hurdles.

The compliance issue at this point appears to stem from an absence of enforcement mechanisms, according to open-government advocates.

“There’s no hammer,” said Patrice McDermott, director of OpenTheGovernment.org, a coalition of government-openness and accountability watchdog groups. “There doesn’t seem to be any repercussions, and no one is holding these agencies accountable. Nobody in the government is holding their feet to the fire.”

McDermott added that FOIA issues go largely undocumented and unaddressed without watchdog groups and the media bringing the problems to light. She said the Obama administration should set a deadline for agency heads and FOIA officers to comply with the law and with Holder’s memo.

“They could do that at a minimum,” McDermott said.

Sen. Patrick J. Leahy (D-Vt.), who co-authored the Open Government Act along with Sen. John Cornyn (R-Tex.), released a statement Tuesday calling on the administration to make transparency a top priority in its second term.

Leahy’s office said in a prepared statement: “The audit released today by the National Security Archive makes clear that the overwhelming majority of federal agencies are neither fulfilling the president’s promise of an open and transparent government for the American people, nor complying with the vital reforms to the FOIA process that Congress demanded by enacting the Leahy-Cornyn Open Government Act.”

© The Washington Post Company