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30 years of Freedom of Information

By Thomas S. Blanton

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Thanksgiving week marked the 30th anniversary of a bitter Washington battle that produced a landmark open government law -- the modern Freedom of Information Act -- over a presidential veto. It also warns of new threats to that law and rising government secrecy as the leading losers in 1974 now dominate the vice presidency, the Pentagon and the Supreme Court.

The current poster-child court case concerns Vice President Dick Cheney's preventing public release of the minutes and participants from his task force on energy policy. When ABC's Cokie Roberts asked the vice president why he turned what would have been a one-day news story about meeting with oil industry buddies into a four-year front-page saga to the Supreme Court and back, at first Cheney answered that "the lawyers decided" to draw the line. But then he reached back to 1974 and denounced the "unwise compromises that have been made over the last 30 or 35 years" ... "where it's demanded that the president cough up (information)."

In 1974, Cheney had his first really big job in Washington, as deputy to the White House chief of staff, Donald Rumsfeld. President Ford faced a tough choice, whether to veto the Freedom of Information Act amendments Congress passed overwhelmingly after Richard Nixon's resignation. As members of Congress in 1966, Rumsfeld had sponsored and Ford had voted for the original FOIA. But weaknesses in the law and endless bureaucratic delays, together with the secrecy abuses of Watergate, had persuaded Congress by 1974 to put teeth in the law and to ensure judicial review over executive branch secrecy decisions.

The Nixon administration had vigorously opposed the bill. One FBI memorandum from June 17, 1974, even noted orders from White House staffers who "want no changes made in this legislation since they want it to remain as bad as possible to make their case stronger for sustaining a certain veto." But President Ford scribbled on his first legislative briefing after taking office that "a veto presents problems. How serious are our objections?"

White House aide Ken Cole wrote Ford on Sept. 25, 1974: "There is little question that the legislation is bad on the merits, the real question is whether opposing it is important enough to face the political consequences. Obviously, there is a significant political disadvantage to vetoing a freedom of information bill, especially just before an election, when your administration's theme is one of openness and candor." Before the FOIA bill had even arrived at the White House, the head of the Justice Department's Office of Legal Counsel, Antonin Scalia, was organizing the opposition. According to CIA documents, the agency had weighed in with the Office of Management and Budget against the bill; but Scalia told them "if we wanted to have any impact, we should move quickly to make our views known directly to the president." Apparently expecting that "neither State nor Defense would be recommending veto," Scalia even telephoned the CIA on Sept. 26, 1974, to urge direct contact with a particular White House staffer against the bill.

The timing was right because President Ford was most worried about leaks, not open government. Notes from the first White House senior staff meeting presided over by Rumsfeld and Cheney (Sept. 30, 1974) show rising anger over leaks; and Ford himself opened the National Security Council meeting on Oct. 7, 1974, by complaining about leaks for a full two pages of the transcript, asking for "recommendations on how to tighten up this system," and telling his advisers that "I could have ordered an FBI investigation on this, but Don and I thought it would be better to see what you could do first."

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Ford vetoed the Freedom of Information Act amendments on Oct. 17, 1974, calling them "unconstitutional and unworkable." On Nov. 20, the House overrode the veto by a 371-to-31 margin; the Senate vote Nov. 21 was 65 to 27 to override.

Today, the federal government responds to 3 million FOIA requests a year, at a cost of \$1.10 per citizen, about what we spend on peanut and sugar subsidies, or a single C-17 aircraft. FOIA requests regularly make headlines exposing corruption and conflicts of interest, and the leading users are veterans and their families seeking information on their benefits and service records.

The veto crowd was wrong in 1974, but the Cheney task force lawsuit reminds us that the battle for open government is still raging.

Thomas S. Blanton is director of the National Security Archive at George Washington University and co-chair of OpenTheGovernment.org, a coalition of more than 30 organizations concerned about rising government secrecy. Write to him at Gelman Library, George Washington University, 2130 H St. NW, Suite 701, Washington, D.C., 20037, or via e-mail at tblanton@gwu.edu.

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