

Arsenal of secrecy

by the St. Louis Post-Dispatch

Given President George W. Bush's predilection for ignoring laws he doesn't agree with, it wouldn't be entirely surprising to discover he'd decided the 20th Amendment was no longer applicable and that he'll be staying on after next Jan. 20.

In his seven years in office, the 43rd president has appended "signing statements" to more than 750 bills, more than all 42 of his predecessors combined. In them, Bush reserves the right to ignore or change any part of the law that he believes infringes on his own executive powers.

Now Bush has added a new weapon to his arsenal of non-compliance: He buried deep within the 2009 federal budget a provision to make the Justice Department the arbiter of disputes over the release of federal records. Because the Justice Department already defends federal agencies that don't want to give up records, it now finds itself in the happy position of being able to judge its own decisions.

If the first two months of 2008 are any indication, Bush isn't backing away from the obsession with secrecy and broad claims of executive power that marked his first seven years in office. His penchant for signing statements first became widely known in 2005, when Bush claimed he could ignore Congress' prohibition against the inhumane treatment of prisoners. He reasserted that this month by claiming that the president has the authority to authorize CIA agents to waterboard terrorist suspects.

Similarly in January, in signing the Defense Appropriations Act, Bush claimed that the bill's prohibition against establishing long-term military bases in Iraq violated his constitutional powers as commander in chief.

On the last day of December, Bush signed two pieces of legislation. One was designed to make it easier for state and municipal pension funds to divest themselves of holdings in firms that do business in Sudan. Bush signed the bill, saying that while he agreed with the goal of pressuring the Sudanese government for its support of genocide in Darfur, the president alone has the power to conduct foreign affairs.

The second bill signed on Dec. 31 was the Open Government Act of 2007, an attempt to put new teeth into the Freedom of Information Act. Government agencies often drag their feet when citizens and news organizations seek federal records, so the new law imposed stiff new rules for compliance.

It created an Office of Government Information, placing it within the National Archives and Records Agency. The new government information office was to be headed by an ombudsman who would have the power to settle disputes between government agencies and those seeking documents.

Bush signed the new law without comment, but in early February, he released his \$3.1 trillion budget request. Deep within its 1,314 pages was some fine print in which the ombudsman job was moved from the National Archives to the Department of Justice. It might seem like a small matter, except for the fact the Justice Department now is in charge of deciding cases defended by the Justice Department.

Thus, the most secretive administration in history has a new firewall. If you want to find out what the Bush administration is doing - and more than 90 percent of FOIA requests are filed by private citizens and businesses, not news organizations - you now have to hope the Bush administration will approve.

Congress should ignore the president's recommendation and fund the ombudsman's office within the National Archives, not the Justice Department. Trouble is, that could take most of the year, and by then Bush will be gone. Maybe.

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