

The Bush Administration Awards \$1 Million For Study Aimed At Limiting Information Available To The

by *Bill Berkowitz*

Although the Air Force Research Laboratory million dollar grant given to Jeffrey Addicott, a professor at St. Mary's University School of Law in San Antonio, to devise new ways to limit making information available to the public via the Freedom of Information Act (FOIA) is not likely to destroy the act completely, if adopted it could further weaken the forty year-old act.

According to an early-July report in USA Today, Addicott said he will use the research grant "to produce a national 'model statute' that state legislatures and Congress could adopt to ensure that potentially dangerous information 'stays out of the hands of the bad guys.'"

The grant, the USA Today report acknowledged, is for "research aimed at rolling back the amount of sensitive data available to the press and public through freedom-of-information requests."

"There's the public's right to know, but how much?" Addicott, a former legal adviser in the Army's Special Forces, told the newspaper. "There's a strong feeling that the law needs to balance that with the need to protect the well-being of the nation. ... There's too much stuff that's easy to get that shouldn't be," he said.

"It's a little peculiar that Jeffrey Addicott received the grant given that the Air Force has a wide range of urgent needs," Steven Aftergood, the Director of the Federation of American Scientists' Project on Government Secrecy and editor of Secrecy News, told me in a telephone interview from his Washington D.C. office.

"We are after all at war. I would have thought they it had more compelling uses for a million dollars than an academic study of how to limit the FOIA. While I'm interested in the fact that the grant was made, there's a long distance between someone writing a report and proposing legislation and actually having that legislation enacted.

The announcement of the Air Force's grant came around the 40th anniversary -- July 4, 1966 -- of President Lyndon Johnson's signing the Freedom of Information Act into law.

Documents from that year, discovered at the Lyndon Baines Johnson Library and Museum in Austin, Texas, by the National Security Archive at George Washington University -- a group whose researchers make more than 1,500 requests for government records on U.S. national security and foreign policy under the FOIA every year -- revealed that President Johnson had serious doubts about how much and what types of information should be made available through the FOIA.

According to the AP's Ted Bridis, Johnson "submitted a signing statement [along with the bill] that some researchers believe was intended to undercut the measure's purpose of forcing government to disclose records except in narrow cases. Draft language from Johnson's statement arguing that 'democracy works best when the people know what their government is doing,' was changed with a handwritten scrawl to read: 'Democracy works best when the people have all the info that the security of the nation will permit.'

"This sentence was eliminated entirely with the same handwritten markings: 'Government officials should not be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.'

"Another scratched sentence on the document said the decisions, policies and mistakes of public officials 'are always subjected to the scrutiny and judgment of the people.'"

"The law's staunchest advocates think its principles are imperiled, threatened by what they describe as the Bush administration's penchant for secrecy and concerns about revealing strategies to terrorists," the Associated Press recently pointed out.

"This is the worst of times for the Freedom of Information Act in many ways," Paul McMasters of the First Amendment Center, which studies issues of free speech, press and religion, told the AP.

In an op-ed piece for the Baltimore Sun, David O. Stewart, president of the Freedom to Write Fund of the Washington Independent Writers, wrote that "The problems with the FOIA could not be more current as radio talk shows thump The New York Times for having the temerity to inform Americans about what their government is doing."

Stewart pointed out how difficult it is to "strike" a "balance between disclosure and secrecy" particularly when more than 4 million FOIA requests are submitted every year. The Defense Department alone has 500 FOIA offices. Yet there are many symptoms that the current policies fundamentally skew toward secrecy in a manner that can only injure the public interest."

According to Stewart, a "secret" federally-run "program... ha[s] spirited out of the National Archives more than 25,000 previously disclosed records and reclassified them as 'secret.' These included a 1951 assessment of agrarian reform in Guatemala and a 1948 memo on balloon drops of leaflets into Communist countries."

In addition, "The CIA has demanded that the National Security Archive... pay the search costs for more than 40 requests, which would run into hundreds of thousands of dollars." And, Stewart pointed out, "The entire government continues to function under former Attorney General John Ashcroft's 2001 directive that encouraged agencies to deny information requested under the FOIA, assuring them of Justice Department support in defending such denials."

"The government ignores almost all FOIA requests coming from activists such as myself," Scott Silver, the executive director of Wild Wilderness, an Oregon-based grassroots environmental group, told me in a recent email. "They do not even acknowledge receipt -- not of the original request or of follow up requests asking why the first request was never acted upon. Those who sue the government when it breaks the law may get a little bit better cooperation --- but even that seems to be changing."

A new book by Stephen Gidiere entitled "The Federal Information Manual: How the Federal Government Collects, Manages and Discloses Information Under FOIA and other statutes," published this spring by the American Bar Association, documented the up-tick in government secrecy. According to The Birmingham News, "in 2005 alone, the executive branch decided 14.2 million times to classify information as secret, nearly double the number of secrets created in 1998."

Gidiere, an environmental and public records lawyer for Balch & Bingham, acknowledged that in the post-9/11 climate it is understandable that the Bush Administration would be more vigilant about information accessible through the FOIA, but, he told The Birmingham News, "Good government requires a balance between secrecy and openness."

"The federal government spent \$7.2 billion on designating and protecting its secrets in 2004, up from \$5.6 billion in 2002. In contrast, the federal government spent only \$300 million on issues related to the FOIA," Gidiere said. "Much of this increase can understandably be attributed to the Iraq and Afghanistan wars and our increased military and intelligence operations since 9/11," Gidiere added. "However, Congress and the federal courts should not give the president an automatic free pass anytime he mentions national security."

Gidiere also pointed out that "In 1998, the government classified information 7.2 million times. By 2005, it was 14.2 million. The war on terror is about protecting our freedom. But we are giving up some of our privacy and freedom to win the war - most notably, the freedom of information."

"People want information from the federal government, and they want it fast - instantaneously, in some cases," said Gidiere, who spent years researching and 18 months writing his book. "But now, there are more hurdles to cross that prevent or delay local officials, journalists, corporations and individuals from getting the information they want. It's easy to understand why the public and many in Congress are calling for reforms."

"Overall, the Freedom of Information Act remains a vital tool but a troubled one: vital because it is not merely a policy, it is a law that gives individuals access to government information," Secrecy News' Steven Aftergood pointed out. "It is troubled because backlogs are growing, secrecy claims are rising, and response times are getting longer -- when you can get them."

The Air Force grant to Jeffrey Addicott "tells us what we essentially already knew; that at this time, this administration views the FOIA not as a public service, but as a potential threat. Those of us who value freedom of information had better take steps to defend it."

Photo of Mr. Berkowitz by Earl Richardson

