

## (BN) Obama Cabinet Flunks Disclosure Test With 19 in 20 Ignoring Law

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By Jim Snyder and Danielle Ivory

Sept. 28 (Bloomberg) -- On his first full day in office, President Barack Obama ordered federal officials to “usher in a new era of open government” and “act promptly” to make information public.

As Obama nears the end of his term, his administration hasn't met those goals, failing to follow the requirements of the Freedom of Information Act, according to an analysis of open-government requests filed by Bloomberg News.

Nineteen of 20 cabinet-level agencies disobeyed the law requiring the disclosure of public information: The cost of travel by top officials. In all, just eight of the 57 federal agencies met Bloomberg's request for those documents within the 20-day window required by the Act.

“When it comes to implementation of Obama's wonderful transparency policy goals, especially FOIA policy in particular, there has been far more ‘talk the talk’ rather than ‘walk the walk,’” said Daniel Metcalfe, director of the Department of Justice's office monitoring the government's compliance with FOIA requests from 1981 to 2007.

The Bloomberg survey was designed in part to gauge the timeliness of responses, which Attorney General Eric Holder called “an essential component of transparency” in a March 2009 memo. About half of the 57 agencies eventually disclosed the out-of-town travel expenses generated by their top official by Sept. 14, most of them well past the legal deadline.

### Public Interest

Bloomberg reporters in June filed FOIA requests for fiscal year 2011 taxpayer-supported travel for Cabinet secretaries and

top officials of major departments. Justice Department official Melanie Ann Pustay said in an interview that disclosure of those records is in the public interest.

Even agency heads who publicly announce their events -- including Holder, Secretary of State Hillary Clinton and Health and Human Services Secretary Kathleen Sebelius -- didn't provide the costs of their out-of-town trips more than three months after the initial request.

"It's ironic that the demands in the presidential campaign for Mitt Romney's tax returns are unrelenting, but when it comes time to release the schedules for senior appointees there's the same denial of access," said Paul Light, a New York University professor who studies the federal bureaucracy.

"Over the past four years, federal agencies have gone to great efforts to make government more transparent and more accessible than ever, to provide people with information that they can use in their daily lives," said White House spokesman Eric Schultz, who noted that Obama received an award for his commitment to open government. The March 2011 presentation of that award was closed to the press.

### 2013 Delivery

The travel costs generated by some other Obama officials --Transportation Secretary Ray LaHood, Energy Secretary Steven Chu, Environmental Protection Agency Administrator Lisa Jackson, and Homeland Security chief Janet Napolitano -- also remain undisclosed.

A request made in June for the travel records of Susan Rice, the U.S. Ambassador to the United Nations, will remain unfulfilled for more than a year, according to a federal official involved in the case.

"We really appreciate your patience in this matter. The estimated completion date is July 2013," wrote Chris Barnes, a State Department FOIA official, in a Sept. 24 e-mail. Under FOIA, the department is required to offer a timetable for delayed responses.

### GSA Scandal

Government travel costs have received greater scrutiny since a report by the General Services Administration's inspector general on April 2 revealed that a 2010 Las Vegas junket -- featuring a mind reader and a clown -- cost taxpayers more than \$823,000. Since then, GSA Administrator Martha Johnson has resigned and the IG has referred the matter to the Department of Justice.

Records obtained as a result of another Bloomberg FOIA request showed that the GSA almost tripled its expenditures for conferences from 2005 to 2010. Taxpayers paid \$27.8 million for more than 200 overnight gatherings attended by at least 50 GSA employees over the five-year period, according to the records.

Under Obama, federal agencies also have stepped up the use of exemptions to block the release of information.

During the first year of the administration, cabinet agencies employed exemptions 466,402 times, a 50 percent jump from the last year of the presidency of George W. Bush. While exemption citations have since been reduced by 21 percent from that high, they still are above the level seen during the Bush administration, according to Justice Department data.

## DHS Exemptions

The majority of the exemptions came from the Department of Homeland Security, which gets the most requests, records show.

The greater number of documents released online helps explain the increased use of exemptions, according to Tracy Russo, a spokeswoman for the Justice Department. "The pool of requests that are made tend to be more complex," she said.

Open government advocates note that Obama's transparency pledge is undermined by a federal bureaucracy that often cites staff shortages and compliance costs to delay the release of information.

"I don't think the administration has been very good at all on open-government issues," said Katherine Meyer, a Washington attorney who has been filing open records requests since the late 1970s. "The Obama administration is as bad as any of them, and to some extent worse."

## Fee Fight

In one case Meyer pursued, the Center for Auto Safety was told by Treasury FOIA officials that its request for records relating to the U.S. auto bailout would cost \$38,000. Meyer successfully argued the fees should be waived because the request was in the public interest.

The Freedom of Information Act, signed into law by President Lyndon B. Johnson in 1966, is designed to open up the process of government to citizens. Individuals have the right to file requests, and the law mandates that the department answer the query within 20 working days, ask for a 10-day extension, or offer a timetable for the release of the information.

In the past, FOIA has been used to obtain a wide range of government records. Among them: Documents on the use of the defoliant Agent Orange during the Vietnam War; Department of Transportation reports detailing safety issues with the Ford Pinto's fuel tank that contributed to some 500 deaths; and details of the Bush administration's deliberations on the use of torture following the Sept. 11, 2001 terrorist attacks.

### 'Smoking Gun'

"It's the smoking gun that often holds government accountable for its misdeeds," said Kevin Goldberg, a First Amendment attorney at Fletcher, Heald & Hildreth Plc in Arlington, Virginia, who also serves as legal counsel for the American Society of News Editors.

Miriam Nisbet, the head of the Office of Government Information Services, which acts as a FOIA ombudsman, said Obama deserves praise for highlighting government accountability.

"We see a great deal of emphasis and attention paid to transparency," she said. "That is a really important message."

Nisbet's office offered travel documents three days after acknowledging the FOIA request.

The Bloomberg FOIA filing also asked each department to identify trips, lodging and meals provided by non-federal sources. All told, 30 of the 57 agencies contacted replied with those travel records by Sept. 14.

## SBA Response

Of the 20 Cabinet-level agencies contacted by Bloomberg News, only the Small Business Administration met the legal 20-day deadline by disclosing that Administrator Karen Mills took 27 trips out of Washington at a total cost to the U.S. taxpayer of \$15,856.

The records of Secretary of the Treasury Timothy Geithner, Labor Hilda Solis, former Secretary of Commerce and Acting Secretary Gary Locke and Rebecca Blank, U.S. Trade Representative Ron Kirk and Jacob Lew, the former director of the Office and Management and Budget who is now White House Chief of Staff, were released to Bloomberg News under the request, though those agencies did not meet the 20-day deadline.

Kirk, “who travels all over the world” for his duties according to the USTR website, took 23 business trips in fiscal 2011, 17 of which involved domestic travel, for a cost of about \$45,000. Kirk “has said many times that increased outreach to the American people” is important for economic growth, USTR spokeswoman Carol Guthrie said in an e-mail.

## No Excuse

Eric Newton, senior adviser at the Knight Foundation, a Miami-based group that promotes citizen engagement, said agencies have no excuse not to rapidly disclose travel costs.

“In a 24/7 world, it should take two days, it should take two hours,” Newton said. “If it’s public, it should be just there.”

The Department of Justice, which is charged with monitoring how all federal agencies respond to FOIA requests, has yet to release the travel details of top officials at three of its affiliated agencies: The Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration and the Federal Bureau of Investigation.

Pustay, head of the Justice Department’s Office of Information Policy, said that taxpayer-supported travel records are “certainly something that people would ask for and something that’s of interest to the public.” She said “the crush of work” makes swift replies difficult.

## Redacted Information

None of the nine exemptions under the FOIA -- which protect national security, personal information or corporate trade secrets, for example -- allow taxpayer-supported travel expenses to remain hidden from view.

Those records may include information, such as private mobile-phone numbers or information related to security, that is exempted from disclosure, which could be causing the delays, Pustay said.

Responsive agencies were able to redact personal details within the FOIA time period. The Federal Housing Finance Agency, the chief regulator for Fannie Mae and Freddie Mac, provided the travel expense records for Acting Director Edward DeMarco's six trips out of town within 15 days of the filing.

DeMarco's trips cost \$5,653.29, the documents show. Personal information such as his Social Security number and home address were blacked-out in the file.

The process for accessing information that hasn't been already released remains confusing, time-consuming and at times antagonistic, said Thomas Blanton, director of the National Security Archive, a Washington-based open-information repository.

## 'Obfuscation' Culture

"There is a culture of obfuscation among agency Freedom of Information officials," he said. "Bureaucrats are able to deter a lot of citizen engagement."

Travel records were largely shielded from public view until Johnson signed the Freedom of Information Act on July 4, 1966. Congress adopted post-Watergate reforms in 1974, giving agencies a deadline to comply with requests and narrowing exemptions for law enforcement and national security agencies. The FOIA law was updated another four times through 2007, when the Office of Government Information Services was established as the federal ombudsman.

The White House says it has released more than 2.5 million records since Obama took office. Recovery.gov allows citizens to

track stimulus spending by state. The administration also has for the first time posted the names of White House visitors, though not a full list of who has attended meetings.

### Backlogged Files

Other records now disclosed include the number of weapons in the nation's nuclear arsenal, report cards for veterans' hospitals, and employer-specific workplace safety records kept by the Occupational Safety and Health Administration.

The total number of FOIA requests increased, with 631,424 processed last year, compared with 600,849 in 2010.

The government's website dedicated to monitoring its response to filings, FOIA.gov, shows the number of backlogged requests grew 20 percent to 83,490 filings from 2010 to 2011.

The Justice Department reported in 2008 that there were 3,691 full-time FOIA personnel across all departments and agencies. In 2011, the figure increased by 19 percent to 4,400, according to the department. Some agencies outsource FOIA-related tasks, including the redaction process. The government has spent at least \$86.2 million on contracts described as pertaining to FOIA since 2009, according to federal procurement data compiled by Bloomberg.

The administration acknowledged systemic issues with the FOIA process when the Office of Management and Budget issued guidelines Aug. 24 to all federal agencies on how to streamline government information. The memo called for all government information to be stored in an electronic format by December 2019 -- almost three years after the end of a potential second Obama term.

Stephen Hess, a presidential historian at the Washington-based Brookings Institution, called the survey results a "grim" assessment of Obama's transparency record. He said the president -- like many of the men who have occupied the Oval Office -- has discovered how difficult it is to bend the government's bureaucracies to his will.

"The sad part is it won't be any better for the next folks either," Hess said. "The only difference perhaps is the Obama people led us to believe it would be different."

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