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# FROM REACTIVE TO PROACTIVE: THE FUTURE OF TRANSPARENCY

# JAMES MADISON

- ✧ A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.



# IN THE WORDS OF PRESIDENTS

Liberty cannot be preserved without a general knowledge among the people, who have a right and a desire to know.

– John Adams

Let the people know the facts, and the country will be safe.

– Abraham Lincoln

We must never forget that the free flow of information is essential to a democratic society.

– Bill Clinton

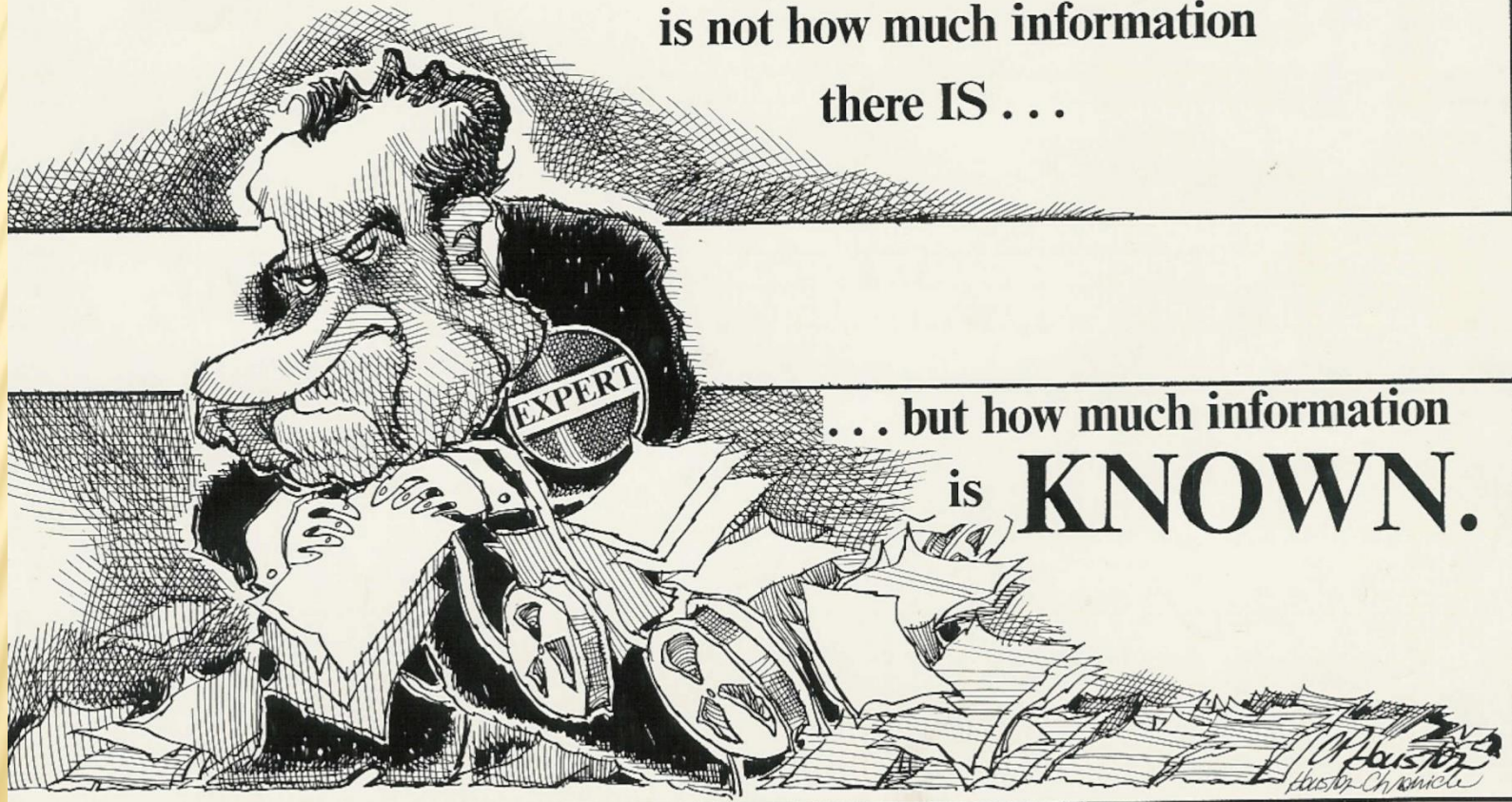


# QUESTION: WHO SAID THIS?

“When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and -- eventually -- incapable of determining their own destinies.”

- a. Abraham Lincoln
- b. Bill Clinton
- c. Richard Nixon
- d. John F. Kennedy

**Experts agree:** What's critical in a free society  
is not how much information  
there IS . . .





# MOST SECRETIVE TIMES IN U.S. HISTORY?

- ✖ War of 1812
- ✖ World War I
- ✖ World War II
- ✖ Civil War
- ✖ Post 9/11

# A HUMAN RIGHT

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- ✗ Freedom of information is recognized in international law. Article 19 of both the **Universal Declaration on Human Rights** and the International Covenant on Civil and Political Rights provide that every person shall have the right to seek and impart information. An international court has recognized the right to seek information includes a right of freedom of information.

# A U.S. RIGHT TO KNOW

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**“Democracy dies behind closed doors.”** – Judge  
Damon Keith

Detroit Free Press v. Ashcroft, 303 F.3d 681  
(August 26, 2002)

Successful challenge of closed court  
proceedings involving non-citizens following  
9/11 terrorist attacks,



## RIGHT TO KNOW

### × Proactive

The positive obligation of public bodies to provide, to publish and to disseminate information about their main activities, budgets and policies so that the public can know what they are doing, can participate in public matters and can control how public authorities are behaving.

## RIGHT TO ASK

### × Reactive

The right of all persons to ask public officials for information about what they are doing and any documents they hold and the right to receive an answer. The majority of information held by public bodies should be available, but there are some cases where the information is withheld in order to protect privacy, national security or commercial interests.

# TWO RIGHTS IMPLIED

# THE IMPACT OF FOI

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- ✖ Some 86 countries around the world now have some form of Freedom of Information (FOI) legislation with many more considering or developing it. This trend gained momentum during the 1990s across the world.
- ✖ The UK implemented its 2000 FOIA in 2005.
- ✖ FOI legislation is pending in Brazil and Philippines.
- ✖ Communist countries recognize basic information access rights.

# GENERAL GOALS OF FOI

- ✖ 1. Increase transparency and openness
- ✖ 2. Increase accountability and decrease corruption
- ✖ 3. Improve the quality of government decision-making
- ✖ 4. Improve public understanding of decision-making
- ✖ 5. Increase public participation
- ✖ 6. Increase public trust
- ✖ 7. Increase security
- ✖ Source; Stated goals of the UK FOIA 2000, National Security Archive



# FREEDOM OF INFORMATION – “SUNSHINE LAWS”

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- ✘ U.S. Constitution – First Amendment right to attend Court hearings and implied record access

(Some First Amendment theorists have argued for that the First Amendment should extend to protect receiving and distributing information from government, but that has never been recognized by a U.S. Supreme Court majority)

- ✘ U.S. Freedom of Information Act - FOIA (records)
- ✘ U.S. Government in the Sunshine Act (meetings)
- ✘ Utah Government Records Access and Management Act - GRAMA
- ✘ Utah Open and Public Meetings Act

# A BIT OF HISTORY

First records access law passed  
in Sweden (1766),

Anders Chydenius (1729-1803)  
(pronounced Anders KyDenies)

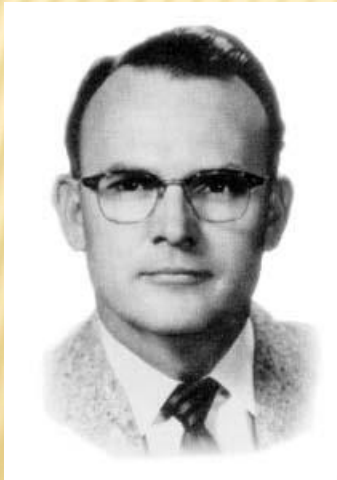
Sweden's Principle of Public  
Access means that the general  
public are to be guaranteed an  
unimpeded view of activities  
pursued by the government  
and local authorities; all  
documents handled by the  
authorities are public unless  
legislation explicitly and  
specifically states otherwise





# U.S. FOIA

- ✗ The first modern legislation was the United States FOI Act of 1966.
- ✗ Championed by Rep. John E. Moss, a Democratic congressman from California, is known as the legislative father of FOIA
- ✗ It was updated in 1974, 1986, 1996, 2002.



FOIA was signed reluctantly by President Lyndon Johnson in 1966. As Johnson's White House press secretary said years later,

*"LBJ had to be dragged kicking and screaming to the signing ceremony. He hated the very idea of the Freedom of Information Act; hated the thought of journalists rummaging in government closets; hated them challenging the official view of reality. He dug in his heels and even threatened to pocket veto the bill after it reached the White House."*

In fact, the bill was signed on July 4 without any signing ceremony.



I HAVE REASON TO BELIEVE THAT THIS  
PERSON MAY BE A REPORTER. DO WE  
GO AHEAD AND TAKE A CHANCE AND  
ISSUE HIM A DOG LICENSE, OR IS  
THERE SOME KIND OF NATIONAL  
SECURITY INVOLVED HERE?



# FOI/GRAMA CHALLENGES TODAY

- ✗ Technology.... Cloud computing, Facebook, social media, text message
- ✗ Lack of planning at front end of records storage development
- ✗ Lack of data to formulate policy
- ✗ Privacy
- ✗ Abuse of records – political participation
- ✗ Misunderstanding, Ignorance
- ✗ Culture of secrecy
- ✗ Over charging
- ✗ Over classification
- ✗ Wikileaks syndrome



# CITY TRANSPARENCY CHECKLIST

- ✖ The 10 pieces of information on the transparency checklist include:
- ✖ (1) a central page for information on city taxes and fees,
- ✖ (2) the city budget,
- ✖ (3) names and contact information for elected city leaders,
- ✖ (4) names and contact information for unelected city administrators,
- ✖ (5) minutes of past city council meetings, (
- ✖ 6) financial audits of the city,
- ✖ (7) contracts that the city has awarded to private businesses,
- ✖ (8) a list of any lobbying organization of which the city is a member,
- ✖ (9) instructions for obtaining public information from the city, and
- ✖ (10) “how-to” information for obtaining building permits from the city.
- ✖ Source: Sunshine Review, Sutherland Institute



# TRANSPARENCY INITIATIVE

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- ✗ [CITY/COUNTY] WILL ESTABLISH A SINGLE “OPEN GOVERNMENT” WEBPAGE WHICH
- ✗ complies with 10-point Transparency checklist recommended by Sunshine Review and endorsed by the Sutherland Institute;
- ✗
- ✗ serves as a searchable, sortable and downloadable in bulk central repository for all public government information accessible in 3 links or less;
- ✗
- ✗ contains a searchable index or catalog of all government information;

# TRANSPARENCY INITIATIVE

- ✗ publishes on at least an annual basis, if not more frequently, commonly requested data sets such as employee compensation, contracts with third-parties, police and fire requests for service, financial reports and audits;
- ✗
- ✗ contains an annual report (a) documenting the progress the city/county is making toward implementation of these Best Practices and (b) assessing and evaluating how the city/county is meeting its legal obligations under the Government Records Access Management Act, the Utah Open & Public Meeting Act, the Transparency in Government Act, the various statutes mandating the giving of public and legal notices and other applicable state or local transparency or disclosure laws or ordinances;

# TRANSPARENCY INITIATIVE

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- ✗ provides an interactive forum for citizens to suggest ideas to promote transparency and otherwise improve the city's information collection, retention, aggregation, validation and dissemination practices;
- ✗
- ✗ provides access to all city ordinances, rules, codes, policies and procedures in a searchable format;
- ✗
- ✗ contains a privacy policy which includes, among other things, a notification of any cookie placement or other tracking or information collection method;



# TRANSPARENCY INITIATIVE

- ✗ employs an authentication and date/time stamping mechanism disclosing how recent the information is and who is responsible for maintaining and updating the information and that person's contact information; and
- ✗
- ✗ contain an organizational chart and description of the government's departments, divisions and other administrative units together with contact information.

# TRANSPARENCY INITIATIVE

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- ✗ 2.GOVERNMENT INFORMATION WILL BE COLLECTED, GENERATED AND MAINTAINED IN A DIGITAL FORM AND MADE AVAILABLE ON THE OPEN GOVERNMENT WEBPAGE
- ✗
- ✗ in a timely, complete and non-discriminating manner;
- ✗ in appropriate open formats;
- ✗ with authoritative sourcing;
- ✗ in computer discoverable, searchable and readable forms;
- ✗ without unnecessary administrative obstacles;
- ✗ at no cost to the public;
- ✗ with no licensing or terms of service conditions;
- ✗ with the finest possible level of granularity ;
- ✗ at a stable internet location indefinitely.

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- ✘ EMAILS, INSTANT MESSAGES AND OTHER ELECTRONIC COMMUNICATIONS MADE WITH GOVERNMENT SUPPLIED EQUIPMENT WILL BE CONSIDERED PUBLIC RECORDS AS THAT TERM IS DEFINED IN U.C.A. §63-G-2-103 (21) & (22).

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✖ 4. ELECTED OFFICIALS AND NON-ELECTED SENIOR ADMINISTRATORS WILL

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✖ Post reasonably in advance their schedule of public events and meetings;

✖

✖ maintain privacy settings as “open” or “public” on Facebook or other social networking sites where the official/administrator posts or discusses [city/county] related business;

✖

✖ commit to developing a culture of transparency among employees and other officials which permeates all levels of government.

# TRANSPARENCY INITIATIVE

- ✗ 5. POLICY AND DELIBERATIVE BODIES WILL STRIVE TO MAKE ALL PUBLIC MEETINGS TRULY TRANSPARENT BY
  - ✗
  - ✗ streaming their public meetings live on the internet either through a videocast or an audio podcast;
  - ✗
  - ✗ recording their public meetings and posting video or audio online within 48 hours;
  - ✗ allowing citizen comment/participation via a synchronous remote connection; and
  - ✗ posting online all agenda materials reasonably anticipated to be discussed or distributed at a meeting at least 24 hours in advance.