

## **Security, Access, Intellectual Freedom: Achieving Balance in a Global World**

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### **Abstract**

Security, privacy, access, and intellectual freedom are words that are loaded with emotional meaning and context for current societal issues. How do we ensure all without sacrificing or compromising others? Balancing a government's need to control information with the individual's right to freely access government information is a global concern that must be addressed. Following 9/11, this balance was challenged by the government limiting access to information, or in many cases removing it from access entirely. Challenges to access include: 1) restricting use of the Freedom of Information Act (FOIA), 2) increased secrecy within the government, and 3) removal of or disappearance of government information. This article will discuss the role and efforts of libraries and librarians to ensure public access to information. U.S. legislation such as the Freedom of Information Act and the USA Patriot Act and how it challenges access are explored. Efforts to restore the balance, by both the government and by those in the academic and journalism communities, will illustrate how both sides of the scale need to be examined so we can move forward.

### **Introduction**

*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 which knowledge gives. (President James Madison, 1822.)*

The post 9/11 world has required us to rethink many aspects of our lives. It could also be argued that because of the threat of terrorism we have been required to sacrifice or compromise freedoms that we enjoy as citizens of a democratic society. Freedoms like access to information, privacy, and free speech have been sorely tested as our government attempts to restore some sense of normalcy to our lives. With the promise of security from further terrorist attacks our government has imposed new measures to control, manage, and restrict access to information, measures that have met with much

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criticism and censor from information professionals such as librarians and journalists. Both communities have been rigorously fighting to restore these basic freedoms.

Balancing a government's need to control information with the individual's right to freely access government information is a global concern that must be addressed. More than 50 countries around the world have adopted open access policies or have enacted laws to provide access to government information. The most recent of these is the United Kingdom's Freedom of Information Act which went into effect January 1, 2005. At least 38 other countries including Russia, Brazil, The Philippines, and Germany are working on or considering laws to open up access. (Swartz, 2004) Ironically, many of these laws are patterned after the U.S. Freedom of Information Act (FOIA), which is currently under assault due to changes resulting from legislation passed precipitously after 9/11. Laws such as the USA Patriot Act and the Homeland Security Act amended provisions of the FOIA to make it easier for government agencies to restrict or refuse access to government information.

Increasing secrecy within the government is also a great cause for concern and is being challenged by librarians and journalists. The USA Patriot and Homeland Security Acts restrict access further. Experts report that "excessive classification is impeding information sharing between government agencies, . . . and excessive secrecy in government sabotaged attempts to find, track, and catch terrorists before 9/11." (Swartz, 2004)

A further interesting phenomenon that became more prevalent immediately after 9/11, is the disappearance or alteration of information available on government websites or from federal depository libraries due to its potential to compromise national security.

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The American Library Association (ALA) Government Documents Round Table (GODORT) and the OpenTheGovernment.org coalition websites chronicle the increased actions of the government to remove, edit, or restrict access to nonclassified government information.

In light of these recent challenges, how then do we ensure security and awareness without sacrificing or compromising our basic freedoms? It is easy for us to see only one side of the scale, and our judgments/decisions often reflect this vantage point. However, in order to achieve a *reasonable* balance, we need to examine both sides of the scale and weight our options, always being mindful of how our decisions may tip the scale. Achieving balance in a global world post the 9/11 terrorism attacks requires a deeper understanding of the issues, and the efforts to minimize the threats (real and perceived). We must also actively solicit and engage responses and opinions of the public citizens of the global community.

To begin the discussion, the role and efforts of libraries and librarians to ensure public access to information will be discussed. U.S. legislation such as the Freedom of Information Act, the Restore the Freedom of Information Act, E-Government Act of 2002, to name just a few, will be examined to illustrate the interconnectivity of the issues and how each has served to provide balance. Efforts by the government to assure more user friendly access to information, as well as efforts by those in the academic and journalism communities to restore balance will also be presented. While issues of privacy and protection of library user's records, and the threats posed by the USA Patriot Act are of significant importance, they will be discussed only as they relate to the issues of unrestricted access to information.

### **The library's role in ensuring access to information**

#### Ensuring access

Libraries serve the publics of their community. The fundamental role of libraries and librarians is to connect the public with information, regardless of form, format, or subject matter. Library professionals pride themselves in enabling equitable access to information, and by doing so, they assure an informed public. Libraries “have long promoted values that are fundamental to a democratic society by offering unrestricted access to essential tools for informed participation in the political process and articulating intellectual freedom.” (Rubin, 1998).

Libraries, with local, state, and federal funding, enable access by providing resources, technology tools, and informed guidance to help patrons access the most appropriate resources. The public remains informed about decisions and actions of the government by accessing information generated by government departments, agencies, and internal and court proceedings. This information is provided in print and online. They can also request other information using of Freedom of Information Act (FOIA) (see further discussion below).

Libraries have a long history of working with federal and state governments to ensure access to government publications. The Federal Depository Library Program (FDLP) began in 1861 with the charge to make federal government information accessible to the public. It includes provisions for distribution of materials to some 1,350 designated libraries across the U.S. Information from all three branches of the federal government is distributed by the Government Printing Office (GPO) to depository

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libraries and to nondepository libraries by purchase. With the emergence and popular use of the Internet and World Wide Web, as well as the threat of budgetary cuts, government information became accessible electronically. In September 2000, President Clinton launched FirstGov, a web portal, meant to be a centralized access point for locating government information. (Heanue, 1991) In 2002, The E-Government Act of 2002 was enacted, which requires government agencies to make their publications available via the Internet. While the movement to provide government information online seems like a viable solution to increased accessibility, it was not without contention and concern from librarians. Issues of permanency, cost, collection development and control over distribution and storage, as well as assurances about accuracy, editing, or otherwise corruption or availability of resources, and technology requirements have been voiced by librarians. (Peterson, Cowell, & Jacobs, 2001).

### Rights of access challenged

Threats to access and to patron's privacy expectations are not new to libraries. Beginning in the 1960's federal agents saw libraries as a resource to track potential terrorist activities. Efforts to protect library patron's privacy, thereby ensuring their access and trust, resulted in the American Library Association's (ALA) development of their first privacy policy. In the 1980's libraries again became targets of federal investigations. The Library Awareness Program (LAP), or FBI's attempts to review patron's records in public and research libraries, was "harshly criticized as an unwarranted government intrusion upon personal privacy and a threat to First Amendment rights of patron's free access to information." (Johnston, 2000). The USA

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Patriot Act has strengthened the abilities of federal agencies to monitor and/or request access to patron's library records. Libraries have responded by: 1) changing record retention policies, 2) implementing OPAC software that automatically deletes records once an item is returned, 3) retaining legal counsel to consult when faced with Patriot Act requests, 4) educating staff to appropriate responses, and 5) signage warning patrons of potential monitoring and/or seizure of records, and other threats to their privacy.<sup>1</sup>

The ALA has responded to access challenges by developing a Resolution on the USA Patriot Act and Related Measures that Infringe on the Rights of Library Users. (ALA, 2003) These resolutions state in part:

- libraries are a critical force for promoting the free flow and unimpeded distribution of knowledge and information for individuals, institutions, and communities,
- the ALA holds that suppression of ideas undermines a democratic society,
- the ALA opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry,
- the ALA urges librarians everywhere to defend and support user privacy and free and open access to knowledge and information (ALA, 2003)<sup>2</sup>

In effect, if library patrons are afraid to use the library due to privacy concerns, they are being denied their right to free access. (Johnston, 2000)

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<sup>1</sup> For a more detailed history of the Library Awareness Program and of the impact the USA Patriot Act is having on public libraries see Foerstel, H.N. (1991). *Surveillance in the Stacks: The FBI's Library Awareness Program*, New York. Greenwood Press and Foerstel, H.N. (2004). *Refuge of a Scoundrel: The Patriot Act in Libraries*, Westport, CT. Libraries Unlimited.

<sup>2</sup> The provisions reported within this article were selected for their relevance to the access issue being discussed. Readers should review the entire resolution for further stances on privacy and application of the surveillance provisions USA Patriot Act and Homeland Security Act.

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The resulting effect on patron's use of libraries, and their expectations of privacy and free access prior to 9/11 was not systematically analyzed or documented, other than in *librarian's* statements in the popular press and professional publications. After 9/11 efforts to document librarian's experiences and opinions have also been minimal. This lack of documentation is probably due to provisions within the USA Patriot Act and Homeland Security Act instituting gag orders on librarians and others approached to provide patron use records. To date, two surveys designed to measure librarian's and library director's awareness of the use of the USA Patriot Act within their libraries, and to capture their opinions of its use in general, have been conducted by library and information researchers from the University of Illinois Graduate School of Library and Information Science, and the members of the California Library Association. The findings of these surveys are contrary to Attorney General and government disclosures regarding its use. At the time of the surveys, the Attorney General reported zero uses of the USA Patriot Act within library settings. The surveys reported differing degrees of awareness by both librarians and library directors of its use. (Foerstel, 2004) In light of the recent threat and application of information gathering and surveillance provisions the USA Patriot Act, the need to analyze and document librarian and *public* understanding and awareness of these intrusions on patron's privacy and access is of *grave* importance and needs to be addressed by policy makers, librarians, and researchers.

### **U.S. Freedom of Information Act**

The US Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, As Amended by PL No. 104-231, 110 Stat. 3048, was passed by Congress as an amendment to the 1946

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Administrative Procedure Act (APA). It became a law in 1967 and was amended again in 1995 to include electronic records. (Weitzel, 2004) FOIA provides the regulations and the process for U.S. citizens to request copies of government information related to: 1) court opinions and orders, 2) statements of policy and interpretations which have been adopted by the agency and not yet published in the Federal Register, and 3) administrative staff manuals and instructions that affect a member of the public. Information that is deemed to be of a security risk is not available using FOIA requests. (Freedom of Information Act)

Requesting information using FOIA can include a cumbersome review process, and requests can be delayed for years or denied if the information requested falls into any of nine broad categories of exemption.<sup>3</sup> After 9/11 requesting information using the FOIA has become even more complicated and restrictive, as government officials, including the President, enacted measures to further restrict access using FOIA. Recent challenges to FOIA post 9/11 include:

- Attorney General Ashcroft's October 12, 2001 memo to the heads of all departments and agencies urging all federal agencies to "safeguard our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, at least, preserving personal privacy". He encouraged agencies to "carefully consider FOIA requests and decide to withhold records, in whole or in

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<sup>3</sup> FOIA broad categories of exemptions include: A) information that needs to be kept secret in the interest of national defense or foreign policy and B) are in fact properly classified pursuant to such Executive order; related solely to internal personnel rules or practices; exempted by other statutes; trade secrets and personal commercial or financial information; inter-agency or intra-agency memos or letters; personnel and medical files; records compiled for law enforcement purposes; financial information compiled for use by an agency responsible for regulation or supervision of financial institutions; and geological and geophysical information and data, including maps, concerning wells. Sec. 552 (b)(1)(A) through (b)(9).

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part,” and assured them that “the DOJ will defend your decisions”<sup>4</sup>  
(Sangillo, 2004; Johnson, 2004)

- Bush executive order in November 2001 restricting FOIA access to documents of earlier administrations
- Exemption written into the Homeland Security Act of 2002. This exemption excludes any “critical infrastructure information” from disclosure under FOIA requests. This broad exemption provides businesses with a means to evade liability for various safety violations by claiming that the information is related to homeland security and therefore exempt from FOI requests. (Foerstel, 2004)
- In March 2003, Bush authorized FOIA officers the latitude to reclassify information that had already been declassified. (Sangillo, 2004)
- Between September 11, 2001 and June 30, 2003, a total of 34 states and the District of Columbia enacted legislation to revise exemptions under their state Open Record’s laws to include any information on water systems or water system vulnerability assessments. (Atkins, 2003)

In spite of these challenges, the number of FOIA requests has tripled between 1998 and 2003, with more than 3.2 million requests in 2003. FOI agencies also report backlogs of requests, some taking up to four years to fulfill. (Swartz, 2004) The effectiveness of requesting government information using the FOIA has also suffered. It is estimated that in 2003, the federal government rejected half of the 3.2 million FOI requests it received. (Johnson, 2004)

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<sup>4</sup> According to Patrice McDermott of the American Library Association Ashcroft’s memo “essentially said that if agencies could find any plausible statutory reason for withholding information...then the Justice Department would defend them in court.” (Sangillo, 2004, p. 3227)

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To date only one attempt to remedy the changes to the FOIA has been proposed. Senator Patrick Leahy and four other senators have introduced the “Restore Open Government Act of 2004” bill (Senate Bill 609) which would revoke the Ashcroft memo and Bush’s November 2001 executive order, (Sangillo, 2004; Oder, 2003) and “restore the presumption of disclosure, ease public oversight or critical infrastructure safeguards, restore historian’s access to presidential records, address excessive overclassification, and make it easier to challenge agencies that are improperly withholding information.” (Swartz, 2004) This bill has been endorsed by the American Library Association, American Association of Law Libraries, and the Association of Research Libraries.

### **Increased secrecy within the government**

U.S. policies and practices since 9/11 have significantly increased secrecy within the government, resulting in further restrictions to accessing government information. Using the amount of newly classified documents as an index, the August 2004 “Secrecy Report Card” shows that 14,228,020 documents were newly classified by the government in 2003, compared to 3,579,505 in 1995, representing an increase of 60 percent. (OpenTheGovernment.org, 2004) According to OpenTheGovernment.org, this “dramatic increase runs counter to recommendations from the 9/11 Commission and the Congressional Joint Inquiry into 9/11, both of which recommended reforms to reduce unnecessary secrets.” (Swartz, 2004; OpenTheGovernment.org, 2004) <sup>5</sup>

Increased secrecy can have detrimental effects on the process of government and undermines efforts to thwart terrorism. Excessive classification impedes sharing of

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<sup>5</sup> The cost of classifying information has increased steadily from 3.4 billion in 1997 to \$6.5 billion in 2003, while money spent on declassifying documents was \$113 million in 2002 and \$54 million in 2003. (Johnson, 2004)

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information between agencies. “Current security requirements nurture overclassification and excessive compartmentation of information among agencies.” (Schwartz, 2004) Information Security Oversight Office Director William Leonard has observed that “overclassification hurts the entire system by making secrets less secure because it inevitably invites leakage from ‘the highest levels of our government’.” (Weitzel, 2004 p. 86) Secrecy within any agency poses a real risk of abuse, especially if there is no system of checks and balances. (Strickland, Baldwin & Justsen, 2005)

A second “political reality” is that the “domestic intelligence process operating in substantial secrecy will not engender the necessary public and Congressional support for the required intelligence activities to combat the very real threat of terrorism.” (Strickland, Baldwin & Justsen, 2005 p. 500) Without public awareness and support, as well as a system for checks and balances, secrecy will have the opposite effect of making the public resentful, wary, and untrusting of the government’s efforts to ensure national security.

“[T]he impetus for secrecy and efficiency must be balanced against the rights of the public and their elected representatives for access to the information needed in a democratic society. If a *reasonable* (emphasis added) balance between openness and secrecy is not obtained through appropriate information policy, then the political process may well act to restore the balance in ways that could harm the national security.” (Strickland, Baldwin, & Justsen, 2005, p.500)

Secrecy further impedes the public right to access information by making that information unattainable, even through FOIA requests. Lucy Dalglish, executive director of the Reporter’s Committee for Freedom of the Press, argues that the increased secrecy

has in fact “slam[med] the doors shut on citizens who depended on access to public information to make informed decisions.” She further notes that a citizenry “kept ignorant of government activity” is not a particularly healthy thing for a democracy. (Kennedy, 2004)

### **Disappearing government information (Poof it was gone!)<sup>6</sup>**

After 9/11 we have seen a startling increase of disappearing and/or altered information contained on government sites. Prior to 9/11 government materials that included maps and/or spatial information either removed or altered references to military bases in the U.S. After 9/11, the White House urged federal agencies to review their websites and remove potentially sensitive data, resulting in the removal of hundreds of thousands of pages of information. “Scrubbing” government websites, or editing or otherwise altering their content, has also been evidenced. (Johnson, 2004; Milbank, 2003)

A few examples of disappearing or altered information include:

- The Nuclear Regulatory Commission shut down its website to review information. Once the site was restored, information on the locations and operations of nuclear power plants was removed.
- The EPA removed all Risk Management Plans from its website and limited queries executed in its Envirofacts database. (Zellmer, 2004)
- Department of Energy, Federal Aviation Administration, and others shut down and removed information from their websites. (Jobe, 2002)

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<sup>6</sup> The April 2004 edition of *Computers in Libraries* had intended to include a story written by two government librarians that would explain the criteria used to classify and/or declassify documents. After learning about the content of the article, an office in the White House determined that the article could not be published. And then – Poof! The article vanished. (Dempsey, 2004)

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- On Oct. 2004, the U.S. Nuclear Regulatory Commission (NRC) suspended public access to the ADAMS online library and some other parts of its website while its content underwent review. On February 4, 2005 it was announced that access was restored via a new, more user-friendly interface. (Nuclear Regulatory Commission, 2005)

News and professional association headlines chronicle government requests for libraries to remove potentially compromising materials from their collections. (Peterson, Cowell, & Jacobs, 2001; Zellmer, 2004; Jobe, 2002)<sup>7</sup> The government's requests have not gone unchallenged by librarians and information professionals. For example, a 2004 recall notice posted on the Government Printing Office (GPO) website requested that five Dept. of Justice documents on civil and criminal asset forfeiture procedures be removed from federal depository libraries. After strong reaction from librarians, the DOJ decided libraries could retain the documents. (Blumenstein & Oder, 2004)

The resulting climate of government censorship or removal of government information resources makes it very difficult for information professionals, not to mention the general public, to access government information. Of further concern is 1) the lack of a centralized listing of deleted materials, 2) uncertainty about the permanence, quality, and completeness of the information, and 3) the seemingly haphazard, uncoordinated manner in which government information is being removed. (Jobe, 2002)

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<sup>7</sup> The extent of government censorship can be illustrated in an unsettling account of how the Allen County Homeland Security Office in Ohio used the Bluffton County Public Library's OPAC system to locate documents they felt may pose a threat to national security. The agents removed the Allen County Hazardous Materials Emergency Plan from the library, directing interested parties to their office. Are OPAC's the next tool of government censorship? (Jaeger, Bertot, McClure, 2003)

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The ALA has responded to this challenge to access by promulgating the Resolution on Withdrawn Electronic Government Information. (ALA, 2002) It states in part:

- permanent public access to government information, including information on federal government websites, is essential to an informed public
- the ALA urges federal agencies to ensure permanent public access through a searchable archive to information no longer available on their current web sites
- the ALA urges the federal agencies to comply with Title 44 amendments contained in the E-Government Act and place required record schedules on the web sites for public access
- the ALA urges all federal agencies to make available to the public an inventory of documents and other information scheduled for permanent retention that have been removed from their web sites (ALA, 2002)<sup>8,9</sup>

### **Government measures to assure more user-friendly access**

The government has taken action in response to complaints and concerns voiced by information professionals, but their efforts target issues of website design, accessibility of websites, and do little to alleviate access issues. Instead the Office of Management and Budget (OMB) has been charged with making electronic government information and services more accessible and accountable, as well as user friendly or

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<sup>8</sup> Again it should be noted that only the most relevant provisions of the Resolution have been reported. Readers should review the entire Resolution for additional provisions.

<sup>9</sup> The ALA Government Documents Round Table (GODORT) (website available at <http://sunsite.berkeley.edu/GODORT>) and the OMB Watch (<http://www.ombwatch.org/article/articlereview/213/1/1>) have compiled lists of government information that has disappeared.

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user-centered. This charge is a focus point for the Federal Library and Information Center Committee (FLICC), and the Interagency Committee on Governmental Information (ICGI), a subcommittee established by the E-Government Act of 2002, which reports to the Office of Management and Budget (OMB). The Sept. 2004 FLICC Technology Update meeting featured ALA Deputy Director of the Office of Government Relations, Patrice McDermott. She stressed the key areas that should be addressed: 1) gauging the public impact of moving to e-government services, 2) providing a more accountable government, and 3) helping people obtain information held by multiple agencies in an integrated fashion. Most importantly, she questioned whether Congress would do useful oversight or welcome public opinion. (E-Government 2004)

The final report to the OMB by the ICGI recommends policies and guidelines for federal public websites. The recommendations emphasize: 1) citizen's ability to identify and *trust* the information's currency and accuracy, 2) user-centered design as essential design criteria, 3) sites that are easy to access and read, 4) seamless, unified access to non-duplicative information, and 5) compliance with existing regulations regarding privacy, security, protocols, and accessibility. (Interagency Committee on Government Information, 2004)<sup>10</sup>

Of notable absence from the report and the recommendations are provisions to address the issue of access to removed or altered information. The ICGI is charged with developing more user-centered, interoperable websites to provide seamless, integrated access to government information, but not to resolve any concerns about the missing information as articulated by the ALA and other information professionals. On the

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<sup>10</sup> Readers should review the entire report for further explanation of the recommendations and other charges of the ICGI.

surface, this emphasis addresses concerns of providing more efficient access to government information. However, it does nothing to address the real access issues of disappearing or altered information. This attempt at balance doesn't go quite far enough.

### **Responses by the academic and journalism communities**

Efforts by both academia and journalists to provide greater access to government information should also be noted. Their efforts have focused in three main areas: 1) providing more open access to the results of government sponsored research, 2) raising public awareness to the issues and concerns of public access, and 3) coordinated efforts to review and enact new legislation to amend provisions of the USA Patriot Act and the Homeland Security Act.

#### Open Access Efforts

Worldwide efforts of the academic and library communities to provide access to the results of government sponsored research have taken form within the Open Access Movement. Academic communities plagued with rising costs of print and electronic subscriptions, as well as recognition that their efforts do not reach world-wide public review due to limited availability of their publications in closed systems, have prompted many scholars and researchers to develop open access repositories and/or digital libraries of their published works. These efforts would ensure public access to government sponsored research. The efforts have not, however, been without resistance from both the government and from publishers. Two important examples include: 1) PubScience, the online database of peer reviewed science research publications, which was launched in 1999. It has now become defunct due to a lack of support. (Jobe, 2003) 2) The Enhanced

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Public Access to NIH Research initiative by the National Institutes of Health (NIH). On September 3, 2004 the NIH released its plan to make peer reviewed journal articles freely available six months after initial publication via the PubMed Central database. On January 10, 2005, officials from NIH abruptly cancelled their announcement of when the plan would go into effect, leaving ALA representatives wondering if the plan has been further challenged by advocates from the government and publishing industry to restrict open access. (Pace, 2004; Check, 2005)

### Raising public awareness

Journalists require unfettered access to government information and are active advocates for increasing access. Unfortunately, according to Peter Weitzel (2004), “there has been no coordinated information gathering or strategic planning about secrecy and reporter’s access to information effort within the journalism community or among its organizations. . . . While the individual organizations sometimes send letters of protest or submit comments urging changes in regulations, no concerted legislative strategy or proactive plan is in place to attempt to reverse the pattern of increasing closure.” (p.88) One project, the Coalition of Journalists for Open Government, has been coordinating the freedom of information efforts of its member organizations. Members of the coalition include: the American Society of Newspaper Editors (ASNE), Radio-Television News Directors Association (RTNDA), Society of Professional Journalists (SPJ), the Newspaper Association of American (NAA), and reporters Committee for Freedom of the Press. Their efforts to date also include more aggressive reporting of secrecy issues and support of FOI audits in every state. Watchdog organizations like

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OpenTheGovernment.org, a coalition of journalists, consumer and government groups, environmentalists, labor organizations and others dedicated to a more open government have been instrumental in raising public awareness of secrecy within government. The ALA has also very rigorously worked to increase public awareness of access and privacy issues.

### Coordinated efforts to review and enact legislation

As mentioned earlier, there has been only one effort to curtail the challenges to the Freedom of Information Act by legislators. Efforts to revoke or amend provisions of the USA Patriot Act have, however, been more significant, though have met with little success yet. For example, the ALA has worked with legislators and other organizations to enact new legislation to amend provisions of the USA Patriot Act and the Homeland Security Act. Legislation in part includes: 1) The Freedom to Read Protection Act, H.R.1157, 2) The Library and Bookseller Protection Act, S.1158, 3) Reasonable Notice and Search Act, S. 1701, 4) The Security and Freedom Ensured Act, H.R. 3352, and 5) Security and Freedom Enhanced Act (SAFE), S. 1709. An updated list of ALA efforts and pending legislation is available at:

<http://www.ala.org/ala/oif/ifissues/usapatriotact.htm> .

### **Achieving a reasonable balance?**

Again we must address the question posed earlier. How do we ensure security and awareness without sacrificing or compromising our basic freedoms of access and privacy? The prevailing opinions include:

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- increasing public awareness of the issues and enabling public support of government initiatives. “[T]he failure of public support could lead the nation to clear error – sacrificing civil liberties for security or prohibiting government authorities that could prevent other catastrophic attacks.” (Strickland, Baldwin, & Justsen, 2005, p. 500)
- a robust system of oversight, transparency, and right of individual challenge (Strickland, Baldwin, & Justsen, 2005)
- “clear standards and procedures to ensure a reasonable balance between the need for citizens to have access to information and the need to protect national security” (Swartz, 2004)
- revision of policy to include:
  - procedures for more specific reporting on the use and impact of the USA Patriot Act
  - more and better public disclosure of instances where Patriot Act provisions have been implemented (Jaeger, Bertot, & McClure, 2003)

We must also begin to document public awareness and opinions of access and privacy challenges. As outlined above, in earlier eras of government intrusion and threats to public access to information, only librarians’ opinions were reported, though informally. Little or no systematic documentation and analysis of public awareness and opinion of the impacts of U.S. legislation has been reported, with the notable exceptions to survey librarians’ and library directors’ awareness and opinions of the use of information gathering and surveillance provisions of the USA Patriot Act (see discussion above).

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Increased understanding of the issues, the national and international efforts to minimize the threats, and the reactions by citizens of the global community are necessary for us to enact change and to achieve a *reasonable* balance. Understanding and an informed discourse coupled with a system of checks and balances are essential components to achieving balance. In summary,

“It is obvious and arguable that no governmental interest is more compelling than the security of the Nation. . . . [The] balance of rights and needs may properly shift in appropriate circumstances. . . . Finding that reasonable balance between government power and citizen rights in this time of asymmetric, nontraditional threat is the national task” (Strickland, Baldwin, & Justsen, 2005, p. 493)

### References

- American Library Association. (January 29, 2003). Resolution on the USA Patriot Act and Related Measures that Infringe on the Rights of Library Users. Available online at: <http://www.ala.org> .
- American Library Association. (January 22, 2002). Resolution on Withdrawn Electronic Government Information. Available online at: <http://www2.library.unr.edu/dept/bgic/withdrawn.html> .
- Atkins, Cathy. (July/August 2003). State open records laws. Legislative activities in 2003. *National Conference of State Legislatures. Terrorism Preparedness*.
- Ault, U.E. (1990). Note. The FBI's Library Awareness Program: Is big brother reading over your shoulder? *N.Y.U.L. Review*, 65, p. 1532-1565.
- Blumenstein, Lynn and Norman Oder. (September 1, 2004). *Library Journal*, 129 (9), p. 16-17.
- Check, Erika. (January 20, 2005). All parties on edge as NIH delays open-access briefing. *Nature*, 433, p. 182.
- Dempsey, Kathy. The info was there. (April 2004). Then – Poof. *Computers in Libraries*, 24 (4), pp. 2-3.
- [n.a.] E-Government Act takes center stage. (Spring/Summer 2004). *FLICC Newsletter*, No. 208 p. 1-3.
- Foerstel, H.N. (2004). *Refuge of a Scoundrel: The Patriot Act in Libraries*, Westport, CT. Libraries Unlimited.
- Heanue, Anne. (1991). In support of democracy: The library role in public access to government information. In *Libraries and Democracy: The Cornerstones of Liberty*. Ed. Kranich, Nancy. Chicago. American Library Association. p. 121-128.
- Interagency Committee on Government Information. (June 9, 2004). *Final report to OMB. Recommended policies and guidelines for federal public websites*.
- Jaeger, Paul T., Bertot, John Carlo, and McClure, Charles R. (2003). The impact of the USA Patriot Act on collection and analysis of personal information under the Foreign Intelligence Surveillance Act. *Government Information Quarterly*, 20, pp. 295-314.
- Jobe, Margaret M. (May 15, 2002). What a difference a year makes. *Library Journal*, 127 (9), p. 60-65.
- Jobe, Margaret M. (May 15, 2003). Another casualty. *Library Journal*, 128 (9), p. 54-55.
- Johnson, Alex. (November 18, 2004). Shhh ... someone might hear you. Available online at: <http://msnbc.com> .

## Forum on Public Policy

Johnston, Scott D. (2000). Rethinking privacy in the public library. *International Information and Library Research*, 32, p. 509-517.

Kennedy, Shirley Duglin. (November 2004). On the net, off the net. *Information Today*, 21 (10), p. 17-18.

Milbank, Dana. (December 18, 2003). White House web scrubbing: offending comments on Iraq disappear from site. *Washington Post*, p. A05.

Nuclear Regulatory Commission. (February 4, 2005). NRC News. Available online at: <http://www.nrc.gov/reading-rm/collections/news/2005/05-022.html> .

Oder, Norman. (April 2003). FOIA exemption may be fixed. *Library Journal*, 128 (7), p. 18-19.

Pace, Andrew K. (2004). The technology of patriotism. *American Libraries*, 35 (10), p. 58-59.

Peterson, Karrie, Cowell, Elizabeth, and Jacobs, Jim. (September 2001). *American Libraries*, 32 (8), p. 52.

Rubin, Robert E. (1998). *Foundations of Library and Information Science*. New York. Neal-Schuman.

Sangillo, Greg. (October 2004). Incarceration of information. *National Journal*, 36 (43), p. 3227.

Strickland, Lee, Baldwin, David A. and Justsen, Marlene. (2005). Domestic security surveillance and civil liberties. In *The Annual Review of Information Science and Technology*, 39. Blaise Cronin, Ed. Medford, NJ. Information Today, p. 433-513.

Swartz, Nikki. (November/December 2004). The world moves toward freedom of information. *The Information Management Journal*, p. 20-23.

The Freedom of Information Act. 5 U.S.C. Sec. 552, As Amended by Public Law No. 104-231, 110 Stat. 3048.

Weitzel, Pete. (Fall 2004). The steady march of government secrecy. *Nieman Reports*.

Zellmer, Linda. (April 2004). How homeland security affects spatial information. *Computers in Libraries*, 24 (4), p. 6-13.

Published by the Forum on Public Policy

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