



Transparency's Critical Role in Strengthening Public Trust in Government

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Introduction

Government by consent is a relationship of trust. Underlying the consent of the governed is the understanding that officials who hold positions of public trust will use their powers to further the interests of the people. Even the appearance of self-dealing can undermine the legitimacy of our democratic system as it calls into question whether the government is holding up its end of the bargain.

Although we are currently nearing record lows¹ in public trust of government, every four years our executive branch has an opportunity to reset and for the President of the United States to renew that trust. This work demands an ethical and transparent approach to government that must be set at the top. In addition to requiring a commitment to ethical conduct as a condition of government employment (like a more robust ethics pledge), the administration should expand transparency measures that open its dealings to public scrutiny.

To be meaningful, the transparency measures should be designed for layman citizen access, requiring proactive disclosures that put the onus on agencies to make information publicly available as opposed to placing the burden on members of the public to navigate a Freedom of Information Act (FOIA) system that is

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¹ See *Public Trust in Government Near Historic Lows*, PEW RES. CTR. (Sept. 24, 2019).

fraught with bureaucratic hurdles and delays² whenever possible. Given the ongoing crisis of government distrust,³ the administration's transparency agenda should make accessible information that allows the public to investigate potential corruption. The following recommendations would help to bolster an open and honest government by expanding public access to key information on its top influencers.

Publish White House Visitor Logs

Visitor logs provide meaningful insight into who the president and staff are meeting with on policy matters. Civil society has long sought disclosure of these records, created by the United States Secret Service in the performance of their protective duties, because they help the public understand who was influencing White House policy.

During the Obama administration, the White House disclosed visitor logs on a monthly basis, subject to narrow limitations and exceptions. Under its White House Voluntary Disclosure Policy,⁴ nearly 6,000,000 records⁵ were released. These records have proven tremendously valuable in revealing the interest groups and individuals that may shape a president's decisions and legislative proposals. The Trump administration discontinued publication of visitor logs, closing a window into its operations and fueling legal action.⁶ They should be easily accessible to the general public.

The president should direct the Secret Service to publish a searchable, sortable, downloadable online database of visitors to the White House, the Vice President's residence, and any location where the president and/or vice president is meeting with individuals or groups to conduct official business. It should include at least 1) the name of each visitor, 2) the name of the individual who requested clearance for each visitor, 3) the date and time of entry for each visitor, 4) a brief and accurate description of the nature of the visit, as well as 5) confirmation that the guests were actually present.

Disclose Political Donors Affiliated with Federal Contractors

The post-*Citizens United v. FEC* proliferation of billions in unaccountable corporate money influencing our elections already shocks the conscience, but there is a special category of corporate donors that raises the stakes even higher: federal contractors.⁷ Since 2000, American taxpayers have paid the top ten federal contractors approximately \$1.5 trillion.⁸

² See U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-406R, FREEDOM OF INFORMATION ACT: FEDERAL AGENCIES' RECENT IMPLEMENTATION EFFORTS (2020).

³ See *Americans' Views of Government: Low Trust, but Some Positive Performance Ratings*, PEW RES. CTR. (Sept. 14, 2020).

⁴ White House Press Disclosure, President Barack Obama, White House Voluntary Disclosure Policy Visitor Access Records (2009).

⁵ See Melanie Garunay, *More than 5.99 Million Records Released*, WHITE HOUSE BLOG (Dec. 30, 2016).

⁶ See Jordan Libowitz, *CREW and Others Sue for White House Visitor Logs*, CITIZENS FOR RESP. & ETHICS IN WASH. (Apr. 10, 2017).

⁷ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

⁸ See *Requiring Government Contractors to Disclose Political Spending*, BRENNAN CTR. FOR JUST. (Mar. 9, 2015).

With the federal expenditure of taxpayer money comes the responsibility of ensuring that these spending decisions are made in the best interest of the people and not as a political favor. Even the suspicion of corruption in government contracting decisions undermines public confidence in government.

Federal law prohibits contracting entities from making direct contributions to political candidates or parties.⁹ Nothing, however, prevents those who stand to profit from these entities' federal contracts (i.e., officers, directors, controlling shareholders) from making direct donations to candidates and parties, nor is there anything stopping these individuals or PACs from making unlimited contributions to dark money groups that allow contractor-affiliated individuals to hide their identities and escape public scrutiny.

The president should take action to expose the scale and scope of contractor-affiliated influence in elections by issuing an executive order requiring entities vying for federal contracts to disclose any contributions made by affiliated PACs and individuals to candidates, parties or third-party political groups over a specific dollar amount in the six years prior to submitting the bid. The information should be disclosed to agencies' procurement offices, which should within thirty calendar days publish the information online in a searchable, sortable, downloadable format.

Proactively Disclose Ethics Waivers

Presidents Obama and Trump have required executive branch appointees to sign an ethics pledge designed to reduce potential conflicts of interest. However, in some cases, the president or his designee has granted waivers to appointees despite an apparent conflict,¹⁰ when they believed allowing the staffer in question to work on certain matters was in the public interest because of the individual's prior experience or knowledge. Public access to these waivers and related documents sheds light on whether such waivers are used appropriately. The current administration has repeatedly failed in this regard.¹¹

Similarly, other waivers granted to non-appointee executive branch employees who are required to adhere to ethical obligations, including avoidance of conflicts,¹² are largely kept out of public view. While Designated Agency Ethics Officials (DAEOs) are required to make these records available upon request (which would require awareness of the waivers' existence),¹³ they are not required to proactively disclose these records.

The president should increase public access to these ethics waivers by directing the White House Counsel and Office of Government Ethics (OGE) Director to compile them in a

⁹ 52 U.S.C. § 30119.

¹⁰ See Kate Ackley, *House Democrats Seek Details of Trump Ethics Waivers*, ROLL CALL (May 17, 2019).

¹¹ See Megan R. Wilson, *Senators Call for Disclosure of Administration's Ethics Waivers*, HILL (Aug. 2, 2017).

¹² 18 U.S.C. § 208.

¹³ U.S. OFF. OF GOV'T. ETHICS, RECORDS MANAGEMENT AND RELEASE (Sept. 20, 2020).

central clearinghouse managed by OGE and post them in an online searchable, sortable, and downloadable format. Further, all agency ethics waivers should be issued in writing and promptly filed with OGE for public inspection.

Address FOIA Inefficiency

FOIA allows the public access to key government information, but poor implementation has hindered that mission. According to a report of the 2018-2020 FOIA Advisory Committee, “[t]he number of FOIA requests filed annually across all agencies has generally increased every year during the past decade.”¹⁴ Technology such as e-discovery is available for more efficient responses to requests, but only a modest number of agencies use the technology for FOIA processing.¹⁵

FOIA backlogs impede the public’s ability to scrutinize and hold the government accountable for their actions. To begin addressing this systemic problem, the president should issue a presidential memorandum on transparency directing the Office of Government Information Services (OGIS) to implement an agency-wide e-discovery program and the Office of Management and Budget (OMB) to identify categories of documents that should be uniformly proactively disclosed online in a searchable, sortable and downloadable format.

Conclusion

The foregoing recommendations are offered with the acknowledgement that, while a comprehensive overhaul of our transparency and ethics regimes would require congressional action, there are steps the president can take unilaterally to help rebuild public trust through increased transparency.

¹⁴ FREEDOM OF INFORMATION ACT FEDERAL ADVISORY COMMITTEE, REPORT TO THE ARCHIVIST OF THE UNITED STATES 8 (July 9, 2020).

¹⁵ FREEDOM OF INFORMATION ACT FEDERAL ADVISORY COMMITTEE, DRAFT REPORT TO THE ARCHIVIST OF THE UNITED STATES 22 (May 20, 2020).