

# Security versus Freedom of Information: An Enduring Conflict in Federal Information Policy

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In the aftermath of the September 11 terrorist attacks many things have changed, not least of which is the way the government balances its roles as a disseminator of public information and as the protector of national security. Concerns about the potential misuse of government information by terrorists or other “evildoers” has led to attempts to withhold information, or the withdrawal of previously published information in a variety of formats. This article will survey some of the major events in this arena since September 11, 2001, and review the legal background and the philosophical debate that has occurred.

The Federal Depository Library Program exists to facilitate citizen access to information produced by the federal government. However, the amount and character of the information disseminated through the program has always been subject to limitation. The general limitations are specified by law: “Government publications, except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, shall be made available to depository libraries” (44 U.S. Code 1902). This provides for a great deal of discretion on the part of the government publisher, allowing for the withholding of publications designated as “for official use only” or used for “strictly administrative or operational purposes.” As there is no official definition for either of these categories of exclusion in the statutes, agencies have a great deal of freedom in determining what information to withhold.

This built-in potential for withholding information extends to previously distributed material. As the U.S. Government Printing Office’s (GPO) publication *Instructions to Depository Libraries* specifies “All Government publications supplied to depository libraries under the FDLP remain

the property of the United States Government ...” (GPO, p.19). Implicit in this statement is that the owner of the publications (the federal government) retains the right to recall the publication at need. Indeed, the *Instructions* go on to state that while only the Public Printer, the Superintendent of Documents, or their agents can legitimately order a library to withdraw a document, those officials may do so for “reasons of national security, incorrect or misleading information in a publication, or for any other cause deemed to be in the public’s interest” (GPO, p.20). (Emphasis added.)

Given this wide discretion in determining what is appropriate for public dissemination, it is not surprising that this capability had been exercised a number of times over the years. For example, in 1996 the Superintendent of Documents issued a memorandum to depository libraries requesting the removal of the Internal Revenue Service publication, *75 Years of IRS Criminal Investigation History: 1919–1994*. The reason given was that the IRS had advised that the publication is “For Official Use Only.” Thus it is clear that while efforts to suppress information in the post 9/11 war against



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terror have justifiably received a great deal of scrutiny, they do not constitute a change in basic policy but rather a heightened awareness of the potential uses (and misuses) of government data by terrorists and other perceived threats. However, certain characteristics of the post-9/11 response by government officials and others merit further discussion.

There has been only one recent (post-9/11) request by the GPO to withdraw a previously distributed publication from depository collections. On October 12, 2001, the Superintendent of Documents, at the request of the U.S. Geological Survey's Associate Director for Water, issued a notice requesting that depository libraries withdraw and destroy USGS Open File Report 99-248, *Source-Area Characteristics of Large Public Surface-Water Supplies in the Conterminous United States: An Information Resource, Source-Water Assessment*. The GPO had distributed this publication as a CD-ROM. The letter making the request gave no reason, merely stating, "Please withdraw this material immediately and destroy it by any means to prevent disclosure of its contents." The request to withdraw in itself was unremarkable. The Superintendent of Documents has issued at least 15 such requests since 1995. In the post 9/11 environment, however, the request received a great deal of attention, from both the library community and the media.

In addition to the official GPO request to withdraw the USGS publication, two other events served to remind depository librarians of the complexity of balancing freedom of information with security concerns. In a move apparently unrelated to terrorism concerns, an official of the U.S. Army Corps of Engineers on September 21, 2001, sent a letter to depository libraries requesting that libraries remove several 1960s-era Corps of Engineers publications from library collections and **return** them to the agency. These publications gave information as to the location of archeological sites near various Corps

of Engineers projects in the Missouri River Basin. The concern of the official was that vandals and looters had damaged some of the archeological sites, and that the information contained in the publications might aid such miscreants in doing more damage to the sites. The GPO had not authorized the letter and, unlike the situation with the USGS CD-ROM, libraries had no legal obligation to comply.

In February 2002, a librarian in Oswego, NY sent an e-mail message urging depository librarians to control access to the microfiche collection of Nuclear Regulatory Commission documents relating to nuclear power plants, out of concern that the safety of the plants might be compromised if the information in the documents fell into the hands of terrorists (*Nuclear plant*, 2002). The GPO issued a critical response, saying, "Only the Superintendent of

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Documents has the authority to request that depository libraries withdraw or secure publications in their depository collections. No such official request has been made. Furthermore, the NRC has not requested GPO to direct depository libraries to take any actions regarding the NRC microfiche... We do not condone this unofficial request to restrict public access" (*Nuclear plant*, 2002, p.16).

Perhaps of greater concern and even more significance than these incidents are the widespread reports of government agencies removing information from agency Web sites in the aftermath of the 9/11 terrorist attack. In the immediate aftermath of the attacks, a number of agencies completely disabled access to their sites. The sites were eventually brought back up, but with selected information deleted or no longer accessible. Many others removed some specific content and pages while leaving the bulk of the site operational. The watchdog group OMB Watch has attempted to chronicle the removal of access to online government information (OMB Watch, 2002), but given the vast amount of information contained on government sites and the inherently fluid nature of the Web it will never be possible to establish the full extent of the data removed. This phenomenon validates a long-standing concern of government documents librarians: in the absence of a distributed system of providing access to government publications (such as the Federal Depository Library Program), it becomes all too easy for agencies to withdraw access to information, even after it has been published.

In addition to these specific instances of restricted access to government information, actions by the Bush Administration have raised concerns that the overall tenor of government information policy in the post-9/11 environment has become too strongly biased toward restricting access, rather than informing the public. During the past year, administration officials have

issued two significant memoranda that potentially have the effect of limiting access to government information. On October 12, 2001, Attorney General John Ashcroft issued a memorandum to the heads of all agencies and departments concerning the Freedom of Information Act (FOIA) (Ashcroft, 2001). This memo used language that is widely considered to encourage a more expansive view of what might be withheld under the FOIA than had previous Department of Justice interpretations. In the second incident, the Office of Management and Budget (OMB), the executive agency responsible for establishing government information policy, issued a memorandum on May 3, 2002, advising executive agencies that they would no longer be required to use the Government Printing Office for printing and duplicating services (United States Office of Management and Budget, 2002). While the intent of the revised policy is to save money, many in the library community worried that it would have the effect of restricting access to government information by making it more difficult for the Superintendent of Documents to acquire executive agency publications for distribution to depository libraries. According to the critics, this would enhance the longstanding problem of "fugitive documents" and add to the difficulty libraries are already facing in providing access to government information.

From this discussion, it is clear that the post-9/11 environment presents a significant challenge to libraries, whose very purpose is to provide open access to information. On the one hand, citizen access to government information remains a fundamental need, yet we also have an obligation to respond to legitimate public safety and national security concerns. As I pointed out earlier, this tension between freedom of information and government concern over security is nothing new. In these days of heightened awareness on the part of both librarians and the general public, however, the level of concern has risen. Part of the problem has





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always been a basic dichotomy in the professional responsibilities of the various parties involved in government information. Librarians have as a core professional value a belief in the importance of providing access to information, whether we agree with the content or not. Many government officials, on the other hand, are responsible for protecting the public safety. Obviously, this job is made more difficult when certain information is freely available.

The same technology that we rely on to enhance our access to information has increased the difficulties in balancing these conflicting values. The advent of the Internet and its increasing use by government agencies and others to disseminate information has greatly expanded our ability to access information that was previously very difficult, if not impossible, to obtain. Yet, if there is no distribution of a tangible product containing the information, it is much easier for the information providers (government agencies in this case) to subsequently decide they no longer want to make the information available. Thus, the great concern about the deletion of data from agency Web sites when no library has a physical book, periodical or pamphlet to document the previous existence of the information.

In a sense, the situation parallels that of children's access to adult materials, another matter in which technology has caused more concern in recent years. There have always been attempts to limit or ban access to certain materials in libraries, even works that are widely respected such as Twain's *The Adventures of Huckleberry Finn* or Salinger's *Catcher in the Rye*. Librarians have rightly resisted such attempts at censorship. With the advent of public access to the Internet in libraries, it is possible that patrons will access (by design or by accident) much more objectionable materials such as child pornography or hate literature. This has predictably led to widespread calls to restrict access, including passage of the *Child Online Protection Act* by Congress. It has also created more pressure on librarians, who continue to resist attempts to limit access to information but who are now viewed as defending material that almost no one would have advocated as additions to the library collection.


Similarly, modern information technology has created a situation with government information in which a long-standing area of concern (the potential for government agencies to restrict access to information) now shows increasing possibilities for abuse. Librarians need to respond by taking steps to ensure that the principle of permanent public access be a fundamental consideration whenever policy makers make decisions regarding government information and data, and by embracing and enhancing our role as preservers and archivists of the historical record. The recent flap over the Department of Education's plan to reorganize its Web site (Davis, 2002) is instructive. The Department of Education has begun an overhaul of the agency's Web site, in which it plans to remove old and outdated content. Part of the directive indicated that one of the criteria for removal is whether the information is in harmony with current administration policy. While department officials





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insist that they will retain content that has current value, this approach has been criticized as potentially damaging to researchers who need to know about past initiatives. It is important to note here that the Bush Administration approach in this matter is no different from that taken by previous administrations. It is standard for incoming administrations to stop distributing materials and publications that reflect the policies of their predecessors. What is different this time is that in years past, the previous publications would have been stored away, and depository libraries would have copies of many of them. The technology now allows for us to easily provide access to the older materials, but the transition to a more electronic depository library program means that not as much of the information has been physically distributed to libraries. Thus, what a government official views as "business as usual" is perceived by librarians as a threat to freedom of information.

This case and many others remind us of our roles as **advocates for open information policies and as preservers of the historical record. Our government has been quick to embrace digital technology as a cost-effective means of information dissemination, but has not usually fully considered the ramifications of its decisions in regard to preserving the record for research and policy-making purposes.** By advocating for policies and processes that take into consideration long-term access, and by developing programs to capture and preserve the historic record, libraries and librarians have an important role to play in keeping government information available. 

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