



June 3, 2009

Analysis of Recommendations Received through Phase 1 of the Open Government Directive Process

Our analysis necessarily differs from that produced by NAPA on June 1. The NAPA analysis assumed a categorization based on the administration's broad open government priorities of transparency, citizen participation, collaboration, and capacity building. The OMB Watch analysis is more narrowly focused and targeted toward identifying the public's commitment to the spirit of the open government recommendations established in the Right-to-Know community's November 2008 report to the presidential transition team. This analysis categorized the recommendations into issue areas of: National Security & Secrecy, Usability of information, and Creating an Environment of Openness.

To conduct this analysis, we grouped recommendations from the survey into the broad themes discussed in the 21st Century Right-to-Know report. The analysis also includes those unique ideas which went beyond the scope of our specific recommendations but still fit into the general categories. This analysis consists only of the recommendations received from the public through the NAPA site and does not include the agency comments submitted through the MAX system. The comments from agency personnel were more concerned with capacity building and specific policy changes needed to increase federal transparency. While important, those comments do not necessarily fold easily into this product.

NAPA's API made it difficult for non-government users to access the data from the IdeaScale survey in a usable format, delaying this analysis and frustrating others interested in summarizing the public comments. The API only provided public access to the top 50 recommendations. Thanks to Greg Elin formerly of the Sunlight Foundation we were able to scrape the website of its data. Further thanks are owed to Amy Fuller of OpenTheGovernment.org, Hannah Bergman of the Reporter's Committee for Freedom of the Press, Heather West of the Center for Democracy and Technology, and OMB Watch's intern Chris George for providing critical assistance in the analytical phase of this project. Any fault in the analysis is the responsibility of OMB Watch. We all worked diligently to provide the best analysis possible so that it would prove useful to the open government community but were restricted by the government's hurried timeframe for this initiative. The data used in this report was scraped on May 29, so some of the votes may have changed since then.

Please note that the sections are color coded by issue: Green – Environment for Transparency; Blue – Usability of Information, Red – National Security & Secrecy.

Roger Strother
Information Policy Analyst
OMB Watch

Celebrating 25 Years of Promoting Government Accountability and Citizen Participation — 1983 - 2008

1742 Connecticut Ave. NW
Washington, DC 20009

tel: 202.234.8494
fax: 202-234.8584

email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

Creating a Government Environment for Transparency

There was a general sense that successful implementation of an open government directive would require adequate funding and attention from the White House and high level agency officials. Thus, several suggestions focused on the need “transparency officers” at each agency, an example to be set by the White House in making itself, including the Executive Office of the President, transparent, and coordination among agencies on transparency efforts.

Other suggestions focused on improving the methods through which the government and citizens interact in order to increase the effectiveness of collaboration and establishing mechanisms for accountability within the transparency in government framework. Many commentators also pointed to existing laws that facilitate open government but that agencies do not comply with, such as the Electronic Freedom of Information Act. These laws and regulations should be followed and updated to take into account changes in technology since they were enacted, according to many commentators. Still most comments were very general in nature and did not go as far as they could have in suggesting concrete solutions to remedy general concerns.

A dozen suggestions of the almost 150 in this category received more than 100 votes. The most popular of these, with 336 votes for it, was a suggestion to fully fund agency participation and collaboration activities as part of the effort to increase government transparency. The other popular suggestions centered on accountability for transparency, methods to facilitate participation, and eliminating legal impediments to collaboration with citizens and across agencies. These included a requirement to Webcast government meetings and more proactive disclosure of public documents. The only 21st Century Right to Know suggestion that received more than 100 votes was for new protections of whistleblowers who disclose waste, fraud, and abuse. However, because many suggestions are redundant the vote tallies are not as useful as they could have been.

There were several easily actionable items:

- Webcasting of agency and advisory committee meetings
- This idea, presented by several different people, received significant support and many people point out how cheaply this could be done.
- Create high-level positions at each agency that focus on transparency (chief transparency officers)
- Government wide standards on document and electronic records preservation
- Make the Office of Management and Budget’s role in agency rulemaking more transparent
- End “on background” briefings and improve media access to agency experts

Creating a Government Environment for Transparency , Themes

Directives and legislation providing protection for whistleblowers who disclose waste, fraud, or abuse within an agency, and punitive processes for managers who retaliate against those whistleblowers in their performance reviews should be established. (c.f. 21st Century RTK Report, E.4)

158 votes for, 15 against¹

39 votes for, 1 against

¹ The first total given is for the 21st Century RTK recommendation. Subsequent votes are for comparable ideas. Further, another whistleblower recommendation now has over 500 votes on the NAPA site as of 6/3/09.

3 votes for, 9 against
6 votes for, 2 against
16 votes for, 3 against
12 votes for, 0 against

The president should direct agencies that when they outsource any of their duties, not limited to records management duties, the contracts should contain provisions specifying that the records produced by the company in its function as a government surrogate belong to the agency and available, as agency records, under FOIA. (cf. 21st Century RTK Report, E.5)

89 votes for, 5 against

Government should have an affirmative legal obligation to disclose information to the public in a timely manner, thereby expanding the presumption of openness. (cf. 21st Century RTK Report, E.22)

83 votes for, 11 against
13 votes for, 0 against
16 votes for, 3 against
104 votes for, 19 against
22 votes for, 6 against
57 votes for, 13 against
190 votes for, 20 against
55 votes for, 10 against
49 votes for, 7 against
28 votes for, 10 against
33 votes for, 5 against
51 votes for, 2 against
15 votes for, 1 against
34 votes for, 1 against

Agencies' implementation of increased transparency and promotion of greater use of information should include strategic and aggressive use of existing library networks, including the Federal Depository Library Program (FDLP). (cf. 21st Century RTK Report, E.6)

69 votes for, 5 against
29 votes for, 5 against
13 votes for, 1 against

The president should establish mandatory training for agency officials on transparency requirements and policies to ensure better implementation, including specific trainings for employees and contractors with classification authority and responsibility for implementing the framework on Controlled Unclassified Information (CUI). (cf. 21st Century RTK Report, E.20)

58 votes for, 4 against
13 votes for, 3 against
10 votes for, 1 against

The president should encourage Congress to establish a criminal penalty for willful concealment or destruction of non-exempt agency records requested under FOIA, as well as penalties for employees and contractors who repeatedly fail to comply with CUI policies and employees and contractors with original classification authority who repeatedly fail to comply with proper classification policies. (cf. 21st Century RTK Report, E.21)

54 votes for, 6 against

Agency communications policies should also inform employees of their rights under the Whistleblower Protection Act and the Lloyd-La Follette Act, which ensures unrestricted employee communication with Congress.

51 votes for, 5 against

The official agency communications policy should be publicly available on the agency's website. Public affairs staff should have a plan for disseminating the policy to agency scientists and should conduct trainings in effective media communication that emphasize scientific openness.

48 votes for, 3 against

176 votes for, 20 against

Provide adequate resources and incentives to allow agencies to achieve transparency goals. (cf. 21st Century RTK Report, E.7-12)

47 votes for, 4 against

50 votes for, 2 against

336 votes for, 64 against

The president should direct the Office of Management and Budget to identify the public's transparency rights and require agencies to post these rights in government offices and use them in agency communications with the public (e.g., public meetings). A simple straightforward notification of the public's right to know could have benefits for both public awareness and mindfulness of public officials. The list of rights compiled by OMB should include key rights afforded in statutes and the Constitution. (cf. 21st Century RTK Report, E.2)

38 votes for, 5 against

The president should make transparency a factor in employee and agency performance evaluations. (cf. 21st Century RTK Report, E.13)

33 votes for, 6 against

29 votes for, 6 against

22 votes for, 10 against

320 votes for, 59 against

224 votes for, 48 against

11 votes for, 4 against

62 votes for, 19 against

27 votes for, 0 against

Each agency should establish a senior officer in charge of dissemination/transparency, tasked to balance information and dissemination regimes, with a particular emphasis on transparency. (cf. 21st Century RTK Report, E.17)

30 votes for, 14 against

22 votes for, 2 against

44 votes for, 4 against

19 votes for, 4 against

The president should create a new central Office of Transparency (run by the Government Transparency Officer (GTO) to oversee disclosure and dissemination practices, promote increased transparency throughout government, and address privacy rights. (cf. 21st Century RTK Report, E.16)

25 votes for, 14 against

28 votes for, 4 against

47 votes for, 22 against

30 votes for, 34 against

The president should create a Dissemination/Transparency Working Group made up of new agency Senior Dissemination/Transparency Officers and task it to establish metrics for outcome (not process) to assess agency transparency and use them to regularly evaluate and report on progress. (cf. 21st Century RTK Report, E.18)

17 votes for, 20 against

25 votes for, 6 against

Creating a Government Environment for Transparency - Additional Ideas

The administration should disclose all outside contacts with the president and agency officials, in particular with regards to the American Recovery and Reinvestment Act.

20 votes for, 1 against

30 votes for, 14 against

Greater public involvement during regulation comment periods.

23 votes for, 1 against

41 votes for, 3 against

20 votes for, 8 against

Incorporate a wide variety of communication strategies to involve people of diverse backgrounds.

14 votes for, 0 against

Publish proposed open government decisions for public comment using a similar dialogue. Information comparing current and proposed transparency policies should be available online.

21 votes for, 5 against

38 votes for, 1 against

3 votes for, 2 against

Follow the model of programs and agencies that demonstrate transparency.

21 votes for, 4 against

Require all agencies to submit a plan for how they will incorporate open government activities into their missions.

253 votes for, 54 against

Shed light on the role of Executive Office of the President and especially OMB in the budget process, rulemaking, and shaping agency decisions.

25 votes for, 6 against

46 votes for, 7 against

43 votes for, 6 against

36 votes for, 4 against
22 votes for, 0 against
17 votes for, 3 against

Make all records of federal government contracts available.

24 votes for, 5 against

Strengthen requirements on agencies to preserve documents for the public record.

32 votes for, 2 against
35 votes for, 14 against
64 votes for, 11 against

Usability of Information

The public concerns reflected by recommendations for open government made on the NAPA site address many of the “fundamental” challenges to the usability of government information laid out in the 21st Century Right to Know Report: specifically, the most popular suggestions dealt with the form in which some government information is stored, restrictions on who from government can speak to the general public and about what, and the lack of an adequate system to handle electronic records.

By far, when duplicate suggestions are taken together, the most popular suggestion involves making government information available. Many recommendations suggest using open source software and established open data principles. As pointed out in the 21st Century Right to Know Report, and echoed by several participants on the NAPA site, open formats for government information and open software applications will enable easier collaboration between agencies and will increase civilian oversight, participation, and the usability of taxpayer-funded research. The public also recommended ensuring government information is digitized and available online for free, and ensuring that government information is authenticated in order to ensure that it can be trusted.

A number of recommendations addressed the need for government information to be displayed in understandable formats. The most popular recommendation concerning format and accessibility is to present information about the federal budget or all federal spending online. The site should be interactive and allow users to analyze and display information in a variety of ways.

The public also recommended, and supported the idea, government-created online indexes of information that would make it easier for the public to know what information is available from the government and how they can get it, with an educational component to ensure that the public knows how to find and use this information. Metadata standards were also suggested, in order to make it easier to determine what information is available and what kinds of documents are held by each agency. Many suggestions integrated some sort of online central repository for all government information archives- a data.gov for all information, not just raw data. In addition, suggestions were given that the government create a system of permalinks to ensure that once you know where information is, it will remain accessible at that location online.

Another set of popular recommendations spoke directly to the problem of the free exchange of ideas in the scientific community. The recommendations contained both suggestions for ensuring scientists and researchers are free from political interference and asked that such policies are implemented in a coherent manner [not sure what this means, exactly- this section could use another sentence].

Several recommendations addressed electronic records management. The suggestions ranged from creating a default “save” setting to archive all electronic records in their original format, to creating a Presidential Task Force to address electronic records management issue. The recommendations addressed both the need to preserve records for future accountability, and the potential cost savings from effective electronic records management.

Recommendations also addressed the usability of current and future initiatives to engage the public through rulemaking processes, public dialogues, and other public processes of the federal government.

Suggestions focused on using the Internet to create new ways to interact based on current practices (especially rulemaking). In addition, many comments on rulemaking specifically have been shared at the Regulations.gov Exchange.

Usability Themes

The president should review and improve upon the existing e-rulemaking initiative, which needs dramatic change. (cf. 21st Century RTK Report, D.4)

- 35 votes for, 4 against
- 9 votes for, 1 against
- 10 votes for, 1 against
- 7 votes for, 6 against
- 11 votes for, 2 against
- 32 votes for, 0 against

The president should instruct the E-Government Administrator to implement a centralized digital system for Freedom of Information Act requests that interacts with each agency's FOIA office. (cf. 21st Century RTK Report, D.5)

- 41 votes for, 5 against
- 58 votes for, 3 against
- 28 votes for, 8 against
- 175 votes for, 23 against

The administration should syndicate government information for the public. (cf. 21st century RTK Report, D.8)

- 15 votes for, 5 against
- 19 votes for, 1 against
- 13 votes for, 2 against
- 38 votes for, 8 against
- 18 votes for, 5 against
- 29 votes for, 0 against
- 37 votes for, 4 against

The CTO should ensure that agencies create websites that use open source software and distribute data in open formats that are accessible to all search engines. (cf. 21st Century RTK Report, D.9)

- 69 votes for, 11 against
- 4 votes for, 0 against
- 91 votes for, 8 against

13 votes for, 3 against
13 votes for, 0 against
16 votes for, 1 against
70 votes for, 17 against
6 votes for, 4 against
37 votes for, 12 against
67 votes for, 19 against
96 votes for, 14 against
32 votes for, 3 against
68 votes for, 22 against
20 votes for, 8 against
31 votes for, 0 against
28 votes for, 1 against
13 votes for, 5 against

OMB, the GSA, or another similar body should undertake a review of metadata standards throughout government (and Congress) and issue recommendations for standards development and coordination. (cf. 21st Century RTK Report, D.10)

59 votes for, 3 against
16 votes for, 7 against

The president should direct agencies to minimize the use of copyright claims on government-sponsored materials and include a statement on websites establishing that in the absence of expressed copyright agency-produced materials are copyright free. (cf. 21st Century RTK Report, D.11)

61 votes for, 4 against
5 votes for, 8 against

The administration should establish a Presidential Task Force on Implementation of Electronic Records Management. (cf. 21st Century RTK Report, D.12)

29 votes for, 6 against

Records retention rules, digitization guidelines, and model contracts should be revised to ensure consistent access to both original and digital records in non-proprietary formats. (cf. 21st Century RTK Report, D.13)

45 votes for, 3 against
20 votes for, 0 against
108 votes for, 3 against
17 votes for, 1 against
21 votes for, 1 against
23 votes for, 4 against
15 votes for, 0 against
23 votes for, 1 against

Preservation of electronic records and converted records should be a priority, and conservation guidelines for electronic records should be produced. (cf. 21st Century RTK Report, D.14)

57 votes for, 4 against
30 votes for, 5 against
158 votes for, 35 against

38 votes for, 0 against
64 votes for, 3 against
13 votes for, 0 against
56 votes for, 11 against
37 votes for, 5 against
21 votes for, 3 against
12 votes for, 2 against
44 votes for, 1 against
4 votes for, 6 against

Regulations should be promulgated to make it explicit that agency employees and officials - in compliance with the requirements of the Federal Records Act - may not conduct agency business through use of non-agency email or other messaging systems. (cf. 21st Century RTK Report, D.15)
54 votes for, 5 against

The CIO Council should study and make recommendations for authentication of government documents and information submitted to the government. (cf. 21st Century RTK Report, D.16)
36 votes for, 2 against
7 votes for, 3 against
87 votes for, 7 against
4 votes for, 1 against
30 votes for, 2 against
11 votes for, 0 against

Agency media policies should respect that scientists and researchers have a right to express their personal views. Scientists and researchers, like any federal employees, have a right to express their personal views outside of a few narrow restrictions. (cf. 21st Century RTK Report, D.17a)
56 votes for, 5 against

Scientists and researchers also have the right to review, approve and comment publicly on the final version of any document or publication that significantly relies on their research, identifies them as an author or contributor, or purports to represent their scientific opinion or relates to their field of expertise. (cf. 21st Century RTK Report, D.17b)
52 votes for, 3 against

Agency policies should make clear that employees are responsible for the accuracy and integrity of their communications and should not represent the agency on issues of politics or policy without prior approval from the Public Affairs Officer. (cf. 21st Century RTK Report, D.17c)
35 votes for, 6 against

Agency policies should spell out a clearly defined role for the PAOs, including timely response to media inquiries and providing journalists and agency staff with accurate information, but should also prevent them from being gatekeepers of information. (cf. 21st Century RTK Report, D.17d)
88 votes for, 12 against

The President's Science Adviser should ensure that guidelines for the free flow of scientific information are implemented in a comprehensive and timely manner. (cf. 21st Century RTK Report, D.18)
54 votes for, 7 against

Additional Ideas - Usability

Improve web forms for incoming communications

20 votes for, 2 against

Disseminate spending data broken down by congressional district or zipcode.

5 votes for, 10 against

36 votes for, 5 against

Improve the functionality and data volume of data.gov.

10 votes for, 3 against

10 votes for, 5 against

8 votes for, 8 against

101 votes for, 11 against

62 votes for, 2 against

9 votes for, 0 against

13 votes for, 1 against

Make procurement documents public.

9 votes for, 2 against

Make public data on the usage of federal websites.

4 votes for, 2 against

134 votes for, 30 against

Agencies should create real-time access to procedural information that allows for participation in government affairs, including schedules, transcripts or webcasts of meetings, and dockets and other official documentation.

51 votes for, 9 against

Restore the Office of Technological Assessment.

19 votes for, 1 against

Provide quarterly status reports on the progress of major initiatives.

21 votes for, 7 against

Create an interactive website to explore the budget.

46 votes for, 18 against

225 votes for, 23 against

45 votes for, 4 against

Make public all data sets from non-classified satellites.

12 votes for, 2 against

Improve the functionality of recovery.gov and the amount of related data available.

17 votes for, 3 against
16 votes for, 3 against
18 votes for, 2 against

Establish technology procurement standards.

11 votes for, 6 against
10 votes for, 1 against.

Agencies should conduct an audit of the information that they have.

44 votes for, 4 against
8 votes for, 3 against
19 votes for, 2 against
29 votes for, 6 against

Data should be searchable across all federal websites.

22 votes for, 8 against

Ensure that federal websites are compatible with smart phones.

18 votes for, 3 against

Websites should have a standards format with links to all other federal sites.

94 votes for, 27 against.

National Security and Secrecy

We identified 35 recommendations which related in some way to recommendations listed in the 21st Century Right to Know Report. By far the highest vote getter of those related to this topic was the recommendation to prohibit secret laws, regulations, & processes. The recommendation received a net voting score of 106 compared to the next highest which received 52 by comparison.

A major pattern for national security & secrecy related suggestions related to the way in which documents are processed. The second highest rated suggestion was for time limits on the classification review process. These recommendations expressed the consensus that distrust in government results from overclassification. Recommendations or complaints about overclassification were comprised the majority of comments received under this category and that too much information was restricted for too long. Often the state secrets privilege was seen as yet another means by which the government classifies documents that are embarrassing or would otherwise expose government misconduct. 62 total votes were seen for recommendations calling for a clear state secrets policy and further actions to prevent the abuse of the privilege.

There were multiple concerns with pseudo-classification that hinders national security and supported the creation of a new CUI memorandum.

- There was displeasure presented in the fact that the public is left out of certain decision making processes such as CUI/SBU reform.
- There was interest in establishing rules by which agencies would have to declare why specific information is designated as SBU.

Oversight was another key issue. Several recommendations dealt with the lack of authority given to GAO auditors to do their jobs while other voters believed that more agencies should be subject to audits. They further noted the lack of whistleblower protections when it comes to revealing secrets to uncover fraud or waste. These recommendations included:

- The president should require agency heads to task agency inspectors general to perform regular audits of agency compliance with executive order requirements
- Allow seasoned bureaucrats within the Government Accountability Office with the appropriate clearance levels audit intelligence agencies.
- Protect federal workers from retaliation in the form of security clearance revocation or threats to revoke security clearances.

Themes- National Security & Secrecy

The president should issue a presidential directive to the executive branch that tasks the Information Security Oversight Office with chairing an interagency taskforce to revise the framework for designating information that requires classification in the interest of national security (Executive Order 12958, as amended), with the objective of reducing national security secrecy to the essential minimum, declassifying all information that has been classified without a valid national security justification, and considering the public interest in disclosure. (cf. 21st Century RTK Report, C.1)

31 votes for, 8 against
49 votes for, 4 against
40 votes for, 12 against
16 votes for, 1 against
20 votes for, 3 against
45 votes for, 6 against
45 votes for, 22 against

The president should immediately task each federal agency or entity that classifies information to conduct a detailed public review of its classification practices, with the objective of reducing national security secrecy to the essential minimum and declassifying all information that has been classified without a valid national security justification or for which classification is no longer justified. (cf. 21st Century RTK Report, C.2)

25 votes for, 9 against
41 votes for, 2 against
18 votes for, 24 against
16 votes for, 14 against
8 votes for, 2 against

The president should work with Congress to accelerate declassification of historical records through passage of an omnibus Historical Records Act. (cf. 21st Century RTK Report, C.4)

33 votes for, 4 against
59 votes for, 7 against
16 votes for, 4 against

The president should replace the CUI Memorandum with a memorandum that directs agencies to reduce use of information control markings unless there is a statute, regulation or policy directive that

justifies the need for special handling safeguards or dissemination controls and that introduces a presumption that information not be labeled. (cf. 21st Century RTK Report, C.5-6)

16 votes for, 5 against

45 votes for, 9 against

23 votes for, 2 against

The president should declare that it is the policy of his administration never to invoke the state secrets privilege to cover up illegal or unconstitutional governmental conduct and that the state secrets privilege will be invoked only as a last resort and only by the head of an agency who has determined that the public interest in disclosure of the information is outweighed by the risk to national security. (cf. 21st Century RTK Report, C.9)

44 votes for, 12 against

The president should work with the relevant committees of Congress to redress improper invocations of the privilege by the previous administration and to ensure that future invocations of the state secrets privilege are properly limited. (cf. 21st Century RTK Report, C.11)

40 votes for, 10 against

Federal task forces incorporating state and local law enforcement officials should declassify information to the greatest extent possible. Documents and information created by or pertaining to the activities of state and local officials should be accessible under state and local open government laws. (cf. 21st Century RTK Report, C.12-15)

15 votes for, 8 against

The president should require agency heads to task agency inspectors general to perform regular audits of agency compliance with executive order requirements on classification and declassification. The Government Accountability Office (GAO) should be enlisted to conduct regular intelligence oversight. The president should actively cooperate with congressional oversight and recognize that oversight is a healthy component of American government. (cf. 21st Century RTK Report, C.16-17,19)

49 votes for, 12 against

55 votes for, 20 against

The President's Foreign Intelligence Advisory Board (PFIAB) is unique among intelligence oversight entities in that it is composed of private citizens with a mandate to oversee intelligence agency compliance with the law. (cf. 21st Century RTK Report, C.20)

16 votes for, 9 against

The president should issue a policy directive prohibiting agencies from creating secret laws or regulations or from using secret processes to prevent public input in the development of government rules. (cf. 21st Century RTK Report, C.21)

123 votes for, 17 against

The president should direct each agency to compile its relevant records on the topics of domestic surveillance, rendition, detention, and interrogation and to provide unclassified reports to the president and to Congress concerning U.S. government actions in these areas.

34 votes for, 11 against

National Security & Secrecy - Additional Ideas

Enhance whistleblower protections for intelligence agency employees.

42 votes for, 8 against

Make all declassified documents available online.

40 votes for, 3 against

Standardize the systems used by the military and other government agencies for storing personnel information.

9 votes for, 5 against

Eliminate the CIA black budget.

29 votes for, 35 against

Miscellaneous (Non-categorized) Ideas

The creation of an online portal for citizen participation to would allow citizens to research, discuss, and oversee formation of public policy. It will streamline civic collaboration with government and allow for unprecedented transparency and participation in public policymaking.

94 votes for, 9 against

Repeat the Open Government Dialogue on a regular basis, so that transparency policy is shaped by an on going process. Improve on the Dialogue using lessons from the first iteration.

46 votes for, 6 against

10 votes for, 2 against

Take steps to involve individuals who do not have access to a web based process.

42 votes for, 17 against

59 votes for, 5 against