

Published on Monday, January 7, 2002 in the [San Francisco Chronicle](#)

# The Day Ashcroft Censored Freedom of Information

by Ruth Rosen

THE PRESIDENT DIDN'T ask the networks for television time. The attorney general didn't hold a press conference. The media didn't report any dramatic change in governmental policy. As a result, most Americans had no idea that one of their most precious freedoms disappeared on Oct. 12.

Yet it happened. In a memo that slipped beneath the political radar, U.S. Attorney General John Ashcroft vigorously urged federal agencies to resist most Freedom of Information Act requests made by American citizens.

Passed in 1974 in the wake of the Watergate scandal, the Freedom of Information Act has been hailed as one of our greatest democratic reforms. It allows ordinary citizens to hold the government accountable by requesting and scrutinizing public documents and records.

Without it, journalists, newspapers, historians and watchdog groups would never be able to keep the government honest. It was our post-Watergate reward, the act that allows us to know what our elected officials do, rather than what they say. It is our national sunshine law, legislation that forces agencies to disclose their public records and documents.

Yet without fanfare, the attorney general simply quashed the FOIA. The Department of Justice did not respond to numerous calls from The Chronicle to comment on the memo.

So, rather than asking federal officials to pay special attention when the public's right to know might collide with the government's need to safeguard our security, Ashcroft instead asked them to consider whether "institutional, commercial and personal privacy interests could be implicated by disclosure of the information." Even more disturbing, he wrote: *"When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records."*

Somehow, this memo never surfaced. When coupled with President Bush's Nov. 1 executive order that allows him to seal all presidential records since 1980, the effect is positively chilling. In the aftermath of Sept. 11, we have witnessed a flurry of federal orders designed to beef up the nation's security. Many anti-terrorist measures have carefully balanced the public's right to know with the government's responsibility to protect its citizens.

Who, for example, would argue against taking detailed plans of nuclear reactors, oil refineries or reservoirs off the Web?

No one. Almost all Americans agree that the nation's security is our highest priority.

Yet half the country is also worried that the government might use the fear of terrorism as a pretext for protecting officials from public scrutiny.

Now we know that they have good reason to worry. For more than a quarter of a century, the Freedom of Information Act has ratified the public's right to know what the government, its agencies and its officials have done. It has substituted transparency for secrecy and we, as a democracy, have benefited from the truths that been extracted from public records.

Consider, for example, just a few of the recent revelations -- obtained through FOIA requests --

- that newspapers and nonprofit watchdog groups have been able to publicize during the last few months:

-- The Washington-based Environmental Working Group, a nonprofit organization, has been able to publish lists of recipients who have received billions of dollars in federal farm subsidies. Their Web site, [www.ewg.org](http://www.ewg.org), has not only embarrassed the agricultural industry, but also allowed the public to realize that federal money -- intended to support small family farmers -- has mostly enhanced the profits of large agricultural corporations.

-- The Charlotte Observer has been able to reveal how the Duke Power Co., an electric utility, cooked its books so that it avoided exceeding its profit limits. This creative accounting scheme prevented the utility from giving lower rates to 2 million customers in North Carolina and South Carolina.

-- USA Today was able to uncover and publicize a widespread pattern of misconduct among the National Guard's upper echelon that has continued for more than a decade. Among the abuses documented in public records are the inflation of troop strength, the misuse of taxpayer money, incidents of sexual harassment and the theft of life-insurance payments intended for the widows and children of Guardsmen.

-- The National Security Archive, a private Washington-based research group, has been able to obtain records that document an unpublicized event in our history. It turns out that in 1975, President Gerald Ford and Secretary of State Henry Kissinger gave Indonesian strongman Suharto the green light to invade East Timor, an incursion that left 200,000 people dead.

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- By examining tens of thousands of public records, the Associated Press has been able to substantiate the long-held African American allegation that white people -- through threats of violence, even murder -- cheated them out of their land. In many cases, government officials simply approved the transfer of property deeds. Valued at tens of million of dollars, some 24,000 acres of farm and timber lands, once the property of 406 black families, are now owned by whites or corporations.

These are but a sample of the revelations made possible by recent FOIA requests. None of them endanger the national security. It is important to remember that all classified documents are protected from FOIA requests and unavailable to the public.

Yet these secrets have exposed all kinds of official skullduggery, some of which even violated the law. True, such revelations may disgrace public officials or even result in criminal charges, but that is the consequence -- or shall we say, the punishment -- for violating the public trust. No one disputes that we must safeguard our national security. All of us want to protect our nation from further acts of terrorism. But we must never allow the public's right to know, enshrined in the Freedom of Information Act, to be suppressed for the sake of official convenience.

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