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# Government Documents Are Declassified in Name Only

*Starting in the new year, the government declassified 270 million pages of FBI files -- but if you tried to access them, you'd have been told that none of them are available, and won't be, maybe for years.*

January 6, 2007 |

On December 31 at midnight, hundreds of millions of pages of secret government documents were automatically declassified -- the result of President Bush's Executive Order on Declassification, which covers all national security documents 25 years old or older.

They included 270 million pages of FBI files, according to the *New York Times*, covering, among other topics, the civil rights movement, 1960s anti-war protests and organized crime up to 1981. In all of American history, there has never been anything like this avalanche of information.

But if you called the National Archives on Wednesday, as I did (it was closed Tuesday for the national day of mourning for President Ford), you would have been told that none of these newly declassified documents are available -- and won't be, maybe for years.

Automatic declassification is a wonderful idea. "Our democratic principles require that the American people be informed of the activities of their Government" -- that's what President Clinton wrote when he ordered 25-year automatic declassification in 1995. The target date for compliance was extended several times, but then, in 2003, Bush surprised his critics by setting a firm deadline. Over the years, some documents were released in anticipation of the deadline.

But the obstacles to actually seeing the vast majority of these documents anytime soon are huge. Declassification, it turns out, is not the same as release. Some documents will remain classified, and others will be declassified but still withheld. Bush's executive order specifies nine grounds for exemptions, and dozens of other existing laws restrict the release of certain kinds of information.

Many restrictions are reasonable: The Privacy Act, for instance, prohibits release to a third party of any government information on a living person -- so I can't get your FBI file, and you can't get mine. The Atomic Energy Act protects information on how to build nuclear weapons.

Some of the exemptions, however, are more troublesome and can easily provide excuses to agencies that want to keep secrets. One, for instance, covers information that might "reveal the identity of a confidential human source."

Obviously, people who have been promised confidentiality should not have their names released. But the FBI has extended that principle (which is also part of the Freedom of Information Act) to cover not just the names of sources but

also the information they provided. The bureau argued that release of the information might lead a knowledgeable person to figure out the source's identity. On this basis, all information provided by all confidential sources could be withheld.

Also exempt: information that might reveal the FBI's "sources and methods." In the past, the FBI has claimed this exemption for information obtained through wiretaps -- because a wiretap is a "source and method" -- even though it's not exactly a secret that the FBI uses wiretaps. But if you withhold all the information provided by informants and wiretaps, not much is left except for newspaper clippings.

Then there's the exemption for information provided by a foreign government. This is the one that tripped me up in my 23-year battle to get John Lennon's FBI files. The last 10 documents were released last month -- but rather than revealing sensitive foreign intelligence that would compromise an allied government, they contained only innocuous information about Lennon's antiwar activities in London in 1971 that had always been publicly known.

Thus the policy known as "automatic declassification" does not in fact mean that 25-year-old national security information will be automatically declassified. It means that the material must be, in the words of the Justice Department, "reviewed for declassification, exemption, and/or referral to other government agencies."

The last phrase, "referral to other government agencies" sounds benign but in fact provides a huge loophole. The Justice Department, for example, reported that in 2006 it reviewed 57 million pages, of which 11 million -- 20% -- were declassified, while 46 million pages, or 80%, were referred to other agencies.

Virtually all important documents involve multiple agencies. If you wanted to look, say, at Reagan-era memos about U.S. support for Saddam Hussein, those meetings probably involved the CIA, the National Security Council and the Defense and State departments. If even one of those agencies wanted to withhold a document, it would be withheld. (There is a deadline for the processing of the material that has been referred to other agencies -- three more years.)

And there is one more huge obstacle. Documents that are deemed releasable are to be sent to the National Archives, which is then supposed to make them available to the public. But the National Archives already has a backlog of 400 million pages. Oh, and its budget for next year has been cut.

Congress needs to appropriate additional funds for the National Archives if the 25-year automatic-declassification policy is to have any meaning. This may not be on the agenda for the Democrats' first 100 hours -- but it ought to be in their first 100 days. Rep. Henry Waxman of Los Angeles and Sen. Joe Lieberman of Connecticut chair the responsible House and Senate committees. They should take the lead because the American people should be informed about the activities of their government.

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