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Freedom of Information Act: Use it or lose it

GUEST VIEWPOINT By Kyu Ho Youm
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James Madison, called the father of the Constitution, stated in 1822: "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both."

But the Madisonian vision for a popular government sustained through citizens' informational access remained an ideal until Congress passed the Freedom of Information Act in 1966 to recognize access to government records as an enforceable right.

Our country was one of the first to embrace freedom of information. Nonetheless, we were 200 years behind the Swedish, who first guaranteed access to government records as their constitutional right in 1766.

The FOIA and its state equivalents, including Oregon's Public Records Law, reflect our right to know as the fundamental concept of our democracy: Give us the knowledge we need to govern ourselves.

But the practical value of open records laws has been called into question in recent years. Since the terrorist attacks of Sept. 11, 2001, government officials have been increasingly inhibited from disclosing agency information. They err on the side of caution.

Judging from Project Open Oregon, the recent Associated Press audit of government agencies' compliance with our state open records law, government reports are likely to be withheld rather than released.

The audit presents a compelling case for an aggressive press in using public records law. Government officials are far more willing to grant document requests from media organizations or reporters than from ordinary individuals.

The federal open records law can be a journalist's best reporting tool. But as reporter Michael Doyle of McClatchy Newspapers noted in his 2001 FOIA study, "Most reporters never use the law at all." An earlier analysis of the law estimated that only 5 percent of FOIA requests were from journalists, scholars and authors combined.

Who benefits most, then, from the federal open records law? Corporations, business executives, litigants _ and 'opposition researchers,' who doggedly seek anything and everything prejudicial to the object of their search. Their use (and, more precisely, misuse) of the FOIA to advance their private interest contradicts the law's central purpose _ ensuring that "the government's activities be opened to the sharp eye of public scrutiny."

Equally significant is foreigners' frequent use of the federal law in seeking a benefit that American citizens rarely obtain. The FOIA allows "any person" to request information from federal government agencies.

Why do journalists so infrequently use the federal law, although they were crucial in lobbying Congress for its passage? The answer is partly journalistic.

Journalists don't want to hassle over record requests when they can obtain government

documents through informal channels. Furthermore, FOIA requests are too time-consuming to meet their reporting demands.

As representatives of the public, however, our news media ought to practice what they preach about freedom of information. They should use FOIA and state laws more regularly and vigorously in forcing our government to be more open to the public.

Our post-Sept. 11 commitment to freedom of information is for a culture of secrecy, not of disclosure. The Madisonian idea of creating an open government as our civic tradition is cavalierly dismissed in the name of national security.

It's shamefully un-American that the ongoing retrenchment in our access right stands in sharp contrast with the veritable wave of freedom of information sweeping the globe during the past 10 years.

To all of us, and especially to our news media, Project Open Oregon should serve as a sobering wake-up call.

The media should help put freedom of information back on track.

No government can make its people secure unless it enables them to scrutinize its activities. So Madison's exhortation about an informed public couldn't be more relevant today. It admonishes government officials against rationalizing restrictions on our freedom of information on the basis of their often nebulous concern about security.

And the Sunshine Week of March 13-19 is all the more fitting, for this week marks Madison's 254th birthday.