

POLITICS & THE NATION

Over 300 public-records lawsuits filed in Obama's first year

FIGURE SIMILAR TO BUSH ERA

Transparency advocates express 'disappointment'

BY CAROL D. LEONNIG

More than 300 individuals and groups have sued the government to get records in the year since President Obama pledged that his administration would be the most open in history.

In case after case, the plaintiffs say little has changed since the Bush administration years, when most began their quests for records. Agencies still often fight requests for disclosure, contending that national security and internal decision-making need to be protected.

The lawsuits cover a wide range of issues. A retired Marine wants to review soldier autopsies to learn whether the Pentagon has issued defective body armor. A Texas law professor questions whether the location of the U.S.-Mexico border fence unfairly harmed minority landowners. Closer to home, the Chesapeake Bay Foundation continues its battle to learn whether agencies are properly punishing those who destroy wetlands.

Despite the administration's opening scores of documents, court dockets show a slight increase in the number of lawsuits — 319 — filed under the Freedom of Information Act since Obama was sworn into office last January. In the final two years of the Bush administration, by comparison, there were 278 records suits filed in 2007 and 298 in 2008. People seeking records can sue only after the government repeatedly rejects their requests, usually after months of attempts and appeals.

The White House disputes the numbers in the court logs. It says the Justice Department's own figures show that 328 records

lawsuits were filed in 2008 and 306 in 2009. Justice Department officials say the difference could be because some cases are mislabeled in court records, and because others never show up in the agency's court because the department does not get involved.

White House officials say the release of huge volumes of records — including once-secret Bush administration memos on interrogation methods, White House visitor logs and data about birds endangering planes — has been nothing short of historic. They argue that a year's worth of lawsuits does not reflect the commitment to transparency.

"During the course of the president's first year in office, more has been done than ever before to make our government open and transparent," said White House spokesman Ben Lobl.

A local case

But the difficulty some still face in quickly getting public records has dampened some of the optimism that open-government advocates felt when the president addressed transparency in an executive memorandum on his second day in office. He instructed agencies to generally presume that their files are public — with exceptions — in the interest of promoting trust.

For the Chesapeake Bay Foundation, the Obama's administration's rejection of its records request has been "a major disappointment," said the group's top lawyer, Jon Mueller.

A former federal prosecutor who also handled records requests in his Justice Department job, Mueller said he was surprised when the Army Corps of Engineers said it couldn't share photographs that a developer provided of his building amid the wetlands of a Magorby River island. Responding to the group's lawsuit, the government has continued to say, as it did under Bush, that the information was part of a Corps investigation.

Last month, a federal judge ruled against the Corps, saying it had not justified its reasons for withholding the information and ordering it to do so.

The Justice Department, the only agency that has reported its recent performance on transparency, said that between 2008 and 2009, it increased the number of cases in which it grants full release of records by 5 percent. And a coalition of reform groups gave Obama an "A" this month for his open-government initiatives.

Merrell Fuchs, an open-records expert and general counsel at the nonprofit National Security Archive, said she has seen improvement in the amount of material some agencies provide. But in cases her group has taken to court, "it's more of a mixed bag" with the Obama administration. She suspects that the administration reflexively defends decisions made years earlier to withhold records.

"It's hard to shift the battle-ship," Fuchs said.

Some little-known requesters complain that they are getting the same runaround from the same officials who turned them down under Bush. Jim Lesar, a veteran public records lawyer, said big-name cases — such as Citizens for Responsibility and Ethics in Washington seeking White House visitor logs — get attention from the Obama administration but others do not.

"Except in those high-level cases, the Obama memorandum is close to meaningless," he said.

Very frustrating

One frustrated requester is Denise Gilman, a University of Texas Law School professor who studies immigration issues. In 2007, Gilman asked the Department of Homeland Security and the Army Corps of Engineers how they decided where to build a multibillion-dollar border security wall. Gilman hoped to learn whether political concerns shaped the location.

Army Corps officials urged Gilman in 2008 to seek less information, because her request was

likely to cost her \$54,545.55 in copying fees. Last spring, the agencies told her that releasing the information could invade landowners' privacy. More recently, the Corps said it didn't have many pertinent documents after all. Homeland Security is sending her a large volume of records, although many are redacted.

"Don't get me wrong — I'm glad to be getting some records," Gilman said. "But the delay has been very frustrating. This Obama administration was working

on decisions related to the wall in the spring... Now the wall is pretty much built, so it's actually too late to use this information to shape those decisions."

Roger Charles, a former Marine and troop advocate who helps publish the watchdog newsletter *DefenseWatch*, wanted to study autopsies and reports surrounding the deaths of soldiers who were hit in the torso by bullets or explosives; he was looking for clues about body-armor defects. Gen. George Casey, the Army's chief of staff, ar-

gued that releasing wound details could give U.S. enemies information.

"It's insulting to me that they would say we would increase the risk for any of these great kids," Charles said. "We are trying to learn what we can to protect them."

Mueller, of the Chesapeake group, said he has some sympathy for the president's team.

"Turning over a new leaf is more difficult than they had expected," he said.

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