

Tuesday, December 18, 2007

**Bush II's contempt for freedom of information.**

From National Archives website. As I blogged on May 13, I handle Freedom of Information Act ("FOIA") requests and litigation. The FOIA is critical for shining the light of day on government, and can provide important evidence in preparing for criminal and civil litigation. Of course, commercial interests love the FOIA at least as much as everyone else. The Bush II administration is contemptuous of the FOIA, which law includes the president by saying that "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." 5 U.S.C. § 552(f)(1). The Bush II administration's desire to be exempt from the FOIA is made clear in its Motion for a Judgment on the Pleadings (the exhibits thereto are here, here, and here) filed by the White House Office of Administration ("OAH") against this FOIA Complaint of Citizens for Responsibility and Ethics in Washington ("CREW") in *CREW v. Office of Administration*, U.S. Dist. Ct. (D.D.C.) Civ. No. 07-0964 (CKK). The FOIA Complaint seeks to learn about the status of lost White House e-mails. The White House keeps a very short list of the entities in the Executive Office of the President ("EOP") that it claims are subject to the FOIA, namely: Council on Environmental Quality, Office of Administration, Office of Management and Budget, Office of National Drug Control Policy, Office of Science and Technology Policy, and Office of the United States Trade Representative. The language of the FOIA does not support the White House's claim in its Motion for a Judgment on the Pleadings that the FOIA does not apply to the Office of Administration. However, the White House is doing its darndest to convince the federal trial court otherwise. The presiding judge is Colleen Kollar-Kotelly, who currently heads the FISA court. Here is CREW's opposition to OAH's Motion for a Judgment on the Pleadings. Here are an attachment to the Motion, and the Motion's exhibits here, here, and here. Here is CREW's motion to supplement its opposition motion with this interesting find from Jimmy Carter's presidential papers. Here is Judicial Watch's Motion for Leave to file a brief in support of CREW's position. (As an aside, only months before Judicial Watch was founded in 1994, I interviewed with its founder Larry Klayman for a job opening at his then Washington-based law firm, not knowing about Judicial Watch, let alone what lay ahead with the group, and knowing nothing about Larry aside from his Martindale-Hubbell listing (the Internet had not yet taken widespread hold in society). It is a good thing that our discussions ultimately went nowhere, on the basis of Judicial Watch alone.) Here is Judicial Watch's brief and its exhibit thereto. The last filing in this case was around two months ago. The Court's decision is pending. Thanks to The Jurist (<http://jurist.law.pitt.edu>) for having written the article that brought this matter to my attention. Jon Katz. ADDENDUM: On December 17, 2007, United States District Judge Royce Lamberth (D.D.C.) issued an order finding that Secret Service White House visitor logs are agency records subject to the FOIA, rather than documents protected by so-called presidential privilege. The order is here. FOIA Blog's review of the case is here. A CNN article on the story is here. Thanks to Professor Jonathan Turley's blog for informing me of this story.

Posted by Jon Katz in Constitutional Law at 01:00