The Obama Model For Transparent Government: Lessons Learned for State Executives

Prepared for: North Carolina Common Cause

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April 20, 2012
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EXECUTIVE SUMMARY

Policy Question: Using the experience of the Obama Administration’s initiatives for a more open government at the federal level, what lessons can North Carolina Common Cause use to enhance transparency reform initiatives at the state level?

By almost every conceivable measure, Americans today are less positive and more critical of government. Majorities or pluralities of all demographic groups report high levels of distrust towards government and believe the federal government needs very major reform.

A growing amount of literature indicates that transparency can improve governmental decision-making. Participation can also have other important effects on customer satisfaction. Research indicates that use of the Internet to transact with government has a positive impact on citizen trust as well as public perceptions of government responsiveness. Yet skeptics suggest closer examination of the concept and its application is needed.

The election of Barack Obama as the 44th President of the United States became associated with the effective use of Internet technologies during his campaign. Then at the beginning of his new administration, President Obama declared that he would work to ensure the public trust and establish a new system of transparency, public participation, and collaboration.
This paper compares the promises and performance of the Obama Administration to develop a set of recommendations that Common Cause North Carolina can provide to governors and state cabinet officials on transparency initiatives throughout state executive branch agencies. This research follows a review procedure combining evidence from quantitative and qualitative studies.

This paper reviews the government transparency initiatives launched by the Obama Administration that resulted from his two Memoranda on Open Government as well as the recent actions federal agencies have undertaken to make public information more accessible in response to the administration’s Freedom of Information Act Memorandum. This paper also reviews the delivery models and paths for success proposed by scholars as well as other observers and incorporates their views in developing a list of ‘lessons learned’ for states.

I recommend that Common Cause propose to state executives the following:

1) States should leverage existing federal infrastructure and national priorities as well as further cultivate state-federal relationships to foster transparency efforts;
2) States should provide data in frameworks that are both useful and citizen-friendly in addition to providing the corresponding underlying data;
3) States should develop new performance and outcome measurement methods to gauge the success of transparency policy initiatives; and
4) States executives should be careful not to overpromise on the outcomes of transparency initiatives.
PURPOSE OF STUDY

The purpose of this paper is to use the experience of the Obama Administration to develop a set of recommendations that Common Cause North Carolina can provide to governors and state executive agencies about transparency initiatives.

Common Cause North Carolina is a nonpartisan, nonprofit advocacy organization founded as a vehicle for the citizens of North Carolina to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Common Cause NC is committed to honest, open and accountable government, as well as encouraging citizen participation in democracy.

Common Cause employs a combination of research and policy development to:

- Strengthen public participation and faith in our institutions of self-government;
- Ensure that government and the political process serve the common good, rather than special interests;
- Curb the excessive influence on government decisions and illuminate the connections between lobbying money and government expenditures;
- Hold government officials accountable for working within the rule of law and under high standards of ethical conduct (Common Cause, 2012)

Common Cause, the national parent organization of Common Cause NC, has nearly 400,000 members and 34 other state organizations. This research should benefit Common Cause North
Carolina and the 34 additional state Common Cause organizations as they promote policies that encourage openness and transparency at the state executive level.

BACKGROUND

“Sunlight is said to be the best of disinfectants.”
– Supreme Court Justice Louis Brandeis, 1913

American citizens have a growing interest in government transparency. According to surveys from Lake Research Partners and the Topos Partnership, roughly eight in ten Americans see making the U.S. government more accountable (83%) and more open (79%) to average citizens as “important priorities.” Close to 4 in 10 regard these reforms as “one of the most important priorities.” (Lake Research Partners and the Topos Partnership, 2009, p. 2)

At the same time, Americans are less positive and more critical of government. A Pew Research Center survey found that public trust in the federal government is at one of its lowest levels in half a century. (See Appendix A.) Only 22% of Americans say they trust the government to do what is right “just about always” (3%) or “most of the time” (19%). (Pew Research Center survey, 2010, p. 13)

A plurality of U.S. voters believe that a group of people randomly selected from the phone book would do a better job than the current Congress. (Rasmussen, 2012) A Washington-Post ABC News poll conducted January 12-15, 2012 placed Congress’s approval rating at 13 percent, a record low for that opinion survey. A December 15-18, 2011 Gallup poll put the approval rating even lower at 11 percent. (Rowley, 2012) After the release of the new historically low figures
for Congressional approval, Senator and former Republican Presidential nominee John McCain tweeted: “We're down to paid staffers and blood relatives.” (McCain, 2011)

Majorities or pluralities of all demographic groups describe their attitude towards government as frustrated and believe the federal government needs major reform. (Pew, p. 26) A related strain of criticism is that the federal government’s priorities are misguided and that government policies do too little for average Americans. (Pew, p. 28) (See Appendix B, Figure 1.) Two-thirds (66%) say the middle class get less attention than they should from the government – a figure up 12 points from 1997. The belief that Wall Street gets too much government attention is shared across political lines, gaining identical majorities of Republicans and Democrats (52% each). (Pew, p. 32) (See Appendix B, Figure 2.)

Large majorities see the influence of special interest money (82%) as major problem. Fewer than eight in ten say that elected officials are out of touch with regular people (76%). (Pew, p. 50) (See Appendix B, Figure 3.)

David Brooks frames American attitudes in the New York Times as the “Instrument Problem.” Americans agree that the nation faces major problems, but they don’t trust the instruments of government that politicians use to solve problems. Americans distrust their government not because they dislike individual programs like Medicare. Rather they think the system is rigged and that government has been captured by rent-seekers who are corroding government. (Brooks, 2012)
In its guide for public managers in the 21st century, the IBM Center for the Business of Government points out that while public demands for government to solve policy problems are growing, the public’s taste for a bigger government is shrinking. The authors describe this paradox as the “fundamental dilemma: satisfying public demand without dramatically increasing government bureaucracy.” In particular, the tax-limitation movement has forced elected officials into ever more creative tactics for expanding government without appearing to increase its size. (Kettl & Kelman, 2007, p. 15)

A growing amount of research suggests that transparency can improve governmental decision-making. In the spirit of Louis Brandeis, this view emphasizes that making more information available will better inform the public and the public can then more thoughtfully participate in the governmental process.

For example, in the IBM guide for public managers, Donald Kettl, Director of the Fels Institute of Government at the University of Pennsylvania, and Steven Kelman, Professor of Public Management John F. Kennedy School of Government Harvard University, emphasize that transparency can serve as an accountability tool and as a performance-improvement tool. When transparency becomes a tool for performance improvement, managers will embrace it. Transparency fosters the engagement of government employees and citizens alike so that they will feel a part of the conversation, process, and decisions. The heightened sense of ownership, accountability, and trust makes government more responsive and able to more efficiently accomplish its mission. (Kettl & Kelman, 2007)
Similarly, a 2010 report from The United Nations Department of Economic and Social Affairs on E-government outlines how knowledge-sharing and tools for participation serve to reduce uncertainty and assuage public unease. According to the UN’s 2010 report, a number of studies indicate a positive relationship between e-government and improvement in citizens’ attitudes towards government. As the report puts it: “E-government – once a bold experiment and now an important tool for public sector transformation – has progressed to the point where it is now a force for effective governance and citizen participation.” (U.N., 2010, p. iii)

The U.N. report, for example, cites research in Canada indicating that use of the Internet to transact with government has a positive impact on trust as well as public perceptions of government responsiveness. The survey of 182 Canadian voters, conducted by Parent, Vandebeek, & Gemino, tested the extent to which web-mediated, citizen-to-government interaction affected trust and external political efficacy. The results showed that using online initiatives to transact with government had a significantly positive impact on trust and external political efficacy. “Information services, knowledge sharing, and tools for participation and collaboration may all serve to reduce uncertainty and assuage public unease,” the U.N. report declares. “Citizens can recognize transparency – and the lack thereof – when they see it, and providing the public with more and better information on decisions taken and the reasons for them is a major need to be addressed by governments.” (p. 24)

The U.N. report further concludes that satisfaction levels can increase when governments use the Internet to solicit ideas from citizens and engage them in decision-making. Citizen participation, in turn, can make it easier to implement policy and is likely to lead to better outcomes as a result
of increased public awareness and “buy-in.” For example, the U.N. report notes that such social networking sites as Facebook, YouTube and Twitter, as well as blogging software and mobile technology, allow “citizens [to] move from being passive consumers of government services to advisers and innovators contributing ideas that are in better accord with their individual and group needs.” (U.N. p. 44-45)

In further support of this view, an assessment of Internet based open government efforts by research firm ForeSee Results in 2010 concluded that the perceived transparency of federal Web sites drives trust in government. The prior standard approach to quantifying transparency was to measure how much data was published. ForeSee Results instead surveyed citizens on their reactions to government Web sites, using the model of the American Customer Satisfaction Index. Researchers asked users questions related to how thoroughly the sites disclosed information about what the agency is doing, how quickly information was made available online and how accessible that information was on the sites.

The study found that when citizens find e-government transparent, they also express more trust in the government agency. Users who find a site to be highly transparent are 46 percent more likely to trust the overall government. According to the study, users who find a site to be transparent are also 49 percent more likely to use the site as a primary resource and 37 percent more likely to return to the site. Agency sites that scored the highest include the Agriculture Department's Center for Nutrition Policy and Promotion, the Health and Human Services Department's National Mental Health Information Center, the State Department's Bureau of Consular Affairs, and the site of the General Services Administration. (Sternstein, 2010)
Researchers have also found positive effects from greater transparency in the economic marketplace. Bendapudi and Leone suggest that customer participation can significantly improve customer satisfaction – whether in the form of enjoyment, accomplishment, self-confidence, or control. Customer participation in the production of goods and services is growing. In the past customer participation was much more likely with services than with goods. Yet recent technological advances and competitive realities are creating opportunities for customers to participate in the production of goods.

The literature has mainly addressed the economic implications of coproduction and not customers’ potential psychological responses to participation. Coproduction occurs whenever consumers usurp the status previously accorded to the producer and participate in the construction of goods and services. Supermarkets are an example of coproduction that date to the 1930s with customers selecting, carting, and transporting groceries – and in recent years checking themselves out at the register. When customers participate in production, it frees up labor costs and enables a firm to market the offering at a lower monetary price, resulting in a win–win situation in the buyer–seller relationship. (Bendapudi and Leone, 2003, p. 14)

Nevertheless, skepticism does exist about current transparency efforts. Justin Wolfers, an economist at the Wharton School of Business, doubts whether the trust in government that existed in the late ‘50s and early ‘60s can return. While government is more transparent now than it was when people trusted government more in the 1940s and ‘50s, Wolfers suggests that very transparency may be the problem. “We actually now get to see there's a window into that
smoke-filled backroom where we're seeing the deal is being cut,” explained Wolfers. “And the more we learn about it, the more … you see how sausage is made; you don't like eating sausage as much anymore.” (NPR, 2011)

Gary Coglianese – professor of law and political science, and deputy dean of the University of Pennsylvania Law School – similarly suggests that closer examination of the concept and application of transparency is needed. He doubts scholars or practitioners know as much about transparency and its effects as they might presume beyond its conceptual popularity. Coglianese makes the case that we need to know more about the benefits of transparency and its costs. He suggests that “it is possible to have too much of a good thing.” (Coglianese, 2009, p. 530)

Drawing on the work of Obama’s own Administrator of the Office of Information and Regulatory Affairs, Cass Sunstein, Coglianese states:

“Too much transparency—or transparency in the wrong places—might actually detract from officials’ ability to make good decisions. One worry is that under an extreme transparency achievable today with the aid of advanced technology, officials will not engage in as probing and self-critical forms of deliberation because they know that outsiders could be monitoring everything they say and do—and perhaps will try to use against them later what they say when simply “thinking aloud.” Although transparency may help inhibit undesirable forms of behavior, total transparency is also likely to inhibit other, desirable behavior—such as internal dissent or asking the proverbial dumb question—that might be embarrassing but is still necessary for good decision making.” (Coglianese, 2009, p. 536)

Similarly, Archon Fung and his colleagues at the Ash Center for Democratic Governance and Innovation at the Kennedy School of Government point out that even the best designed and supported transparency systems can be ineffective. Transparency systems feature two actors: those who can use new information produced by policies to improve their choices and those who
are compelled by public policies to provide that information and whose behavior policy makers hope to change. Information “users” and “disclosers” are connected in a general “action cycle.” A transparency system is only effective when the information that it produces enters the calculus of users and they change their actions in conjunction with information disclosers noticing and responding to user actions. When transparency systems provide highly relevant and accessible information that users incorporate into the considerations to determine their actions, information becomes embedded in users’ decision-making processes.

Fung explains that transparency requirements can successfully generate relevant information. Yet that information may not be easily embedded into the routines of users (citizens) and those users would not be likely to act in ways that spurred reactions from information disclosers (government). Fung and his colleagues point to the example of transparency in the mortgage-lending industry. On one hand, it has generated information allowing community organizations to identify the ways in which local banks discriminate against certain groups of borrowers or against particular neighborhoods. However, those organizations may have lacked the power to successfully demand that those banks alter their behavior.

The Fung research asserts that forceful regulatory rules against discrimination by financial institutions altered the action cycle in ways that embedded information into the strategies of users and responses of disclosers. A similar backdrop of regulatory provisions in addition to disclosure requirements could improve the effectiveness of many other transparency systems.

Thus transparency by itself may prove insufficient to generate effective policy outcomes. Yet
Fung also emphasizes that transparency can be designed to complement other government actions and embed information in the pre-existing routines of users that ultimately produce corresponding behaviors by disclosers. Fung notes “information may not produce effective policy outcomes but can be designed to work in tandem with other government actions” (Fung, et al, 2004, p. 30)

THE OBAMA PROMISE OF TRANSPARENCY

Just days after the Obama victory in November 2008 election, the Brookings Institute’s William Galston and Elaine Kamarck wrote as a warning to the incoming administration that “the more an issue affects the public, the more difficult the problem, and the more potentially transformative the remedy, the more important it is to conduct a policy process the public sees as open and above-board.” (Galston & Kamarck, 2008, p. 27)

Galston and Kamarck emphasized that the art of governance in the 21st century “will call upon the next administration to focus on problems that affect the nation as a whole and to shape programmatic responses that are sensitive to the need to rebuild trust in the federal government as an effective instrument for promoting the common good.” (Galston and Kamarck, 2008, p. 2) They outlined a path for Obama to earn the public’s trust by being open and transparent, putting common interests over special interests, attacking waste and abuse, and fostering an ethic of high performance and responsibility for results in every government agency.

The restoration of public trust, according to Galston and Kamarck, will require a well-planned, well-executed “trust strategy” that contains four pillars: (1) a narrative that explicitly
acknowledges the legitimacy of people’s doubts about government; (2) a strategy to reform and clean up government; (3) a series of policy design and policy implementation principles that highlight trust-building mechanisms; and (4) a plan to sequence new initiatives in order to build long-term trust. (Galston & Kamarck, 2008, p. 24)

Barack Obama had become associated with the effective use of Internet technologies during his campaign and then reinforced that image in his promises about implementation of his new administration in 2009. The day after his election, The New York Times wrote: “One of the many ways that the election of Barack Obama as president has echoed that of John F. Kennedy is his use of a new medium that will forever change politics. For Mr. Kennedy, it was television. For Mr. Obama, it is the Internet.” Joe Trippi, a political consultant widely acclaimed for the innovative use of Internet technologies in campaigns, predicted the United States was on the verge of seeing “the first wired, connected, networked presidency.” (Miller, 2008)

Coglianese describes the Obama promise of transparency as follows: “The electoral repudiation of the Bush Administration’s policies, combined with the nearly universal veneration of open government as a political ideal, would make transparency seem the sweet elixir of contemporary governance.” (Coglianese, 2009, p. 530) In 2001, for example, Attorney General John Ashcroft issued a memorandum to the heads of all departments and agencies that replaced a 1993 Department of Justice FOIA policy memorandum. The presumption, established by the Ashcroft Memorandum was that agencies should first assume that information should not be released and put most of the burden on the requester to prove otherwise. (DOJ FOIA Post, 2001)
Early in his administration, President Obama began pushing governmental initiatives to build and share the next generation of tools to empower citizens. The president even went so far as to characterize such tools and empowerment as “the essence of democracy” before the U.N. General Assembly in 2011. President Obama pledged that his administration would work to ensure the public trust and establish a system of transparency, public participation, and collaboration. (White House “Essence of Democracy,” 2011)

During Obama’s first term, transparency reports and recommendations appeared from the Association of Health Care Journalists, Center for Progressive Reform, Liberty and Security Transition Coalition, National Security Archive, OMB Watch, Project on Government Oversight, the Sunlight Foundation, and the Sunshine in Government Initiative. The tremendous number of transparency reports from various organizations buttresses the claim that transparency is not a politically left or right issue. But the reports generally were critical of the Ashcroft FOIA policies of the Bush Administration, and pressed the newly elected president to make the changes necessary to be more responsive to FOIA requests, as well as to improve technologies to better public access. These reports helped lay a foundation for much of the Obama Administration’s open government agenda. (Coglianese, 2009, p. 532)

THE OBAMA OPEN-GOVERNMENT MEMORANDA

In January 2009, the Obama Administration released two major memoranda on open-government transparency. The first of the administration’s two open government memos directed his attorney general to establish a new FOIA policy that would clearly institute a presumption in favor of the release of government information. The memo stated that “[T]he Government
should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” (White House, FOIA Memorandum, 2009)

The 2009 FOIA Memorandum also directed agencies to take affirmative steps to make information public rather than wait for specific requests from the public. Accompanying the president’s FOIA Memorandum to agency executives was a Transparency and Open Government Memorandum. In order to ensure the public trust, President Obama then directed agency heads to disclose information rapidly in forms that the public can readily find by harnessing new technologies. The memo also instructed agencies to solicit information from the public. (White House Status Report, 2011)

The Open Government Directive required that each agency develop and publish an Open Government Plan as well as create an Open Government webpage to house information about how each agency will promote transparency and participation. (White House Status Report, 2011)

SUMMARY OF RESEARCH METHODS

My analysis focuses on the transparency policies of the Obama Administration and specifically its progress on proactive disclosure and the Freedom of information Act.

I have reviewed the government transparency initiatives launched by the Obama Administration that resulted from the Memorandum on Open Government as well as the recent actions federal
agencies have undertaken to make public information more accessible in response to the Freedom of Information Act Memorandum.

My research combined evidence from quantitative and qualitative studies. The results of several studies are used to address a set of related research hypotheses surrounding the aims, opportunities, and performance measurement of transparency initiatives. I reviewed the delivery models and paths for success proposed by scholars as well as other observers and incorporated their views in developing a list of “lessons learned” for states.

REVIEWS AND ANALYSES OF THE OBAMA PERFORMANCE

The Status Report released by the White House on September 16, 2011 provided an account of the progress the Administration made towards forging a more open relationship between citizens and government.

According to the Status Report, over the first full year of the administration in 2009, agencies increased their disclosures in response to FOIA requests. Agencies made full, un-redacted disclosure of requested information for nearly 56% of all FOIA requests – a more than a 6% increase over the last year of the Bush Administration in 2008. This shift also marked the first increase in full FOIA disclosures in the past ten years. (White House Status Report, 2011)

According to the Obama Administration, other progress over the last two years could not be captured by FOIA statistics. The Obama Administration asserted that many agencies have made substantial improvements to their FOIA infrastructure including increased FOIA personnel,
better training, request processing improvements, and an increase in agency resources dedicated to FOIA. The White House provided the following developments as examples:

- The Centers for Medicare & Medicaid Services at the Department of Health and Human Services nearly doubled the resources it commits to FOIA and drastically restructured its methods for processing requests.
- The Department of Education increased FOIA training.
- The Department of the Interior developed a FOIA Request Status interface on its FOIA website allowing requesters to check the status of their pending requests at any time.
- DHS’s Citizenship and Immigration Services added 30 additional FOIA operations employees.
- The Department of Justice began accepting FOIA requests by e-mail and added nearly ninety full-time employees to address FOIA matters.
- The State Department created a FOIA Rapid Response Team and developed new streamlined procedures to handle document referrals. (White House Status Report, 2011, p. 11)

The Status Report also indicated that at the president’s direction, agencies had disclosed information proactively rather than responding to requests for information. As an example, the White House touted the USDA’s Animal and Plant Health Inspection Service. The APHIS now posts online a variety of reports and enforcement actions frequently the object of FOIA requests. According to the Status Report, the effect of posting this information proactively has reduced FOIA requests at the Animal and Plant Health Inspection Service by 42%. The administration
also pointed out that the Commerce Department’s National Telecommunications and Information Administration now posts 500 to 10,000 pages of grant documents on its website daily. (White House Status Report, 2011, p. 12-13)

Agencies worked throughout 2010 to develop their Open Government Plans for the publication of high-value data and the development of high-profile agency initiatives. The new Open Government webpages highlighted agency efforts and provide a gateway for soliciting public feedback. (White House Status Report, 2011)

The Open Government Plans of many agencies received wide acclaim for their breadth and depth, according to the White House’s Status Report. For example, the EPA’s Open Government Plan offers comprehensive and constantly updated information about upcoming agency action and urges public participation in EPA rulemaking and hearings. (White House Status Report, 2011, p. 15)

Other agencies’ plans employ new technology to promote transparency and participation. The Social Security Administration, for example, hosted a live question-and-answer webinar designed to educate young workers. It explained the financing principles of Social Security, along with issues like disability and survivors insurance, how workers and their families qualify for coverage, and how to plan and save for their financial future. (White House Status Report, 2011, p. 16)
The Obama Administration also proactively released information deemed to be of great interest to the public on the website data.gov. Nevertheless, some of what the government is disclosing is either a repackaging of old information or of marginal value. The *L.A. Times* even described the notion of a more open system of government as a “casualty of President Obama's first year in office.” For example, the *L.A. Times* explained how the Commerce Department posted rain and snow accumulation data that were already available online. (Nicholas, 2010)

While acknowledging that more work is necessary, the White House’s *Status Report* cited the “measurable and undeniable progress made on all of the Administration’s major initiatives.” (White House Status Report, p. 25) “There is no ‘Open’ button that can be pushed to render the federal government more open overnight,” declared the *Status Report*. “Creating a more open government instead requires, as the President has instructed, sustained commitment—by public officials and employees at all levels of government.” (p. 4)

In March 2012, however, the Associated Press reported that the Obama Administration has been unable to keep pace with increasing requests under the U.S. Freedom of Information Act for copies of government documents, emails, photographs and more. The AP analyzed data from 2009 to 2011 from 37 of the largest federal departments and agencies.¹ According to the AP

¹ The 37 agencies that AP examined were: Agency for International Development, CIA, Consumer Product Safety Commission, Council on Environmental Quality, Agriculture Department, Commerce Department, Defense Department, Education Department, Energy Department, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Interior Department, Justice Department, Labor Department, State Department, Transportation Department, Treasury Department, Department of Veterans Affairs, Environmental Protection Agency, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Election Commission, Federal Trade Commission, NASA, National Science Foundation, National Transportation Safety Board, Nuclear Regulatory Commission, Office of Management and Budget, Office of National Drug Control Policy, Office of Personnel Management, Office of Science and Technology Policy, Office of the Director of National Intelligence, Securities and Exchange Commission, Small Business Administration, the Social Security Administration and the U.S. Postal Service.
analysis, agencies showed progress in filling requests but still fell further behind with backlogs. In 2011 the federal government responded to more than 576,000 requests — 5 percent more than in the year 2010 and a record number since the inception of FOIA. Agencies less frequently cited legal reasons to keep records secret, notably emails and documents describing how federal officials make important decisions. Federal agencies released all or portions of the information sought, and fully rejected other requests, at roughly the same rate as the previous two years of 2009 and 2010. (AP, 2012)

The White House has pointed out that agency efforts do more to disclose information to the public proactively can create a paradox: by releasing information before receiving FOIA requests, they will actually deny or partially deny a larger percentage of an overall smaller amount of FOIA requests over time. “This is true because by affirmatively disclosing information, agencies in effect preempt the most straightforward FOIA requests,” the White House maintains. “That is, agencies will proactively disclose only information that, had the information been the subject of ordinary FOIA requests, they would have fully disclosed anyway, requests to which no FOIA exemptions would have applied.” (White House Status Report, p. 25) In other words, agencies’ proactive disclosure will result in a higher percentage of harder cases among traditional FOIA requests, and more frequent or partial denials is a consequence of the desired progress agencies have made to release more information proactively.

Months after the Obama Open Government Memos were issued, George Washington University’s National Security Archive, filed FOIA requests with 90 agencies that submit annual
FOIA reports to the Attorney General. The request included: “All records, including but not limited to guidance or directives, memoranda, training materials, or legal analyses, concerning the implementation of President Barack Obama’s January 21, 2009, memorandum on the Freedom of Information Act and/or Attorney General Eric Holder’s memorandum of March 19, 2009, on the Freedom of Information Act.” (National Security Archive, p. 5)

The March 2010 report, released by George Washington University’s National Security Archive, indicates that the results of President Obama’s push for transparency have been decidedly mixed across the federal government. Despite the directive for agencies to take affirmative steps toward making more information public through the Freedom of Information Act, many agencies do not appear to have made any changes. The report found little indication that most federal agencies were releasing information any more frequently or rejecting public requests for information any less often. According to the National Security Archive, only a minority of agencies even responded to the Obama Memos with concrete changes in their FOIA practices. (Lichtblau, 2010)

13 out of 90 agencies (14%) produced documentation showing that the Obama Memos resulted in concrete changes in guidance, training materials, or practices. Some of these changes from agencies may have a large impact on access to information. For example, the Environmental

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2 On March 19, 2009, Attorney General Eric Holder issued comprehensive new guidelines to the heads of executive departments and agencies governing the Freedom of Information Act. These guidelines reaffirmed the Obama Administration’s “commitment to accountability and transparency” as directed by President Obama in his FOIA Memorandum issued January 21, 2009. Attorney General Holder’s FOIA Guidelines address both the presumption of openness that the president demanded in his FOIA Memorandum and the necessity for agencies to create and maintain an effective system for responding to requests and proactively making information available to the public.”
Protection Agency reversed its policy of withholding e-mails on the grounds that they constituted internal deliberations. The National Transportation Safety Board began uploading accident dockets to its website. The Occupational Safety and Health Review Commission began posting Administrative Law Judge decisions before appeal rights are exhausted. (National Security Archive, 2010, p. 7)

14 out of 90 agencies (16%) provided documentation showing that the Obama Memos played a prominent role in agency training sessions but did not provide documentation of concrete changes in practice. The larger agencies that fall into this category include: the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Justice, the Department of Transportation, and the Department of Veterans Affairs. (National Security Archive, 2010, p. 8)

11 out of 90 agencies (12%) – including the General Services Administration, the National Labor Relations Board, the Office of Personnel Management, and the Small Business Administration – provided documentation showing that the Obama Memos were circulated and discussed through e-mail. However, 11 agencies did not provide documentation of concrete changes in practice or enhanced training. (National Security Archive, 2010, p. 9) 35 out of 90 agencies (39%) responded that they had no responsive records concerning the implementation of the Obama and Holder Memos. An additional 17 out of 90 (19%) of agencies surveyed did not respond to the Archive’s FOIA request despite the passage of five months from its submission. (National Security Archive, 2010, p. 10-11)
DISCUSSION AND RECOMMENDATIONS

Based upon the promises and performance of the Obama Administration at the federal level, I recommend state executives consider the following when developing and implementing transparency initiatives:

1) States should leverage existing federal infrastructure and national priorities and further cultivate state-federal relationships to foster state transparency efforts.

2) States should provide data in frameworks that are both useful and citizen-friendly in addition to providing underlying data.

3) States should develop new performance and outcome measurement methods to gauge the success of transparency policy initiatives.

4) States executives should be careful not to overpromise on the outcomes of transparency initiatives.

1) States should leverage existing federal infrastructure and national priorities and further cultivate state-federal relationships to foster state transparency efforts.

States have traditionally been considered the laboratories of democracy under the system of U.S. federalism. Yet the federal government has played an increasing role in setting the transparency reform agenda and spurring improvements at the state level throughout the nation.

Well-supported practices by the federal government can be powerful engines for achieving strategic goals at the state level. A 2003 report from the IBM Center for The Business of
Government declares no entity is as well placed as the federal government to sponsor initiatives and support communities of practice to achieve national outcomes. (Snyder and de Souza Briggs, 2003)

While debate continues over the effects of President Obama’s stimulus package, it had one very clear effect that transcends political party affiliation and is virtually universally acknowledged. Governing Magazine reported: “The stimulus has done more to promote transparency at almost all levels of government than any piece of legislation in recent memory.” In other words, the greatest legacy of the American Recover and Reinvestment Act (ARRA) is the demand it created for transparency across government at all levels.

States and localities that received stimulus funds were required to meet very specific reporting standards. These ranged from basic descriptions of ARRA-funded projects to detailed data on expenditures to data from sub-recipient contractors and even subcontractors that performed stimulus-funded work. In response to the increased federal reporting requirements under the Act, some states launched or enhanced open government initiatives drawing on the lessons learned and technical know-how they developed as they received funds.

The federal reporting requirements have already pulled states forward in their efforts toward greater transparency. The unprecedented level of data offers taxpayers a way to see how government money is used in real time. One year after the stimulus was created, at least 14 states built transparency sites or made vast improvements to their existing sites. (Holeywell, 2012)
In total, 40 states have transparency websites that provide information on government spending. The stimulus should serve as a template for the future of state transparency initiatives. Among its lessons is the knowledge that governmental entities are capable of collecting data, displaying information on a detailed transparency site and minimizing corruption. (Holeywell, 2012)

State executives should seize upon the example set by the experience of the American Recovery and Reinvestment Act. For example, states should apply what they have done with stimulus transparency in such other areas of transparency as FOIA information. In March 2011, the Justice Department’s Office of Information Policy launched a website for monitoring FOIA compliance at agencies. The new website highlighted significant FOIA trends, highlighting major agency FOIA releases, linking to agency FOIA pages, tracking agency FOIA performance (including the number of requests and received and processed by each agency, the disposition of those requests, and time taken to respond), learning how and where to make a FOIA request, and providing additional FOIA resources and support. (White House Status Report, 2011)

States should begin to model state FOIA portals on the federal website. The success of state transparency efforts in the American Recovery and Reinvestment Act have set new citizen expectations for state governments. State governments should not fail to meet these expectations and risk further damaging citizen trust in government.
2) States should provide data in frameworks that are both useful and citizen-friendly in addition to providing the corresponding underlying data.

State governments must understand the functional distinctions between learning and transacting. (Snyder and de Souza Briggs, 2003) Transparency should not be defined by “what,” but rather “how” information is communicated. Transparency should never be a “data dump” that has no context or tells no story.

States should put a premium on designing public information that is citizen-friendly. In general, simple graphs and charts, rather than pages full of undigested numbers, are much better for public consumption. Furthermore, citizens deserve a qualitative description of performance, rather than only quantitative measures. As Alfred Ho of the IBM Center for the Business of Government has noted, citizens want stories to which they can relate. They also want to see successful and innovative practices as well as failures and problems. (Ho, 2007) Ho points to the Boston Indicators Project website as a good example of how data, analysis, and stories can be integrated. Although at first a measurement project focused on sustainability issues, the Boston Indicators Project gradually evolved into a broad community engagement effort that focuses civic, community, business, and government leadership and collaboration on key trends, challenges, and opportunities. (Ho, 2007, p. 29)

Citizens also differ in their interest about the content of performance reports, and they often prefer different formats. Some legal and technology experts have argued that it would be preferable for government to provide reusable data, rather than struggling as it currently does to
meet the needs of each end-user. Advocates of reusable data models propose that the executive branches at both the federal and state levels focus on creating a simple, reliable and publicly accessible infrastructure that exposes the underlying data. According to Robinson et al., crowdsourcing, open data standards and the connectivity of social media will spur a web renaissance in the private and non-profit sectors that will make it unnecessary for the government to do anything but publish the raw data online. (Robinson et al., 2009)

Open data therefore should be:

- Produced in the delivery of State services;
- Published in computer readable and standard formats;
- Timely and current;
- Accessible to everyone without needing State assistance; and,
- Free to use and reuse as users see fit.

Citizens and other users can benefit from a hosted open data catalog by being able to:

- View open data online;
- Download data in various formats; and
- Have data imbedded in websites or smartphone applications.

The goal of delivering information directly to citizens so that they can constantly create and reshape the tools to find and leverage public data is vital. Web applications provide decentralized patterns for data submission and analysis and a platform for the provider-user interaction – in contrast to non-interactive websites where users can only passively view
Getting the public involved in discussing performance measurement and the reporting of government services is a necessary and important step in democratic governance. When government agencies make information available, citizens can build applications where they share information about government services to gauge quality of services, choose services, and report unethical behavior or legal violations.

Observers have pointed out that non-governmental organizations, research institutes, and the media have combined data from various sources in creative and innovative ways. As an example, the Massachusetts Department of Transportation provides open data to the public. The licensing agreement allows anyone to use real-time and static traffic data to build apps for consumers. The state has saved money and manpower by leaving the development up to citizens and companies. As a result, the Massachusetts Bay Transportation Authority featured 50 applications on its website as of March 2012 – none of which were created by the state. They comprise Web apps like “MBTAway,” which uses a mobile device’s GPS or Wi-Fi to provide a list of nearby bus stops, and apps like “Where’s My MBTA Rail?” for Apple iOS, which uses GPS to offer real-time tracking of commuter rail lines. According to Governing Magazine “not all [apps] are created equal” and the surplus of applications is not problematic because the market will decide which apps gain traction. (Collins, 2012)

Citizens in North Carolina’s capital, Raleigh, have already begun experimenting with reusable data. At the June 2011 Raleigh CityCamp conference, local citizens joined with government, business, and non-profit leaders to identify and solve local community issues.

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3 Available data sets include CSV, XML and JavaScript Object Notation files as well as Google’s GTFS-realtime specification.
On the Friday afternoon of the conference, a concerned parent mentioned that although school data is currently available from a government website, it does not allow any direct comparison of various measurement and tracking criteria. On Saturday morning a team of strangers came together to propose and prototype a technology solution. By the end of the following day, they made the public data from the NC Education Report Card open and easily accessible.

The citizen developers created a method to convert the school data into CSV (comma-separated values) format that can be used by anyone. Any spreadsheet program can import and export data in this format. They made the data available on a website where it could be transformed into graphs that allow parents to easily compare school performance. (Both, 2011)

Citizens have shown not only that they are able to deliver online services of great public value but also provide such services even more efficiently than governments. Creating a structure for state government to provide re-usable data and web services will promote the co-production of public goods that foster transparency and deliver better services. (U.N., 2010, p. 16-17)

3) **States should develop new performance and outcome measurement methods to gauge the success of transparency policy initiatives.**

Government responsiveness to federal Freedom of Information Act requests has been widely viewed by the government, media, and citizens as a barometer of government transparency. Under FOIA, anyone can compel the government to provide copies of federal records for little or
no cost unless disclosure would hurt national security, violate personal privacy or expose business secrets or confidential decision-making in certain areas. (AP, 2012)

But as Snyder and de Souza Briggs put it, “the issue is how to measure, not whether.” (Snyder and de Souza Briggs, 2003) In comparison with the traditional performance management approach, public engagement models have the benefit of putting government officials more directly in touch with the citizens that are impacted by government actions. (Ho, 2007) The previous longstanding approach to quantifying transparency was to measure how much data the government publicly released. (Sternstein, 2010) However, public engagement allows greater transparency and accountability in examining the performance issues of government programs. The shift from traditional measures to a more transparent and accountable model will provide states the opportunity to collect direct public input into their performance enhancement efforts. (Ho, 2007)

Public officials need citizens to support and legitimize their decisions. Engaging citizens in performance measurement also offers states a platform for innovative ideas – allowing the government to tap into a wide range of talent and expertise from citizens. (Ho, 2007)

Standard approaches to performance measurement have been narrow and excluded such citizenship outcomes as enhanced political participation, social capital, and trust. This administrative perspective simply emphasizes an agency’s mission in a one-dimensional way. In contrast, the policy feedback perspective stresses that mass opinion and behavior are not just functions of individual characteristics and preferences but also the result of interactions between
institutions and citizens. According to Wichowsky and Moynihan, “Policies communicate to citizens their civic identity and degree of membership within the political community, conveying messages as to whether their voices matter and whether government is responsive to their concerns, thereby encouraging engagement…” As an example, Social Security has helped make senior citizens one of the most politically active groups in the electorate. (Wichowsky and Moynihan, 2008, p. 908-909)

A growing body of literature offers strong empirical evidence that certain policies have measurable effects on citizenship outcomes. Neglecting to account for the impact of policies on civic capacities and trust fails to acknowledge that mass opinion and behavior are not just functions of individual characteristics and preferences. They also involve social interactions between institutions and citizens. (Wichowsky and Moynihan, 2008)

Organizations that measure only quantitative or production goals are likely to miss such important social values as an enhanced sense of citizenship. State governments should incorporate measures that reflect how policy design and implementation affect democratic life and practice. Rather than focusing solely on service output and efficiency measures, governments should give greater attention to such “citizenship outcomes” as responsiveness, equity, political participation and social trust. Government performance measurement has a largely untapped potential to further examine and verify the relationship between programs and citizenship outcomes.

Measuring citizenship outcomes would allow states to better understand what aspects of policy
design and implementation improve or undermine citizenship and to incorporate such lessons into policy making. Citizenship outcomes will also help states rethink the relationship between government and citizens and foster trust in government. (Wichowsky and Moynihan, 2008)

4) States executives should be careful not to overpromise on the outcomes of transparency initiatives.

The rhetoric surrounding the promise of transparency is very encouraging. However, that rhetoric must be translated into reality. State executives should not equate successful transparency with the test of democracy as President Obama did when he declared transparency is the “essence of democracy.” Steven Aftergood directs the Project on Government Secrecy for the Federation of American Scientists. He believes that "Expectations were raised so high at the beginning of the administration that some disappointment was almost inevitable." (Johnson, 2011)
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Public Trust in Government: 1958-2010

Trust government just about always or most of the time

APPENDIX B

Figure 1

<table>
<thead>
<tr>
<th>Criticisms of the Federal Government</th>
<th>Major problem %</th>
<th>Minor problem %</th>
<th>Not a problem %</th>
<th>DK %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wasteful and inefficient</td>
<td>70</td>
<td>20</td>
<td>7</td>
<td>3=100</td>
</tr>
<tr>
<td>Policies unfairly benefit some</td>
<td>62</td>
<td>27</td>
<td>7</td>
<td>4=100</td>
</tr>
<tr>
<td>Does too little for average Americans</td>
<td>56</td>
<td>29</td>
<td>12</td>
<td>3=100</td>
</tr>
<tr>
<td>Too big and powerful</td>
<td>52</td>
<td>26</td>
<td>18</td>
<td>2=100</td>
</tr>
<tr>
<td>Interferes too much in people’s lives</td>
<td>46</td>
<td>34</td>
<td>18</td>
<td>2=100</td>
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</tbody>
</table>

Pew Research Center March 11-21 Q67aF2-eF2.
Figures may not add to 100% because of rounding.

Figure 2

<table>
<thead>
<tr>
<th>Who Gets Too Much Attention, Too Little Attention from Government?</th>
<th>Too much %</th>
<th>Right amount %</th>
<th>Too little %</th>
<th>DK %</th>
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</thead>
<tbody>
<tr>
<td>Wall Street</td>
<td>2010</td>
<td>50</td>
<td>25</td>
<td>16</td>
</tr>
<tr>
<td>Business leaders</td>
<td>2010</td>
<td>45</td>
<td>26</td>
<td>20</td>
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<tr>
<td>1997</td>
<td>50</td>
<td>37</td>
<td>9</td>
<td>4=100</td>
</tr>
<tr>
<td>Labor unions</td>
<td>2010</td>
<td>34</td>
<td>30</td>
<td>26</td>
</tr>
<tr>
<td>1997</td>
<td>34</td>
<td>30</td>
<td>26</td>
<td>11=100</td>
</tr>
<tr>
<td>Poor people</td>
<td>2010</td>
<td>17</td>
<td>22</td>
<td>56</td>
</tr>
<tr>
<td>1997</td>
<td>17</td>
<td>23</td>
<td>65</td>
<td>2=100</td>
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<tr>
<td>Middle class</td>
<td>2010</td>
<td>9</td>
<td>22</td>
<td>66</td>
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<td>1997</td>
<td>9</td>
<td>36</td>
<td>54</td>
<td>1=100</td>
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<tr>
<td>Small businesses</td>
<td>2010</td>
<td>8</td>
<td>20</td>
<td>69</td>
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Pew Research Center March 11-21 Q60aF1-IF2.
Figures may not add to 100% because of rounding.

Figure 3

<table>
<thead>
<tr>
<th>Criticisms of Elected Officials Seen as Major Problems</th>
<th>Major problem %</th>
<th>Minor problem %</th>
<th>Not a problem %</th>
<th>DK %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not careful w/ gov’t’s money</td>
<td>83</td>
<td>11</td>
<td>3</td>
<td>3=100</td>
</tr>
<tr>
<td>Infl. by special interest money</td>
<td>82</td>
<td>11</td>
<td>2</td>
<td>4=100</td>
</tr>
<tr>
<td>Care only about own careers</td>
<td>81</td>
<td>14</td>
<td>3</td>
<td>3=100</td>
</tr>
<tr>
<td>Unwilling to compromise</td>
<td>78</td>
<td>14</td>
<td>4</td>
<td>4=100</td>
</tr>
<tr>
<td>Out of touch w/ regular people</td>
<td>76</td>
<td>16</td>
<td>5</td>
<td>4=100</td>
</tr>
</tbody>
</table>

Pew Research Center March 11-21 Q66a-e.
Figures may not add to 100% because of rounding.