

GUEST ESSAY

# Why Do Documents Marked Secret Keep Showing Up in Strange Places?

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There is much we still do not know about President Biden’s stash of secret documents, but one thing is painfully obvious: The system for protecting secrets vital to national security has spun out of control. The question is why.

No one should be surprised that documents marked secret keep showing up in strange places. Last July, the government’s own watchdog in charge of managing systems for protecting “national security information,” Mark Bradley, reported that this office decided to stop trying to count how many secrets the government created each year: “We can no longer keep our heads above the tsunami.”

No doubt partisan Republicans and Democrats will continue insisting that it is the other side that has recklessly endangered national security — when they are not insisting that “there’s nothing to see here” or claiming a partisan witch hunt that just serves to distract from what they call real issues (as Hillary Clinton did).

But how many more of these scandals need to explode before we recognize that there is a deeper problem, one that we cannot begin to solve unless we come together as a country and confront it head on?

This problem is not some “deep state,” conspiring in the shadows in defiance of our elected leaders. It’s true that many people profit from the current system, which costs over \$18 billion a year — as of 2017, the last time Mr. Bradley’s office publicly guessed at a total — and allows countless unnamed bureaucrats to evade democratic oversight. Those involved in this system include even presidents, who have resisted almost any congressional oversight or judicial review in determining whether information should be classified or made public.

The president’s almost exclusive authority over determining what constitutes national-security information and who can have access to it is unlike anything else in American politics: a form of power that is fully sovereign, with almost no effective checks or balances. No wonder it has proved so intoxicating. Donald Trump’s refusal to release the classified documents he held at Mar-a-Lago — even after being warned that he was breaking the law — is just an extreme case of this powerful addiction, one that Joe Biden, after serving as vice president, may have struggled with as well.

This is not a new problem. Presidents since Teddy Roosevelt (and sometimes even before) have tried to manage what Americans know about what presidents do. And almost every one has had the same message: They will be much more forthcoming than their predecessors. But then they go on to betray these promises.

Woodrow Wilson campaigned in 1912 on the proposition that “there ought to be no place where anything can be done that everybody does not know about.” But he presided over vast new systems for surveillance and censorship, and negotiated the Treaty of Versailles behind closed and guarded doors.

Franklin Roosevelt, like his distant cousin Teddy before him, was a master of public relations, and both Roosevelts made themselves unusually available for media appearances. But they also believed deeply in secrecy, and Franklin Roosevelt delighted in compartmentalizing “top secrets” even within his own administration. Harry Truman was a famous straight talker, yet even when he expanded his predecessor’s security classification system, he claimed it would make more rather than less information available. Dwight Eisenhower curtailed the number of agencies that could create secrets and eliminated the catchall “restricted” classification. His own Defense Department found these changes made little difference, and the problem of overclassification kept growing.

Not to be outdone in making himself available to journalists demanding more transparency, Lyndon Johnson famously lifted his shirt to show the scar across his belly from a gallbladder operation. But behind the scenes, he was contemptuous of the Freedom of Information Act and quietly sabotaged it.

Secrecy has a power all its own. It enables executive branch officials to classify and thereby conceal not just dangerous information that could threaten national security but also many things they simply prefer to hide from the public — that could include elite cynicism, managerial incompetence or military insubordination. This national secrecy complex would best be described as a *dark state* — much of it hidden from us, even decades after the fact, and used to cover up too many shameful things in our history, including illegal surveillance, radioactive experimentation on children and the elderly, and a whole series of undeclared wars.

Even Richard Nixon agreed on the need to “lift the veil of secrecy which now enshrouds altogether too many papers written by employees of the federal establishment.” But the executive order he issued was really intended to consolidate control of this apparatus within the White House, by reducing the number of people allowed to create new secrets, limiting the number classified at the highest levels and “automatically” declassifying the secrets produced by previous administrations. But Mr. Nixon all but gave up on trying to control runaway inflation in official secrecy and struggled to come up with some new term to distinguish the president’s own secrets. “Don’t use ‘top secret’ for me ever again,” he told John Ehrlichman. “I never want to see ‘top secret’ in this [expletive] office.”

Even the presidents credited with truly trying to reform the system — Jimmy Carter, Bill Clinton and Barack Obama — presided over tremendous growth in the number of new secrets created each year. Seeking a new way to categorize the most sensitive information, like Mr. Nixon before him, Mr. Carter tried a new designation: “royal.”

Mr. Trump was the first president after World War II not to issue a new order regulating the government’s system for secrecy. He came into office railing against the deep state and government surveillance, but he kept Mr. Obama’s secrecy policies in place and made a habit of tearing up presidential papers into tiny pieces. Mr. Biden promised “a recommitment to the highest standards of transparency.” But his administration has not given policymaking in this area much more priority than did the Trump administration. After his first year, advocacy groups were unable to find anyone in the White House who was even working on the issue.

Presidents want to have their cake and eat it, too. Through executive orders, they manage what the American people get to learn about “national security,” but they also try to create the appearance of being transparent and honest, deserving of public trust. They reveal information — including classified information — to bend issues to their advantage either overtly, using the “bully pulpit,” or covertly, through authorized leaks. And they fight off attempts by Congress or the courts to rein in overclassification.

Real reform will not come from tinkering with rules and regulations that, over and over again, officials have found ways to break or ignore. Instead, Congress must use the power of appropriations to make transparency a priority. Declassification has received less than 1 percent as much funding as “information security.”

A rule with real teeth would require departments and agencies to match spending on public relations and advertising — in the case of the Pentagon, some \$600 million a year — with spending on reviewing and releasing formerly secret information to the public. And courts could finally overturn the infamous 1953 *United States v. Reynolds* precedent — cited over 800 times, typically to deny Freedom of Information Act appeals — in which federal officials fraudulently claimed that a judge could not even look at a classified document without endangering national security.

Judges could show some independence. In the end it may be necessary to create an independent agency, analogous to the Federal Reserve, that takes sovereign control over secrecy away from the president. It would have a mandate to prevent inflation in official secrecy while protecting truly dangerous information.

Otherwise, we will go on living in a political environment that both avoids accountability and endangers national security. By insisting they can control this dark state and stopping external challenges, presidents have allowed it to run amok — to the point that even a sitting president is being investigated by his own Justice Department and an ex-president still faces the threat of prosecution.

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