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OFFICE OF THE VICE PRESIDENT

The Legal Debate Over The
Freedom Of Information Act (FOIA)



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OFFICE OF THE VICE PRESIDENT

THE LEGAL DEBATE OVER THE FREEDOM OF INFORMATION ACT (FOIA)

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Dedicated to Dr. Tom Coburn

OpenTheBooks Honorary Chairman
Rest In Peace - March 28, 2020

By Adam Andrzejewski
Founder/CEO

Thomas W. Smith
Chairman

"OpenTheBooks is doing the work I envisioned when the Coburn-Obama bill became law. Their innovative app and other tools are putting sunlight through a magnifying glass."

U.S. Senator Tom Coburn, MD
Washington, D.C. | March 11, 2014

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"I know that restoring transparency is not only the surest way to achieve results, but also to earn back the trust in government..."

U.S. Sen. Barack Obama

SCOPE & METHODOLOGY

On Sept. 13, 2021, we asked the Office of the Vice President for, “An electronic copy of any and all employees for year of 2020, (fiscal or calendar year). At minimum, each employee record should contain the employee's full name, title, and gross annual wages. This data should be broken down by employer, employee and year.”

That same day, a spokesman replied, “Thank you for your inquiry. The Office of the Vice President is not subject to Freedom of Information Act requests. See 5 U.S.C. 552; 44 U.S.C. 2207.”

The following day, we asked, “I understand the OVP isn't subject to FOIA – is there any information you can provide me at all about the office staff? Whether it's total staff employees (without names or any other employee-specific info) or total payroll for 2020 or current numbers for 2021?”

The spokesman replied, “Thank you for the inquiry. OVP does not have any information to share at this time.”

Without the cooperation of the OVP, we got our hands on some spending through the U.S. Senate’s [semi-annual report](#) for Oct. 1, 2020, to March 31, 2021, which gives a partial list of staff names and pay.

Working off that list, we get a glimpse of who works for the Vice President and what they’re paid.

We calculated that for VP Harris’s 28 staff listed in the Senate report, the 2021 salaries added up to \$2,334, 223.97 - when estimated for the year.

However, the president’s [congressional budget submission](#) shows the OVP got \$5 million for 23 full time staff in 2021 and requested \$6,039,000 for 27 full time staff in 2022.

WHO WE ARE

American Transparency ([OpenTheBooks.com](#)) is a public charity. We do not accept government money. Our oversight reports present hard data so citizens, media, think tanks, politicians, and watchdogs can “follow the money.” Hard facts are non-partisan and enhance the public discourse.

INTRODUCTION

The [Freedom of Information Act](#) gives the public the right to request access to records from any federal agency.

It's a vital piece of the puzzle that makes public information available to regular people, the press, watchdogs and researchers.

Each state also has a law that's modeled on FOIA, giving the public the right to see government documents.

These open records laws and laws that require most government meetings to be open to the public are often referred to as Sunshine Laws because they shed light on otherwise opaque government actions and spending.

But what happens when one of the country's most important representatives doesn't have to abide by FOIA?

The Office of the Vice President, or OVP, isn't subject to FOIA because, it argues, it's not a federal agency.





TOP 10 TAKEAWAYS

- 1** **Federal agencies are required to give the public access** to records, as per the [Freedom of Information Act](#). This ensures federal spending and actions are transparent and can be scrutinized.
- 2** **The Office of the Vice President** says it's [not considered an agency](#) and thus not subject to FOIA. It refuses to provide requested figures on total spending or staff salaries.
- 3** **Agency is defined as** "each authority of the Government of the United States, whether or not it is within or subject to review by another agency," and doesn't include Congress, courts and a few other exceptions.
- 4** **VP records aren't available** under FOIA in the National Archives and Records Administration until five years after an administration leaves.
- 5** **The Senate's semi-annual report** shows that VP Kamala Harris' 28 staff salaries for 2021 added up to \$2.3 million. But the president's [Congressional Budget Submission for 2022](#) shows the OVP got \$5 million for 23 full time staff in 2021. The cause of the discrepancy is unclear because the OVP won't answer questions about its budget and spending.

- 6 **The OVP requested more than \$6 million** for 2022 for 27 full time staff, a more than \$1 million increase from 2021 funding.
- 7 **Harris named Tina Flourney as her chief of staff** in December 2020, and has been criticized for her rough management style and what has been reported as dysfunction and frustration in Harris' office.
- 8 **Symone D. Sanders, Harris senior advisor/chief spokesperson,** initially defended Flourney but became one of many to leave her high-profile job there at the end of 2021.
- 9 **Sanders left two weeks after** communications director Ashley Etienne resigned, which renewed speculation of chaos and dysfunction within the vice-president's office.
- 10 **Transparency in other federal agencies** has led to OpenTheBooks.com being able to quantify and qualify spending and staff salaries in our report "Mapping The Swamp: A Study of the Administrative State (FY2020)." It details \$217 billion spent on 2.8 million federal employees – a number that jumps to \$292 billion when adjusted for inflation and assuming a 30 percent cost of benefits.

CONTENTS

SCOPE & METHODOLOGY.....	iii
INTRODUCTION.....	iv
TOP 10 TAKEAWAYS.....	v
CONTENTS.....	1
WHAT IS A FEDERAL AGENCY?.....	2
THE OFFICE OF THE VICE PRESIDENT IS NOT SUBJECT TO FOIA.....	4
CASE STUDIES.....	8
PREVIOUS OVERSIGHT.....	12
ABOUT AMERICAN TRANSPARENCY.....	13



WHAT'S A FEDERAL AGENCY?

As we wrote about in our Forbes article, "[VP Kamala Harris Is The Least Transparent Elected Official In The Nation](#)," the Congressional Research Service in August 2020, published a legal overview of FOIA, and looked at the [definition of "agency"](#) in federal statute 5 U.S.C. § 551.

There, agency is defined as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency."

That broad [definition](#) is further described in the FOIA as one that "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."

But the Congressional Research Service notes the law's scope. "While this definition includes a large swath of the federal government, it does not encompass the entire federal establishment. For example, FOIA does not apply to Congress, the federal courts, or territorial governments."

While FOIA's definition of "agency" includes the Executive Office of the President, the CRS report explains that courts have decided there are some exclusions.

In the U.S. Supreme Court's 1980 decision in [Kissinger v. Reporters Committee for Freedom of the Press](#), it said transcripts of Henry Kissinger's phone conversations during his time as Assistant to the President for National Security Affairs didn't have to be disclosed under FOIA.

In February 1994, Assistant Attorney General Walter Dellinger said in a memo to Todd J. Campbell, counsel and director of administration at VP, that his office [isn't an "agency"](#) for the purposes of FOIA.

He wrote that the Supreme Court has held that "agency" doesn't include "the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President."

Dellinger argued, “The OVP (Office of Vice President) clearly satisfies the Supreme Court’s ‘sole function’ test because the Vice President and his staff do not have ‘substantial independent authority in the exercise of specific functions,’ but rather have the sole function of advising and assisting the President.”

But faulty legal analysis could have been used in this case to arrive at the conclusion that their office wanted: to prevent the VP from being subject to FOIA.

Further insulating the VP’s office from public scrutiny, its records are transferred to the National Archives and Records Administration after an administration leaves office, but are not available under FOIA until five years later.

President Joe Biden’s records created when he was vice president were subject to public access requests beginning Jan. 20, 2022, while former VP Mike Pence’s records will become available on Jan. 20, 2026.

If VP Harris leaves her office on Jan. 20, 2025, after one term in office, her office’s records won’t be available until Jan. 20, 2030.

That’s a blow to transparency efforts - knowing what happened years ago is not nearly as impactful as knowing what’s happening with taxpayer money now.



"THE OFFICE OF THE VICE PRESIDENT IS NOT SUBJECT TO FREEDOM OF INFORMATION ACT REQUESTS."



While the OVP doesn't have to give the public any of its records under FOIA, our auditors at OpenTheBooks.com got our hands on some spending by the VP by way of the U.S. Senate.

Specifically, the [semi-annual report](#) of the Secretary of the Senate for Oct. 1, 2020, to March 31, 2021 lists staff names and pay.

Before we delve into the findings, it's important to note that because the OVP refuses to be transparent and won't provide the public a look at its spending, the records in this report are incomplete.

What's found on page 67 of this Senate report is a snapshot in time – staff has come and gone since this time almost one year ago. Some staff that we know worked for OVP during this time aren't listed on the Senate documents. We don't know why because OVP won't answer any questions about their staff, spending or any other budget questions.

But it gives us a broad view of the type of staff spending the office does.

PAYROLL IS A GUESSING GAME

EMPLOYEE	TITLE	SALARY	HARRIS SENATE STAFF	TERMINATED
Nasrina Bargzie	Associate Counsel	\$93,075.22		
Yael Shoshana Belkind	Assistant to the Chief of Staff	\$81,111.02		
Megha Bhattacharya	Press Assistant	\$49,981.92		
Marguerite T. Biagi	Scheduler	\$81,111.02		
Brittany N. Carmon	Associate Legislative Affairs Director	\$69,607.22	Yes	Yes
Michael D. deForest	Operations Coordinator	\$46,638.79		
Kaitlin E. Denney	Associate Director/Staff Secretary	\$68,451.30	Yes	
Edgar A. Estrada	Assoc Special Projects Dir/ Special Asst to the Second Gentleman	\$63,367.86		
Halle Madison Ewing	Legislative Assistant	\$58,911.30	Yes	
Michael C. George	Policy Adviser	\$81,111.02		
Sarah Nadia Gouda	Deputy Speechwriting Director	\$77,731.31		
Lindsay Baker Hayes	Scheduling Director	\$97,164.06		
Isaac David Irby	Senior Policy Adviser	\$97,166.13	Yes	
Brent Alexander Johnson	Deputy Advance and Operations Director	\$82,440.70		Yes
Rajan Kaur	Deputy Digital Director	\$83,042.19		Yes
Emily R. Langner	Staff Secretary, Office of the Vice President	\$101,388.72		
Kristine Joy Lucius	Legislative Affairs Director	\$167,296.45	Yes	
John Tyler Lykins	Deputy Research Director	\$73,506.83		
Deanne B. Millison	Deputy Policy Director	\$153,167.84	Yes	
Rachel E. Palermo	Assistant Press Secretary	\$48,666.63		
Elizabeth Ivey Purcell	Deputy Scheduling Director, Office of the Second Gentleman	\$81,111.02		
Ricardo Brandon Rios	Associate Counsel	\$93,651.32		
Sabrina Singh	Deputy Press Secretary	\$101,388.72		
Rukku Singla	Deputy Policy Director, Office of the Second Gentleman	\$82,800.78		
Andy Vargas	Associate Operations Director	\$63,367.86		
Peter T. Velz	Press Operations Director	\$81,111.02		Yes
Silas Woods III	Vetting Researcher	\$54,467.00		
Herbert M. Ziskend	Deputy Communications Director	\$101,388.72		

TOTAL: \$2,334, 223.97

MISSING FROM LIST			
EMPLOYEE	TITLE	HARRIS SENATE STAFF	TERMINATED
Robert Buckman	Advance Associate Lead		
Michael Collins	Director of public Engagement and Intergovernmental Affair		
Ashley Etienne	Communications Director		Yes
Tina Flournoy	Chief of Staff		
John Hsu	Counsel to the Vice President	Yes	
Rohini Kosoglu	Domestic Policy Adviser	Yes	
Nancy McEldowney	National Security Adviser		
Symone Sanders	Senior Advisor/Chief Spokesperson		Yes
Opal Vadhan	Personal Aide to the Vice President		

Based on the Senate’s [semi-annual report](#), we calculated that VP Harris’ 28 staff salaries for 2021 added up to \$2,334, 223.97

But on P.64 of the president’s [Congressional Budget Submission for 2022](#), it shows the OVP got \$5 million for 23 full time staff in 2021.

On P.11, the Office of the Vice President estimated a 2022 funding requirement of \$6,039,000 for 27 full time staff. That’s a \$1,039,000 increase from 2021 funding.



OVP BUDGET - CONGRESSIONAL BUDGET SUBMISSION 2022

2020 – \$4,590,000 (enacted) – FTE 20
2021 – \$5,000,000 (enacted) – FTE 23
2022 – \$6,039,000 (requested) – FTE 27
Note: FTE = full time equivalent employee



WHY THE DISCREPANCY BOTH IN BUDGETING AND STAFFING? THE SHORT ANSWER IS **WE DON'T KNOW.**

We don't know because the OVP won't be transparent about its spending and staff. While benefits often make up an additional 30 percent of spending, we can only estimate what the office spent on which budget line, including for other expenses, like travel and supplies.

Based on news reports of staff being hired and staff resigning, we know that at least nine people who work for or have worked for the VP are not on this Senate list. They include Harris' chief of staff, Tina Flournoy, a longtime Democratic political strategist.

Also absent from the Senate list of VP staffers are Ashley Etienne, the VP's one-time communications director and Symone Sanders, her former senior advisor and chief spokesperson.

Since we know there are at least nine people who work for or worked for VP Harris in 2021 who aren't on the Senate staffing list for OVP, we know the salary total is higher than we see, but again, it's anybody's guess what the totals are without OVP being forthcoming.

TINA FLOURNOY

CASE STUDY

Harris named Tina Flournoy as her [chief of staff](#) in December 2020, The Associated Press reported. The Democratic operative has a long career working with Democratic politicians.

In 2013, Flournoy took a job as chief of staff [for former President Bill Clinton](#) and has been criticized for her tactics, her rough management style that keeps allies from getting direct access to her boss, CNBC reported.

Politico reported in June 2021 that there is [dysfunction and frustration](#) in Harris' office that stems from Flournoy. The news outlet reported that staff are unhappy.

"People are thrown under the bus from the very top, there are short fuses and it's an abusive environment," Politico reported from one person with direct knowledge of how Harris' office is run. "It's not a healthy environment and people often feel mistreated. It's not a place where people feel supported but a place where people feel treated like s---."

POLITICO

The VP's team has "low morale, porous lines of communication and diminished trust among aides and senior officials," Politico reported. "Much of the frustration internally is directed at Tina Flournoy, Harris' chief of staff, a veteran of Democratic politics who began working for her earlier this year."

Flournoy was previously assistant to the president for public policy at the American Federation of Teachers, an international union representing over 1.4 million members

She has worked as counsel to the Democratic National Committee, general counsel to the 1992 Democratic National Convention, and worked on Bill Clinton's transition to the White House. She has worked on the presidential campaigns of Vice President Al Gore and Secretary of State Hillary Clinton and was an employee in the White House Office of Presidential Personnel.

SYMONE D. SANDERS

CASE STUDY

ONE OF SEVERAL TO LEAVE THE VP'S OFFICE...

While Symone D. Sanders, Harris senior advisor/chief spokesperson, defended Flournoy in the Politico article, saying she has an “open door policy” and that “Black women like me would not have the opportunity to work in politics without Tina,” Sanders became one of several to leave the VP’s office.

“We are not making rainbows and bunnies all day,” she said in June 2021. “What I hear is that people have hard jobs and I’m like ‘welcome to the club.’ We have created a culture where people, if there is anything anyone would like to raise, there are avenues for them to do so. Whoever has something they would like to raise, they should raise it directly.”

But she [left her high-profile job](#) there at the end of 2021.

[The Washington Post reported](#) that the “office has been beset by concerns about messaging discipline and staff dysfunction.”

Sanders had been national press secretary for Democratic presidential candidate Bernie Sanders during his 2016 presidential campaign. In October 2016, she was hired to be a Democratic strategist and political commentator by CNN. In April 2019, Symone Sanders joined the 2020 presidential campaign of former vice president Joe Biden as a senior advisor.

She’s now a political commentator and host on MSNBC’s The Choice.

OTHER STAFFERS WHO LEFT OVP

Symone D. Sanders was the second high-profile staffer to leave in two weeks, after communications director [Ashley Etienne resigned](#), which renewed speculation of chaos and dysfunction within the vice-president's office, CNN reported.

Etienne had been a senior adviser to the Biden presidential campaign and a communications professional for several elected officials in Washington, including then-House Minority Leader Nancy Pelosi and then-President Barack Obama.

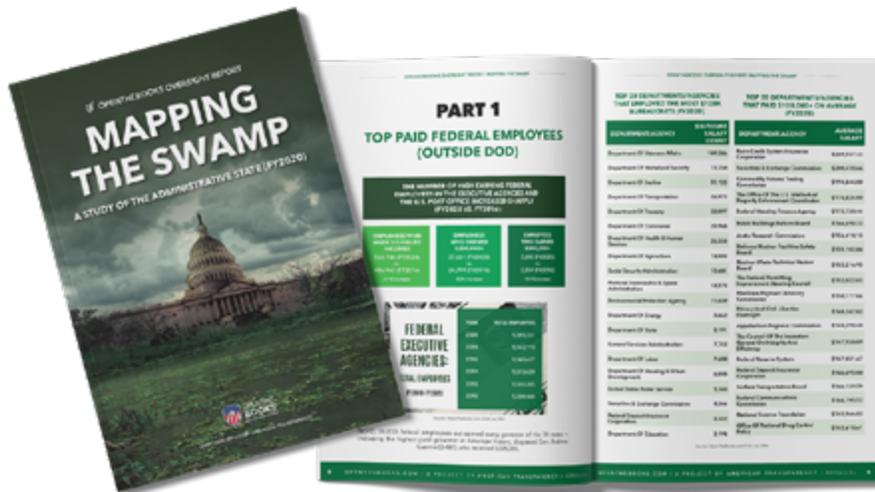
As various news outlets reported on the "dysfunction" in the VP's office, the White House called Harris a "key partner," [CNN reported](#) in November 2021.

As The Washington Post reported on Sanders leaving, [it also noted](#) that Peter Velz, director of press operations, and Vince Evans, deputy director of the Office of Public Engagement and Intergovernmental Affairs in the vice president's office, told others in OVP that they are leaving.



TRANSPARENCY IN OTHER FEDERAL AGENCIES

At [OpenTheBooks.com](https://openthebooks.com), we published an oversight report in September 2021 on all federal agencies spending and staff.



[“Mapping The Swamp: A Study of the Administrative State \(FY2020\)”](#) detailed the \$217 billion spent on 2.8 million federal employees – a number that jumps to \$292 billion when adjusted for inflation and assuming a 30 percent cost of benefits.

We saw name redactions from the Department of Defense, and the U.S. Postal Service redacted all bonuses. Names of all employees at the Internal Revenue Service, Federal Bureau of Investigation, Secret Service, and some other rank-and-file agencies were redacted.

Citing national security issues, exceptions in the FOIA law, or lack of jurisdiction, the federal Office of Personnel Management didn’t provide data on the Central Intelligence Agency, Foreign Service personnel at the State Department, the National Security Agency and other agencies.

But beyond that, we got detailed data from federal agencies on staff totals and individual salaries. We were able to see how many employees were in each agency, how many employees made six figures or more, what the average salary was in each agency and more.

That’s compared to the OVP, headed by an elected official who won’t give a total staff count or salary total, let alone list salary-specific date for each individual.

PREVIOUS OVERSIGHT

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WHERE'S THE PORK?
*Mapping Waste, Fraud,
Corruption & Taxpayer Abuse*



DR. ANTHONY FAUCI
Investigating Fauci's Finances



MAPPING THE SWAMP
*A Study of the Administrative
State (FY2020)*



U.S. FOREIGN AID
*How and Where The U.S.
Spent \$282.6 Billion
(FY2013-2018)*



**THE MILITARIZATION
of the U.S. Executive Agencies**

AS FEATURED IN



ABOUT AMERICAN TRANSPARENCY

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Our aggressive transparency and forensic auditing has led to the assembly of grand juries, indictments, and successful prosecutions; congressional briefings, hearings, audits, subpoenas, and legislation; administrative and White House policy changes; and much more.

IN 2020...

The President's Budget To Congress FY2021 included a first-ever chapter, "Stopping Wasteful and Unnecessary Spending," which was inspired by our oversight report, *Where's The Pork? A Study of \$600 Billion In Federal Grants*. Included in the President's Budget was our report, *Use-It-Or-Lose-It - How The Federal Government Spent \$97 Billion In September 2018*. The President committed to stopping this wasteful phenomenon. Also, the budget cited our report on the National Endowment of the Arts as the principle reason to eliminate the agency. (Media coverage included USA Today, The Wall Street Journal, and FOX News.)

IN 2019...

Our Top 82 U.S. Non-Profit Hospitals: Quantifying Government Payments & Financial Assets report launched on *FOX News' Tucker Carlson Tonight* and *USA TODAY*. This report backstopped President Trump's two executive orders on healthcare price transparency by showing that wealthy charitable non-profit healthcare providers and their CEO's were making big profits. Colorado Governor Jared Polis (D) also cited this data in his state of the state address while arguing for price reforms.

IN 2018...

Open The Books' Mapping The Swamp, A Study Of The Administrative State Media report launched on *FOX News' The Ingraham Angle* and directly led to Representative Judy Hice's (R-GA) legislation on pension and bonus transparency (H.R. 2612). Furthermore, we briefed the Executive Office of the President, Office of Management & Budget regarding our policy ideas to drain the swamp.

IN 2017...

The Tax Cuts And Jobs Act 2017, passed into law and included a claw-back tax on Ivy League-style, excessive university endowments. The *Boston Globe* cited our Ivy League, Inc. oversight report as a catalyst for the legislative provision. Coverage included *The Wall Street Journal* and eight segments on *Fox News*.

IN 2016...

We exposed the \$20 million luxury-art procurement program at the Department of Veterans Affairs, which forced a public apology from the V.A. Secretary and the adoption of new rules to stop the abuse. Coverage included *Good Morning America* and *ABC World News Tonight*.

IN RECOGNITION OF OUR TEAM

Adam Andrzejewski

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& Founder

Craig Mijares

Chief Operating
Officer

Matthew Tyrmand

Deputy Director
at Large

Courtenay Lyons

Development
Director

Rachel O'Brien

Deputy Public Policy
Editor Director

Christopher Neefus

Communications
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Tamara Colbert

Public Relations
Specialist

Amber Todoroff

Writing
Specialist

Milan Erastus-Obilo

Video Editor

Sejelle Erastus-Obilo,

Creative Services Manager,
designed the report.



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