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## Taking the File Cabinets, Too

**I**T IS EASY to understand why Henry Kissinger wants to retain exclusive access to transcripts and summaries of telephone conversations he had while he was secretary of state—and why other people also want access to them. In addition to being the raw material of history, they must be full of nuggets of the kind that transform routine books into best sellers and that make (or break) reputations.

Under the Supreme Court's decision the other day, it appears likely Mr. Kissinger will retain full control over those documents until at least 2001, even though he may have obtained control wrongfully: it is not clear that Mr. Kissinger had the legal authority to move the transcripts from the Department of State, where some of them might already be available to researchers, to the Library of Congress, where access is sharply limited. But once they were moved, the court said, they were beyond the reach of the Freedom of Information Act, and only the executive branch of government—not a citizen or a private organization—can challenge the legality of the transfer.

This decision opens a loophole through which other high officials and, perhaps, government agencies can drive trucks full of documents to evade the intent of the Act. By giving controversial documents to some repository outside their control, officials and agencies can presumably tell researchers and others

what the State Department did in this case: you can't see the material because we don't have it.

That was not the intent of the FOI Act, which was designed to make unclassified information in the government's files available to anyone with a legitimate interest in it. Congress can—and should—close the loophole by directing the courts to entertain challenges to such transfers from private citizens and organizations.

The questions raised by this case, however, run beyond that law. Should any public official have the exclusive use of papers generated originally for government use, focused on national problems and issues and produced at the expense of the taxpayers? Should such an official be able, for instance, for the next quarter-century, not only to profit from but also to shield from public view the documents that may reveal things about his time in office less flattering than those he makes known?

In the old days, appointed public officials—Dean Acheson is an example—took only their briefcases when they moved out. They left the filing cabinets behind. Whether that was out of a sense of duty or a belief that the public is entitled to what it has paid for, it was good policy. Since it seems to have vanished, Congress should reimpose it by law, even if that requires broadening the Federal Records Act as well as the FOI statute.