

Is There a Duty to Disclose? Constitutional, Statutory, and International Sources of an Obligation to Reveal the Existence of NHI

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Key points

- No court is likely to order the government to say that NHI exist: there is no general constitutional right of access to government information (*Houchins*; *McBurney*).
 - Real duties are indirect: records statutes (FOIA; the UAP Records Collection), reporting to Congress (50 U.S.C. §§3091, 3373), and treaty duties under OST Articles V and XI.
 - The Statement and Account Clause reaches secret budgets in principle, but taxpayers lack standing to enforce it (*Richardson*).
 - Statutory disclosure duties create standing for those denied the information (*Akins*; *Public Citizen*), so a disclosure statute with a mandatory reporting duty could be enforced in court.
 - Selective, viewpoint-based release of UAP information can be challenged under *Boardman v. Inslee*.
 - The path to a duty to disclose is legislative; [Form A4-1](#) is a model provision.
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1. Summary

If the United States knows that non-human intelligence exists, no court is likely to order it to say so. The Constitution does not give the public a general right of access to information the government controls, and the Supreme Court has repeatedly described disclosure of such information as “a task which the Constitution has left to the political processes.” *Houchins v. KQED, Inc.*, 438 U.S. 1, 12 (1978) (plurality opinion).

Duties do exist, but they are narrower and indirect:

- **Statutory records duties.** Congress has required agencies to transmit UAP records, including records relating to “technologies of unknown origin, and non-human intelligence,” to the National Archives and to release them unless a postponement ground is

shown by clear and convincing evidence, with a 25-year outside limit ([Issue A3](#)). FOIA gives requesters a cause of action for specific records.

- **Reporting to Congress.** AARO must report to Congress, including on restricted access programs not previously reported (50 U.S.C. §3373), and intelligence agencies must keep the intelligence committees fully and currently informed (50 U.S.C. §3091).
- **Treaty duties.** The Outer Space Treaty requires states to inform other states or the UN Secretary-General immediately of phenomena discovered in outer space that could endanger astronauts (Art. V), and to inform the public and the scientific community of the results of space activities “to the greatest extent feasible and practicable” (Art. XI).
- **Duties tied to danger.** Where government knowledge concerns a specific danger to identifiable people, doctrines of state-created danger, tort duties to warn, and aviation-safety obligations may require disclosure to those people (Issues D4, D6).

Whether Congress itself has been told is part of the dispute. A former director of the Navy’s UAP Task Force writes that the crash-retrieval program he describes “was never briefed to Congress,” and that senators who sought access to facilities he identified to committee staff were refused (Jay Stratton, *Out of the Shadows* chs. 8, 33 (2026)). Those are allegations, but they explain why reporting duties that run only to Congress (50 U.S.C. §§3091, 3373) do little for the public unless Congress can compel compliance and publish what it learns ([Issue D1](#)).

The rest is political. The practical path to a disclosure duty is legislative: a statute with a presumption of disclosure, an independent board, a firm deadline, and judicial review. The pending House UAP Disclosure Act contains most of these features ([Issue A3](#)).

2. Federal constitutional law

2.1 No general right of access

- *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978) (plurality): neither the First nor the Fourteenth Amendment “mandates a right of access to government information or sources of information within the government’s control.” Justice Stewart concurred in the judgment on the narrower ground that the press has no greater right of access than the public. *Id.* at 16.
- *McBurney v. Young*, 569 U.S. 221, 232 (2013): “This Court has repeatedly made clear that there is no constitutional right to obtain all the information provided by FOIA laws.”
- *Boardman v. Inslee*, 978 F.3d 1092, 1104 (9th Cir. 2020), restating *Houchins* as “the well-settled principle that the First Amendment does not guarantee a general ‘right of access to government information or sources of information within the government’s control.’”
- See also *Pell v. Procunier*, 417 U.S. 817 (1974); *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974).

2.2 The exceptions

- **Judicial proceedings.** The public has a qualified First Amendment right of access to criminal trials and some related proceedings, determined by “experience and logic.”
Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986). The right bears on UAP litigation (sealing, closed hearings; [Issue A1](#)) and on any truth commission that conducts adjudicative proceedings ([Issue B3](#)). It does not reach executive records.
- **Viewpoint discrimination in selective disclosure.** *Boardman* holds that although disclosure of government information is generally left to the political process, “the First Amendment forbids a state from discriminating invidiously among viewpoints in the provision of information within its control.” 978 F.3d at 1098. If the government were to release UAP information selectively to favor or disfavor particular speakers or viewpoints (for example, providing access only to outlets that adopt a debunking position), *Boardman* supplies a theory. The government-speech doctrine, which lets the government choose its own message (*Pleasant Grove City v. Summum*, 555 U.S. 460 (2009)), limits the theory to discrimination in access; the content of the government’s own statements is outside it.
- **The right to receive information from willing speakers.** *Stanley v. Georgia*, 394 U.S. 557 (1969); *Kleindienst v. Mandel*, 408 U.S. 753 (1972); *Board of Education v. Pico*, 457 U.S. 853 (1982) (plurality). These cases protect against government interference with communication between willing parties. They do not compel the government to speak, but they matter when the government tries to stop insiders, scientists, or (on the site’s premise) NHI from communicating with the public (Issues B4, F3, F4).

2.3 Secret budgets and standing

The Constitution’s one express disclosure requirement concerns money: “a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time” (art. I, §9, cl. 7). A taxpayer sued to compel publication of the CIA’s expenditures under that clause and lost for want of standing; the Court described the question of how much to publish as “committed to the surveillance of Congress.” *United States v. Richardson*, 418 U.S. 166, 179 (1974). The D.C. Circuit later upheld the CIA’s withholding of its legal-fee records under FOIA. *Halperin v. CIA*, 629 F.2d 144 (D.C. Cir. 1980). A suit to compel disclosure of the cost of UAP programs would meet both decisions.

Standing is a different matter when a statute requires disclosure. A plaintiff denied information that a statute requires the government to make public suffers an injury in fact. *FEC v. Akins*, 524 U.S. 11, 21 (1998); *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989). That is the doctrinal route by which a disclosure statute with a reporting duty ([Form A4-1](#)) could be enforced in court, and the reason any such statute should state the duty in mandatory terms.

2.4 Due process

The Due Process Clause imposes no general duty on government to protect people from harms it did not create. *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). Most

circuits recognize a “state-created danger” exception where the government affirmatively creates or increases a danger to specific individuals and acts with deliberate indifference. Knowledge of NHI as such is not a danger the government created. Specific operations (for example, testing recovered technology near workers, or provoking encounters) could be, and the exception could support a duty to warn those exposed. [Issue D6](#) develops this.

3. Statutory duties

Source	What it requires	Who can enforce it
FY2024 NDAA §§1841-1843 (44 U.S.C. §2107 note)	Identify, transmit, and (absent clear-and-convincing postponement) release UAP records, including records on “technologies of unknown origin, and non-human intelligence”; 25-year limit	No express cause of action; APA §706(1) for discrete duties, within limits drawn by the JFK Act cases (Issue A3)
FOIA, 5 U.S.C. §552	Release of specific records on request, subject to exemptions	Requesters, de novo review
50 U.S.C. §3373	AARO reports to Congress, including historical record and restricted programs not reported to Congress	Congress. On the site’s premise that AARO is part of the concealment, this is a duty the reporting office has an interest in not performing; its reports should be tested against other official sources
50 U.S.C. §3091	Keep intelligence committees fully and currently informed	Congress
50 U.S.C. §3373b(a)(4)(B)	Notify the committees within 72 hours when an authorized disclosure concerns an unreported restricted or special access program	Congress
Federal Records Act and Presidential Records Act	Preserve records; no publication duty	Archivist; limited private enforcement
EO 13526 §§1.7(a), 3.1(d)	Classification may not be used to conceal violations of law or prevent embarrassment;	No private right of action; usable in MDR and FOIA

Source	What it requires	Who can enforce it
	agencies may declassify where the public interest outweighs harm	advocacy
None of these requires the government to announce a conclusion that NHI exist. They require the government to release records. A disclosure duty in practice therefore operates through records: if the government holds records documenting NHI, the Records Collection provisions require their transmission and, subject to postponement, their release.		

4. State law

Several state constitutions guarantee a right of access to public records or proceedings. California's provides that "[t]he people have the right of access to information concerning the conduct of the people's business" and directs courts to construe statutes broadly when they further that access and narrowly when they limit it (Cal. Const. art. I, §3(b)(1)-(2)). Florida's gives "[e]very person" the "right to inspect or copy any public record made or received in connection with the official business of any public body" (Fla. Const. art. I, §24(a)). Montana's "right to know" provides that no person "shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure" (Mont. Const. art. II, §9). These reach state and local agencies (state police, state aviation agencies, emergency management offices, state universities, and National Guard records in state status). They do not reach federal records, and records shared with a state by a federal agency raise preemption and ownership questions ([Issue B1](#)).

5. International law

5.1 Outer Space Treaty

- **Article V** requires States Parties to "immediately inform the other States Parties to the Treaty or the Secretary-General of the United Nations of any phenomena they discover in outer space, including the Moon and other celestial bodies, which could constitute a danger to the life or health of astronauts." The duty is mandatory and immediate, but limited to phenomena discovered in outer space that endanger astronauts. UAP observed in orbit near crewed spacecraft, or reported by astronauts, could fall within it.
- **Article XI** requires states conducting space activities to inform the Secretary-General, the public, and the international scientific community "to the greatest extent feasible and practicable" of the nature, conduct, locations, and results of those activities. Commentators read the qualifier as self-judging, which gives states room to withhold on security grounds.
- **Article VI** makes states responsible for the space activities of their nongovernmental entities and requires authorization and continuing supervision. An attorney writing for the

International Astronautical Congress has argued that Article VI obliges states to require their private space actors to report an encounter with extraterrestrial intelligence under Articles V and XI. George Anthony Long, *The Duty Under the Space Law Treaty Regime to Disclose or Report an Encounter with an Extra Terrestrial Intelligence*, IAC-20,A4,2,1,x60707 (2020).

- The United States treats the Outer Space Treaty as binding but not self-executing in this respect; no private party can enforce Article V or XI in U.S. court. A treaty that is not self-executing is not domestic law enforceable by courts until Congress implements it. *Medellín v. Texas*, 552 U.S. 491, 505 (2008). The treaty matters diplomatically and as a basis for congressional or executive policy.

5.2 United Nations practice

In 1977 and 1978 Grenada placed UFOs on the General Assembly agenda. The Assembly adopted Decision 32/424 (1977) and Decision 33/426 (Dec. 18, 1978). Grenada's draft resolution asking the United Nations to "initiate, conduct and co-ordinate research" into UFOs through a group of experts under the Committee on the Peaceful Uses of Outer Space (A/SPC/33/L.20) was withdrawn after consultations, and the Special Political Committee instead recommended a consensus decision. Report of the Special Political Committee, U.N. Doc. A/33/512, paras. 5-9 (Dec. 16, 1978). In paragraph 2 of the decision, the General Assembly "invites interested Member States to take appropriate steps to co-ordinate on a national level scientific research and investigation into extraterrestrial life, including unidentified flying objects," and to inform the Secretary-General of the observations, research, and evaluation of those activities; paragraphs 3 and 4 sent Grenada's statements to COPUOS and allowed Grenada to present its views there in 1979. *Id.* para. 9. The plenary adopted the decision without a vote. U.N. GAOR, 33d Sess., 87th plen. mtg. at 1553, U.N. Doc. A/33/PV.87 (Dec. 18, 1978). The decision is non-binding and was never implemented, but it is the only General Assembly action on the subject and a precedent for reporting to the Secretary-General. (The committee report survives as a poor-quality scan; the quoted words were read from the scan image.)

5.3 Human rights law

- **Access to information.** Article 19(2) of the ICCPR protects the right to "seek, receive and impart information," and the Human Rights Committee reads it to include a right of access to information held by public bodies (General Comment No. 34 (2011), para. 18). Regional courts have recognized similar rights (*Claude Reyes v. Chile*, Inter-Am. Ct. H.R. (2006); *Magyar Helsinki Bizottság v. Hungary*, ECtHR Grand Chamber (2016)). The United States treats the ICCPR as non-self-executing.
- **Right to truth.** The Office of the High Commissioner for Human Rights describes an autonomous right to the truth about gross violations of human rights, tied to the state's duty to investigate and provide remedies. *Study on the Right to the Truth*, U.N. Doc. E/CN.4/2006/91 (2006). It is relevant to allegations that NHI have been killed or detained ([Issue F2](#)), and to experiencers who allege government involvement in their experiences, more than to the general question of existence.

- **Right to science.** ICESCR Article 15(1)(b) and CESCR General Comment No. 25 (2020) recognize a right to enjoy the benefits of scientific progress, including access to scientific knowledge, subject to limitations under Article 4. The United States has signed but not ratified the ICESCR. The right is the strongest international basis for arguing that suppressed scientific knowledge, such as energy or medical technology, should be shared ([Issue D6](#)).

5.4 Post-detection protocols

The International Academy of Astronautics' SETI declarations (1989, 2010, and the 2026 revision) commit signatory researchers to verify and then publicly announce a confirmed detection of extraterrestrial intelligence, and not to respond without international consultation. They bind no government. They are a normative benchmark: the scientific community's own rule is prompt public disclosure after verification.

6. Comparative practice

Several governments have released UAP information without any judicial compulsion: France through GEIPAN's public archive (since 2007); the United Kingdom through transfer of Ministry of Defence UFO files to The National Archives (2008-2013); Brazil through Air Force declassification (from 2005) and its access-to-information law (Lei 12.527/2011); and Chile through CEFAA. Several have constitutional rights of access to information (Mexico art. 6; South Africa s. 32; Brazil art. 5, XXXIII). These examples show that disclosure duties, where they exist, come from access-to-information statutes and executive policy. No rule specific to NHI exists. [Issue F6](#) collects the foreign programs.

7. Designing a statutory duty

A legislature that wants to impose a duty to disclose the existence of NHI, rather than only a duty to release records, would need to address:

1. **Findings and a presumption of disclosure.** Define NHI and technologies of unknown origin (H.R. 8800 §1773 offers definitions).
2. **An affirmative reporting duty.** Require the President or a designated official to report to Congress and the public, by a fixed date, whether the government possesses evidence of NHI or of technology of non-human origin, with a classified annex for details.
3. **An independent decision-maker.** A review board with access, subpoena power, and authority to determine whether material qualifies (H.R. 8800 §§1764, 1767).
4. **Narrow, time-limited postponement.** Clear-and-convincing evidence, specific harms, published reasons, and a sunset (FY2024 §1843; H.R. 8800 §1763).

5. **Judicial review and a cause of action.** An express right of action for persons denied information the statute requires to be released, with de novo review (H.R. 8800 §1769(c) preserves APA review).
 6. **Protection for those who disclose.** Extend 50 U.S.C. §3373b protections and provide immunity procedures (Issues B3, C1).
 7. **International coordination.** Direct the Secretary of State to notify the UN Secretary-General consistent with OST Articles V and XI and to seek reciprocal disclosure (H.R. 8800 §1768(b)(2) expresses this only as a sense of Congress).
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8. Practice points

- Do not plead a constitutional right to disclosure of NHI existence; it will be dismissed under *Houchins* and *McBurney*.
 - Use records statutes: FOIA plus the Records Collection provisions ([Form A3-1](#)), and MDR ([Form A2-1](#)).
 - Use state public-records laws for state-held records.
 - If an agency releases UAP information selectively by viewpoint, consider a *Boardman* claim.
 - For clients exposed to specific hazards, frame disclosure claims as duty-to-warn or state-created danger claims tied to identified risks ([Issue D6](#)).
 - For international advocacy, frame requests around OST Articles V and XI and the 1978 General Assembly decision.
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