

March 16, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

We, the undersigned organizations and individuals, write to express our deep concern regarding efforts by the Department of Justice to undermine legislation in the last Congress that would have strengthened the Freedom of Information Act (FOIA) and likely are continuing to undermine FOIA amendments proposed by this Congress.¹ We urge you to repudiate the positions taken by the Justice Department and instead publicly and unequivocally endorse the bipartisan FOIA Improvement Act, which was unanimously passed by the Senate on March 15, 2016.²

The Justice Department's six-page memorandum³ on H.R. 1211 -- obtained in response to a FOIA lawsuit and recently made public -- stands in stark contrast with your Day One memo on FOIA, which boldly declared, "in the face of doubt, openness prevails."⁴ The recently disclosed DOJ memo voices strong opposition to nearly every provision of the FOIA amendments and, notably, repudiates Attorney General Holder's guidance on implementing a presumption of openness by rejecting a verbatim codification of his language.⁵ Without these legislative changes, implementation of the FOIA will remain a matter of policy,⁶ not a statutory command, too often driven by partisan political concerns.

The Justice Department's positions are at variance with the underlying intent of the FOIA, good public policy, common sense, and the administration's oft-stated position on transparency. That it required a lawsuit by a reporter to uncover the DOJ memo and the secret lobbying by administration officials in opposition to the legislation speaks volumes.

¹ See "It Took a FOIA Lawsuit to Uncover how the Obama Administration Killed FOIA Reform," by Jason Leopold, Vice News, available at <http://bit.ly/1TLiNgz>.

² See Senate passes FOIA reform bill, Mario Trujillo, The Hill, March 15, 2016, available at <http://bit.ly/22iqb7A>.

³ See Freedom of the Press Foundation, records released by the Department of Justice in response to a FOIA request and lawsuit, available at <http://bit.ly/1RA29Ki>.

⁴ Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, The White House, January 21, 2009, <http://1.usa.gov/1SoNNCx>.

⁵ Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, The Attorney General, March 19, 2009, <http://1.usa.gov/226jHVZ>.

⁶ See, e.g., the 2001 Ashcroft FOIA Memorandum, which established the "sound legal basis" standard governing the DOJ's decisions on whether to defend agency actions under FOIA when they are challenged in court; differing from the "foreseeable harm" standard that was employed under the predecessor memorandum, available at <http://1.usa.gov/1pmD2Vh>.

This year marks the 50th anniversary of the enactment of the Freedom of Information Act. We hope you will join us during Sunshine Week, created in celebration of public access to information, in declaring your support for the legislation.

For more information, contact Patrice McDermott, Executive Director of OpenTheGovernment.org, at pmcdermott@openthegovernment.org, Anne Weismann, Executive Director of Campaign for Accountability, at aweismann@campaignforaccountability.org, or Daniel Schuman, Policy Director at Demand Progress, at daniel@demandprogress.org.

Sincerely,

Access Now

American Association of Law Libraries

American Civil Liberties Union

American Library Association

American Society of Journalists and Authors

American Society of News Editors

Association of Alternative Newsmedia

Association of Research Libraries

Bill of Rights Defense Committee

Campaign for Accountability

Center for Media and Democracy

Center for Responsive Politics

Citizens for Responsibility and Ethics in Washington (CREW)

Constitutional Alliance

Data Coalition

Defending Dissent Foundation

Demand Progress

Essential Information

Electronic Privacy Information Center

Electronic Frontier Foundation

Fight for the Future

Freedom of the Press Foundation

Government Accountability Project

The James Madison Project

Liberty Coalition

Muckrock

National Center for Transgender Equality

National Coalition Against Censorship

National Security Archive

National Security Counselors

Niskanen Center

No More Guantánamos

OpenTheGovernment.org

Open Society Policy Center

People for the American Way

Public Citizen

Project On Government Oversight

Reporters Committee for Freedom of the Press

Restore The Fourth

RootsAction.org

Society of American Archivists

Society of Professional Journalists

Sunlight Foundation

Transactional Records Access Clearinghouse

Tully Center for Free Speech at Syracuse

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