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.

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
TechFreedom

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