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Lucy A. Dalglish
Executive Director

August 1, 2005

The Honorable Alberto R. Gonzales
United States Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Dear Attorney General Gonzales:

We are writing on behalf of ourselves and the news organizations listed to express our pleasure in learning of your willingness to revisit the Freedom of Information Act guidance to heads of federal agencies issued by your predecessor and known as the "Ashcroft Memorandum."

Whatever the motivation behind that guidance, we believe it has resulted in the withholding of federal agency records that once would have been made available to the public, and that are important to public understanding of government.

We further believe that a vigorous endorsement by the country's top law enforcement official of the underlying principles of openness embodied in the Freedom of Information Act would greatly enhance the enforcement of the act and would be influential in convincing the federal workforce that the current Department of Justice, which advises federal agencies on implementation, has not in any way retreated from those principles.

A Government Accountability Office report released in September 2003 examined "Agency Views on Changes Resulting from New Administration Policy." The report said that while a majority of FOIA officers had seen no change in the handling of FOIA requests as a result of the new policy, one-third did believe their agencies were making fewer discretionary disclosures of information and one-fourth said they were more likely to invoke the specific exemptions noted in the memo. Most cited the new guidelines as the "top factor" influencing those changes.

We also believe, perhaps intuitively, that the "Ashcroft Memorandum" may have been influential beyond the FOIA offices, giving program officers in

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federal agencies the misguided impression that the Justice Department believes that nondisclosure should trump disclosure. Since these officials actually hold most of the records subject to FOIA requests, their cooperation in FOIA processes is essential to the free and efficient flow of government information.

We hope that in looking anew at Freedom of Information guidance, you will speak forcefully to the importance, even and especially in these difficult times, for greater openness in government and that you will urge federal officials to construe the several exemptions narrowly, based on their inherent intent. Your support for that openness will help affirm in practice the presumption in the Freedom of Information Act that citizens in a democracy have both the need and the right to share in the information of their government.

The five paragraphs of guidance in the "Ashcroft Memorandum" include a two-sentence paragraph establishing the administration's commitment to the act and its purposes followed by four paragraphs extolling the need to safeguard, protect and withhold information under various exemptions to the act and to exercise discretion only after full consideration of other interests that "could be implicated" by disclosure. It also promises the agency's defense of any withholding accompanied by "sound legal basis" so long as the battle would not risk the result of more disclosure of "important records."

The current memorandum displaces earlier guidance that agencies should make use of discretionary exemptions only where disclosure would cause "foreseeable harm."

We believe the current guidance gives short shrift to the interests of disclosure. For instance, under settled court precedent, agencies which invoke the privacy exemptions must do so only after weighing privacy interests against the public's interest in information about government operations and activities. The instruction does not address the need for any consideration of the public's interests in disclosure.

A vigorous and successful federal FOI program would, we believe, serve everyone's interests. We are frankly concerned that the Department of Justice may not view the enforcement of the Freedom of Information Act as an important priority.

We are grateful for your consideration of these concerns.

Sincerely,

Lucy Dalglish
Executive Director, Reporters Committee

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