

March 10, 2010

Chairman Thomas R. Carper  
Senate Committee on Homeland Security and  
Governmental Affairs  
Subcommittee on Federal Financial  
Management, Government Information,  
Federal Services, and International Security  
432 Russell Senate Office Building  
Washington, DC 20510

Ranking Member John McCain  
Senate Committee on Homeland Security and  
Governmental Affairs  
Subcommittee on Federal Financial  
Management, Government Information,  
Federal Services, and International Security  
439 Hart Senate Office Building  
Washington, DC 20510

Chairman William Lacy Clay  
House Committee on Oversight and  
Government Reform  
Subcommittee on Information Policy, Census  
and National Archives  
B-349C Rayburn House Office Building  
Washington, DC 20515

Ranking Member Patrick McHenry  
House Committee on Oversight and  
Government Reform  
Subcommittee on Information Policy, Census  
and National Archives  
B-349C Rayburn House Office Building  
Washington, DC 20515

Dear Chairman and Ranking Member,

The undersigned organizations concerned with government openness and accountability respectfully request that you hold hearings on the apparent destruction of e-mails in the Department of Justice to determine how the e-mails could be missing despite the requirements of the Federal Records Act (FRA), and if the Act needs further strengthening.

According to a report by the Office of Professional Responsibility on the investigation into the Office of Legal Counsel's memoranda concerning issues relating to the Central Intelligence Agency's use of "enhanced interrogation techniques" on suspected terrorists, investigators reported that their work was "hampered" by the destruction of Mr. Yoo's and Mr. Philbin's emails from around the time the memos were being drafted. Specifically, the report noted investigators were "told most of Yoo's records had been deleted and were not recoverable. [Former Deputy AAG] Philbin's email records from July 2002 through August 5, 2002 – the time period in which the Bybee Memo was completed and the Classified Bybee Memo was created – had also been deleted and were reportedly not recoverable."

The FRA is intended to prevent the loss of records of legal, financial, evidentiary and historical significance by requiring federal agencies to establish a program for the creation and preservation of agency records. Such a program should include effective controls over the records' use and safeguards against their removal or loss. As the business of the government is increasingly conducted over email, the common understanding, supported by case law, is that email falls within the scope of these FRA obligations.

The disappearance of emails that are required to be saved under current law raises serious concerns about government transparency and whether information needed to hold the government accountable is being destroyed before officials, Congress and the public can have access to it. We respectfully urge you to hold hearings to examine the issue, and to consider the need for reforms to the FRA.

Thank you in advance for your attention to this important matter. If you have any questions, or would like to discuss the issue in greater detail, please contact Patrice McDermott, Director of OpenTheGovernment.org ([pmcdermott@openthegovernment.org](mailto:pmcdermott@openthegovernment.org) or 202-332-6736).

Sincerely,

OpenTheGovernment.org

Alliance for Justice

American Association of Law Libraries

American Civil Liberties Union

American Library Association

American Society of News Editors

Association of Research Libraries

Bill of Rights Defense Committee

Brennan Center for Justice

Californians Aware

Center for Financial Privacy and Human Rights

Center for Responsive Politics

Citizens for Responsibility and Ethics in Washington

Defending Dissent Foundation

Electronic Frontier Foundation

Electronic Privacy Information Center

Essential Information

Feminists for Free Expression

First Amendment Coalition

FreeGovInfo

Government Accountability Project

iSolon.org

Liberty Coalition

Minnesota Coalition on Government Information

Muslim Legal Fund of America

Muslim Public Affairs Council

National Coalition Against Censorship

National Coalition for History

National Freedom of Information Coalition

National Lawyers Guild – National Office

National Security Archive

OMB Watch

The Pain Relief Network

Progressive Librarians Guild

Project On Government Oversight

Public Citizen

Public Employees for Environmental Responsibility

Reporters Committee for Freedom of the Press

The Rutherford Institute

Society of American Archivists

Society of Professional Journalists

Special Libraries Association

Sunlight Foundation

UNITED SIKHS

U.S. Bill of Rights Foundation

Washington Coalition for Open Government

CC: Chairman Joseph Lieberman, Senate Committee on Homeland Security and Governmental Affairs  
Ranking Member Susan Collins, Senate Committee on Homeland Security and Governmental Affairs  
Chairman Edolphus Town, House Committee on Oversight and Government Reform  
Ranking Member Darrell Issa, House Committee on Oversight and Government Reform  
Chairman Patrick Leahy, Senate Judiciary Committee  
Ranking Member Jeff Sessions, Senate Judiciary Committee  
Chairman John Conyers, House Judiciary Committee  
Ranking Member Lamar Smith, House Judiciary Committee