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 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