The Honorable Barack Obama  
President of the United States  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear President Obama:

As a journalism organization dedicated to transparency and open government, the Society of Environmental Journalists (SEJ) applauded the memo issued on the first full day of your presidency, directing agencies to adopt a presumption in favor of disclosure under the Freedom of Information Act (FOIA). Our hopes were lifted when you pledged that your administration would be the most transparent in modern history. Today, more than five years later, we face many challenges in fulfilling your day-one commitment.

SEJ is an educational membership association of more than 1200 journalists, students and educators seeking to improve environmental coverage, to advance public understanding of critically important issues. Through our Freedom of Information Task Force, we advocate information policies that make reporting on government activities more robust.

We have been encouraged this year to see bipartisan bills that would strengthen the Freedom of Information Act moving in both House (HR 1211) and Senate (S 2520) moving in Congress. But without an extra impetus, no such legislation may be enacted in the 113th Congress. It surprises us to note that your administration has not taken a public position on these bills, and we hope you can offer leadership that will make a difference.

We are aware of similar urgings from a coalition of open-government groups organized by OpenTheGovernment.org. With this letter, we want to reinforce the legislative agenda they have urged you to support as legislation to improve FOIA is pending. We summarize:

1. The presumption of disclosure must be codified if your commitment to an open government is to survive your presidency.

2. The foreseeable harm standard mandated by Attorney General Eric Holder’s March 19, 2009 memorandum to heads of all executive departments and agencies also must be codified.

3. Exemption 5 of the FOIA – which authorizes agencies to withhold inter- and intra-agency memoranda that fall within civil discovery privileges – must be amended to
add a public interest balancing test, at least for material protected by the deliberative process privilege.

4. Information created 25 or more years before the date of any FOIA request should not be subject to withholding under FOIA exemption 5.

5. The FOIA must be amended to implement the clear congressional intent of the 2007 FOIA amendments that agencies that delay responding to FOIA requesters past the statutory deadlines cannot charge fees.

6. Legislation is needed to enhance and expand the role of the Office of Government Information Services (OGIS).

Taking a position on these questions now would demonstrate that you are serious about your stated goal of more open government. It would also provide the leadership that Congress sometimes needs to get even uncontroversial things done. Legislation is needed to permanently accomplish the goals set forth above. Accomplishing them would be a valuable legacy for your administration.

We look forward to hearing from your administration on these issues that are essential to open government and the public interest, and stand ready to work with you on any of them.

Sincerely,

Jeff Burnside, President
Society of Environmental Journalists