

March 31, 2011

The Honorable Robert F. Bauer
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Bauer,

As organizations dedicated to transparency and accountability in government, we are writing to request that the Administration coordinate all proposals from the Executive Branch intended to address agency concerns about protecting information after *Milner v. Department of Navy*. Specifically we ask that the Department of Justice serve as a coordinating body within the Administration and that congressional committees with jurisdiction over the Freedom of Information Act (FOIA) be notified and consulted about all proposals that would require legislation.

As you know, in *Milner*, the Supreme Court ruled that Exemption 2 of FOIA only pertains to "records relating to employee relations and human resources issues," rejecting the argument that a "high 2" component of the exemption covers all "predominantly internal" materials whose disclosure would significantly risk circumvention of agency regulations or statutes. As a result of this ruling, it appears materials previously withheld by government agencies under the high 2 exemption may now be subject to disclosure.

We understand agencies are approaching various congressional committees with proposals to protect material previously treated as exempt under a "high 2." If allowed to continue in an ad hoc fashion, overlapping and overly-broad exemptions of information from public disclosure might be written into law without notification or advice from committees with jurisdiction over FOIA, and with little or no public notice. Setting up a process in the Executive Branch to coordinate all such proposals and seeking the advice of congressional committees of jurisdiction, will help ensure agencies can protect sensitive information without unduly jeopardizing public access to information.

Thank you in advance for considering our request. We would appreciate the opportunity to meet with you to discuss this request and offer our input into the proper response to the *Milner* decision at your convenience. To arrange a meeting, please contact Amy Bennett (afuller@openthegovernment.org or 202-332-6736).

Sincerely,

Kevin Goldberg, Legal Counsel
American Society of News Editors

Anne Weismann, Chief Counsel
Citizens for Responsibility and Ethics in Washington

Thomas Susman, President
DC Open Government Coalition

David Sobel, Senior Counsel
Electronic Frontier Foundation

Sean Moulton, Director, Federal Information Policy
OMB Watch

Patrice McDermott, Director
OpenTheGovernment.org

Angela Canterbury, Director of Public Policy
Project On Government Oversight

Michael Page, Attorney, Litigation Group
Public Citizen

Lucy A. Dalglish, Executive Director
Reporters Committee for Freedom of the Press

cc: Chairman Leahy and Ranking Member Grassley, Senate Judiciary Committee
Senator John Cornyn, Senate Judiciary Committee
Chairman Issa and Ranking Member Cummings, House Oversight and Government Reform Committee
Melanie Pustay, Director, Office of Information Policy, Department of Justice
Miriam Nisbet, Director, Office of Government Information Services
Steve Croley, Special Assistant to the President for Justice and Regulatory Policy, White House
Domestic Policy Council