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December 12, 2005

The Honorable Duncan Hunter
Chairman, Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Ike Skelton
Ranking Member, Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable John Warner
Chairman, Committee on Armed Services
226 Russell Senate Office Building
Washington, DC 20510

The Honorable Carl Levin
Ranking Member, Committee on Armed Services
226 Russell Senate Office Building
Washington, DC 20510

Dear Chairmen and Ranking Members:

I am writing to urge you to reject a provision included in the National Defense Authorization Act for FY 2006 as passed by the Senate (S. 1042) that would exempt operational files from the Defense Intelligence Agency from the Freedom of Information Act. The section in question (section 922, entitled *Operational Files of the Defense Intelligence Agency*) was added to the bill during Senate consideration and should be removed by the Conference Committee.

Over the past five years, the Bush Administration has taken repeated steps to weaken this nation's open government laws, including the Freedom of Information Act. This provision, which I understand was suggested by the Administration, would create yet another exception to FOIA, further reducing public access to information and public understanding of the operations of government.

I recognize that the language of this provision is similar to the language exempting CIA operational files from FOIA. However, as two experts in government openness point out, the "reasons supporting the exemption for the CIA ... do not apply to the files of the DIA."[1] The DIA provides defense attaches to U.S. embassies around the world. These attaches operate openly as they collect information and report on foreign intelligence. These defense attaches do not operate in secret. As the experts note, "the DIA has routinely declassified and released hundreds of documents including intelligence reports, which have been important to public debate and the historical record."[2]

Open and accountable government is a bedrock principle in our democracy. The Freedom of Information Act is one of our country's landmark laws protecting public access to government records. New exemptions should not be created lightly, especially in the absence of a hearing record that demonstrates the need for an exemption.

I hope that you will oppose this provision and remove it from the National Defense Authorization Act for FY 2006.

Sincerely,

Henry A. Waxman
Ranking Minority Member

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[1] Letter from Meredith Fuchs and Steven Aftergood to Senator Cornyn (Sept. 7, 2005).
[2] *Id.*