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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

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January 11, 2006

The Honorable Elaine Chao  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC

Dear Madam Secretary:

I am writing to urge you to reverse the 2004 decision of the Mine Safety and Health Administration (MSHA) to block public access to the reports filed by mine safety inspectors. This unwarranted secrecy may protect the mining industry from embarrassing disclosures, but it undermines accountability and mine safety.

Prior to 2004, MSHA publicly disclosed both the results of mine safety inspections and the reports and notes filed by inspectors that provided the documentation of any violations found. The inspectors' reports and notes were particularly important. Not only were they used by mine safety organizations, mine workers, and the public to identify dangerous mines and practices, they were also useful to mine operators implementing needed improvements in mine safety.

In 2004, MSHA reversed its interpretation of the Freedom of Information Act, deciding that the inspectors' reports and notes did not need to be disclosed under FOIA. As a trade publication reported at the time, "without public comment or input, MSHA secretly changed its long-standing policy of routinely releasing inspector notes under the Freedom of Information Act."<sup>1</sup> The rationale for this change was unclear. The reports do not implicate national security or privacy concerns. Although the change in policy was publicly acknowledged by MSHA officials, the documentation behind the change in policy has not been released.<sup>2</sup>

It would be impossible to draw a direct connection between the new FOIA policy and the recent fatal disaster at the Sago mine. But the agency's secrecy policy certainly limited public

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<sup>1</sup> *Gutting FOIA at MSHA: The Public Has a Right to Know How Decisions Are Made*, Mine Safety and Health News (July 5, 2004).

<sup>2</sup> *Id.*

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disclosure about the mine's violations. Over the past two years, the Sago mine was cited for hundreds of safety violations, including many that were classified as "significant and substantial" or "unwarrantable failures."<sup>3</sup> Under the current policy, the inspector's notes and reports that serve as the basis for these violations have been withheld from the public. If the full reports of the mine inspectors had been disclosed, it is possible that life-saving reforms could have been identified and put in place.

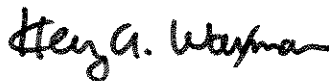
The 2004 FOIA policy is not the only example of growing secrecy involving the MSHA. A report I issued in September 2004, *Secrecy in the Bush Administration*, cited MSHA's misuse of the "law enforcement exemption" to FOIA to withhold notes from a meeting between MSHA officials and coal company executives. The full notes show that much of the deleted material consisted of accusations, threats, and profane invective directed by the executives against MSHA officials. The meeting had no evident law enforcement purpose, and it is unclear how the redacted material would fit within this narrow exemption.<sup>4</sup>

Government secrecy exacts a heavy price. It reduces accountability and invites abuse and corruption. The secrecy policies that MSHA has adopted under the Bush Administration are dangerous and unwarranted, and they should be immediately reversed.

To assist congressional oversight of these important matters, I request that you provide all documents relating to MSHA's policy on releasing information on mine safety inspections and investigations pursuant to the Freedom of Information Act, including but not limited to statements of policy and drafts thereof, memoranda relating to changes in policy since 2000, and all guidance provided to FOIA processing officials.

Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman  
Ranking Minority Member

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<sup>3</sup> *Safety Violations Have Piled up at Coal Mine*, Washington Post (Jan. 4, 2006).

<sup>4</sup> Minority Staff, House Committee on Government Reform, *Secrecy in the Bush Administration* (Sept. 2004) (<http://www.democrats.reform.house.gov/Documents/20050317180908-35215.pdf>).