

May 24, 2006

Senator Jon Kyl  
2200 East Camelback Rd., Suite 120  
Phoenix, Arizona 85016

Dear Senator Kyl:

One of the most effective ways to control government and ensure that agencies are dedicated to serving the public rather than the bureaucracy is to guarantee broadest public access to government information. While the federal Freedom of Information Act (FOIA) is four decades old, you probably know that Arizona traces its own Public Records Law back to territorial days – 1901, to be precise. Just as our state law has been strengthened by amendments through the years, we also believe it is time to strengthen the federal FOIA again. S. 849 is the right vehicle to do so.

We understand that you raised concerns in the Senate Judiciary Committee about some of the bill's provisions, most significantly, those relating to attorneys' fees for successful litigants and penalties for agency delay. We urge you to support inclusion of a provision that would allow courts to award fees to parties who received the documents they requested only after they were forced to go to court. The law provided this result for many years before a Supreme Court case in an unrelated area changed things; there were no allegations of abuse or misuse of the judicial processes during that earlier period. In short, this provision only returns the law to an earlier time, allowing reimbursement for a private citizen who is forced to go to court to get the information requested, and then only after a court orders the payment.

We are sympathetic with your concern about denying the government the ability to rely on an exemption where there has been some agency delay. We agree with you that this might have some negative unintended consequences, for both the public and the agency. Perhaps you can get the sponsors of the legislation to remove this section if you agree to allow the bill go [sic] through with the attorneys' fees provision intact. This would be a win-win tradeoff.

Finally, we note that the Arizona Public Records Law not only allows an Ombudsman-Citizen Aide to assist the public in pursuing requests for information, but provides that persons wrongfully denied records can sue for any monetary damages caused by the denial. We are not suggesting a damage remedy in the federal context, but point out how seriously our State views the public's right to information. S. 849 would institute an alternative dispute process through a type of Ombudsman, and we think this would be a valuable addition to the federal law.

Very truly yours,

(signed by KSJ)

Senator Karen S. Johnson (District 18)

Senator Paul Aboud (District 28)

Senator Tim Bee (District 30)

Senator Ken Chevront (District 15)

Senator Jake Flake (District 5)

Senator Ron Gould (District 3)

Senator Linda Gray (District 10)

Senator Leah Landrum-Taylor (District 16)

Senator Thayer Verschoor (District 22)

Senator Jim Waring (District 7)