



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DEPUTY RECORDS ACCESS OFFICER

December 29, 2014

via e-mail: nathan@getliberty.org
Mr. Nathan Paul Mehrens
Americans for Limited Government
10332 Main Street, No. 326
Fairfax, VA 22031

RE: Freedom of Information Law (FOIL) Request # 140606

Dear Mr. Mehrens:

This letter responds to your correspondence dated October 20, 2014, which, pursuant to the FOIL, requested the following:

“[R]e: Ref # ALGFOIL2014-017

Pursuant to Article 6 of the New York Public Officers Law (FOIL), PUB. OFF. § 87 et seq., and the regulations on records applicable to the New York State Department of Law, N.Y. COMP. CODES R. & REGS. tit. 13 § 120 et seq., I request on behalf of Americans for Limited Government (ALG) copies of the records described below.

These records pertain to communications to or from officials in the Attorney General’s office and Kendall Fells of the organization Fast Food Forward.

Please provide copies of any records that exist in any of the following categories and that were created on or after January 1, 2013:

1. All records of communications between any officer or employee in the Office of the Attorney General and Kendall Fells regarding the Attorney General’s suit against a Papa John’s franchisee; [See Footnote 1]
2. All records of communications between any officer or employee in the Office of the Attorney General and Kendall Fells or any other officer or employee of Fast Food Forward regarding any other subject; and
3. All records of meetings held between any officer or employee in the Office of the Attorney General and Kendall Fells or other officers and employees of Fast Food Forward.

Further Definition of Records Sought

The term 'record' should be construed to mean any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind of nature. A record bearing any notation not a part of the original text is to be considered a separate record. A draft of a non-identical copy is to be construed as a separate record.

The term 'relating' and 'regarding' with respect to any given subject, should be construed to mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.

The inclusion and description of particular records in this request should not be construed to eliminate other records that are not described in particular detail if they should exist in another format.

Procedure Regarding Records Exempt from Disclosure

I anticipate that the vast majority of any responsive records will be of the type required to be released under FOIL. In the event that records exist that FOIL does not require to be released I request that they be released regardless unless the failure to release such records can be justified based upon sound reasoning related to one of the statutory exemptions or exceptions in FOIL and there is a patently manifest danger of significant harm that would occur from release of such records, e.g., danger to health or safety of an individual. In the event that records are withheld I request to be provided with the following information:

1. Reason each record is not being produced;
2. Type of record withheld;
3. Subject matter of record withheld; and
4. Date, author, and addressee, if applicable of the record.

Further, I request that the above information be indexed by individual record and provide information sufficient for a reasonable person to be able to ascertain whether the record sought is actually exempt from disclosure.

Request for Waiver of Fees

The information sought by ALG in this FOIL request will be used to better the public's understanding of how the Office of the Attorney General is spending the taxpayers' money and how it is coordinating with outside advocacy groups as part of its investigation and litigation activity. As such the public good that will occur in disclosing the information sought in and of itself weighs strongly in favor of a fee waiver. Further, the information sought is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. ALG regularly publishes information on the activities, structure, and operations of the federal, state, and local governments. This information is distributed to a large number of diverse individuals across the entire nation. The records sought are of the type which ALG regularly provides to the public through its publications and website, www.getliberty.org. As such granting the request to waive fees is in the public interest.

In the event that a fee waiver is not granted, please inform me before taking any action that would result in the incurrence of fees by ALG.

Conclusion

Pursuant to N.Y. COMP. CODES R. & REGS. tit. 13 § 120.15 please provide the requested records within five business days or provide a 'written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied.'

I request that any records disclosed pursuant to this request be indexed, to the extent feasible, in such a way as to enable the reader to readily ascertain to which number listed above the responsive records relate. If reasonably possible I request that responsive records be provided in electronic form on either unencrypted CDs or DVDs. If you have any questions as to the medium on which responsive records are to be provided, please contact me in advance to sending the medium.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information.

Please send the requested records to me at the following address:

Americans for Limited Government
10332 Main Street
No. 326
Fairfax, VA 22030

If you have any questions regarding this FOIL request, please contact me at Nathan@getliberty.org.

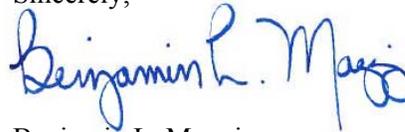
[Footnote 1] See, A.G. Schneiderman Sues Papa John's Franchisee For Underpaying More Than 400 Delivery Workers; Seeking More Than \$2 Million, New York Attorney General, October 16, 2014. Available online at: <http://www.ag.ny.gov/press-release/ag-schneiderman-sues-papa-johns-franchisee-underpaying-more-400-delivery-workers> (accessed October 20, 2014)."

Please be advised that the Office of the Attorney General has conducted a diligent search and has located no records that respond to items 2 and 3 of your request.

Further, please be advised that the records responsive to item 1 of your request are exempt from disclosure and have been withheld pursuant to New York Public Officers Law § 87(2)(e) because the documents requested were compiled for law-enforcement purposes and would, if disclosed, interfere with law-enforcement investigations or judicial proceedings.

You have a right to appeal the foregoing decision. If you should elect to file such an appeal, your written appeal must be submitted no later than 30 days after your receipt of this letter to Kathryn Sheingold, Records Appeals Officer, State of New York, Office of the Attorney General, Division of Appeals and Opinions, The Capitol, Albany, New York 12224. You may reach the Records Appeals Officer at (518) 473-2533.

Sincerely,



Benjamin L. Maggi
Assistant Attorney General