



AMERICANS FOR LIMITED GOVERNMENT

9900 MAIN STREET SUITE 303 · FAIRFAX, VA 22031 · PHONE: 703.383.0880 · FAX: 703.383.5288 · WWW.GETLIBERTY.ORG

September 14, 2010

Department of Treasury
Hugh Gilmore
FOIA/PA Request
Disclosure Services
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Via fax to: 202.622.0930
Hard Copy Via U.S. Mail

Re: Freedom of Information Act (FOIA) Request #2010-08-063

Mr. Gilmore:

I am in receipt of your letter dated August 20, 2010, regarding our FOIA request dealing with the IRS's June 2, 1997 Field Service Advisory with subject "Deductibility of Attorney Expense Advance" ("1997 FSA"). In your response, you asked for a "better description" of the records we're seeking. Therefore, in compliance to your request, we agree to limit our request in the following manner:

I am hereby requesting copies of the following documents under the Freedom of Information Act ("FOIA"), pursuant to 5 U.S.C. § 552(a)(2):

- (1) All documents produced, maintained or created by **politically appointed department officials of the** Department of the Treasury that refer to, reflect, or mention communications regarding the IRS's June 2, 1997 Field Service Advisory with the subject "Deductibility of Attorney Expense Advance" ("1997 FSA").
- (2) All documents produced, maintained or created by **politically appointed department officials of the** Department of the Treasury that refer, relate to or address the 1997 FSA.

Please note, we *only* seek such documents that were created between January 20, 2009 and the present.

Furthermore, while a FOIA request may be considered broad or burdensome in magnitude, it does not entitle an agency to deny that request on the basis of not "reasonably describing" the records sought.¹ The courts have determined that the key factor is the ability of an agency's staff to reasonably ascertain exactly which records are being requested and then locate them.²

As such, our request has now been limited to "politically appointed officials of the Department of Treasury" communications regarding the IRS's June 2, 1997 Field Service Advisory with subject "Deductibility of Attorney Expense Advance". I trust this is sufficient detail to fulfill our FOIA request.

Again, I work for Americans for Limited Government, but am not seeking this information for any commercial use. Disclosure of such information is in the public interest as it would likely contribute significantly to public understanding of the operations or activities of the government. I therefore request that any fees associated with this request be waived in accordance with 5 U.S.C. 552(a)(4)(A)(iii), or at least be limited in accordance with 5 U.S.C. § 552(a)(4)(A)(ii)(II). I would also request that if you deny the fee waiver, that I be notified in advance.

To the extent that you deny any part of this request, please cite specific exemptions to FOIA that you believe justifies your denial. In addition, for any documents withheld by the agency, please provide a description containing the information that would be required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

Please send the requested records to the following address:

Nathan Paul Mehrens
Counsel
Americans for Limited Government
9900 Main Street
Suite 303
Fairfax, VA 22031

¹ See *Ruotolo v. Dep't of Justice*, 53 F.3d 4, 10 (2d Cir. 1995) (finding that request that required 803 files to be searched was not "unreasonably burdensome"); *Pub. Citizen v. FDA*, No. 94-0018, slip op. at 2 (D.D.C. Feb. 9, 1996); see also FOIA Update, Vol. IV, No. 3, at 5 ("The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not 'reasonably describe' records within the meaning of 5 U.S.C. § 552(a)(3)(A).").

² See *Yeager v. DEA*, 678 F.2d 315, 322, 326 (D.C. Cir. 1982) (holding request encompassing over 1,000,000 computerized records to be valid because "[t]he linchpin inquiry is whether the agency is able to determine 'precisely what records [are] being requested'" (quoting legislative history)).

If you have any questions regarding these FOIA requests please contact me at 703.383.0880.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan Paul Mehrens".

Nathan Paul Mehrens
Counsel