



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

NOV 30 2010

Re: FOIA Appeal No. 100331

Dear Mr. Mehrens:

On August 12, 2010, your organization in a letter from William Wilson made a Freedom of Information Act (FOIA) request to the Office of Labor-Management Standards (OLMS), U.S. Department of Labor, and requested that communications and documents be sent to you. On August 16, Andrew Davis, Chief, Division of Interpretations and Standards, OLMS, in a letter to you denied your request for a fee waiver. On August 20, 2010, you appealed OLMS's denial of your fee waiver and renewed your request for a waiver of fees associated with your request for copies of "[a]ll documents that refer to, reflect, or mention communications discussing revocation of the LM-30" and "[a]ll documents reflecting any meeting, phone call, e-mail, letter, or other communication regarding revocation of the LM-30" created between January 20, 2009, and "the present."

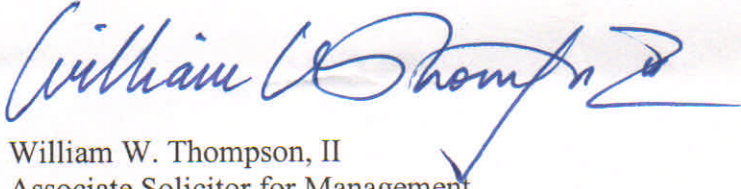
In your initial request for a fee waiver before OLMS, you merely stated that you were "not seeking this information for any commercial use. Disclosure of such information is in the public interest as it would likely contribute significantly to the public understanding of the operations or activities of the government." At that time, you did not raise specific arguments regarding how you believe you qualify for a fee waiver, pursuant to the fee waiver provisions of FOIA, 5 U.S.C. 552(a)(4)(A)(ii) and Department of Labor regulations, 29 C.F.R. 70.41. However, on appeal, for the first time, you raise specific arguments regarding how you believe your organization qualifies for a fee waiver under these statutory and regulatory provisions. Consequently, we are remanding your fee waiver request to OLMS for additional consideration of your fee waiver request. We note that subsequent to your appeal request, in a November 8, 2010, response to a different FOIA request, OLMS characterized your organization as a representative of the news media for fee purposes (see letter attached). Therefore, if OLMS denies your fee waiver on remand, it will assess fees based on this fee category, with only reproduction costs assessed, excluding charges for the first 100 pages. 29 C.F.R. § 70.38, 70.40.

OLMS will shortly provide you with a supplemental FOIA fee decision regarding your fee waiver request. You will have the same right to appeal OLMS's determination on remand as you would any FOIA determination. Your appeal rights will be provided in OLMS's forthcoming decision.

Our failure to assert any other exemption or defense that may apply in this appeal does not constitute a waiver of that exemption or defense.

This appeal decision constitutes final agency action for purposes of judicial review. We do not consider this determination to be a denial of your request, but if you do, the Freedom of Information Act provides for judicial review of administrative decisions denying a request in whole or in part. 5 U.S.C. § 552(a)(4)(B). You have the option of seeking judicial review of this determination by filing suit against the Department of Labor. A complainant may bring suit in the district court of the United States in the jurisdiction in which the complainant resides or has his or her principal place of business, or in which the agency records are maintained, or in the District of Columbia.

Sincerely,



William W. Thompson, II
Associate Solicitor for Management
and Administrative Legal Services

U.S. Department of Labor

Office of Labor-Management Standards
Washington, DC 20210

NOV 08 2010

Appendix 2

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Dear Mr. Mehrens:

This is to respond to your request, dated October 6, 2010, made pursuant to the Freedom of Information Act (FOIA). The Office of Labor-Management Standards (OLMS) received your request October 12, 2010. Your request was for "(1) Letter dated December 20, 1967 that was signed by Frank M. Kleiler and Solicitor of Labor Charles Donahue. This letter is referred in the Notice of Proposed Rulemaking on the Form LM-30 that was published on August 10, 2010 at 75 Fed. Reg. 48,416, 28; (2) All other interpretative letters signed by the head of OLMS and its predecessor agencies or the Solicitor of Labor that deal with the reporting requirements of Section 202 of the Labor-Management Reporting and Disclosure Act of 1969 (LMRDA), 29 U.S.C. § 432; and (3) All Solicitor's Opinions concerning the reporting requirements of Section 202 of the LMRDA."

OLMS is committed to the principles of openness and transparency in making disclosure determinations, and it is the policy of the Department of Labor (DOL) to disclose information to the maximum extent practicable. See 29 C.F.R. §70.3. In reviewing the records that were located, and in making my disclosure determinations, I have kept these considerations in mind.

OLMS is providing five pages in response to the first portion of your request, and consider it granted in full.

With regard to the second portion of your request, OLMS has determined that it is overbroad. A proper FOIA request must "reasonably describe" the records sought. 5 U.S.C §552(a)(3)(A). Agencies do not have to conduct wide-ranging "unreasonably burdensome" searches that would require an agency to "...locate, review, redact, and arrange for inspection a vast quantity of material." *AFGE v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990) (holding that "while [plaintiff's requests] might identify the documents requested with sufficient precision to enable the agency to identify them...it is clear that these requests are so broad as to impose an unreasonable burden on the agency"). OLMS has broad statutory and regulatory responsibilities under the LMRDA, and since its inception, has undertaken comprehensive policy-making activity generating a vast quantity of material. Producing every single interpretative

letter dealing with the reporting requirements of Section 202 of the LMRDA since the program's inception, and to include its predecessor agencies, would be an unreasonably burdensome undertaking.

With regard to the third portion of your request, the custodian of record for the documents you request is DOL's Office of the Solicitor (SOL), and the disclosure determination will be made by that office. Your request has been referred to SOL and it will respond to you directly. You may also write that office at:

Office of the Solicitor
Division of Management and Administrative Legal Services
FOIA Coordinator
U. S. Department of Labor - OWCP
Room N-2428
200 Constitution Avenue, N.W.
Washington, D.C. 20210

With regard to the applicable charges for processing your FOIA request, the Department of Labor has determined that you are a "representative of the news media" as defined at 29 C.F.R. §70.38(i). As such, only reproduction costs may be assessed, excluding charges for the first 100 pages. 29 C.F.R. §70.40(c) (3). No fees have been assessed for providing these materials.

I believe that OLMS has been responsive to your request. However, if you disagree and you wish to have my decision reviewed, you may do so by requesting such a review from the Office of the Solicitor of Labor. The Department of Labor regulations (29 CFR §70.22) provide that when a request for access to records has been denied in whole or in part, the requestor may file an administrative appeal within 90 days from the date of the denial. The appeal must be in writing and must state the grounds for an appeal, including any supporting statements or arguments. When filing an appeal, you should include a copy of your initial FOIA request and a copy of this letter. To facilitate processing, you may wish to fax your appeal to: (202) 693-5539. The appeal must be addressed to:

Solicitor of Labor
U.S. Department of Labor
Rm. N-2428
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If mailed, both the envelope and the letter of appeal itself should be clearly marked:
"Freedom of Information Act Appeal." Please refer to tracking number 624237.

Sincerely,

Andrew Auerbach
Deputy Director

By: Andrew Davis
Andrew Davis, Chief
Division of Interpretations and Standards

Enclosures