

BEFORE THE SOLICITOR OF LABOR

ON APPEAL FROM THE CENTER FOR PROGRAM PLANNING AND RESULTS, OFFICE
OF THE ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT

APPELLANT AMERICANS FOR LIMITED GOVERNMENT'S FREEDOM OF
INFORMATION ACT APPEAL

Nathan Paul Mehrens
Mark A. Wohlschlegel, II
Americans for Limited Government
9900 Main Street
Suite 303
Fairfax, VA 22031
703.383.0880 [voice]
703.383.5288 [fax]

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES..... 3

STATEMENT OF FACTS 4

SUMMARY OF THE ARGUMENT 8

ARGUMENT 9

I. THE DEPARTMENT’S USE OF 5 U.S.C. § 552(b)(6) (“EXEMPTION 6”) TO REDACT INDIVIDUAL NAMES FROM THE FOIA REQUEST DOES NOT FIT WITH THE EXEMPTION’S INTENT AND AS SUCH SHOULD NOT BE HELD TO APPLY 9

A. A NAME BY ITSELF DOES NOT FIT THE COURTS’ ANALYSIS OF “SIMILAR FILE” UNDER EXEMPTION 6 AND AS SUCH THE DEPARTMENT SHOULD RELEASE THE NAMES TO THE APPELLANT 11

B. THE PUBLIC’S INTEREST IN UNDERSTANDING THE OPERATIONS AND ACTIVITIES OF THE GOVERNMENT, IN PARTICULAR, WITH WHOM THE SECRETARY HAS COME IN CONTACT WITH WHILE PERFORMING HER DUTIES, OUTWEIGHS ANY NOMINAL PRIVACY INTRUSION, THUS THE DEPARTMENT SHOULD RELEASE THE NAMES TO THE APPELLANT 13

CONCLUSION..... 14

TABLE OF AUTHORITIES

Cases

Board of Trade v. CFTC, 627 F.2d 392 (D.C. Cir. 1980) 12

Church of Scientology of Cal.v. U.S. Dep’t of Army, 611 F.2d 738 (1979) 11

Dep’t of the Air Force v. Rose, 425 U.S. 352 (1976) 9

Dep’t of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749 (1989)..... 10

Florida Medical Asso. v Department of Health, Education & Welfare, 479 F.Supp 1291 (M.D. Fla 1979) 13

Hopkins v. United States Dep’t of HUD, 929 F.2d 81 (2d Cir. 1991) 9

Judicial Watch, Inc. v. FDA, 449 F.3d 141 (D.C. Cir. 2006) 12

Lepelletier v. FDIC, 164 F.3d 37 (D.C. Cir. 1999)..... 11

Minnis v. United States Dep’t of Agriculture, 737 F.2d 784 (9th Cir. 1984) 11, 12

National Assn. of Retired Federal Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989)..... 11, 12

Rural Housing Alliance v. U.S. Dep’t of Agriculture, 498 F.2d 73 (D.C. Cir. 1974) 11

Sims v. CIA, 642 F.2d 562 (D.C. Cir. 1980)..... 10, 12

United States Dep’t of State v. Washington Post Co., 456 U.S. 595 (1982) 11

United States DOD v. FLRA, 510 U.S. 487 (1994) 10

VoteHemp, Inc. v. DEA, 567 F.Supp. 2d 1 (2004)..... 11

Washington Post Co. v. Dep’t of Health and Human Servs., 690 F.2d 252 (D.C. Cir. 1982) 12

Washington Post Co. v. United States Department of Agriculture, 943 F.Supp. 31 (D.D.C. 1996) 12

Yonemoto v. Dep’t of Veterans Affairs, 2007 U.S. Dist. LEXIS 32523 (2007)..... 10

Statutes

5 U.S.C. § 552..... 4

5 U.S.C. § 552(b) 9

5 U.S.C. § 552(b)(6) 5, 8, 9, 13

STATEMENT OF FACTS

Appellant, Americans for Limited Government, (Appellant) filed a request under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* with U.S. Department of Labor's Office of the Solicitor (SOL) on January 14, 2010. A copy of that FOIA request is attached as Appendix 1.

In its FOIA request Appellant sought production from SOL of specifically described federal records regarding travel records and activities of Sec. Hilda Solis. Appellant requested records in categories as follows:

Please provide copies of records that exist in any of the following categories and that were created on or after January 20, 2009:

1. All records relating to daily schedules including attendees at meetings held by and attended by Sec. Hilda Solis;
2. All records relating to travel performed by Sec. Hilda Solis on behalf of the Department including disbursements issued to her or on her behalf for such travel;
3. All records relating to travel performed by Department personnel, excluding personnel from the Office of Inspector General, accompanying or providing advance work for the travel of Sec. Hilda Solis on behalf of the Department including disbursements issued to or on behalf of Department personnel for such travel; and
4. All records relating to speeches given on behalf of the Department by Sec. Hilda Solis including text of any speeches given.

Appellant received a letter with a packet of records in partial fulfillment of its FOIA request, which, as noted in the letter, is being fulfilled on a "rolling bases." In this letter, dated September 1, 2010, David Frederickson, Acting Director for the Office of the Assistant Secretary's Center for Program Planning and Results, noted that this packet included copies of the Secretary's desk calendar covering the period from February 25, 2009 thru July 11, 2009. It

went on to state that a portion of these documents were withheld pursuant to FOIA 5 U.S.C. § 552(b)(6) to protect personal privacy, particularly only “personal entries and the names of individuals who were *interviewed* by the Secretary.” A copy of the letter is attached as Appendix 2. The desk calendar is broken down daily by hour in which travels, events, meetings, interviews briefings, calls, and lunches of the Secretary are recorded. Other than the time, place and a name, no other information is included with the date. In reviewing the packet, Appellant noted numerous instances in which names of individuals had been redacted from the calendar. However, these redactions went beyond just “interviews” and redacted information under the headings of “Meeting,” “Briefing,” “Lunch,” and “Call.”

A second packet of responsive documents was sent to Appellant on September 30, 2010. A copy of the cover letter signed by Mr. Frederickson is enclosed as Appendix 3. The same issues with redaction are found in that packet of documents as well.

Following are instances where this type of information was redacted. The documents produced by the Department on September 1, 2010 included the following redactions:¹

1. April 2, 2009, “INTERVIEW – [redacted] (HLS Office).”
2. April 7, 2009, “LUNCH [redacted] (Secys Dining Room).”
3. May 5, 2009, “BRIEFING – Meeting with [redacted] (HLS Office).”
4. May 5, 2009, “MEETING [redacted] (HLS Office).”
5. May 6, 2009. “INTERVIEW – [redacted] (HLS Office).”
6. May 14, 2009, “MEETING [redacted] (HLS Office).”
7. May 15, 2009, “INTERVIEW – [redacted] HLS Office).”
8. May 20, 2009, “MEETING [redacted] (HLS Office).”

¹ This list is not exhaustive as there are certain other redactions that are not the subject of this appeal, e.g., instances where the phone number for a conference call was redacted.

9. May 21, 2009, "INTERVIEW [redacted] (HLS Office)."
10. May 29, 2009, "INTERVIEW – [redacted] (HLS Office)."
11. June 11, 2009, "CALL [redacted] (via phone)."
12. June 15, 2009, "1:50pm-2:30pm INTERVIEW [redacted] [redacted] (ILO) (8th Floor on balcony)."
13. June 18, 2009, "INTERVIEW [redacted] via phone)."
14. June 23, 2009, "2:30-3:15 INTERVIEW – PBGC [redacted] (HLS Office)."
15. June 26, 2009, "11:00am-11:15am BRIEF HELLO [redacted] (Office)."

The documents produced by the Department on September 30, 2010² included the following redactions:

16. September 4, 2009, "PHONE CALL: [redacted]."
17. September 5, 2009, Entry at top of calendar is redacted.
18. September 6, 2009, Entry at top of calendar is redacted.
19. September 7, 2009, Entry at top of calendar is redacted.
20. September 12, 2009, Entry at top of calendar is redacted.
21. September 13, 2009, Entry at top of calendar is redacted.
22. September 19, 2009, Entry at top of calendar is redacted.
23. September 20, 2009, Entry at top of calendar is redacted.
24. September 26, 2009, Entry at top of calendar is redacted.
25. September 27, 2009, Entry at top of calendar is redacted.

² The cover letter accompanying the package of documents referenced here is undated. However, the tracking information for the FedEx package used to ship the documents indicates that the package was shipped on September 30, 2010.

26. October 1, 2009, “2:30pm-2:45pm DROP BY [redacted] (HLS Office).”
27. October 3, 2009, Entry at top of calendar is redacted.
28. October 4, 2009, Entry at top of calendar is redacted.
29. October 10, 2009, Entry at top of calendar is redacted.
30. October 11, 2009, Entry at top of calendar is redacted.
31. October 12, 2009, Entry at top of calendar is redacted.
32. October 15, 2009, Name of person meeting with the Secretary is redacted.
33. October 17, 2009, Entry at top of calendar is redacted.
34. October 18, 2009, Entry at top of calendar is redacted.
35. October 27, 2009, Entry at top of calendar is redacted.
36. October 28, 2009, Entry at top of calendar is redacted.
37. October 29, 2009, Entry at top of calendar is redacted.
38. October 30, 2009, Entry at top of calendar is redacted.
39. October 31, 2009, Two entries at top of calendar are redacted.
40. November 1, 2009, Two entries at top of calendar are redacted.
41. November 2, 2009, “[redacted] t, Faith Based Initiative (HLS Office).”
42. November 7, 2009, Entry at top of calendar redacted.
43. November 8, 2009, Entry at top of calendar redacted.
44. November 14, 2009, Entry at top of calendar redacted.
45. November 15, 2009, Entry at top of calendar redacted.
46. November 21, 2009, Entry at top of calendar redacted.
47. November 22, 2009, Entry at top of calendar redacted.
48. November 28, 2009, Entry at top of calendar redacted.

49. November 29, 2009, Entry at top of calendar redacted.
50. December 5, 2009, Entry at top of calendar redacted.
51. December 6, 2009, Entry at top of calendar redacted.
52. December 12, 2009, Entry at top of calendar redacted
53. December 13, 2009, Entry at top of calendar redacted.
54. December 16, 2009, Entry for 4:00pm-4:30pm redacted. No other text for this time period.
55. December 19, 2009, Entry at top of calendar redacted.
56. December 20, 2009, Entry at top of calendar redacted.
57. December 25, 2009, Entry at top of calendar redacted.
58. December 26, 2009, Entry at top of calendar redacted.
59. January 1, 2010, Entry at top of calendar redacted.
60. January 2, 2010, Entry at top of calendar redacted.
61. January 3, 2010, Entry at top of calendar redacted.

As will be discussed further below, Appellant is entitled to the disclosure of these sixty one records without the redactions specified above because the redacted information is not actually covered by a FOIA exemption.

SUMMARY OF THE ARGUMENT

Appellee improperly applied 5 U.S.C. § 552(b)(6) by redacting certain names in the calendar of Sec. Solis. Under 5 U.S.C. § 552(b)(6), an individual's name in and of itself does not qualify as a "personnel, medical, or similar file." Furthermore, the disclosure of such

information does not rise to the level of a “clearly unwarranted invasion of privacy,” and it is in the interest of the public by increasing their understanding of the operations or activities of the government. As such, Appellant is entitled to production of the responsive records without redaction.

Additionally, the area of the calendar for which certain entries were redacted indicates that the redacted information was not really a reference to a meeting. For these redactions the Department should, at a minimum, provide information sufficient for a reasonable person to ascertain whether the redacted record is actually exempt from disclosure.

ARGUMENT

I. THE DEPARTMENT’S USE OF 5 U.S.C. § 552(b)(6) (“EXEMPTION 6”) TO REDACT INDIVIDUAL NAMES FROM THE FOIA REQUEST DOES NOT FIT WITH THE EXEMPTION’S INTENT AND AS SUCH SHOULD NOT BE HELD TO APPLY

Exemption 6 in 5 U.S.C. § 552(b) reads in whole:

[This section does not apply to matters that are:] (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.

In its construction, Congress’ intent was to create an exemption that would balance an “individual’s right to privacy against the preservation of the basic purpose of the Freedom of Information Act – to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976). *See also, Hopkins v. United States Dep’t of HUD*, 929 F.2d 81, 86 (2d Cir. 1991) (whether documents are protected under the FOIA privacy exemptions turns on whether the privacy interest in nondisclosure of the documents outweighs the public interest in their release). However, this is not a blanket exemption. While it serves to withhold “intimate details of personal and family life,” it is not intended to protect “business judgments

and relationships.” *Sims v. CIA*, 642 F.2d 563, 575 (D.C. Cir. 1980). As the courts have recently reiterated, for Exemption 6 to apply,

[T]he requested record must first be deemed either a “personnel” file, a “medical” file, or a “similar” file. If the record fits one of these three categories, the court must then “balance the public interest in disclosure against the interest Congress intended the [e]xemption to protect” to determine whether there is a clearly unwarranted invasion of privacy. *United States DOD v. FLRA*, 510 U.S. 487, 495, (1994)(quoting *Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 776, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989)).

Yonemoto v. Dep’t of Veterans Affairs, 2007 U.S. Dist. LEXIS 32523, 3-4 (D. Haw. 2007).

The bulk of the information withheld by the Department in records responsive to the Appellant’s FOIA request are the names of a number of individuals who have had “interviews,” “meetings,” “briefing,” “lunches,” and “calls” with Sec. Hilda Solis. These instances have been recorded in her office desk calendar. These entries, including those not redacted, include the name of the individual, the time, date and place of the meeting, along with the occasional reference to a call-in number. The majority of the meetings took place in the Secretary’s office. These contacts were recorded in a work calendar, and were work related. As such they do not rise to the level of “personal” or “intimate” details that Exemption 6 was created to protect.

In further support of its argument Appellant submits the following further analysis of how a name by itself does not give rise to a “similar file” referred to in Exemption 6 and how the public interest outweighs the right to privacy in this case.

A. A NAME BY ITSELF DOES NOT FIT THE COURTS' ANALYSIS OF "SIMILAR FILE" UNDER EXEMPTION 6 AND AS SUCH THE DEPARTMENT SHOULD RELEASE THE NAMES TO THE APPELLANT

The Supreme Court has given a broad interpretation to "similar file" in Exemption 6, defining as "government records containing 'information which applies to a particular individual'." *Minnis v. United States Dep't of Agriculture*, 737 F.2d 784, 786 (9th Cir. 1984) (quoting *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602, (1982)). See also, *Church of Scientology v. U.S. Dep't of Army*, 611 F.2d 738, 746 (9th Cir. 1979) (defines "similar file" as "file which contains information similar to that found in a standard personnel file"). This is not to say that the exemption is without limit. See, *VoteHemp, Inc. v. DEA*, 567 F.Supp. 2d 1, 14-15 (D.D.C. 2004) (court found that information that merely identifies names of government officials who authored documents and received documents from third parties concerning hemp was not covered by Exemption 6). In relation to the disclosure of names coupled with addresses, the Court of Appeals for the District of Columbia Circuit has said that whether such disclosure is a "significant or *de minimis* threat depends upon the characteristic(s) revealed by virtue of being on the particular list, and the consequences likely to ensue." *National Assn. of Retired Federal Employees v. Horner*, 879 F.2d 873, 877 (D.C. Cir. 1989). In most all cases where courts have ruled that Exemption 6 has been properly invoked to withhold the public disclosure of a name, it has also been in connection with some other piece of personal information, such as an address, social security number, or where disclosure may cause physical danger to that individual.³ Furthermore, courts have been even less inclined to find that Exemption 6 applies in relation to a person's business affairs.⁴

³ See *Lepelletier v. FDIC*, 164 F.3d 37, 47 (D.C. Cir. 1999) (documents sought included an individual's name and address combined with personal financial information that would invite commercial solicitation); *Rural Housing Alliance v. U.S. Dep't of Agriculture*, 498 F.2d 73, 77 (D.C. Cir. 1974) (intimate personal information, such as

Courts have been even more reluctant to interpret Exemption 6's "similar file" as applying to names alone. In one case, the Transportation Security Authority (TSA) sought to withhold the names of employees in otherwise disclosable documents on the basis that they were "private" and therefore fit under Exemption 6. The court disagreed with them, stating,

If "similar file" is interpreted as broadly as the TSA urges, the "personnel, medical or similar file" condition is surplusage; Congress could have simply exempted the disclosure of any document that would constitute an unwarranted invasion of privacy.

While several cases have held that an employee has a privacy interest in his name *and home address*, see, e.g., *Minnis v. United States Dep't of Agriculture*, 737 F.2d 784, 786 (9th Cir. 1984); *National Assn. of Retired Federal Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 875 (D. C. Cir. 1989), the TSA does not cite a single case in which a court has permitted a non-law enforcement agency to uniformly redact government employees' names from otherwise disclosable documents pursuant to exemption 6.

Gordon v. FBI, 388 F. Supp. 2d 1028, 40-41 (N.D. Cal. 2005). Furthermore, in its own rulings on subject, the Department of Energy has found that,

[N]ames, by themselves, reveal nothing private about [a] person, so they are not the type of information that creates protectible privacy interests for purpose of Exemption 6... however, privacy interest may be created when [an] individual's name is linked with

number and legitimacy of children, medical history, welfare benefits received, or alcohol consumption); *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 153 (D.C. Cir. 2006) (information that exposed an individual to physical danger); *Horowitz v. Peace Corps* 428 F.3d 271, 280 (D.C. Cir. 2005) (applying Exemption 6 to identity of individual who reported a sexual assault); and *Bigwood v. United States Agency for Int'l Dev.*, 484 F. Supp. 2d 68, 77 (applying Exemption 6 to identifying information where it created a risk of physical danger to the individual) as cited in *Consumers' Checkbook v. United States HHS*, 502 F. Supp. 2d 79, 84-85 (D.D.C. 2007).

⁴ See *Washington Post Co. v. Dep't of Health and Human Servs.*, 690 F.2d 252, 61-62 (D.C. Cir. 1982) (holding that disclosure of agency consultants' non-federal employment "would be only a minimal invasion of privacy" and that disclosure of organizations in which consultants have financial interests "does not amount to a serious invasion"); *Sims v. CIA*, 642 F.2d 562, 75 (D.C. Cir. 1980) ("Exemption 6 was developed to protect intimate details of personal and family life, not business judgments and relationships."); *Board of Trade v. CFTC*, 627 F.2d 392, 399-400 (D.C. Cir. 1980) (finding only a "slight privacy interest" implicated by disclosure of "purely commercial matters"); and *Washington Post Co. v. United States Department of Agriculture*, 943 F.Supp. 31 (D.D.C. 1996) (court held that the disclosure of names and addresses of individuals and the amount of cotton-farming subsidies they received from the government did not constitute an unwarranted invasion of personal privacy because the disclosed information related to the individual's business interests and there was a strong public interest in understanding the administration of the subsidy program) as cited in *Consumers' Checkbook v. United States HHS*, 502 F. Supp. 2d 79, 84-85 (D.D.C. 2007).

some other piece of information which reveals something personal about [the] individual.⁵

Appellant here is seeking the names of individuals that have been redacted from Sec. Hilda Solis' desk calendar. No other information regarding these persons is requested; hence, the privacy interests of the individuals are not placed in jeopardy. Appellant seeks to further the public's understanding of the persons with which Sec. Hilda Solis is meeting with in the course of carrying out her role as Secretary of Labor.

B. THE PUBLIC'S INTEREST IN UNDERSTANDING THE OPERATIONS AND ACTIVITIES OF THE GOVERNMENT, IN PARTICULAR, WITH WHOM THE SECRETARY HAS COME IN CONTACT WITH WHILE PERFORMING HER DUTIES, OUTWEIGHS ANY NOMINAL PRIVACY INTRUSION, THUS THE DEPARTMENT SHOULD RELEASE THE NAMES TO THE APPELLANT

The courts have noted that 5 U.S.C. § 552(b)(6) is unique among the FOIA exemptions. This exemption requires a balancing test to determine whether information requested constitutes a "clearly unwarranted invasion of personal privacy," thus, leaving "no blanket or Per se applicability of this exemption." *Florida Medical Asso. v Department of Health, Education & Welfare*, 479 F.Supp. 1291, 1304 (M.D. Fla. 1979). This test requires the courts to weigh the privacy concerns of an individual against the public interest in general disclosure. "In deciding claims under Exemption 6, interest of the individual in privacy must be weighed against the public interest in disclosure and that the balance favors disclosure." *Hrones v. Central Intelligence Agency*, 685 F.2d 13, 19 (1st Cir. Mass. 1982). See also, *Ferry v Central Intelligence Agency*, 458 F. Supp 664 (S.D. NY 1978) (courts will generally decide in favor of

⁵ Decision and Order of DOE, Case No. VFA-0292, 26 DOE ¶ 80,190 (available at <http://www.oha.doe.gov/cases/foia/vfa0292.htm>) (May 29, 1997) (accessed October 25, 2010) (quoting *The News Tribune*, 25 DOE ¶ 80,181 at 80,699-80,700 (1996)).

disclosure where disclosure has public interest purpose and particular information sought will contribute to this purpose).

Appellant regularly publishes information on the activities, structure, and operations of the federal government. The information sought by Appellant in its FOIA request concerns the activities of the Secretary of Labor. Any privacy intrusion is nominal in light of the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. In particular, it is in the public's interest to know with whom the Secretary of the Department of Labor is coming contact with while carrying out her duties. As such the public good that will occur in disclosing the information sought in and of itself weighs strongly in favor of a disclosure of the redacted names.


CONCLUSION

Based on the foregoing Appellant respectfully urges the Solicitor of Labor to reverse the decision of the Acting Director for the Office of the Assistant Secretary's Center for Program Planning and Results and to grant the release of the names withheld in the Secretary's desk calendar to the Appellant. Appellant also requests the provision of further information as to the substance of the redacted information which is not names, sufficient that a reasonable person can ascertain whether those redacted portions are actually exempt under FOIA.

Dated this 26th day of October, 2010.

Respectfully Submitted,


Nathan Paul Mehrens


Mark A. Wohlschlegel, II

Americans for Limited Government
9900 Main Street
Suite 303
Fairfax, VA 22031
703.383.0880 [voice]
703.383.5288 [fax]

Counsel for Appellant



AMERICANS FOR LIMITED GOVERNMENT

Appendix 1

9900 MAIN STREET SUITE 303 • FAIRFAX, VA 22031 • PHONE: 703-383-0880 • FAX: 703-383-5288 • WWW.GETLIBERTY.ORG

January 14, 2009

Attention: FOIA Request
Office of the Solicitor
Division of Legislation and Legal Counsel
Department of Labor
Room N-2428
200 Constitution Avenue, NW
Washington, DC 20210

Via email to: foiarequest@dol.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, I request on behalf of Americans for Limited Government (ALG) copies of the federal records described below. These records pertain to the travel and activities of Sec. Hilda Solis.

Please provide copies of records that exist in any of the following categories and that were created on or after January 20, 2009:

1. All records relating to daily schedules including attendees at meetings held by and attended by Sec. Hilda Solis;
2. All records relating to travel performed by Sec. Hilda Solis on behalf of the Department including disbursements issued to her or on her behalf for such travel;
3. All records relating to travel performed by Department personnel, excluding personnel from the Office of Inspector General, accompanying or providing advance work for the travel of Sec. Hilda Solis on behalf of the Department including disbursements issued to or on behalf of Department personnel for such travel; and
4. All records relating to speeches given on behalf of the Department by Sec. Hilda Solis including the text of any speeches given.

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

Given the nature of the records requested I anticipate that the vast majority of any responsive records will be of the type required to be released under FOIA. However, in the event that records exist that FOIA 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 FOIA 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.

Further, the Department should be reminded of the policy in favor of disclosure mandated by President Barack Obama on January 26, 2009. President Obama instructed the executive departments and agencies to operate with a presumption

towards disclosure. On this point the President stated as follows:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sun-light is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. Freedom of Information Act, Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (January 26, 2009.)

These instructions from the President were followed up by further instructions from Attorney General Eric Holder on March 19, 2009. The Attorney General stated as follows:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure. The Freedom of Information Act (FOIA), Attorney General Memorandum for Heads of Executive Departments and Agencies, March 19, 2009.

Based on this policy I believe that there will be no records sought that the Department

will withhold. However, 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 comply with *Vaugh v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), by providing 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 FOIA request will be used to better the public's understanding of how the Department is spending the taxpayers' money. 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." 5 U.S.C. § 552(a)(4)(A)(iii). ALG regularly publishes information on the activities, structure, and operations of the federal government. 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. Further, "Congress intended that the **public interest standard be liberally construed** and that fees not be used as an obstacle to disclosure of requested information." (*Emphasis added.*) *Eudey v. Central Intelligence Agency*, 478 F.Supp. 1175 (D.D.C. 1979). (*Internal citations omitted.*) The central focus of the analysis in determining whether the fee waiver is in the public interest is whether the public rather than the requestor is the primary beneficiary of the release of the information. "The statute indicates that the issue to be considered by the agency is whether furnishing the information will primarily benefit the public at large or whether any benefit will inure primarily to the specific individual requesting the documents." *Id.* In the instant case the records sought will be used to further the public's understanding of the operations of the Department. The records sought will be disseminated widely to parties interested in the workings of the government and as such will not inure primarily to the benefit of the requestor. Therefore the request for waiver of fees should be granted pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

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 5 U.S.C. § 552(a)(6)(A)(i) please provide the requested documents within 20 days. If for some reason all of the requested documents cannot be provided within 20 days I request that documents that are available within the 20 day time period be provided first and that when the remaining documents subsequently become available that they be provided at that time.

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 or to deny a waiver of fees.

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

If you have any questions regarding this FOIA request please contact Nathan Paul Mehrens at 703.383.0880.

I look forward to your reply within 20 business days, as the statute requires. In the event that processing this request will take longer than 10 business days I request that you immediately provide me with an individualized tracking number for my request.

Thank you in advance for your assistance.

Sincerely,



William Wilson
President



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

SEP 01 2010

Dear Mr. Mehrens:

This letter is in partial response to your Freedom of Information Act (FOIA) request dated January 14, 2010. We apologize for the delay in responding. In your letter you requested:

Copies of records that exist in any of the following categories and that were created on or after January 20, 2009:

1. All records relating to daily schedules including attendees at meetings held by and attended by Sec. Hilda Solis;
2. All records relating to travel performed by Sec. Hilda Solis on behalf of the Department including disbursements issued to her or on her behalf for such travel;
3. All records relating to travel performed by Department personnel, excluding personnel from the Office of the Inspector General, accompanying or providing advance work for the travel of Sec. Hilda Solis on behalf of the Department including disbursements issued to or on behalf of Department personnel for such travel; and
4. All records relating to speeches given on behalf of the Department by Sec. Hilda Solis including the text of any speeches given.

In response to your request, we conducted a search for responsive records within the Office of the Assistant Secretary for Administration and Management and the Office of the Secretary. In our initial search we located documents related to the Secretary's schedule and other documents deemed responsive to your request. However, after further review of your request we determined that a further search needed to be conducted to locate additional records. Again, we apologize for any inconvenience this may have caused.

As discussed with The Department of Labor (DOL) FOIA Public Liaison, Thomas Hicks, Sr. Esq. and Daniel J. Gomez Esq., your attorney, we are in the process of expediting another search and will provide responsive documents to you on a "rolling bases" as they are located and reviewed for disclosure.

Enclosed are copies of the Secretary's desk calendars covering the period from February 25, 2009 (the day following her U.S. Senate confirmation) thru July 11, 2009. You will note that portions of these documents are withheld pursuant to FOIA 5 U.S.C. § 552 (b)(6) to protect personal privacy. We only withheld personal entries and the names of individuals who were interviewed by the Secretary. The remaining entries are disclosed for your review.

In discussions with the DOL FOIA Public Liaison, Mr. Gomez was informed that text of all of the Secretary's speeches are available for review from our website at: <http://www.dol.gov/sec/media/>. They also discussed the possibility of narrowing the scope of your request for all records related to speeches given by Secretary Hilda Solis, by identifying topics that are of interest to you. We will await additional instructions from you or Mr. Gomez before proceeding with a search on this aspect of your request only.

At this time we ask that you await our full response before filing an administrative appeal. However, that option remains available to you. If you wish to pursue an administrative appeal of this partial response you may do so by writing the Solicitor of Labor within 90 days from the date you receive this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. To facilitate processing, you may wish to fax your appeal to: (202) 693-5539. The appeal should include a copy of this letter. The appeal must be addressed to: Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-2428, Washington, DC 20210. If mailed, the envelope, and the letter of appeal must be clearly marked: "Freedom of Information Act Appeal".

Sincerely,



DAVID FREDERICKSON

Acting Director

Center for Program Planning and Results

Enclosure(s)



FOIA #FY2010-591270

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

Dear Mr. Mehrens:

As per the agreement between your attorney, Daniel J. Gomez Esq., and our Public Freedom of Information Act (FOIA) Liaison, Thomas Hicks, you agreed to allow us to respond to your January 14, 2010, FOIA request on an interim basis. You requested:

Copies of records that exist in any of the following categories and that were created on or after January 20, 2009:

1. All records relating to daily schedules including attendees at meetings held by and attended by Sec. Hilda Solis;
2. All records relating to travel performed by Sec. Hilda Solis on behalf of the Department including disbursements issued to her or on her behalf for such travel;
3. All records relating to travel performed by Department personnel, excluding personnel from the Office of the Inspector General, accompanying or providing advance work for the travel of Sec. Hilda Solis on behalf of the Department including disbursements issued to or on behalf of Department personnel for such travel; and
4. All records relating to speeches given on behalf of the Department by Sec. Hilda Solis including the text of any speeches given.

In response to your request, we conducted a search for responsive records within the Office of the Assistant Secretary for Administration and Management and the Office of the Secretary. In our initial search we located documents related to the Secretary's schedule and other documents deemed responsive to your request. However, after further review of your request we determined that a further search needed to be conducted to locate additional records. Again, we apologize for any inconvenience this may have caused.

As discussed with The Department of Labor (DOL) FOIA Public Liaison, Thomas Hicks, Sr. Esq. and Daniel J. Gomez Esq., your attorney, we are in the process of expediting another search and will provide responsive documents to you on a, "rolling bases" as they are located and reviewed for disclosure.

Enclosed are copies of the Secretary's desk calendars covering the period from July 09, 2009 thru January 09, 2010. These records are being withheld in part, pursuant to Exemption 6 of FOIA protects from disclosure information about individuals that in contained in "personnel and medical files and similar files" when the disclosure of this information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

At this time we ask that you await our full response before filing an administrative appeal. However, that option remains available to you. If you wish to pursue an administrative appeal of this partial response you may do so by writing the Solicitor of Labor within 90 days from the date you receive this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. To facilitate processing, you may wish to fax your appeal to: (202) 693-5539. The appeal should include a copy of this letter. The appeal must be addressed to: Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-2428, Washington, DC 20210. If mailed, the envelope, and the letter of appeal must be clearly marked: "Freedom of Information Act Appeal".

Sincerely,

A handwritten signature in dark ink, appearing to read "David Frederickson". The signature is fluid and cursive, written over the printed name below.

DAVID FREDERICKSON

Acting Director

Center for Program Planning and Results

Enclosure(s)