



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

APPEALS AND OPINIONS BUREAU

Telephone (518) 776-2009

February 6, 2015

Mr. Nathan Paul Mehrens
Americans for Limited Government
10332 Main Street, No. 326
Fairfax, VA 22031

VIA EMAIL: nathan@getliberty.org

Re: Appeal re: Freedom of Information Law Request # 140606

Dear Mr. Mehrens:

I write in response to your January 20, 2015 administrative appeal letter in the above-referenced Freedom of Information Law (FOIL) matter.

By correspondence dated October 20, 2014, you requested records created on or after January 1, 2013 that relate to communications between officers or employees of the Office of the Attorney General (OAG) and Kendall Fells or any other officer or employee of Fast Food Forward. Specifically, you requested records within three categories:

1. All records of communications between any officer or employee of the OAG and Kendall Fells regarding the Attorney General's suit against a Papa John's franchisee;
2. All records of communications between any officer or employee of the OAG 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 of the OAG and Kendall Fells or other officers and employees of Fast Food Forward.

The Records Access Officer responded to you by letter dated December 29, 2014. He advised you that the OAG conducted a diligent search and located no

records responsive to items 2 and 3 of your request. With respect to records responsive to item 1 of your request, he explained that they are exempt from disclosure and were withheld under 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.

In your administrative appeal, you question the applicability of the law enforcement exception to the responsive records.

Please be advised that the Record Access Officer's letter mistakenly indicated that no records responsive to items 2 and 3 of your request were located and that records responsive to item 1 were withheld. Instead, you should have been advised that no records responsive to items 1 and 3 were located and that records responsive to item 2 were withheld. Specifically with respect to item 1, after conducting a diligent search, the OAG found no records of communications between officers or employees of the OAG and Mr. Fells relating to the October 16, 2014 press release. Consequently, the law enforcement exception was not applied to any such records.

With respect to the withheld records responsive to item 2, the OAG located records of communications between any officer or employee of the OAG and Kendall Fells "regarding any other subject," and these records properly were determined to be exempt as records compiled for law enforcement purposes, the disclosure of which would interfere with law enforcement investigations or judicial proceedings. Public Officers Law § 87(2)(e)(i). The OAG received allegations unrelated to the October 16, 2014 press release that an employer violated the New York Labor Law in its treatment of employees. That investigation is ongoing. The OAG, a law enforcement agency with responsibility for enforcing the Labor Law, relies on confidential communications from numerous sources to report potential violations of the Labor Law. Disclosure of the substance of these communications would undermine the OAG's ability to investigate and prosecute such violations.

This is a final agency determination. Please be advised that you may bring a C.P.L.R. article 78 proceeding with respect to this determination within four months of receipt of this letter. Public Officers Law § 89(4)(b); C.P.L.R. 217.

Sincerely,



KATHRYN SHEINGOLD
Records Appeals Officer

Cc: Committee on Open Government
OAG Records Access Officer