



# AMERICANS FOR LIMITED GOVERNMENT FOUNDATION

10332 MAIN STREET · NO. 326 · FAIRFAX, VA 22030 · PHONE: 703.383.0880 · FAX: 703.383.5288 · WWW.GETLIBERTY.ORG

August 27, 2015

Office of the Solicitor  
Division of Management and Administrative Legal Services  
200 Constitution Avenue, N.W., Room N-2420  
Washington, DC 20210

Via email to [foiarequests@dol.gov](mailto:foiarequests@dol.gov)

**Re: Freedom of Information Act (FOIA) Request for OSHA**

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 Foundation (ALGF) copies of the federal records described below. Please provide the following from OSHA:

- (1.) All communications, internally or externally, about OSHA extending joint-employer status with regard to workplace inspections; and
- (2.) All communications regarding the memo from the Office of the Solicitor titled, "Can Franchisor (Corporate Entity) and Franchisee be Considered Joint Employers" that was referred to in Politico on August 25, 2015.<sup>1</sup>

Please provide any such records that were created on or after January 1, 2014.

**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

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<sup>1</sup> Brian Mahoney, *OSHA probes franchises on joint employment*, POLITICO, August 25, 2017. Available online at: <https://www.politicopro.com/go/?id=51728>.

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. 4,683 (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 ALGF in this FOIA request will be used to better the public's understanding of how Department is using taxpayer funds to extend a controversial enforcement 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." 5 U.S.C. § 552(a)(4)(A)(iii). ALGF 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 ALGF regularly provides to the public through its publications and websites, [www.getliberty.org](http://www.getliberty.org) and [www.netrightdaily.com](http://www.netrightdaily.com). 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 ALGF.

**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.

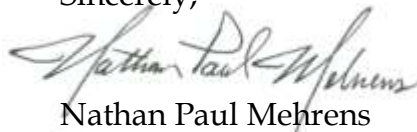
If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material.

I request that responsive records be provided in electronic form and emailed to me at [nathan@getliberty.org](mailto:nathan@getliberty.org). If the files are too large to email I request that they be provided on either unencrypted CDs or DVDs and mailed to me at the following address:

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

If you have any questions regarding this FOIA request please contact me at [nathan@getliberty.org](mailto:nathan@getliberty.org). Thank you in advance for your assistance.

Sincerely,



Nathan Paul Mehrens  
President and General Counsel

Ref# ALGFOIA2015-056