



AMERICANS FOR LIMITED GOVERNMENT

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February 25th, 2010

To the Members of U.S. Senate Judiciary Committee:

Today, your committee has scheduled a markup on Dawn Johnsen's nomination for the Office of Legal Counsel (OLC) of the Justice Department (DOJ) for 10:00 A.M. I am writing to bring your attention to [a Freedom of Information Act \(FOIA\) request that Americans for Limited Government filed with the Justice Department's \(DOJ\) Office of Legal Counsel \(OLC\)](#) relating to Ms. Johnsen that has gone unheeded in spite of a 20-day statutory requirement.

Specifically, Americans for Limited Government (ALG) is attempting to confirm allegations that [Ms. Johnsen, President Barack Obama's nominee for Assistant Attorney General to the Office of Legal Counsel](#), has been performing duties pursuant to that office without being confirmed by the Senate, including making hiring decisions.

[According to National Review Online](#), Ms. Johnsen may have been "involving herself in OLC's decisions on hiring junior lawyers. If those reports are accurate, Johnsen's actions would seem a serious violation of the Senate's understanding of pre-confirmation etiquette—an etiquette that is especially punctilious for nominees who have generated controversy—and would give senators additional reason to oppose her nomination."

The ALG FOIA request was filed on October 26th, 2009, and has thus far gone unheeded by the FOIA office within the Office of Legal Counsel. That was over 120 days ago, and flies in the face of the Freedom of Information Act, specifically 5 U.S.C. § 552(a)(6)(A)(i), which states as follows:

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request **and shall immediately notify the person making such request of such determination** and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination;"(Emphasis added.)

In addition, the OLC's delay is in violation of President Obama's policy to all executive departments instructing them to promptly fulfill all FOIA requests. President Obama instructed the executive departments and agencies to operate with a presumption towards disclosure:

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 DOJ-OLC Page 2 February 24, 2010 (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.) (Emphasis added.)

The information we have requested is critical to your committee's decision on whether or not to confirm Ms. Johnsen. Because the Justice Dept has refused to comply with the law and the real possibility exists that Ms. Johnson has violated the law in acting prior to confirmation, I call upon you to delay or defeat this nomination.

Sincerely,

A handwritten signature in cursive script that reads "William A. Wilson".

William Wilson
President
Americans for Limited Government