



# AMERICANS FOR LIMITED GOVERNMENT

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February 24, 2010

Elizabeth Farris  
Supervisory Paralegal  
Office of Legal Counsel  
Room 5515, 950 Pennsylvania Avenue, NW  
Department of Justice  
Washington, DC 20530-0001

Via fax to: 202.353.2723

**Re: October 26, 2009 Freedom of Information Act (FOIA) Request from  
Americans for Limited Government (ALG) Regarding Dawn Johnsen**

Dear Ms. Farris:

After numerous failed attempts to obtain a response, *i.e.*, unreturned voicemails, etc., from your office regarding the FOIA request referenced above I finally was able to get you on the phone on Friday, February 12, 2009. As you will recall in that call you stated that the Office of Legal Counsel (OLC) has not even started to work on the FOIA request. You also declined to provide an estimated date of completion for the FOIA request.

Our FOIA request was submitted on October 26, 2009, over 120 days ago. Any reasonable person would agree that a delay in excess of 120 days is unacceptable and must be immediately remedied.

The OLC should be reminded of the policy in favor of **prompt** 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.) (Emphasis added.)

A delay of 120 days does not meet any reasonable definition of the word “promptly.” Thus, the failure of the OLC to respond to our FOIA request puts OLC out of compliance with this Executive Order. This delay also means that OLC is not following the requirements of the statute. See 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; and (Emphasis added.)

As stated above, it has been over 120 day, a significant multiple of the 20 day period provided for in the FOIA statute. Please expedite the process for furnishing us with responsive records.

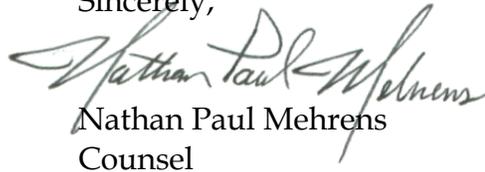
The records sought are highly relevant to the issue of whether Dawn Johnsen, the President’ nominee to run OLC should be confirmed. As the U.S. Senate Committee on the Judiciary has scheduled a markup on Johnsen’s nomination for 10:00 A.M. on Thursday, February 25, 2009, time is now of the essence. Given the nature of the records sought any further delay from OLC will significantly reduce the public value of the records sought. This delay contravenes the purpose and intent of FOIA and the

Executive Order on transparency from President Obama referenced above.

I look forward to your prompt reply.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Nathan Paul Mehrens". The signature is written in black ink and is positioned above the printed name and title.

Nathan Paul Mehrens  
Counsel