

Freedom Through Justice Foundation

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August 30, 2011

VIA EMAIL AND CERTIFIED MAIL

Keith V. Morgan
Deputy Chief
Civil Division
U.S. Attorney's Office for the District of Columbia
c/o William G. Stewart, II, Assistant Director
FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
Room 7300, 600 E Street, N.W.
Washington, DC 20530-0001
DOJ.OIP.Initial.Requests@usdoj.gov

Re: Freedom of Information Act Request

Dear Mr. Morgan:

We write on behalf of the Freedom Through Justice Foundation, a 501(c)(3) nonprofit corporation that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. It has come to our attention that certain aspects of enforcement of the lobbying laws bear close scrutiny, and we accordingly write to request certain documents pursuant to the Freedom of Information Act.

According to the Center for Responsive Politics, special interests spent approximately \$3.51 billion on lobbying the federal government last year.¹ As such, accurate lobbying disclosure, in addition to enforcement of lobbying laws, is critical to ensuring transparency and accountability in our government. The Honest Leadership and Open Government Act of 2007 ("HLOGA") took important steps to require more frequent lobbyist disclosures and brought more transparency to lobbyists' interactions with Members of Congress.² While significant progress has been made in implementing the provisions of the Act, we have serious concerns about the enforcement of the Lobbying Disclosure Act ("LDA").

The U.S. Attorney's Office for the District of Columbia, which is charged with enforcing the LDA, receives thousands of referrals of potential LDA violators from

¹ LOBBYING DATABASE, THE CENTER FOR RESPONSIVE POLITICS, *available at* <http://www.opensecrets.org/lobby/index.php> (last visited May 5, 2010).

² PUB. L. 110-81.

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Secretary of the Senate, Nancy Erickson, and Clerk of the House, Lorraine Miller, who are jointly responsible for administering the LDA and referring potential violators to the Justice Department. According to recent studies, however, the vast majority of these referrals remain pending, with no resolution.³ As it stands, 135 referrals are still pending from 2007, when House and Senate officials referred 241 possible LDA violations to the U.S. Attorney's Office for follow-up action.⁴

In the 241 cases, which involved failures to file required reports in lobbying spending, DOJ has sent letters or investigated to determine whether the filer has complied with the law. However, only 75 of the targeted lobbyists came into compliance after being contacted by DOJ officials.⁵ The U.S. Government Accountability Office ("GAO") found another 26 came into compliance before being contacted by the DOJ, while five of the referred lobbyists could not even be located.⁶

While DOJ has referrals pending from 2007, 2008, and 2009 regarding missing reports on lobbying spending, thousands of new referrals are being received by the U.S. Attorney's Office.⁷ Indeed, a recent report issued by the GAO found that DOJ has now received referrals regarding 2,680 lobbyists or organizations that have not filed required reports on their campaign contributions or other political spending. However, not one of these non-filers has been sent a non-compliance letter by the U.S. Attorney's Office.⁸ Additionally, Senate officials have referred a cumulative total of 8,281 possible LDA violators to the U.S. Attorney's Office.⁹

Given the above facts, the Freedom Through Justice Foundation is interested in analyzing the DOJ's procedures for identifying non-compliant lobbyists and enforcing existing law. Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Freedom Through Justice Foundation hereby requests that your department produce the following within twenty (20) business days:

1. Provide all records¹⁰ pertaining to lobbyists or organizations that have not filed required reports on their campaign contributions or other political spending

³ Kenneth P. Doyle, *DOJ Official Cites Progress on LDA, Says Compliance Action Coming Soon*, BNA MONEY & POL. REP., (Apr. 9, 2010), at 1 (The DOJ "has never filed a criminal case or civil lawsuit to enforce the 15-year-old lobbying law and has reached out-of-court settlements in only three cases, which are now five years old").

⁴ GOVERNMENT ACCOUNTABILITY OFFICE, *2009 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, (Apr. 2010), at 17, available at <http://www.gao.gov/new.items/d10499.pdf> [hereinafter "GAO REPORT"].

⁵ GAO REPORT, *supra* note 4 at 17.

⁶ *Id.*

⁷ Doyle, *supra* note 3, at 1.

⁸ *Id.* at 2-3.

⁹ *Id.*

¹⁰ For purpose of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically,

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(hereinafter “non-filers”) to whom your office has sent demand letters requiring that they file missing reports or formally terminate their LDA registrations.

- a. Provide all records used by your office to identify non-filers.
 - b. Provide all records pertaining to procedures or methods used by your office in identification of conscious efforts to avoid disclosure by non-filers.
 - c. Provide all records pertaining to procedures established or actions taken by your office to ensure compliance by non-filers.
 - d. Provide all records pertaining to responses by non-filers to DOJ demand letters.
 - e. Provide all records pertaining to legal action, including but not limited to enforcement actions, taken by your office against non-filers.
2. Provide all records pertaining to LDA compliance reports sent by the DOJ to Congress within the last 2 years.
 3. Provide all records pertaining to LDA compliance reports sent by the DOJ to GAO within the last 2 years.
 4. Provide all FOIA requests from individuals or organizations submitted to your office during the last two years for which any of the above documents were responsive.

We call your attention to President Obama’s January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA . . . The presumption of disclosure should be applied to all decisions involving FOIA.¹¹

magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term “record” also shall mean any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

¹¹ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, (Jan. 21, 2009), available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct (last visited Aug. 30, 2011).

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If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Freedom Through Justice Foundation is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

In an effort to facilitate record production within the statutory time limit, the Freedom Through Justice Foundation prefers to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, the Freedom Through Justice Foundation will accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact Amber Taylor at (703) 875-8625. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



Daniel Epstein
Executive Director