



August 1, 2012

Via U.S. Mail & Email

Dorothy Lee
Office of Justice Programs
Office of the General Counsel
Attention: FOIA Staff
810 7th St., NW
Room 5400
Washington, D.C. 20531
Email: FOIAOJP@usdoj.gov

AMERICAN CIVIL
LIBERTIES UNION

Dear Ms. Lee:

This is a request for the production of documents under the Freedom of Information Act, 5 U.S.C. § 552 (2009).

PROGRAM ON FREEDOM
OF RELIGION AND BELIEF
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Definitions

For the purposes of this request:

1. “**Materials**” includes, but is not limited to, any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including, but not limited to, copies with notations.
2. “**RFRA**” refers to the Religious Freedom Restoration Act, 42 U.S.C.A. § 2000bb-1 (1993). “**OJP**” refers to the Office of Justice Programs, as well as its employees, contractors, and agents. “**DOJ**” refers to the Department of Justice, as well as its employees, contractors, and agents.
3. “**Attorney General Eric Holder’s testimony**” refers to Attorney General Eric Holder’s June 5, 2012, responses to the December 8, 2011, “Questions for the Record” posed by Rep. Bobby Scott, addressed to the Hon. Lamar Smith, Chairman of the Committee on the Judiciary. The relevant responses are attached hereto.

DANIEL MACH
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4. “**Certificate(s) of Exemption**” refers to any application, certificate, submission, or other request for exemption, under RFRA, to the prohibition on religious employment discrimination for federally funded programs. It includes, but is not limited to, the eight Certificates of Exemption and requests referenced in Attorney General Eric Holder’s testimony in response to questions 16(A) and 16(D), as well as any Certificates of Exemption or requests made since the issuance of the October 2007 OJP memorandum entitled “Effect of the Religious Freedom Restoration Act on Faith-Based Applicants for Grants,” <http://www.justice.gov/archive/fbci/effect-rfra.pdf>.

Requests

Please provide the following materials from October 1, 2007, until present:

1. All materials referring or relating to any policy, rule, and/or regulation pertaining to Certificates of Exemption, including but not limited to:
 - a. All policies, rules, and/or regulations referring or relating to the requirements that must be met in order to request, obtain, or hold a Certificate of Exemption.
 - b. All policies, rules, and/or regulations referring or relating to the evaluation of requests, applications, and/or submissions for Certificates of Exemption;
 - c. All policies, rules, and/or regulations referring or relating to the denial or grant of requests, applications, and/or submissions for Certificates of Exemption;
 - d. All formal and informal communications within OJP referring or relating to policies, rules, and/or regulations pertaining to Certificates of Exemption;
 - e. All formal and informal communications between OJP and DOJ referring or relating to policies, rules, and/or regulations pertaining to Certificates of Exemption;

- f. All other formal and informal communications sent to or from OJP referring or relating to policies, rules, and/or regulations pertaining to Certificates of Exemption; and
 - g. All policies, rules, and/or regulations referring or relating to investigating, monitoring, or enforcing a faith-based organization's continuing compliance with requirements for exemption after a Certificate of Exemption has been granted or recognized.
2. All materials referring or relating to any specific request, application, and/or submission for a Certificate of Exemption made by any faith-based organization, including but not limited to:

- a. All specific applications, requests, and/or submissions for a Certificate of Exemption made by any faith-based organization;
- b. All supporting materials provided in connection with each application, request, and/or submission for a Certificate of Exemption made by any faith-based organization;
- c. All materials referring or relating to investigations, grants, denials, or other decisions pertaining to any specific request, application, and/or submission for a Certificate of Exemption made by any faith-based organization;
- d. All materials gathered by, or produced to OJP, in connection with any specific request, application, and/or submission for a Certificate of Exemption made by any faith-based organization;
- e. All formal and informal communications between OJP and any faith-based organization requesting, applying for, and/or submitting a Certificate of Exemption;
- f. All formal and informal communications within OJP referring or relating to any specific application, request,

and/or submission for a Certificate of Exemption made by a faith-based organization;

- g. All formal and informal communications between OJP and DOJ referring or relating to any specific application, request, and/or submission for a Certificate of Exemption made by a faith-based organization;
- h. All other formal and informal communications sent to or by OJP referring or relating to any specific application, request, and/or submission for a Certificate of Exemption made by a faith-based organization; and
- i. All materials referring or relating to investigating, monitoring, or enforcing a faith-based organization's continuing compliance with requirements for exemption after a Certificate of Exemption has been granted or recognized.

3. All materials referring or relating to any compilations, charts, graphs, or other written representations produced by, or provided to, OJP pertaining to Certificates of Exemption for faith-based organizations.

4. All materials referring or relating to funds granted or distributed to any faith-based organization holding a Certificate of Exemption, including, but not limited to:

- a. Materials referring or relating to the amount of federal funds granted and/or supplied to faith-based organizations holding Certificates of Exemption, broken down by fiscal year if funding was continued beyond the span of one fiscal year; and

- b. All records relating to the provision of taxpayer funds to any faith-based organizations holding a Certificate of Exemption, including agreements; contracts; reports or other auditing materials; applications and materials submitted with applications; complaints; corrective plans; correspondence; and grantees' program documents, curricula, manuals, or handbooks.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures and/or exhibits. However, to the extent that a response to this request would require the provision of multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 294 (1979) (“Congress did not limit an agency’s discretion to disclose information when it enacted the FOIA.”). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt material be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemption relied upon.

Fee Waiver

We request that the fees associated with this request be waived because (1) disclosure is in the public interest and the Requestor does not seek the records for commercial purposes, and (2) the Requestor is considered a member of the news media. Under 5 U.S.C. § 552(a)(4)(A)(ii-iii), fees should be waived or reduced if disclosure is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) not primarily in the commercial interest of the Requester. Disclosure in this case meets both of these tests, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”).

The requested records pertain directly to the operations and activities of the federal government, and more specifically, to OJP as an administrator of federal taxpayer funds. In particular, the requested records pertain to the use of federal funds for grants to faith-based organizations for the provision of public services, and whether such funds were used constitutionally. Ensuring adherence to the Constitution is in the public interest. Moreover, disclosure will advance the understanding of the general public.

The ACLU has significant knowledge and expertise regarding government-funded religious programs. A review of the requested documents will permit us to assess, and bring to light any issues with, the disbursement and use of taxpayer dollars intended to promote religious groups’ provision of

public services. Because the ACLU has expertise regarding the subject matter of the information requested, we are in a position to contribute to public understanding. Lastly, disclosure is not in the Requester's commercial interest. The Requesters have no intention of applying for any of the funding mentioned in this request.

Furthermore, the ACLU meets the definition of a representative of the news media because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *National Sec. Archive v. Department of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The ACLU regularly gathers information on issues of public significance; uses its editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials; and distributes those materials to the general public through various channels, such as its heavily subscribed Web site (www.aclu.org), and newsletter sent to its more than 400,000 members, as well as an electronic newsletter, which is distributed to subscribers via e-mail. The ACLU is therefore a "news media entity." *Cf. Electronic Privacy Info. Ctr. v. Department of Def.*, 241 F.Supp.2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).

Accordingly, the ACLU requests that the fees be waived. In the event that you decide not to waive the fees, if you determine that the fees authorized by 5 U.S.C. § 552(a)(4)(A) will exceed \$200, please provide us with prior notice so that we can discuss arrangements.

We look forward to a determination on this request from you. Thank you for your prompt attention to this request. Please call Heather L. Weaver at (202) 675-2330 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records should be sent to Heather L. Weaver, ACLU, 915 15th Street, NW, 6th Floor, Washington, D.C., 20005.

Sincerely,



Heather L. Weaver

Staff Attorney

ACLU Program on Freedom of Religion and Belief



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

JUN 05 2012

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Attorney General Eric Holder before the Committee on December 8, 2011. We hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith C. Appelbaum", with a long horizontal flourish extending to the right.

Judith C. Appelbaum
Acting Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Member

Questions for the Record
Attorney General Eric H. Holder, Jr.
Committee on the Judiciary
U.S. House of Representatives
December 8, 2011

QUESTIONS POSED BY REPRESENTATIVE CHABOT

1. Mr. Attorney General Holder, Under the International Traffic in Arms Regulations (ITAR) it is a violation if the Arms Export Control Act (AECA) to “conspire to export, import, re-export or *cause to be exported*” any covered defense article without first obtaining written approval from the State Department.

A. First, Did the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) violate the Arms Export Control Act?

We are unaware of evidence that ATF agents violated the Arms Export Control Act. That said, the Attorney General has made clear that the tactics used in Fast and Furious and in similar operations in the prior Administration like Wide Receiver, Hernandez and Medrano, should not have been used and must not be used again. In February 2011, the Attorney General asked the Department’s Office of the Inspector General to conduct a review, and he instructed the Deputy Attorney General in early March 2011 to direct that such tactics not be used.

B. In Fast and Furious, ATF encouraged gun dealers to continue to sell guns to known straw purchasers and the straw purchasers smuggled the guns over the border. If, as correspondence suggests, Federal Firearms Licensees would not have sold firearms to straw purchasers but for ATF’s request, then did ATF cause these guns to be exported?

Please see response to question 1(A), above.

2. Mr. Holder, would you agree that permitting thousands of weapons into a sovereign nation- one that is, I might add, an ally of the United States- without that nation’s express permission has the potential to seriously undermine our critical relationship with that country? How would your office respond if Mexico were arming gangs in Americans cities with thousands of assault rifles to “try to get the big fish?”

Response:

As indicated above, the tactics used in Operation Fast and Furious and in similar operations in the prior Administration like Wide Receiver, Hernandez and Medrano, were inappropriate. That is why, soon after allegations of inappropriate tactics in Operation Fast and Furious came to light, the Attorney General instructed the Deputy Attorney General to direct that such tactics not be used.

QUESTIONS POSED BY REPRESENTATIVE SCOTT

- 11. What steps does the Department of Justice plan to take to increase its focus on investigating and prosecuting mortgage fraud, health care fraud (against private and public plans), and wrongdoing perpetrated at the highest levels of Wall Street financial firms?**

The Department of Justice is devoting significant resources to investigating and prosecuting mortgage fraud, health care fraud, and fraud within the financial services industry. The Department's efforts have seen significant results: in just the last year, the Department has obtained sentences in major investment fraud cases of sixty and forty-five years; sentences of fifty, thirty-five and twenty years in Medicare fraud cases; and a sentence of thirty years against the chairman of the nation's largest privately held non-depository mortgage company in a securities and bank fraud case. We have also obtained sentences of eleven and ten years in insider trading cases on Wall Street.

The Department of Justice is committed to holding accountable those who have engaged in illegal practices in originating and securitizing loans in the mortgage industry. As President Obama announced on January 24, 2012, during his State of the Union Address, the Justice Department is joining forces with state attorneys' general and other federal agencies to combat fraud and other such misconduct by creating the Residential Mortgage Backed Securities Working Group. The Residential Mortgage Backed Securities Working Group, a part of the Financial Fraud Enforcement Task Force, is a multi-district, multi-jurisdictional, multi-agency effort at bringing to bear all appropriate resources to get at the heart of the causes of our financial crisis.

The President's announcement was followed shortly thereafter by the Department's February 9, 2012, announcement of the \$25 billion settlement with the largest mortgage servicers in the country. It was an historic settlement, both in the size and scope of the relief. As part of the joint federal-state agreement, the servicers will collectively dedicate \$20 billion toward various forms of financial relief to borrowers. The agreement also requires the servicers to implement comprehensive new mortgage loan servicing standards, which will prevent the foreclosure abuses of the past. These new standards address violations such as use of "robo-signed" affidavits in foreclosure proceedings; deceptive practices in the offering of loan modifications; failures to offer non-foreclosure alternatives before foreclosing on borrowers with federally insured mortgages; and filing improper documentation in federal bankruptcy court. The agreement will also provide enhanced protections for service members that go beyond those required by the Servicemembers Civil Relief Act (SCRA). Notably, the agreement does not prevent the government from punishing wrongful securitization conduct that will be the focus of the new Residential Mortgage-Backed Securities Working Group discussed above.

Similarly, on December 21, 2011, the Department announced the largest fair lending settlement in history, a \$335 million agreement with Bank of America resolving claims that its Countrywide unit discriminated against African-American and Hispanic borrowers.

Attorney of the district of conviction and the sentencing judge to provide comments and recommendations on the clemency request.

After careful consideration, recommendations as to disposition of the petitions are prepared by the Pardon Attorney and his staff and transmitted to the Office of the Deputy Attorney General, where they are closely reviewed. Ultimately, the Deputy Attorney General executes a recommendation regarding each commutation case, and these recommendations are forwarded to the Office of the White House Counsel for consideration and decision by the President.

- F. How does the pardon office identify the rare exception that deserves a closer look? Political support? Media attention? If so, is that the best way – the most fair way -- to make these decisions?**

Media attention and political support do not play a role in the investigation or review of applications for executive clemency. The standards for considering commutation petitions are readily available to the public on the Office of the Pardon Attorney's website and include factors such as disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, as well as other equitable factors that may be present in a given case. Weighing the totality of circumstances, the Office of the Pardon Attorney, the Deputy Attorney General, and the White House Counsel work to identify meritorious cases.

- 16. In 2008, then-candidate Barack Obama promised that “if you get a federal grant, you can’t use that grant money to proselytize the people you help and you can’t discriminate against them—or against the people you hire—on the basis of their religion.” Yet, the Administration has failed to take any concrete steps thus far to restore anti-discrimination protections and end policies put in place by the George W. Bush Administration that permit the federal government to subsidize employment discrimination on the basis of religion.**

Instead, when this Administration launched its version of the “faith-based initiative,” Administration officials explained that the issue of hiring discrimination on the basis of religion in taxpayer-funded social service contracts and grants would be reviewed on a case-by-case basis by the Justice Department.

In June, [Mr. Nadler] asked Tom Perez, Assistant Attorney General for the Civil Rights Division, about this “case-by-case” review process. Mr. Perez stated that the Civil Rights Division was not leading the effort in the Justice Department and that he could not recall who in the Department was.

- A. If the Civil Rights Division is not responsible for this review, what component within the Department is responsible?**

In response to the June 29, 2007, opinion of the Office of Legal Counsel entitled *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, commonly referred to as the “World Vision opinion,” DOJ’s Office of Justice Programs (OJP) developed a policy that allows for a case-by-case review of applicants seeking a similar exemption. Under the policy, a religious organization that applies for funding and requests an exemption under the Religious Freedom Restoration Act to enable it to prefer coreligionists in employment, notwithstanding a statutory prohibition on religious employment discrimination, is required to submit documentation to the DOJ grant-making component from which it has applied for funds, either OJP or the Department’s Office on Violence Against Women (OVW), certifying to each of the following statements:

- a) The Applicant will offer all federally-funded services to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals, consistent with the requirements of 28 C.F.R. Part 38, Equal Treatment for Faith-Based Organizations;
- b) Any activities of the Applicant that contain inherently religious content will be kept separate in time or location from any services supported by direct federal funding, and, if provided under such conditions, will be offered only on a voluntary basis, consistent with the requirements of 28 C.F.R. Part 38; and,
- c) The Applicant is a religious organization that sincerely believes that providing the services in question is an expression of its religious beliefs; that employing individuals of a particular religion is important to its religious exercise; and that having to abandon its religious hiring practice in order to receive the federal funding would substantially burden its religious exercise.

B. Could you describe the Department’s case-by-case review process?

Please see response to 16(A), above.

C. What are the standards applied to each case in determining whether discrimination is permissible?

Please see response to 16(A), above.

D. Are there any past incidents where the “case-by-case” review has been used? What were the outcomes of those cases?

Neither OJP nor OVW received requests for exemptions to the prohibition on employment discrimination in FY 2009, the first grant year of the Obama Administration.

For FY 2008, there were eight faith-based organizations that submitted certificates of exemption to OJP, and that continued to receive funding in FY 2009.

E. What is the procedure for other agencies to work with the Department of Justice to address issues of religious hiring discrimination through the “case-by-case” process?

As with any other legal question posed to the Justice Department by other executive branch agencies, the agency should initially contact the Department’s Office of Legal Counsel, which will consider the matter and respond appropriately.

F. Have there been any discussions with President Obama and other White House officials regarding this “case-by-case” review?

As a general matter, the Department of Justice does not disclose internal Administration discussions.