

U.S. HOUSE OF REPRESENTATIVES
OFFICE OF THE GENERAL COUNSEL
219 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6532
(202) 225-9700
FAX: (202) 226-1360

DAVID PLOTINSKY
ASSISTANT COUNSEL

CHRISTINE DAVENPORT
ASSISTANT COUNSEL

JOHN D. FILAMOR
ASSISTANT COUNSEL

January 14, 2008

BY FEDERAL EXPRESS

Gerald M. Bailey, Commissioner
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32308

Re: Mark Foley Investigation

Dear Mr. Bailey:

I write in response to your December 11, 2007 letter to House Speaker Nancy Pelosi. This office is handling, on behalf of the House, matters relating to the Foley investigation. (You should be aware that the Speaker's office only received your letter on January 2, 2008. The delayed receipt was a result of stringent mail screening procedures put in place after the Capitol Hill anthrax and ricin attacks several years ago. To prevent such delays in the future, I suggest that you not contact Capitol Hill offices about this matter by regular mail. Instead, please contact this office either by fax (202-██████████) or email, ██████████@house.gov.)

On June 21, 2007, Chief Inspector Mark M. Perez of the Florida Department of Law Enforcement ("FDLE") communicated with this office – in terms virtually identical to your December 11 letter – about Mr. Foley's computer equipment. On July 24, 2007, I sent a detailed response to Mr. Perez which

- described what computer equipment and other Foley information the Clerk and Chief Administrative Officer ("CAO") of the House possessed, namely, (i) in the case of the Clerk, the personal computer that was in Mr. Foley's Washington, D.C. office, the hard drives from two district office computers that Mr. Foley used, and a non-current office server (collectively, "Office Computer Equipment"), and (ii) in the case of the CAO, two sets of back up tapes that contain email traffic to and from Mr. Foley's Washington, D.C. office;
- explained that, in accordance with House Rules, the information on the Office Computer Equipment belongs to Mr. Foley, and that we cannot simply give FDLE unfettered access to that equipment and the back up tapes because of the Constitution's Speech or Debate Clause, U.S. Const. art. I, § 6, cl. 1; and

Gerald M. Bailey, Commissioner
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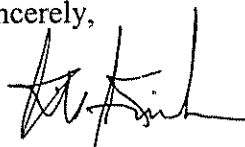
- provided other information to assist FDLE in making judgments about how to conduct its investigation going forward.

Copies of Mr. Perez's June 21, 2007 letter and my July 24, 2007 response are attached.

Until your December 11 letter arrived, we heard nothing from FDLE in response to my July 24 letter, although we did understand from other sources that FDLE had decided to close its investigation. If that is not the case – and without trying to tell you how to conduct your investigation – we suggest that it would expedite and facilitate your investigation if you would confer with Department of Justice (“DOJ”) lawyers (Steve Grocki, 202/██████████; Dan Butler, 202/██████████), and/or with Mr. Foley’s lawyers (Bill Taylor and Leslie Kiernan, 202/██████████). As described in my July 24 letter, those lawyers have been working together to facilitate the provision of pertinent information to DOJ, consistent with the Constitution. The House has assisted that process (i) in the manner described in my July 24 letter, and (ii) since July 24, by searching the July 2005 back up tapes at DOJ’s request, using a list of search terms provided by DOJ. With DOJ’s agreement, copies of all resulting “hits” were provided to Mr. Foley’s lawyers who intend, we understand, to produce pertinent information to DOJ, consistent with the Constitution, as they have in the past.

I trust this information is helpful. Please contact me if you have other questions.

Sincerely,



Kerry W. Kircher
Deputy General Counsel

Enclosures

cc: Steve Grocki, Esq.
William W. Taylor, III, Esq.
Joe Onek, Senior Counsel



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

Office of Executive Investigations
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-8240
www.fdle.state.fl.us

Charlie Crist, *Governor*
Bill McCollum, *Attorney General*
Alex Sink, *Chief Financial Officer*
Charles H. Bronson, *Commissioner of Agriculture*

June 21, 2007

Honorable Geraldine R. Gennet
General Counsel
U.S. House of Representatives
219 Cannon HOB
Washington, DC 20515

Dear Ms. Gennet:

The Florida Department of Law Enforcement has been actively involved in investigating whether former U.S. Representative Mark Foley committed any state law violations. In order to further this agency's investigation we are respectfully requesting access to any and all computer equipment that the U.S. Government possesses that former Representative Foley utilized during his time in office. If we are not able to obtain access to such equipment we would appreciate a written response specifying why access is not possible. In addition, if access is denied, we would also appreciate it if you would specify what court process or other procedure that would be required in order to gain access to the equipment.

Thank you for your review and consideration of this request. If you have any questions or if we can provide additional information please feel free to contact Florida Department of Law Enforcement Special Agent Supervisor Bob LeFiles at (850) [REDACTED] or me at (850) [REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Perez', written over a white background.

Mark M. Perez
Chief Inspector

MMP/rcr

Also Sent by Facsimile to (202) [REDACTED]

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DAVID PLOTINSKY
ASSISTANT COUNSEL
CHRISTINE DAVENPORT
ASSISTANT COUNSEL
JOHN D. FILAMOR
ASSISTANT COUNSEL

July 24, 2007

BY FIRST-CLASS MAIL

Mark M. Perez, Chief Inspector
Florida Department of Law Enforcement
Office of Executive Investigations
P.O. Box 1489
Tallahassee, FL 32302-1489

Re: Mark Foley Investigation

Dear Mr. Perez:

I write in response to your June 21, 2007 letter to House General Counsel Geraldine R. Gennet.

Pursuant to the Rules of the House, the Clerk of the House became the Supervisor of the Office of the 16th Congressional District of Florida when Mr. Foley resigned on September 29, 2006. The Clerk took custody, and retains custody today, of certain computer equipment deemed to be potentially relevant to the investigations into Mr. Foley's conduct, specifically, the personal computer in Mr. Foley's Washington, D.C. office and the hard drives from two district office computers that Mr. Foley used. The Clerk also has custody of a non-current office server. Under the Rules of the House, the data on all this equipment – collectively, the "Office Computer Equipment" – belongs to former Congressman Foley, and he has copies of the data.

In addition, the Chief Administrative Officer of the House ("CAO") (i) took out of circulation and retained the back up tapes of the relevant House servers for the 14 days prior to Mr. Foley's resignation, and (ii) has in his possession certain back up tapes from late July 2005 that were taken out of circulation and retained at that time in connection with another Department of Justice ("DOJ") investigation. Both sets of back up tapes contain copies of email traffic to and from Mr. Foley's Washington, D.C. office. Because the Office Computer Equipment and the two sets of back up tapes may contain legislative information that is constitutionally privileged as to Mr. Foley under the Speech or Debate Clause, U.S. Const. art. I, § 6, cl. 1 – and because Mr. Foley has not waived that privilege – we cannot simply give you access to the Office Computer Equipment and the back up tapes.

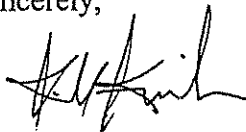
You should also be aware that:

Mark M. Perez, Chief Inspector
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July 24, 2007
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- we understand that Mr. Foley has already searched the data on the Office Computer Equipment – as well as the data on an office laptop that was in his possession at the time he resigned – and reported the results to DOJ. Accordingly, as to this data, we suggest you confer with Mr. Foley’s lawyers (Bill Taylor and Leslie Kiernan, 202/[REDACTED]), and/or with DOJ (Dan Butler, [REDACTED]).
- At DOJ’s request, the CAO has already searched the two sets of back up tapes for sexually explicit graphic attachments and embedded images. Nothing responsive was found.
- In light of the very considerable overlap that will exist between the emails on the September 2006 back up tapes and the data on the Office Computer Equipment, DOJ has not asked the CAO to search those back up tapes.
- Finally, with respect to the July 2005 back up tapes, DOJ is currently formulating search terms for the CAO to use to search those tapes. If you want the CAO to search that set of back up tapes, we suggest you coordinate with DOJ so that the CAO only has to search the tapes once. (Mr. Foley’s lawyers will conduct a Speech or Debate privilege review of any responsive documents the CAO locates that appear to be legislative in nature.)

Thank you for your attention.

Sincerely,



Kerry W. Kircher
Deputy General Counsel

cc: Honorable Lorraine C. Miller, Clerk
Honorable Daniel P. Beard, CAO