

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

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.

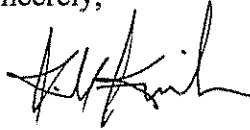
You should also be aware that:

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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, 202/778-1800), and/or with DOJ (Dan Butler, 202/353-9431).
- 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 to 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