



Failure: FOIA Compliance Oversight & Funding

**Part 2
No Joking Matter
+
FOIA Advisory Committee
Under the Bus
+
DOJ OIP FOIA
Compliance Inquiries
OGIS Mediation & Compliance
Cheating?**

**PUBLIC COMMENT
June 15, 2022**

**by Robert Hammond
foiacompliance@gmail.com**

**Copy to:
Senate Judiciary, House
Oversight, Senator Patrick Leahy,
Senator Charles Grassley**

Whistleblower@judiciary-rep.senate.gov

Outline

1. [Overview – Failure of Compliance Oversight – DOJ OIP & OGIS \(12.3.2021\)](#)
2. [Who is Policing FOIA? DOJ OIP? NARA OGIS?](#)
3. [Absent Oversight & \\$\\$, FOIA Dies in Darkness & Neglect](#)
4. [Compliance Oversight Proposal – DOJ OIP & NARA OGIS](#)
5. [DOJ OIP Mission](#)
6. [FOIA Compliance Inquiries – What Are They?](#)
7. [DOJ OIP Compliance Inquiries Reported 2016 to 2020](#)
8. [DOJ OIP Refusal to Release 2017 Inquiry Records](#)
9. [DOJ Combines 23 Cases, States the Impossible, & Fails](#)
10. [DOJ OIP's DeLorean Time Machine?](#)
11. [Chilling Example: Ten Aged Appeals & FOIA Requests](#)
12. [OGIS's Response Violates Law and Lacks Common Sense](#)
13. [OGIS & OIP Do Nothing, DOD Continues False Reporting](#)
14. [Summary – Failure of Compliance Oversight](#)
[Backup Cases](#) (Index next page)
15. [Abraham, Martin and John – Our Best Days Are Ahead](#)
16. [We The People. Declaration of Independence 1776!](#)
17. [We The People. U.S. Constitution 1789!](#)

BACKUP

- A. Unauthorized Disposition Format. FY2021 Open Cases**
- B. Correspondence to OIP – “I Need Your Help.”**
- C. Correspondence From OIP – “Our Limited Resources”**
- D. Complaint to Attorney General; DOJ OIP FY 2017 Actions**
 - **Enclosure 1, August 9, 2017 Sample Correspondence**
 - **Enclosure 2, September 20, 2017 Sample Correspondence**
 - **Enclosure 3, October 23, 2017 Sample Correspondence**
 - **Enclosure 4, November 11, 2017 Sample Correspondence**
 - **Enclosure 5, Email to Mr. Tillotson III Inaccurate 2017 Chief FOIA Officer Report**

(Based on information, belief and records available to me)

- 15. Abraham, Martin and John – Our Best Days Are Ahead**
- 16. We The People. Declaration of Independence 1776!**
- 17. We The People. U.S. Constitution 1789!**

Overview – Failure of Compliance Oversight – DOJ OIP & OGIS

- There is a **total failure of FOIA compliance oversight** by both DOJ Office of Information Policy (DOJ OIP) & Office of Government Information Services (OGIS) due in part to grossly inadequate funding, which they both admit.
- In our military, when commanders do not stand up and tell the boss (or the boss doesn't listen), "I cannot accomplish the mission with these resources, the mission will fail," people die. Here FOIA dies in darkness.
- **Known massive, False FOIA Reporting** and other issues are not addressed.
- DOJ and OGIS fail to close cases, their data is not transparent, their own FOIA reporting is inaccurate, and they loath holding agencies accountable.
- DOJ FOIA Compliance Inquiries are one of the few safeguards for requesters.
- FOIA requesters can challenge agency violations of law or policy.
- In theory OGIS also offers mediation => uses that data to effect compliance audits and reviews of Annual FOIA Reports together with DOJ OIP. Not so.
- DOJ, DOD, Navy & Defense Health Agency (DHA) Offices of Inspector General unresponsive (e.g., Complaint to Attorney General; DOJ OIP FY 2017 Actions

Update 12/2.2021. FOIA Advisory Committee Under the Bus

As many of you know, I have been working with a consortium of likeminded FOIA advocates, media professionals and Congress to gain more Congressional oversight hearings, GAO audits and funding for the Office of Government Information Services (OGIS) and DOJ Office of Information Policy (OIP) for the OGIS FOIA mediation and compliance missions and OIP Compliance oversight mission.

I want NARA to succeed. I want DOJ Office of Information Policy to Succeed. I want the Chief FOIA Officers Council and the FOIA Advisory Committee to succeed. Your missions are vital to a free and open government.

- In her comments during a productive but unlawfully held November 17, 2021 Chief FOIA Officers Council Meeting (one of many not properly advertised in the Federal Register as mandated by law), OGIS Director, Alina Semo, stated,

"We sometimes joke, we are not the FOIA police. We cannot write tickets for non-compliance, or failure to participate in our [inaudible 00:37:50] process."

I disagree. FOIA Compliance is OGIS statutory mission, and it is no joking matter. OGIS Director's comments appear to an errant response to my

October 28, 2021 Written Public Comments to the CFO Council, "[Failure: FOIA Compliance Oversight & Funding](#)," and reiterated herein.

When there are no cops on the beat, chaos and anarchy ensue. Here FOIA dies in darkness.

- Then, in the **2021 OGIS Ombudsman Annual Report to Congress and the President of the United States**, the Director states:

"Explanation: The 2018–2020 term of the FOIA Advisory Committee recommended that the Archivist task OGIS with asking Congress to (1) engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies, and strengthen OGIS with clearer authority and expanded resources (Recommendation No. 2020-19); and (2) address funding for agency FOIA programs and ensure that agencies have sufficient resources to comply with FOIA (Recommendation No. 2020-20).

With regard to Recommendation No. 2020-19, as the Committee explained in its final report, **"in the absence of oversight from Congress, FOIA otherwise lacks a sustaining enforcement mechanism. It is incumbent upon Congress to ensure that our country has a robust, well-funded, and carefully considered**

overall FOIA program to deliver the transparency and accountability that the American people deserve and expect.”

The final report provides specific recommendations for ways that oversight could be achieved, including increased hearings and inquiries as to agency performance.

While we support regular and coordinated communication between Congress and federal agencies, **having more hearings and formal inquiries may not necessarily achieve the intended result of robust, well-funded, and carefully considered FOIA programs. Oversight in the form of additional hearings and inquiries risks imposing additional burdens on agency FOIA programs that are already straining to respond to FOIA requests.”**

I disagree. FOIA Advisory Committee Under the Bus. Congressional oversight hearings of OGIS, DOJ OIP, and the FOIA Process are essential, and they are coming.

Meanwhile I have sought via FOIA countless records related to OGIS funding and the accuracy of OGIS reporting in its Ombudsman Reports (which I believe are materially inaccurate). More to follow.

Who is Policing FOIA? DOJ OIP? NARA OGIS?

DOJ OIP:

- The [DOJ] Office of Information Policy is responsible for developing policy guidance for Executive Branch agencies on the Freedom of Information Act (FOIA), providing legal counsel and training to agency personnel on the procedural and substantive aspects of the Act, and **for overseeing agency compliance with the law.**

NARA's OGIS:

- OGIS shall “identify procedures and methods for improving compliance” under the FOIA.
- In providing mediation services, OGIS may issue advisory opinions at its discretion or upon the request of any party to the dispute.
- Not less than annually OGIS shall submit to Congress and the President, and make available to the public electronically:
 1. A report on its findings from its reviews of agency policies, procedures, and compliance.
 2. A summary of its mediation services, including any advisory opinions issued and the number of times each agency engaged in dispute resolution with the assistance of OGIS or the FOIA Public Liaison.

Absent Oversight & \$\$, FOIA Dies in Darkness & Neglect

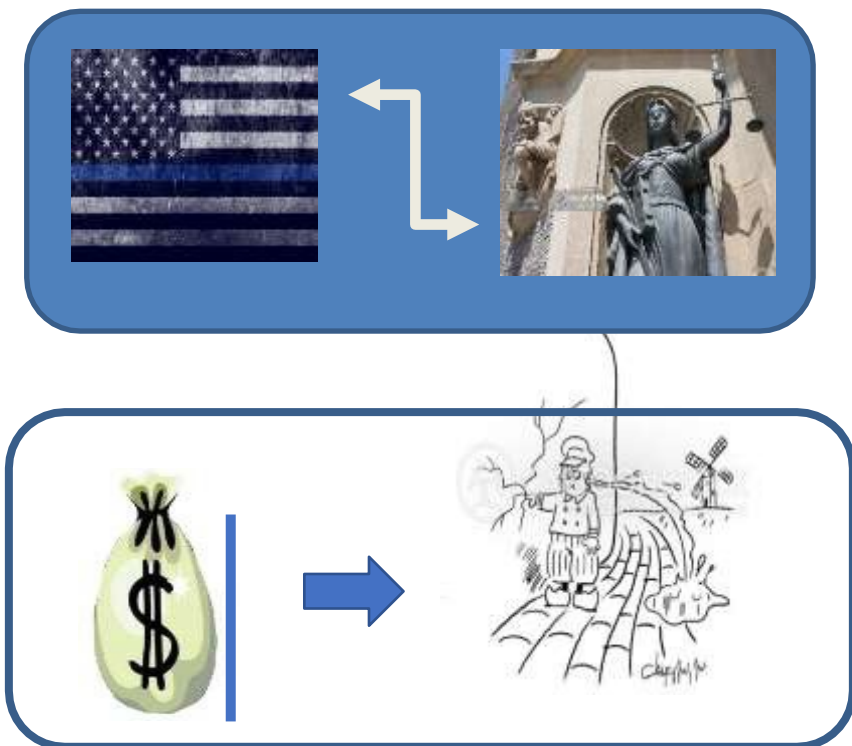


Figure 1

OGIS Budget. Not adjust for inflation or mandatory pay increases.	
	\$ in Thousands Requested
FY 2022	\$1,588 (Not funded.CR.)
FY 2021	\$1,289
FY 2020	\$1,212
FY 2019	\$1,317
FY 2018	\$1,012
FY 2017	\$1,114
FY 2016	\$1,094
FY 2015	\$913
FY 2014	\$1,074
FY 2013	\$1,629
FY 2012	\$1,529

- For OGIS, the situation dire. OGIS had **\$1.629M in 2013** for compliance and mediation with a mediation caseload of 300 –400 cases per year. That grew to over **4,600 cases in 2019** with only **\$1.2M by 2020**, despite inflation and mandatory pay raises. All the while, **NARA** got every dime that they asked for in 2019: **\$377.8M**.
- DOJ OIP similarly states a “lack of resources.”

DOJ's Office of Information Policy and NARA's OGIS Should:

- Upon receipt, provide each complainant an individualized DOJ Compliance Inquiry or OGIS Dispute Resolution Request number (#).
- DOJ cite in DOJ's Annual Litigation Compliance Report to Congress and the President the # of Compliance Inquiries received; # processed, time to process, opening and closing case numbers & dates.
- OGIS in Ombudsman Report cite the number of times each agency engaged in dispute resolution with the assistance of OGIS or the FOIA Public Liaison as well as the number of times agencies refused to participate (not number of incoming requests, which are materially different).
- DOJ OIP and OGIS contemporaneously post the case numbers, letters to the agencies and case closure letters for DOJ Compliance Inquiries & OGIS Mediation Request from 2017 forward using the NARA Unauthorized Disposition Model. *See Backup, Appendix A.*
(*See [Unauthorized Disposition of Federal Records | National Archives](#)*)

The mission of the **Office of Information Policy (OIP)**

is to encourage and oversee agency compliance with the Freedom of Information Act (FOIA). The Freedom of Information Act (FOIA) requires the Attorney General of the United States to submit a report on or before March 1 of each calendar year to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President detailing the Department's efforts for the prior calendar year to encourage agency compliance with the law. 5 U.S.C. § 552(e)(6) (2016).

Bobak Talebian was DOJ OIP's Chief, FOIA Compliance staff through February 2020 when he became the Director of the Office of Information Policy and was replaced by Lindsay Steel. (Guys, I need your help.)

FOIA Compliance Inquiries – What Are They?

“As part of its oversight and guidance responsibilities, OIP reviews inquiries made by the public raising issues regarding agencies' compliance with the FOIA statute and the Attorney General's FOIA Guidelines. Compliance inquiries may be submitted in writing to OIP by mail or e-mail.

Office of Information Policy (OIP)
U.S. Department of Justice
6th Floor
441 G St. N.W.
Washington, D.C. 20530
E-mail: OIP.ComplianceInquiry@usdoj.gov”

DOJ OIP Compliance Inquires Reported 2016 to 2020

- DOJ reports responding to Congressional Compliance Inquiries but only reports receiving inquiries from the Public (not responses). Numbers appear materially inaccurate.
- DOJ's 2017 Litigation & Compliance Report states:

“In 2017, OIP responded to nine congressional inquiries pertaining to FOIA-related matters. OIP also received and looked into nine matters from members of the public who had concerns about how the FOIA was being administered at an agency...”
- DOJ does not report beginning and ending backlogs, case numbers, dates received, and dates closed, etc. (although it could easily do so for the 18 – 20 average caseload per year) to ensure that cases are being timely processed and closed & to better inform Congress, the President, the American citizens.
- In my experience egregious FOIA compliance violations are not being addressed.

DOJ OIP Compliance Inquiries Reported 2016 to 2020

<u>Year</u>	<u>Congressional Inquiries</u>	<u>Public Inquiries</u>	<u>Total</u>
2020	5	17	22
2019	10	6	16
2018	10	6	16
2017	9	9	18
2016	9	9	<u>18</u>
		Total	90

(Numbers appear materially under-reported)

DOJ OIP Refusal to Release 2017 Inquiry Records

- My 06/25/2018 FOIA request DOJ-2018-006245 seeks, for DOJ's 2017 Litigation & Compliance Report:
 - Copies of the “nine congressional inquiries” and the reported “received” and looked into nine matters from members of the public.”
- DOJ initially classified DOJ-2018-006245 as “Simple” thru FY 2020.
 - Now DOJ states it is Complex; projected completion is October 29, 2021.
 - Bobak Talebian has the records
- After 3+ yrs., DOJ OIP has yet to release any of my 2017 Compliance Inquiries. See examples: Backup, Appendix B - Complaint to Attorney General; DOJ OIP FY 2017 Actions

DOJ Combines 23 Cases, States the Impossible, & Fails

- On April 5, 2021, DOJ OIP wrongly combined 23 compliance Inquiries over multiple years to a single case # CI 2020-0024, which will again result in false reporting in DOJ's Annual report (23 does not equal 1).
- DOJ falsely claimed that Mr. Talebian **impossibly** addressed in **2018** my **December 4, 2020** Compliance Inquiry (regarding Navy's 08/19/2019 response to my Appeal DON-NAVY-2019-005596 at issue).
- Then, regarding that December 4, 2020 Compliance Inquiry:
 - Did not address the most serious issues, including False FOIA Reporting.
 - The subject of that Compliance Inquiry is “DON JAG Appellate Determination dtd May 17, 2019. APPEAL DON-NAVY-2019-005596 False Statements and Potential Violations of Law.”
 - I noted 7 issues. OIP only addressed issue #7 and did not address the others.

For December 4, 2020 Compliance Inquiry DOJ OIP stated impossibly:

“December 4, 2020 & February 6, 2021:

(Reference Appeal DON-NAVY-2019-005596 [of Request DON-NAVY-2018-011839 / your Request DON-NAVY-2019-001207])

Within these emails, you explained that DON JAG failed to advise you of your rights to seek dispute resolution from the Office of Government Information Services (OGIS).

Please be advised that documentation in this office indicates that this matter was previously reviewed and resolved. Former Chief of Compliance Bobak Talebian, now Director of OIP, addressed each of the concerns you cited in your email via prior correspondence dating from between July 2018 and October 2018. Mr. Talebian also discussed these matters in a telephone call with you on October 30, 2018.

As such, please be advised that your email inquiries relating to this topic are now considered closed in this office.”

DOJ OIP's DeLorean Time Machine?

?



Chilling Example: Ten Aged Appeals & FOIA Requests

DOJ and OGIS fail to close cases, their data is not transparent, their own FOIA reporting is inaccurate, and they loath holding agencies accountable.

Massive, widely known, longstanding False FOIA reporting continues unabated. For example:

In 2014, I submitted ten, confirmed receipt, expedited FOIA Requests to Walter Reed, which Walter Reed did not answer or report as open in its Annual FOIA Reports. I appealed to Walter Reed's parent, Defense Health Agency (DHA), who similarly did not respond or report the ten open appeals.

I provided correspondence that ultimately went to the entire DHA chain of command, DOD FOIA chain of command, OGIS and DOJ OIP. In one of many follow-ups, on May 18 2015, I advised the DHA and DOD chain of command:

“By the action that you are taking, you will be knowingly submitting a false Annual FOIA Report to leadership, the Attorney General of the United States and in tum to the United States Congress.”

OGIS's Response Violates Law and Lacks Common Sense

Regarding ten aged, unreported FOIA requests and appeals, **OGIS's ludicrous, unlawful alleged mediation response** stated by letter of May 3, 2017:

“In response to our inquiry about the status of your pending appeals, the Privacy Office explained that DHA will combine your ten appeals regarding FOIA requests for personal information because the requests/appeals are thematically linked and DHA's appeal's unit received them within days of one another.”

---/

OGIS, I don't see the block on the Annual FOIA Report for requests/appeals that are thematically linked and received within days of one another, thereby allowing ten appeals to be combined into one. Also, Walter Reed apparently never reported the 10 FOIA requests.

OGIS and DOJ knowingly then allowed DHA to submit a false FOIA report and Chief FOIA Officers Report. False FOIA Reporting continues unabated despite OGIS and DOJ OIP Compliance oversight responsibilities to review annual FOIA Reports. I personally have several hundred examples.

OGIS & OIP Do Nothing, DOD Continues False Reporting

Even after admitting to OGIS that they had not been reporting these ten appeals, DHA and DOD continued knowingly submitting false reports, consciously omitting these ten appeals and the associated FOIA requests.

DHA/DOD then brazenly submitted a knowingly false 2017 Chief FOIA Officer Report to the Attorney General, falsely claiming at numbered page 24 that “DHA closed their entire ten oldest [appeals].” DHA/DOD had also submitted a false FY 2016 Annual FOIA Report, claiming that their oldest appeal was 327 days old. See <https://open.defense.gov/Transparency/FOIA.aspx> .

By email, I advised Mr. Tillotson David Tillotson III, DOD Chief FOIA Officer & Assistant Chief Management Officer (ACMO), of incontrovertible discrepancies, noting that he was personally aware of this discrepancy and that his staff was currently reviewing the matter of the ten open, unreported appeals with DOJ OIP as part of a DOJ compliance investigation. I further advised him that “The number of aged, still open requests, appeals and consultations dating back to 2013 is staggering.” (February 19, 2018 7:20 AM, Subject: Inaccurate FY 2017 DOD CIO [Chief FOIA Officer] Report to DOJ).

Summary – Failure of Compliance Oversight

- There is a **total failure of FOIA compliance oversight by both DOJ OIP & OGIS** due in part to grossly inadequate funding, which they both admit.
- **Known massive, False FOIA Reporting** and other issues are not addressed.
- DOJ and OGIS fail to close cases, their data is not transparent, their own FOIA reporting is inaccurate, and they loath holding agencies accountable.
- A tragic failure of leadership. FOIA dies in darkness and neglect.
- DOJ, DOD, Navy & Defense Health Agency (DHA) Offices of Inspector General unresponsive (e.g., Complaint to Attorney General; DOJ OIP FY 2017 Actions)
- The Chief FOIA Officers Council should adopt my proposal to add transparency and accountability to DOJ OIP and NARA OGIS case reporting.



BACKUP

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(Based on information, belief and records available to me)

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A. Unauthorized Disposition of Federal Records

Federal agencies are required to "notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency" ([36 CFR Part 1230](#)). NARA also receives notifications from other sources such as the news media and private citizens. NARA establishes unauthorized disposition case files to track each allegation and any communications with the agency until the issue is resolved.

Listed below are unauthorized disposition cases from October 1, 2016 to present and includes pdf files of open and close letters (when available or permissible) for each case from NARA to the agency.

The unauthorized disposition case file contains more information including the communications between NARA and the agency. If you would like more information on a case, please contact the NARA [Freedom of Information Act \(FOIA\) Office](#) to file a FOIA request for the case information. Please use the Case ID indicated on the below table in your FOIA request. You can also see some previously requested records in the [FOIA Electronic Reading Room](#). For additional information on older cases, you can review this [spreadsheet](#) of all cases that were closed prior to October 1, 2016.

The [Records Management Oversight and Reporting Program](#) is responsible for handling all unauthorized disposition cases. For more information or to report a case of unauthorized disposition, please contact us via email at UnauthorizedDisposition@nara.gov.

A. Unauthorized Disposition Format. FY 2021 Open Cases

LAURENCE BREWER
Chief Records Officer for the U.S. Government

Agency	Case Open Date	Case ID	Records	Status	Case Letters
Navy	11/9/2020	UD-2021-0004	Allegation that the Navy's use of outdated authorities has resulted in the early destruction of FOIA records. [Patterson. Financial & Contracting & Other Records. Sought via FOIA. DON-NAVY-2019-011817]	Pending review/follow-up	UD-2021-0004 Open
Navy	2/17/2021	UD-2021-0017	Allegation of destruction of FOIA records relating to an April 2014 request for Walter Reed National Military Medical Center's FY 2013 FOIA Report submission to the Navy's BUMED, along with associated raw data, enclosures, and communications.	Pending review/follow-up	UD-2021-0017 Open
Navy	7/2/2021	UD-2021-0033	Allegation that the Navy's Office of Judge Advocate General unauthorized destruction of FOIA case processing records <u>[FOIA DON 21-A (DON-NAVY-2021-006765). FY 2020 Moot Appellate Determinations]</u>	Pending review/follow-up	UD-2021-0033 Open

Defense Health Agency	3/1/2021	UD-2021-0018	Allegation of destruction of FOIA requested records that identified Walter Reed National Military Medical Center 's reporting chains of command for FY 2013 and FY 2014 FOIA and Privacy reports; and related civil action court records.	Ongoing litigation	UD-2021-0018 Open
Defense Health Agency	3/1/2021	UD-2021-0019	Allegation of destruction of FOIA requested records [Walter Reed National Military Medical Center WRNMC #14-1. certified mail tracking numbers 70121640000096651035 and 70121640000096654524]	Ongoing litigation	UD-2021-0019 Open
Defense Health Agency	3/1/2021	UD-2021-0020	Allegation regarding the alteration and unlawfully destruction of FY 2013 FOIA processing logs and related communication records.	Ongoing litigation	UD-2021-0020 Open
Defense Health Agency	[4/17/2021 3:47 PM]	??? 4/17/2021 3:47 PM	The Walter Reed National Military Medical Center ("Walter Reed" or "WRNMMC") FOIA Officer, Judy J. Bizzell, during or prior to litigation, destroyed original records related to my FOIA Request WRNMC #14-R of April 28, 2014 or they are in eminent danger of being destroyed. Case 16-421 KBJ in the District Court of Colombia. All records are available from PACER.gov.	???	???

B. Correspondence to OIP – “I Need Your Help.”

“I am asking for your help.”

“I would like to work cooperatively with you and your staff to improve FOIA processes.”

“I have seen the body of work that your office produces and respect that you have a small staff juxtaposition with the scope of your responsibilities. You will never get more resources by under-reporting cases. OIP provides one of the few safeguards for private citizen FOIA requesters. To the extent that I can assist in lobbying for more resources and enlisting support from others, I am willing to do so, provide that you play everything straight up going forward.”

C. Correspondence From OIP – “Our Limited Resources”

“In determining which matters may constitute compliance inquiries, our office considers factors including, but not limited to, whether the matter concerns compliance with a specific requirement under the FOIA and whether OIP needs to gather additional information from an agency in order to resolve the concern.”

“Our office handles inquiries in the most efficient and effective manner, given our limited resources ...”

“It is our desire to assist you with your FOIA concerns.”

--/

OIP,

- The only “factor” is whether the compliance inquiry allegations involve violations of law or policy, which all of mine do.
- I am seeking additional funding for OGIS & OIP, but you must stand up for yourselves.

D. Complaint to Attorney General; DOJ OIP FY 2017 Actions

Robert Hammond
REDACTED

March 30, 2019

Hon. Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Subject: Complaint Regarding DOJ OIP Inaccurate FOIA Reporting to Congress and Facilitation of Same WRT DOD

Dear Sir:

I have not received any response to my letter of February 26, 2019 in which I complained that (in an unsigned letter dated February 15, 2019) your OIG Investigation Division stated that, in lieu of investigating my December 23, 2018 complaint (subject as above), DOJ referred the matter back to the DOJ OIP Director, Ms. Melanie A. Pustay, whom I am alleging committed the wrongdoing.

False reporting to the Attorney General, Congress and the American people in published reports is a very serious matter worthy of your attention.

Please reopen the investigation and bring all records of my communications with DOJ OIP, DOJ OIP's internal communications related to same and DOJ's communications with DOD related to same into your investigation package.

Thank you.

With my respect,

Robert Hammond

Copy to:

U.S. Department of Justice
Office of the Inspector General HOTLINE
950 Pennsylvania Avenue, N.W.,
Suite 4706
Washington, D.C. 20530-0001
Fax: (202) 616-9881

Robert Hammond
REDACTED

December 23, 2018

Hon. Matthew G. Whitaker
Attorney General of the United States (Acting)
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. Washington, D.C. 20530

Hon. Robin C. Ashton
Chief of Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. Washington, D.C. 20530

Hon. Michael E. Horowitz Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. Washington, D.C. 20530

I am writing to inform you of and to initiate a formal complaint regarding the Department of Justice Office of Information Policy, (DOJ OIP) inaccurate Freedom of Information Act (FOIA) reporting to Congress with respect to the Department of Justice Freedom of Information Act 2017 Litigation and Compliance Report and of DOJ OIP's active facilitation of massively inaccurate reporting by the Department of Defense (DOD), with respect to DOD's FY 2017 Annual FOIA Report and DOD's FY 2017 Chief Freedom of Information Act (FOIA) Officer Report to the Department of Justice. What's more, in violation of law, DOD has refused to publish the raw statistical data for its annual FOIA reports, which would further expose their fraudulent reporting; and DOJ OIP, tasked with overseeing agency compliance, has not done anything whatsoever about it.

BACKGROUND

The Office of Information Policy is responsible for developing policy guidance for Executive Branch agencies on the Freedom of Information Act (FOIA), providing legal counsel and training to agency personnel on the procedural and substantive aspects of the Act, and for overseeing agency compliance with the law. Ms. Melanie Ann Pustay has been the Director of the Office of Information Policy since 2007. She reports to Mr. Jesse Panuccio.

The Freedom of Information Act (FOIA) requires the Department of Justice to submit a report to Congress each year detailing the Department's efforts to encourage agency compliance with the law. 5 U.S.C. § 552(e)(6) (2016). DOJ's 2017 submission is inaccurate, and DOJ was aware of this before submitting the report.

The FOIA requires each federal agency to submit an Annual Report to the Attorney General each year. These reports contain detailed statistics on the numbers of requests received and processed by each agency, the time taken to respond, and the outcome of each request, as well as many other vital statistics regarding the administration of the FOIA at federal departments and agencies. DOJ OIP reviews those reports for accuracy before they are finalized, made available to Congress, and published on public websites and. DOJ OIP was well aware that DOD's FY 2017 annual FOIA report was significantly inaccurate, based on my compliance inquiries, yet they allowed DOD's report to be finalized and published.

The 2009 Department of Justice's Freedom of Information Act (FOIA) Guidelines require the Chief FOIA Officer for each federal agency to submit a report to the Attorney General containing a detailed description of the steps undertaken by the agency to improve FOIA compliance and transparency. DOD's 2017 Chief FOIA Officer's reports is materially inaccurate with respect to Defense Health Agency (DHA). DOJ OIP was well aware of the inaccuracies before these reports were published.

Section 8 of the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, added to the FOIA the requirement that each agency "make the raw statistical data used in its reports available electronically to the public upon request." The FOIA Improvement Act of 2016 amended this provision to now require agencies to proactively make the raw data from their final, published Annual FOIA Reports available without the need for a request. See 5 U.S.C. § 552(e)(3)(A)-(C) (2014), amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538. The raw data identifies every FOIA request and appeal by date received, tracking number, requester and disposition, allowing all requesters to see whether or not DOD has even been reporting their requests and appeals. Together with the Annual FOIA Reports, this is an important safeguard, without which DOD can, and does, simply ignore requests and appeals and never act on them. DOJ OIP knows that that DOD is refusing to release their raw statistical and that DOD's raw statistical data cannot be accurate. Again, DOJ OIP, tasked with overseeing agency compliance, has not done anything whatsoever about it.

FACTS FURTHER SUPPORTING THE NEED FOR INVESTIGATION OF OIP'S ACTIONS

The DOJ FOIA 2017 Litigation and Compliance Report states at paragraph K., Congressional and Compliance Inquiries:

In 2017, OIP responded to nine congressional inquiries pertaining to FOIA- related matters. OIP also received and looked into nine matters from members of the public who had concerns about how the FOIA was being administered at an agency. In response to these compliance inquiries, OIP discussed the issues with the agency involved and, whenever appropriate, made recommendations on the steps needed to address the concern.

DOJ has yet to release records that I am seeking via FOIA pertaining OIP's 2017 report, which will document that DOJ OIP did not act on or report (as required by statute) four distinct compliance inquiries/complaints regarding DOD's non-compliance with law and DOD's significant, documented, and incontrovertible false reporting. Records will show that DOJ's refusal to act and failure to report are not simple administrative error. In my view, record evidence suggests that DOJ participated in covering-up DOD' extensive false reporting that is widely known and is ongoing today. The few examples discussed below are just the tip of a very large iceberg.

On August 9, 2017, I sent DOJ correspondence showing that DHA had already admitted to the Office of Government Services (OGIS) that they were knowingly not reporting ten open administrative appeals dating back to 2015, which I had been complaining about four years. For example, I advised DHA on May 18, 2015 2:51 PM., "By the action that you are taking, you will be knowingly submitting a false Annual FOIA Report to leadership, the Attorney General of the United States and in turn to the United States Congress." Yet, DHA still did not report the appeals, even after I advised the entire DHA/DOD reporting chain of this ongoing fraud, and even after DHA admitted to OGIS that they were not reporting them. As to DOJ, on 7/2/2018 1:37:11, nearly a year after my complaint and after I insisted that DOJ afford my inquiry the same deference as if it had been submitted by a member of Congress, DOJ sent me an undated letter of reply. That undated letter states that DHA acknowledged the discrepant reporting, but unbelievably, blamed it on a lack of standard operating procedures, rather the premediated, deliberate act documented in the records. See sample correspondence at Enclosure 1.

On September 20, 2017, I sent a compliance inquiry regarding another unanswered DHA administrative appeal. DOJ has never responded to that inquiry, allowing DOD to still not report it as open in their FY 2017 Annual FOIA Report. See Enclosure 2.

On October 23, 2017, I sent DOJ OIP a compliance inquiry in which Walter Reed National Military Medical Center was assigning FY 2017 FOIA case numbers to 16 open FOIA requests dating back to 2014, 2015 and 2016, despite Walter Reed having incontrovertibly received the requests years earlier. Walter Reed was not reporting these open requests through DHA/DOD, and their entire reporting chain of command/senior leadership was aware of it. DOJ took no action in 2017 and has still not issued any correspondence responding to my inquiry.

See Enclosure 4.

On November 11, 2017, I sent DOJ OIP another compliance inquiry regarding another example of an aged, open DHA FOIA appeal. DOJ OIP took no action in 2017, nor did they cause DOD to correctly report this open appeal. DOJ OIP has never responded to that letter. See Enclosure 5.

Year 2017 came and went without any action by or response from DOJ OIP. Meanwhile DOD submitted its 2017 CIO report to DOJ, which both DOD and DOJ knew full well was materially inaccurate Yet, DOJ published it anyway.

On February 19, 2018 I notified DOD's Chief FIOA Officer, Mr. David Tillotson III, that DOD's 2017 Chief FOIA Officer's Report could not be accurate in that it stated that DHA had cleared it's ten oldest appeals, all the while his staff and DOJ OIP had my

compliance inquiry of August 8, 2017 regarding ten specific aged appeals that were older than any that DOD had incontrovertibly not reported. I notified Mr. Tillotson that, “The number of aged, still open requests, appeals and consultations dating back to 2013 is staggering.” See Enclosure 5. I sent that same correspondence to DOJ OIP.

Before going to DOJ, I had advised everyone in DOD’s reporting chain of command of these and countless other specific instances of false reporting, vastly beyond what is discussed here. I have repeatedly asked DOD’ Chief FOIA Officer and DOD’s Director of Oversight and Compliance to conduct an independent audit of DHA (and Navy) FOIA reporting, which is within their responsibility, but they have not done so. Rather than providing the American public and Congress a full accounting of DOD’s false reporting, it appears that DOD and DOJ OIP plan to sweep this all under the rug with an innocuous footnote in DOD’s FY 2018 report simply stating something to the effect of,” After reviewing their database, DHA, updated the number of appeals and requests pending as of the start of the Fiscal Year.” So, for example, if DHA were to answer a five-year-old appeal, that appeal would never have been accounted for as to its age but would rather be averaged into the processing time for all appeals (marginally affecting that statistic). I believe that DOJ should hold DOD accountable and require to be published an addendum documenting by request and appeal every single adjustment to DOD’s FY 2017 Annual FOIA Report rather than glossing over it.

In 2018, I provided DOJ OIP similar examples of DOD’s non-compliance, which I will address at a later date. DOJ has not yet submitted its 2018 Litigation and Compliance Report.

PREEMPTIVE DISCLOSURE.

Whenever I address such matters with DOD, rather than responding accurately to their own misdeeds, DOD attacks me personally, impugning my integrity.

Yes, I submit a lot of FOIA requests, largely related to the lack of integrity in DOD’s FOIA and Privacy Act processes and false reporting related to those Acts. As a result of my open whistleblower activity, I now have countless records documenting same.

Yes, at my personal expense, I have been in active litigation with DOD since March 2016 seeking records of Walter Reed’s FY 2013-2104 FOIA reports records, which are required by statute to be released. I am also seeking their Privacy Act reporting records and addressing an alleged Privacy Act violation. There is no monetary gain in a FOIA case. None if this is relevant to the issues raised herein.

Ax to grind? None. I have served the DOD with distinction in some capacity every day of my adult life since entering the Naval Academy in 1972. They taught us to be truthful and accountable for our actions. My ax, I suppose, is that a few bad apples within DOD believe that they are above the law, and leadership, in this instance, has not lived up to the high standards set by Defense Secretary Mattis.

ACTIONS SOUGHT.

First, a DOJ IG investigation and a professional ethics investigation into DOJ OIP's own false reporting to Congress, establishing what occurred, who is responsible and why. Second, included in those investigations, an accurate investigation as to DOJ OIP's active facilitation of DOD's false reporting, who is responsible and why it occurred. Third, a complete accounting of every single correction by request and appeal of any adjustments that DOD makes from its FY 2017 to FY 2018 Annual Report. I expect the extent of those adjustments to be enormous.

Congress and the American public have a right to know of this fraud.

I will appreciate an opportunity to participate in such DOJ investigations. Thank you,

[Based on information, belief and records available to me.]

With my respect,

/s/

Robert Hammond

Enclosures:

1. August 9, 2017 Sample Correspondence
2. September 20, 2017 Sample Correspondence
3. October 23, 2017 Sample Correspondence
4. November 11, 2017 Sample Correspondence
5. Enclosure 5, Email to Mr. Tillotson III; Inaccurate 2017 Chief FOIA Officer Report, As Forwarded

Copy to:

Hon Senator Chuck Grassley Committee on the Judiciary. 135 Hart Senate Office Building Washington, D.C. 20510

Phone: 202-224-3744

Fax: 202-224-6020

whistleblower@judiciary-rep.senate.gov

Enclosure 1, August 9, 2017 Sample Correspondence

Subject: Fwd: Re: PART 1. GOT CAUGHT? Re: DHA FOIA Compliance-Aged DHA Administrative Appeal

Date: 8/9/2017 5:44:34 PM Eastern Standard Time From: REDACTED

To: OIP.ComplianceInquiry@us.doj.gov

Cc: [REDACTED](#)

Dear Sir:

Please assist. There are three emails related to this matter.

DHA has not acted on these ten aged administrative appeals dating back to 2014 (sought with expedited processing) and they did not report them in the annual FOIA Reports to the Attorney General and to Congress. I confirmed this from publicly available records and OGIS also confirmed this with DHA I am seeking assistance on both issues.

OGIS reports that DHA amended its FY 2016 Annual FOIA report to capture one of the ten appeals. Can you provide me information on what was provided to your office in that regard? This is just one example of evident intentional massive under-reporting .This is extremely serious.

Attached you will find two of the ten requests related to Ms. Judy Bizzell, Walter Reed's FOIA Officer. Walter Reed is a subordinate command of DHA. You will also find release of the very same information with regard to DHA's own FOIA Officer, making any refusal to release the requested information capricious and arbitrary.

Thank you in advance,

With my respect,
Robert Hammond

From: dha.walter.reed.foia.pa@gmail.com

To: [REDACTED](#)

Sent: 6/14/2017 5:21:21 AM Eastern Standard Time

Subject: Re: PART 1. GOT CAUGHT? Re: DHA FOIA Compliance-Aged DHA Administrative Appe...

On Wed, Jun 14, 2017 at 5:08 AM [REDACTED](#) wrote:

Enclosure 1, August 9, 2017 Sample Correspondence

From: [REDACTED](#)

To: Linda.Thomas@dha.mil, paul.t.crygarowicz.mil@mail.mil, joseph.e.davidge.civ@mail.mil, judy.j.bizzell.civ@mail.mil, dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mail.mil

CC: david.tillotson1.civ@mail.mil, joo.y.chung2.civ@mail.mil, cindy.l.allard.civ@mail.mil, raquel.c.bono.mil@mail.mil, david.a.lane@med.navy.mil, colin.g.chin.mil@mail.mil, Jeffrye.b.clark4.mil@mail.mil, michael.s.heimall@mail.mil

Sent: 6/11/2017 10:32:48 A.M. Eastern Daylight Time

Subj: PART 1. GOT CAUGHT? Re: DHA FOIA Compliance-Aged DHA Administrative Appeals

PART 1. GOT CAUGHT?

Dear Ms. Thomas.

Will DHA now be reporting All ten of these expedited 2014 administrative appeals as open in your amended FOIA reports? Surely these were all among those that you reported to ODCMO on March 23, 2017.

I don't see the block on the Annual FOIA Report for requests/appeals that thematically linked and received by DHA's appeals unit within days of one another (Who writes this stuff? Seriously ... Who?)

How will this match up with Walter Reed's FOIA Report?

Can you please clarify the process for amending official source Processing Log records after the Reports have been submitted? Does this happen often?

Thank you.

With my respect,

Robert Hammond

In a message dated 2/17/2017 4:54:11 P.M. Eastern Daylight Time, [REDACTED](#) writes:

Dear Ms. Thompson,

Enclosure 1, August 9, 2017 Sample Correspondence

Regarding the integrity of the Walter Reed and Defense Health Agency (DHA) FOIA and HI(PAA/Privacy Act processes and the accuracy of reporting via reporting chains to the United States Attorney General and United States Congress respectively, perhaps it is not the questions that are difficult. Perhaps it is the answers.

Some may have known for many years that Walter Reed and DHA may have been cooking the books - potentially submitting inaccurate and incomplete FOIA and Privacy Act reports. There are many issues. I have related concerns regarding certified mail processing.

Regarding this specific issue of the ten aged administrative appeals below, please see the DoD FY 2015 FOIA Annual Report, which shows only five administrative appeals pending at the end of FY 2015, not necessarily five of the ten below

([Http:// OP-en.defense.gov / Portals/23/Documents/DoDFY2015AnnualFOIA Report.pdf](http://OP-en.defense.gov/Portals/23/Documents/DoDFY2015AnnualFOIAReport.pdf)).

One might ask (for example) why DHA would not act on administrative appeals of FOIA Requests seeking the Performance Standards (not evaluation ratings) of the Walter Reed Privacy Officer and the Walter Reed FOIA Officer, given that DHA has released the standards for the DHA FOIA Officer and given that other entities within DoD have properly and promptly released such records (see attached). One might also ask why Walter Reed would deny a FOIA Request seeking the records that the Walter Reed Privacy Officer relied upon in denying a HIPAA/Privacy Act record amendment request by inaccurately stating that the health care professional (Ms. Leung) was no longer assigned to Walter Reed when in fact records released by the Army Human Resources Command show that she was still assigned. Why would DHA not act on the administrative appeal?

With respect to FOIA actions that still may be resolved within DoD, FOIA prescribes that:

"Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends." 5 U.S.C. § 552(a)(4)(F)(i).

In my view, DoD senior leadership, including Vice Admiral Bono and Mr. Tollerton, have been poorly served by senior Walter Reed and DHA legal and FOIA/HIPAA/Privacy Act staff members. In my view, it is time for Walter Reed, DHA and others interacting with them to do the right, lawful and inevitable thing by making administrative adjustments to the next FOIA and Privacy Act reports to pick up prior omissions and correct processing times and then by timely acting on open FOIA/HIPAA/Privacy Act matters. Such

Enclosure 1, August 9, 2017 Sample Correspondence

proactive action now may preserve scarce DoD litigation funds and may be a factor in assessing who may have the privilege of retaining a security clearance.

Wouldn't it be better to properly act on and report FOIA/HIPAA/Privacy Act matters at the appropriate level rather than waiting for Privacy Act complaints and/or other actions, some of which may ultimately be outside of DoD?

This correspondence is being forwarded to some potentially interested parties within DoD and may be forwarded to others later, so you may receive additional inquiries from them.

With my respect,

Robert Hammond

In a message dated 1/10/2017 4:09:07 P.M. Eastern Standard Time, [REDACTED](#) writes:

Dear Ms. Thomas,

Please address each specific question as a matter of FOIA compliance; no generalizations. This clearly falls under your personal responsibility as the DHA FOIA Liaison Officer. What do your performance standards say about this? Critical elements? 2+ years to address expedited appeals? Governing laws regulations and policies are very specific.

Per DHA web site:

"Freedom of Information Act (FOIA)

The Defense Health Agency (DHA) Freedom of Information Service Center has principal authority to ensure Health Affairs (HA), DHA, and its components are in full compliance with the FOIA.

Liaison Officer

If you are concerned about service received from the HA/DHA FOIA Service Center, please contact the FOIA Liaison Officer at:

Defense Freedom of Information Policy Office ATTN: Ms. Linda S. Thomas

Chief, Freedom of Information Service Center Defense Health Agency
7700 Arlington Boulevard, Suite 5101 Falls Church, VA 22042-5101

Enclosure 1, August 9, 2017 Sample Correspondence

Phone: 1-703-275-6363"

Thank you,

With my respect,
Robert Hammond

In a message dated 1/10/2017 2:30:07 P.M. Eastern Standard Time, linda.s.thomas47.civ@mail.mil writes:

Thank you for your inquiry. Appeals questions need to go to our appeals Officer, Paul Cygnarowicz.

We properly report items on our annual FOIA Report. Our data goes to DoD FOIA and is then combined with the data of other components before being transmitted to DOJ.

You have given us over 1000 pages of material to address impacting to some degree our ability to respond as promptly as we would like in every case.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP
Chief, DHA Privacy and Civil Liberties Office
Office: 703-275-6363

"Quality and Service Above All"

Please comment on our service at: VoiceoftheCustomer@dha.mil

-----Original Message-----

From: [REDCATED](#)

Sent: Monday, January 09, 2017 6:58 PM

To: [Thomas, Linda S CIV DHA PCL \(US\)](#)

Cc: [DHA NCR DGC FC List OGC FOIA Appeals Owners; OGCFOIAAppeals@tma.osd.mil; paul.t.crygarowicz.mil@mail.mil; foiarequests@tma.osd.mil; jewel.p.christmas.civ@health.mil; Christmas, Jewel P CIV DHA HEALTH IT DIR \(US\); Brown, Nadine R CIV DHA PCL \(US\); DHA NCR PCL Mailbox FOIA Requests](#)

Subject: [Non-DoD Source] DHA FOIA Compliance -Aged DHA Administrative Appeals

Enclosure 1, August 9, 2017 Sample Correspondence

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Dear Ms. Thomas,

I am seeking that this be addressed as a matter of FOIA compliance, which I see is a responsibility of your office.

I am asking that you please address the questions below in writing - email is inappropriate. Please note that with the exception of the first appeal (Leung)

the requests and appeals were submitted seeking expedited processing due to eminent loss of due process rights. Please also note that as to the remaining FOIA requests and appeals for personal records and performance standards, DHA released records of its own FOIA Officer pursuant to nearly identical requests

Please address all of the following specific questions:

1. Does DHA acknowledge receiving the Appeals on the dates indicated and if not please explain?
2. Is DHA reporting these appeals as open on the DHA Annual FOIA Report submission to the Attorney General of the United States via reporting chain and if not why not?
3. Has DHA processed other appeals that were received after the appeals below and if so, why?
4. Why has DHA not issued final determinations on these administrative appeals.?

I am seeking confirmation that DHA received the Administrative Appeals on the date indicated and confirmation that DHA is reporting these administrative appeals as open on DHA's Annual FOIA Report Submissions.

Please note that DHA and you personally have not responded to my past follow up requests. Pls see attached two examples.

Again, please address this as a FOIA compliance matter.

Enclosure 1, August 9, 2017 Sample Correspondence

Thank you,

With my respect,
Robert Hammond

In a message dated 1/9/2017 12:27:35 P.M. Eastern Standard Time, linda.s.thomas47.civ@mail.mil writes:

I have received your email and will reply after inquiry.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP Chief, DHA Privacy and Civil Liberties Office
Office: 703-275-6363
Mobile: 571-286-9517
Linda.S.Thomas47.Civ@mail.mil

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Please comment on our service at VoiceoftheCustomer@dha.mil

-----Original Message-----

From: [REDACTED](#)

Sent: Saturday, December 31, 2016 9:51 AM

To: [Thomas, Linda S CIV DHA PCL \(US\)](#)

Cc: [REDACTED](#)

Subject: [Non-DoD Source] Aged DHA Administrative Appeals

Dear Ms. Thomas,

As the DHA FOIA Liaison, I am seeking action from you in obtaining the status of these aged administrative appeals shown below and of email follow-ups on these appeals. I have received no acknowledgement or reply to these appeals.

FOIA requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides

Enclosure 1, August 9, 2017 Sample Correspondence

notice to the requester of "unusual circumstances" meriting additional time for responding to a FO IA request. 5 U.S.C. § 552(a)(6)(A)(ii.)

Please provide your reply by email. In the event that you send any correspondence to me by any other means, please send it by a traceable means only.

Please promptly acknowledge this email.

Thank you,

With my respect,
Robert Hammond

My Personal

Requester CTRL #	Title/Subject	Appeal Date
WRNMC #13- 29	LEUNG, ANGELA N 2LT 6087 Unavailability	5/16/2015
WRNMC #14-B	Personnel Record Information for Cornell.J.Floyd.civ@health.mil	11/8/2014
WRNMC #14-C	Personnel Record Information for Judy.J.Bizzell.civ@health.mil	11/8/2014
WRNMC #14-D	Personnel Record Information for Barbara.l.Moidel.civ@health.mil	11/8/2014
WRNMC #14-E	Personnel Record Information for Judy.A.Logeman.civ@health.mil	11/8/2014
WRNMC #14-F	Personnel Record Information for Joe.E.Davidge.civ@health.mil	11/10/2014
WRNMC #14-G	Personnel Record Information for Brice.A.Goodwin.mil@health.mil	11/10/2014
WRNMC #14-H	Contract Information for Thurman.S.McCall.ctr@health.mil	11/7/2014
WRNMC #14-K	Performance Standards of Ms. Judy Bizzell	11/10/2014
WRNMC #14-L	Performance Standards of Mr. Joe. E. Davidge	11/10/2014

Thank you,

With my respect
Robert Hammond

Enclosure 1, August 9, 2017 Sample Correspondence

May 3, 2017 — Sent via email

Mr. Robert Hammond

Re: Case Nos. 201500673 and 201600882 [REDACTED](#) NG: CL

Dear Mr. Hammond:

This responds to your November 22, 2016, request for assistance from the Office of Government Information Services (OGIS) concerning your Freedom of Information Act (FOIA) request to the Department of Defense (DoD) Defense Health Agency (DHA) and subsequent appeal. Thank you for your patience as we handled your request for assistance.

We understand that you submitted a FOIA request for records concerning Walter Reed National Military Medical Center (WRNMMC) Healthcare Resolutions Specialist Judy A. Logeman. The agency denied your request (your tracking No. 14-E) in full under FOIA Exemption 6, 5 U.S.C. § 552(b)(6). You disputed the agency's action on your request and filed an appeal on November 8, 2014. You are concerned that you have not received a response to your appeal and that DoD did not include your pending appeal among its ten oldest appeals in its fiscal year (FY) 2014, 2015 and 2016 Annual FOIA reports to the U.S. Attorney General.¹ You requested OGIS assistance with this matter.

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. Our goal is to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

OGIS provides mediation services to resolve disputes between FOIA requesters and Federal agencies. After opening a case, OGIS gathers information from the requester and the agency to learn more about the nature of the dispute. This process helps us gather necessary background information, assess whether the issues are appropriate for mediation, and determine the willingness of the parties to engage in our services. As part of our information gathering, OGIS staff carefully reviewed your submission of information. We also discussed this matter with you by phone and contacted the DHA Privacy and Civil Liberties Office (Privacy Office) to inquire about your appeal and DHA's reporting of it.

¹ _____ Because
DHA received your November 8, 2014 appeal in FY 2015, DoD would not have included the appeal in its FY 2014 Annual FOIA report. Regarding your appeal, the Privacy Office explained the agency's appellate authority, Mr. Paul Cygnarowicz, received your appeal via email on November 8, 2014. Your appeal is currently pending.

Enclosure 2, September 20, 2017 Sample Correspondence

OGIS inquired as to whether DoD reported your November 8, 2014 appeal as among its 10 oldest in the FY 2015, and 2016 Annual FOIA reports to the U.S. Attorney General. The Privacy Office confirmed that DHA did not report your appeal to DoD; therefore, the department did not include it in its annual reports. However, the agency explained that before responding to an appeal, the appellate authority usually gives DHA and its subcomponents an opportunity to re-process a request. During our discussions with the agency, we learned that on March 23, 2017, DHA amended its annual reports and updated its outstanding appeal to DoD's Deputy Chief Management Officer, which included your November 8, 2014 appeal.

In response to our inquiry about the status of your pending appeals, the Privacy Office explained that DHA will combine your ten appeals regarding FOIA requests for personal information because the requests/appeals are thematically linked and DHA's appeal's unit received them within days of one another. DHA was unable to provide us with an appeal number; however, we learned that the unit prioritized its work on your lawsuit.

For that reason, all matters relating to the litigation took precedence over the processing of your appeals. The Privacy Office noted that your pending records request will undergo careful review to determine whether they relate to the lawsuit. The agency notes that your counsel represents you, and any matters concerning the lawsuit first require notice and coordination with your counsel.

Finally, as part of OGIS's role as FOIA Ombudsman, we offer assistance to FOIA requesters and Federal agencies. We suggest in future FOIA requests to the DHA or any other agency that you limit filing multiple requests for essentially the same information or submitting duplicate copies of previous requests that you had submitted to WRNMMC. Excessive paperwork slows the process, making FOIA less efficient for all requesters and the agency itself.

I hope you find this information useful. Thank you for bringing this matter to OGIS. At this time, there is no further action for us to take and we consider your case closed.

Sincerely,



NIKKI GRAMIAN

Deputy Director

cc: DHA Privacy Office and WRNMMC FOIA Office

Subject: Fwd: PART II. INTENT? - Fwd: Request for Assistance - FOIA Compliance; OGIS 201300673

Date: 8/9/2017 5:46:33 PM Eastern Standard Time From: REDACTED

Enclosure 2, September 20, 2017 Sample Correspondence

To: OIP.ComplianceInquiry@us.doj.gov
Cc: [REDACTED](#)

From: [REDACTED](#)

To: Linda.Thomas@dha.mil, paul.t.crygarowicz.mil@mail.mil, joseph.e.davidge.civ@mail.mil, judy.j.bizzell.civ@mail.mil, dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mail.mil

Cc: david.tillotson1.civ@mail.mil, joo.y.chung2.civ@mail.mil, cindy.l.allard.civ@mail.mil, raquel.c.bono.mil@mail.mil, david.a.lane@med.navy.mil, colin.g.chin.mil@mail.mil, Jeffrye.b.clark4.mil@mail.mil, michael.s.heimall@mail.mil

Sent: 6/11/2017 10:37:35 AM Eastern Standard Time

Subject: PART II. INTENT? - Fwd: Request for Assistance - FOIA Compliance; OGIS 201300673

PART II. INTENT?

From: linda.s.thomas47.civ@mail.mil

To: REDACTED

CC: nadine.r.brown4.civ@mail.mil, foiarequests@tma.osd.mil, ogis@nara.gov, amy.bennett@nara.gov, paul.t.cygnarowicz.civ@mail.mil, rahwa.a.keleta.civ@mail.mil, doritha.n.ross.ctr@mail.mil, osd.mc.alex.odemo.mbx.dod-foia-policy-office@mail.mil, nikki.gramian@nara.gov, DOJ.OIP.FOIA@usdoj.gov, michael.l.rhodes32.civ@mail.mil, kirsten.mitchell@nara.gov, lucille.w.deLoach.ctr@mail.mil, denise.f.washington.civ@mail.mil, paul.t.cygnarowicz.civ@mail.mil

Sent: 5/19/2015 8:49:28 A.M. Eastern Daylight Time

Subj: RE: Request for Assistance - FOIA Compliance; OGIS 201300673

We are giving you the relief which you seek -- which is to process the FOIA requests for Logeman information first and others in due course. Thank you for your comments.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP
Chief, DHA Privacy and Civil Liberties Office
Office: 703-681-7500
Mobile: 571-286-9517
Linda.S.Thomas47.civ@mali.mil

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Please comment on our service at: VoiceoftheCustomer@dha.mil

Enclosure 2, September 20, 2017 Sample Correspondence

-----Original Message-----

From: [REDACTED](#)

Sent: Monday, May 18, 2015 5:16 PM

To: [Thomas, Linda S CIV DHA CMD GRP \(US\)](#)

Cc: [Brown, Nadine R CIV \(US\)](#); [foiarequests@tma.osd.mil](#); [ogis@nara.gov](#); [amy.bennett@nara.gov](#); [Cygnaowicz, Paul T CIV \(US\)](#); [Keleta, Rahwa A CIV DHA CMD GRP \(US\)](#); [Ross, Doritha N CTR DHA ADMIN MD \(US\)](#); [OSD MC-ALEX ODCMO Mailbox DoD FOIA Policy Office](#); [nikki.gramian@nara.gov](#); [DOJ.OIP.FOIA@usdo.gov](#); [Rhodes, Michael L SES OSD ODAM \(US\)](#); [kirsten.mitchell@nara.gov](#); [lucille.w.deloch.ctr@mail.mil](#); [Washington, Denise F CIV OSD ODCMO \(US\)](#); [douglas.j.robbs@mail.mil](#)

Subject: Re: Request for Assistance - FOIA Compliance; OGIS 201300673

Dear Ms. Thomas,

Was this appeal below logged into your system? Are you asserting that DHA did not receive it?

There is no indication that DHA did not receive my appeals and I am skeptical of that inference as a reason for why my aged appeals have not been processed. Please refer to my appeal below, which includes Lieutenant Colonel Cygnaowicz as an addressee on this and other appeals. Several appeals were submitted on the same day. In addition, I am not aware of any change in your fax number. I received no notice of rejected emails from my appeal submissions or from any of the emails in the thread below. Please coordinate with Lieutenant Colonel Cygnaowicz and the members of your staff and provide a listing of the appeals from me that you do have pending.

I want to ensure that DHA is complying with the FOIA, processing FOIA requests and appeals properly and reporting them properly in your Annual FOIA Report submissions. It is unfortunate that it is taking this level of involvement by others. As previously discussed, I am attempting to follow the chain of command and resolve this and matters at your level or lower.

Will DHA be issuing a final determination letter on this and other appeals? Is DHA processing appeals in the order in which they are received?

Thank you.

With my respect,

Enclosure 2, September 20, 2017 Sample Correspondence

Robert Hammond

In a message dated 5/18/2015 2:54:50 P.M. Eastern Daylight Time, linda.s.thomas47.civ@mail.mil writes:

Thank you for your comments. Would you please send all appeals again? We had a change in our email system, and believe that some communications were lost in the process. Thank you.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP
Chief, DHA Privacy and Civil Liberties Office
Office: 703-681-7500
Mobile: 571-286-9517
Linda.S.Thomas47.Civ@mail.mil

"Quality and Service Above All"

Please comment on our service at VoiceoftheCustomer@dha.mil

-----Original Message-----

From: [REDACTED](#)

Sent: Monday, May 18, 2015 2:51 PM

To: [Thomas, Linda S CIV DHA CMD GRP \(US\)](#)

Cc: [Brown, Nadine R CIV \(US\)](#); foiarequests@tma.osd.mil; ogis@nara.gov; amy.bennett@nara.gov; [Cygnarowicz, Paul T CIV \(US\)](#); [Keleta, Rahwa A CIV DHA CMD GRP \(US\)](#); [REDACTED](#); [Ross, Doritha N CTR DHA ADMIN MD \(US\)](#); [OSD MC-ALEX ODCMO Mailbox DoD FOIA Policy Office](#); nikki.gramian@nara.gov; DOJ.OIP.FOIA@usdo.gov; [Rhodes, Michael L SES OSD ODAM \(US\)](#); kirsten.mitchell@nara.gov; lucille.w.deloch.ctr@mali.mil; [Washington, Denise F CIV OSD ODCMO \(US\)](#); douglas.j.robb@mail.mil

Subject: Re: Request for Assistance - FOIA Compliance; OGIS 201300673

Ms. Thomas,

By the action that you are taking, you will be knowingly submitting a false Annual FOIA Report to leadership, the Attorney General of the United States and in turn to the United States Congress. You will be understating the number of improper denials for Walter Reed National Military Medical Center (WRNMMC), the number of appeals sustained as well as the FOIA and appeals processing times. I call your attention to GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act.

Enclosure 2, September 20, 2017 Sample Correspondence

There is no question that WRNMMC improperly denied my requests (and others) citing the FOIA Exemption (b)(6).

There is no question that I submitted my appeal properly via the instructions on your web site and that DHA received my appeal.

There is no question that you personally knew of this aged appeal and others. This appeal and other appeals are more than six months old. The FOIA request and others are now more than 13 months old.

You cannot ignore the WRNMMC improper denial of my FOIA request and pretend that it didn't happen. You must issue a final determination letter on my appeal - as required by the FOIA - and remand the request back to WRNMMC. You must record my appeal on the date that it was submitted to DHA and properly report its disposition on your Annual FOIA Report.

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Thank you.

With my respect,
Robert Hammond

In a message dated 5/18/2015 10:16:51 A.M. Eastern Daylight Time, linda.s.thomas47.civ@mail.mil writes:

We are responding to your FOIA on Logeman first since that is the one that you mentioned. I take it you are formally requesting a reopening of the similar other ones; we will take those up in due course.

Since we are going to respond under the FOIA, **your appeals on those are moot at this point.**

Enclosure 2, September 20, 2017 Sample Correspondence

You wrote in separate emails that you are dissatisfied with a lack of correction of your medical record relating to other requests or complaints. Please be advised that this is not the purview of either the FOIA Office or the HIPAA complaint office but is in the hands of the medical offices.

Thank you.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP
Chief, DHA Privacy and Civil Liberties Office
Office: 703-681-7500
Mobile: 571-286-9517
Linda.S.Thomas47.Civ@mail.mil

"Quality and Service Above All"

Please comment on our service at VoiceoftheCustomer@dha.mil

-----Original Message-----

From: [REDACTED](#)

Sent: Thursday, May 14, 2015 5:51 PM

To: [Thomas, Linda S CIV DHA CMD GRP \(US\)](#)

Cc: [Brown, Nadine R CIV \(US\)](#); foiarequests@tma.osd.mil; [REDACTED](#); ogis@nara.gov; amy.bennett@nara.gov

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Similarly, there are several identical appeals for FOIA requests pertaining to personnel records of WRNMMC personnel submitted on the same day that I would expect DHA will be treating in the same manner. Please also note that there are yet other aged appeals submitted to DHA that have not been acted upon.

Enclosure 2, September 20, 2017 Sample Correspondence

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In a message dated 4/29/2015 8:47:38 P.M. Eastern Daylight Time, [REDACTED](#) writes:

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Enclosure 2, September 20, 2017 Sample Correspondence

Other commands, including DHA, have released records in response to FOIA requests to them seeking the same information relative to their commands. To demonstrate that DHA considers such records releasable, I am attaching the records released by DHA for my FOIA request to them seeking the same personnel records for their FOIA Officer, along with the records that DHA released. Moreover, the Privacy Act stipulates that these records are releasable. There can be no question that records sought from WRNMMC are fully releasable.

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Thank you

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In a message dated 4/24/2015 9:36:10 A.M. Eastern Daylight Time, REDACTED writes:

Good morning, Ms. Thomas.

I am following up once again on the appeal addressed below. This appeal and others are now nearly five months old. My FOIA request submitted on April 26, 2014 is now a year old.

This is simple request and appeal. DHA promptly released complete, fully responsive records in response to a FOIA request for the same personnel records for your FOIA Officer, Ms. Brown.

WRNMMC's assertion that these records may be denied under FOIA Exemption (b)(6) is clearly improper.

Thank you in advance.

With my respect,

Robert Hammond

Enclosure 2, September 20, 2017 Sample Correspondence

From: [REDACTED](#)
To: linda.s.thomas47.civ@mail.mil
CC: nadine.r.brown4.civ@mail.mil, [REDACTED](#)
Sent: 4/3/2015 5:43:40 A.M. Eastern Daylight Time
Subj: Request for Assistance - FOIA Compliance

Good morning, Ms. Thomas.

I am writing to request your assistance regarding a matter of FOIA compliance. As you know the prescribed time for responding to FOIA appeals is twenty working days. The appeal attached and below submitted to DHA on November 8, 2014 for my FOIA request of April 26, 2014 is quite old.

I am asking that DHA sustain my appeal for this and similar FOIA requests and remand them back to WRNMMC to release the records. As you may be aware, DHA promptly released records in response to a FOIA request for the same personnel records for Ms. Brown. WRNMMC's assertion that these records may be denied under FOIA Exemption (b)(6) is clearly improper.

A reply by WRNMMC in advance of your final determination will not render this appeal moot. In my view, WRNMMC must not continue to improperly assert the FOIA (b)(6) Exemption of privacy for withholding records in anticipation that an appellate authority will sustain their improper denials.

I am hopeful that this and similar matters may be promptly resolved at the WRNMMC or DHA level. I will greatly appreciate your help and support in this important matter.

Thank you in advance.

With my respect,
Robert Hammond

From: [REDACTED](#)
To: ogcfoiaappeals@tma.osd.mil, paul.t.crygarowicz.mil@mail.mil
Sent: 3/24/2015 8:25:23 A.M. Eastern Daylight Time
Subj: Fwd: Appeal of My FOIA #14-E - Judy A. Logeman CORRECTED COPY

Enclosure 2, September 20, 2017 Sample Correspondence

Good morning, Lieutenant Colonel Paul T. Cygnarowicz.

I am following up on this appeal, which is now quite old. As you are aware, DoD 5400.7-R, September 1998 states that: C5.3.3.2. Final determinations on appeals normally shall be made within 20 working days after receipt.

I would also add that multiple DOD entities were able to provide fully responsive replies to identical requests well within the statutory time for reply. This is not a complex request or a complex appeal.

In addition, there are separate FOIA appeals pending in your office. Thank you in advance.
With my respect, Robert Hammond

From: REDACTED

To: ogcfoiaappeals@tma.osd.mil, paul.t.crygarowicz.mil@mail.mil

CC: REDACTED

Sent: 11/8/2014 12:12:26 P.M. Eastern Daylight Time

Subj: Re: Appeal of My FOIA #14-E - Judy A. Logeman CORRECTED COPY

... WITH ATTACHMENT

In a message dated 11/8/2014 11:07:30 A.M. Eastern Standard Time, [REDACTED](#) writes:

Robert Hammond
REDACTED

November 8, 2014

Office of General Counsel

National Capital Region Medical Directorate Attention: Lieutenant Colonel Paul T. Cygnarowicz Defense Health Agency
8901 Wisconsin Avenue (Building 27)
Bethesda, MD 20889

Enclosure 2, September 20, 2017 Sample Correspondence

Phone: (703) 681-6012, FAX 301-319-8900

E-mail: OGCFOIAAppeals@tma.osd.mil <<mailto:OGCFOIMppeals@tma.osd.mil>>;

Subject: Appeal of My FOIA Request - Personnel Record Information for Judy A. Logeman
Judy.A.Logeman.civ@health.mil <<mailto:Judy.A.Logeman.civ@health.mil>>
CORRECTED COPY

My Personal Reference Number: FOIA WRNMC #14-E

WRNMC Assigned Agency FOIA Case Number 14-34

References:

- (a) The Freedom of Information Act (FOIA)
- (b) The Privacy Act (c) CFR 164.526
- (c) DoD 5700.7-R, September 1998, DoD Freedom of Information Act
- (d) (FOIA) Program
- (e) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (f) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011: "Your Right to Federal Records" (see <http://publications.usa.gov/USAPubs.php?PubID=6080> <<http://publications.usa.gov/USAPubs.php?PubID=6080>>;)
- (g) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (h) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6><<http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>>;

Dear Lieutenant Colonel Cygnarowicz,

This appeal is submitted under the references above for my FOIA request dated April 26, 2014 at Enclosure (1), which asks for records of personnel information explicitly authorized for release under reference (g), DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program. Enclosure (1) also contains my request for expedited processing. The Agency's reply (forwarded by email at 9/23/2014 3:00:35 P.M. Eastern Daylight Time) is at Enclosure (2). The Agency's interim reply of 11 July 2014 is at Enclosure (3). The Agency is improperly denying my request in full, inappropriately citing the FOIA Exemption (b)(6) and asserting that release

Enclosure 2, September 20, 2017 Sample Correspondence

would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C. 552(b)(6). There is no personal privacy interest in the information sought. This denial is capricious, arbitrary and a misuse of the privacy exemption.

Information Requested via FOIA. For the person identified by the email address above , I am seeking the following information, as explicitly authorized for release by reference (b):

DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

C4.2.2.5.1. DoD Civilian Employees:

C4.2.2.5.1.1.1. Name.

C4.2.2.5.1.1.2. Present position titles. C4.2.2.5.1.1.3. Present grade.

C4.2.2.5.1.1.4. Present annual salary rate. C4.2.2.5.1.1.5. Present duty stations.

C4.2.2.5.1.1.6. Office and duty telephone number. C4.2.2.5.1.1.7. Current Position Description.

Discussion.

[intervening text not shown]

Release of Segregable Portions.

- I contend that every item sought under my FOIA request is fully releasable without redaction in accordance with reference (g). Notwithstanding that, the Agency is making the... assertion that (for example) the salary of a federal employee is exempt under 5 U.S.C. 552(b)(6). The Agency must justify each item being withheld.
- The FOIA requires that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated
- at the place in the record where such deletion is made. Enclosure 1
- Further, when a requested document contains some information which falls under one of the exemptions, the FOIA requires that all non-exempt portions of the record must still be released. The Act expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction (the deletion of part of a document to prevent disclosure of material covered by an exemption) of the parts which are exempt. 5 U.S.C. § 552(b). This is a very important

Enclosure 2, September 20, 2017 Sample Correspondence

aspect of FOIA because it prohibits an agency from withholding an entire document merely because one line, one page or one picture are exempt.

Strong Presumption in Favor of Disclosure.

- "In the Act generally, and particularly under Exemption (6), there is a strong presumption in favor of disclosure." *Local 598 v. Department of Army Corps of Engineers*, 841 F.2d 1459, 1463 (9th. Cir. 1988) (emphasis added). In that case, the Ninth Circuit reviewed the context of applicable Exemption 6 case law:

The Freedom of Information Act embodies a strong policy of disclosure and places a duty to disclose on federal agencies. As the district court recognized, 'disclosure, not secrecy, is the dominant objective of the Act.' *Department of the Air Force v. Rose*, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976). 'As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information'

Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d 704, 715 (D.C.Cir.1977). As a consequence, the listed exemptions to the normal disclosure rule are to be construed narrowly. See *Rose*, 425 U.S. at 361, 96 S.Ct. at 1599. This is particularly true of Exemption (6). Exemption (6) protects only against disclosure which amounts to a 'clearly unwarranted invasion of personal privacy.' That strong language 'instructs us to 'tilt the balance [of disclosure interests against privacy interests] in favor of disclosure.'"

Id. (emphasis added), citing *Washington Post Co. v. Department of Health and Human Servs.*, 690 F.2d 252, 261 (D.C.Cir.1982) (quoting *Ditlow v. Shultz*, 517 F.2d 166, 169 (D.C. Cir.1975)).

Public Interest. The public is entitled to information, such as the grade, salary, etc., of federal employees whose salaries are paid from tax dollars. This is public information. Though I do not believe that it is necessary to assert a public interest to be balanced with privacy interest, because the information sought is otherwise fully releasable under the Privacy Act, there is a public interest in assuring that the Privacy Act is being properly administrated at Walter Reed National Military Medical Center [remaining text omitted]

Basis for Appeal.

I am appealing that the Agency:

- (1) has improperly denied my request under 5 U.S.C. 552(b)(6);

Enclosure 2, September 20, 2017 Sample Correspondence

(2) (notwithstanding the improper denial above) has not provided all reasonably segregable portions of documents, nor properly justified and accounted for any redactions.

Further, I am appealing that WRNMMC HIPAA/Privacy Act/FOIA/Civil Liberties Office did not:

(3) provide a tracking number for this request within ten days of receipt of original request as required by the FOIA and various regulations and policies;

(4) provide a reply within the statutory and regulatory twenty-day time period or provide an interim reply within 20 days as required by the FOIA and various regulations.

Appellate Authority Action Requested. I am asking that:

(1) each element of the basis of my appeal be addressed separately;

(2) each element of my appeal be sustained [granted];

(3) my FOIA request be remanded back to the Agency for direct reply to me; and,

(4) I be granted new appellate rights following a subsequent reply by the Agency.

Some Additional References.

Reference (e) states that for requests 'that will require more than ten days for the agency to process, the FOIA requires agencies to assign a tracking number to your request. Each agency must provide a telephone number or website by which a requester can use the assigned tracking number to obtain information about the status of a pending request.'

DoD 5400.11-R, May 14, 2007, paragraph C3.1.1O. states: "Time Limits. "DoD Components normally shall provide access within 20 working days after receipt of the request. If access cannot be given within the 20-working day period, the requester shall be notified in an interim response."

Enclosure 2, September 20, 2017 Sample Correspondence

DoD 5400.11-R, May 14, 2007, paragraph C1.5.3. states: "Avoidance of Procedural Obstacles. DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components."

DoD 5400.11-R, May 14, 2007 paragraph C1.5.1. states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

This appeal is separate and distinct from any other appeals that I may file and may not be combined with any other appeal. I am not agreeing to combining separate appeals, as this would be improper, potentially distorting FOIA reporting to Congress and impeding separate judicial review (if that becomes necessary). If you deny all or any part of this appeal, please cite each specific exemption you think justifies your determination and notify me of further remedies available under the law.

I will greatly appreciate your thoughtful consideration of my request. Please contact me if you have any questions regarding this request. Thank you in advance.

With my respect,

Robert Hammond

Enclosures: As stated.

In a message dated 4/3/2015 5:43:40 A.M. Eastern Daylight Time, [REDACTED](#) writes:

Subject: Fwd: PART III. INTENT?? - Fwd: Request for Assistance-FOIA Compliance; OGIS 201300673

Date: 8/9/2017 5:47:07 PM Eastern Standard Time From: REDACTED

To: OIP.ComplianceInquiry@us.doj.gov

From: REDACTED

To: Linda.Thomas@dha.mil, paul.t.crygarowicz.mil@mail.mil, joseph.e.davidge.civ@mail.mil, judy.j.bizzell.civ@mail.mil, dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mai.lmill

Enclosure 2, September 20, 2017 Sample Correspondence

Cc: david.tillotson1.civ@mail.mil, joo.y.chung2.civ@mail.mil, cindy.l.allard.civ@mail.mil, raquel.c.bono.mil@mail.mil, david.a.lane@med.navy.mil, colin.g.chin.mil@mail.mil, Jeffrye.b.clark4.mil@mail.mil, michael.s.heimall@mail.mil

Sent: 6/11/2017 10:38:49 AM Eastern Standard Time

Subject: PART III. INTENT?? - Fwd: Request for Assistance-FOIA Compliance; OGIS 201300673 PART III. INTENT??

From: linda.s.thomas47.civ@mail.mil

To: REDACTED

CC: nadine.r.brown4.civ@mail.mil, foiarequests@tma.osd.mil, ogis@nara.gov, amy.bennett@nara.gov, paul.t.cygnarowicz.civ@mail.mil, rahwa.a.keleta.civ@mail.mil, doritha.n.ross.ctr@mail.mil, osd.mc.alex.odcmo.mbx.dod-foia-policy-office@mail.mil, nikki.gramian@nara.gov, DOJ.OIP.FOIA@usdoj.gov, michael.l.rhodes32.civ@mail.mil, kirsten.mitchell@nara.gov, lucille.w.deloch.ctr@mail.mil, denise.f.washington.civ@mail.mil, douglas.j.robb@mail.mil

Sent: 5/18/2015 2:54:50 P.M. Eastern Daylight Time

Subj: RE: Request for Assistance - FOIA Compliance; OGIS 201300673

Thank you for your comments. Would you please send all appeals again? We had a change in our email system, and believe that some communications were lost in the process. Thank you.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP
Chief, DHA Privacy and Civil Liberties Office

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Mobile: 571-286-9517

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Enclosure 2, September 20, 2017 Sample Correspondence

[ODCMO Mailbox DoD FOIA Policy Office; nikki.gramian@nara.gov; DOJ.OIP.FOIA@usdo.gov; Rhodes, Michael L SES OSD ODAM \(US\); kirsten.mitchell@nara.gov; lucille.w.deloach.ctr@mali.mil; Washington, Denise F CIV OSD ODCMO \(US\); douglas.j.robb@mail.mil](#)

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Linda S. Thomas, JD, CIPP/G, PMP, CISSP
Chief, DHA Privacy and Civil Liberties Office
Office: 703-681-7500
Mobile: 571-286-9517
Linda.S.Thomas47.Civ@mail.mil

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To: linda.s.thomas47.civ@mail.mil
CC: nadine.r.brown4.civ@mail.mil, [REDACTED](#)
Sent: 4/3/2015 5:43:40 A.M. Eastern Daylight Time
Subj: Request for Assistance - FOIA Compliance

Good morning, Ms. Thomas.

I am writing to request your assistance regarding a matter of FOIA compliance. As you know the prescribed time for responding to FOIA appeals is twenty working days. The appeal attached and below submitted to DHA on November 8, 2014 for my FOIA request of April 26, 2014 is quite old.

I am asking that DHA sustain my appeal for this and similar FOIA requests and remand them back to WRNMMC to release the records. As you may be aware, DHA promptly released records in response to a FOIA request for the same personnel records for Ms. Brown. WRNMMC's assertion that these records may be denied under FOIA Exemption (b)(6) is clearly improper.

A reply by WRNMMC in advance of your final determination will not render this appeal moot. In my view, WRNMMC must not continue to improperly assert the FOIA (b)(6) Exemption of privacy for withholding records in anticipation that an appellate authority will sustain their improper denials.

I am hopeful that this and similar matters may be promptly resolved at the WRNMMC or DHA level. I will greatly appreciate your help and support in this important matter.

Thank you in advance.

With my respect,

Enclosure 2, September 20, 2017 Sample Correspondence

Robert Hammond

From: [REDACTED](#)

To: ogcfoiaappeals@tma.osd.mil, paul.t.crygarowicz.mil@mail.mil

Sent: 3/24/2015 8:25:23 A.M. Eastern Daylight Time

Subj: Fwd: Appeal of My FOIA #14-E - Judy A. Logeman CORRECTED COPY

Good morning, Lieutenant Colonel Paul T. Cygnarowicz.

I am following up on this appeal. which is now quire old. As you are aware, DoD 5400.7-R, September 1998 states that:
C5.3.3.2. Final determinations on appeals normally shall be made within 20 working days after receipt.

I would also add that multiple DOD entities were able to provide fully responsive replies to identical requests well within the statutory time for reply. This is not a complex request or a complex appeal.

In addition, there are separate FOIA appeals pending in your office.

Thank you in advance.

With my respect,

Robert Hammond

From: [REDACTED](#)

To: ogcfoiaappeals@tma.osd.mil, paul.t.crygarowicz.mil@mail.mil

CC: [REDACTED](#)

Sent: 11/8/2014 12:12:26 P.M. Eastern Daylight Time

Subj: Re: Appeal of My FOIA #14-E - Judy A. Logeman CORRECTED COPY WIITH ATTACHMENT

In a message dated 11/8/201411:07:30 A.M. Eastern Standard Time, [REDACTED](#) writes:

Enclosure 2, September 20, 2017 Sample Correspondence

Robert Hammond
REDACTED

November 8, 2014

Office of General Counsel

National Capital Region Medical Directorate Attention: Lieutenant Colonel Paul T. Cygnarowicz Defense Health Agency
8901 Wisconsin Avenue (Building 27)
Bethesda, MD 20889

Phone: (703) 681-6012, FAX 301-319-8900

E-mail: OGCFOIAAppeals@tma.osd.mil <<mailto:OGCFOIAAppeals@tma.osd.mil>>;

Subject: Appeal of My FOIA Request - Personnel Record Information for Judy A. Logeman

Judy.A.Logeman.civ@health.mil <<mailto:Judy.A.Logeman.civ@health.mil>>

CORRECTED COPY

My Personal Reference Number: FOIA WRNMC #14-E

WRNNMC Assigned Agency FOIA Case Number 14-34

References:

- (a) The Freedom of Information Act (FOIA)
- (b) The Privacy Act (c) CFR 164.526
- (c) DoD 5700.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (d) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (e) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011: "Your Right to Federal Records" (see <http://publications.usa.gov/USAPubs.php?PubID=6080> <[http://publications.usa.gov/USAPubs.php? PubID=6080](http://publications.usa.gov/USAPubs.php?PubID=6080)>;)

Enclosure 2, September 20, 2017 Sample Correspondence

- (f) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (g) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6> Enclosure 1<<http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>>;

Dear Lieutenant Colonel Cygnarowicz,

This appeal is submitted under the references above for my FOIA request dated April 26, 2014 at Enclosure (1), which asks for records of personnel information explicitly authorized for release under reference (g), DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program. Enclosure (1) also contains my request for expedited processing. The Agency's reply (forwarded by email at 9/23/2014 3:00:35 P.M. Eastern Daylight Time) is at Enclosure (2). The Agency's interim reply of 11 July 2014 is at Enclosure (3). The Agency is improperly denying my request in full, inappropriately citing the FOIA Exemption (b)(6) and asserting that release would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C. 552(b)(6). There is no personal privacy interest in the information sought. This denial is capricious, arbitrary and a misuse of the privacy exemption.

Information Requested via FOIA. For the person identified by the email address above, I am seeking the following information, as explicitly authorized for release by reference (b):

DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

C4.2.2.5.1. DoD Civilian Employees:

C4.2.2.5.1.1.1. Name.

C4.2.2.5.1.1.2. Present position titles. C4.2.2.5.1.1.3. Present grade.

C4.2.2.5.1.1.4. Present annual salary rate. C4.2.2.5.1.1.5. Present duty stations.

C4.2.2.5.1.1.6. Office and duty telephone number. C4.2.2.5.1.1.7. Current Position Description.

Discussion.

[intervening text not shown] Release of Segregable Portions.

Enclosure 2, September 20, 2017 Sample Correspondence

- I contend that every item sought under my FOIA request is fully releasable without redaction in accordance with reference (g). Notwithstanding that, the Agency is making the... assertion that (for example) the salary of a federal employee is exempt under 5 U.S.C. 552(b)(6). The Agency must justify each item being withheld.
- The FOIA requires that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record unless **including** that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.
- Further, when a requested document contains some information which falls under one of the exemptions, the FOIA requires that all non-exempt portions of the record must still be released. The Act expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction (the deletion of part of a document to prevent disclosure of material covered by an exemption) of the parts which are exempt. 5 U.S.C. § 552(b). This is a very important aspect of FOIA because it prohibits an agency from withholding an entire document merely because one line, one page or one picture are exempt.

Strong Presumption in Favor of Disclosure.

- "In the Act generally, and particularly under Exemption (6), there is a strong presumption in favor of disclosure." *Local 598 v. Department of Army Corps of Engineers*, 841 F.2d 1459, 1463 (9th. Cir. 1988) (emphasis added). In that case, the Ninth Circuit reviewed the context of applicable Exemption 6 case law:

The Freedom of Information Act embodies a strong policy of disclosure and places a duty to disclose on federal agencies. As the district court recognized, 'disclosure, not secrecy, is the dominant objective of the Act.' *Department of the Air Force v. Rose*, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976). 'As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information'

Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d 704, 715 (D.C.Cir.1977). As a consequence, the listed exemptions to the normal disclosure rule are to be construed narrowly. See *Rose*, 425 U.S. at 361, 96 S.Ct. at 1599. This is particularly true of Exemption (6). Exemption (6) protects only against disclosure which amounts to a 'clearly unwarranted invasion of personal privacy.' That strong language 'instructs us to 'tilt the balance [of disclosure interests against privacy interests] in favor of disclosure.'"

Enclosure 2, September 20, 2017 Sample Correspondence

Id. (emphasis added), citing *Washington Post Co. v. Department of Health and Human Servs.*, 690 F.2d 252,261 (D.C.Cir.1982) (quoting *Ditlow v. Shultz*, 517 F.2d 166, 169 (D.C. Cir.1975)).

Public Interest. The public is entitled to information, such as the grade, salary, etc., of federal employees whose salaries are paid from tax dollars. This is public information. Though I do not believe that it is necessary to assert a public interest to be balanced with privacy interest, because the information sought is otherwise fully releasable under the Privacy Act, there is a public interest in assuring that the Privacy Act is being properly administrated at Walter Reed National Military Medical Center [remaining text omitted]

Basis for Appeal.

I am appealing that the Agency:

- (1) has improperly denied my request under 5 U.S.C. 552(b)(6);
- (2) (notwithstanding the improper denial above) has not provided all reasonably segregable portions of documents, nor properly justified and accounted for any redactions.

Further, I am appealing that WRNMMC HIPAA/Privacy Act/FOIA/Civil Liberties Office did not:

- (3) provide a tracking number for this request within ten days of receipt of my original request as required by the FOIA and various regulations and policies;
- (4) provide a reply within the statutory and regulatory twenty-day time period or provide an interim reply within 20 days as required by the FOIA and various regulations.

Appellate Authority Action Requested. I am asking that:

- (1) each element of the basis of my appeal be addressed separately;
- (2) each element of my appeal be sustained [granted];

Enclosure 2, September 20, 2017 Sample Correspondence

- (3) my FOIA request be remanded back to the Agency for direct reply to me; and,
- (4) I be granted new appellate rights following a subsequent reply by the Agency.

Some Additional References.

Reference (e) states that for requests 'that will require more than ten days for the agency to process, the FOIA requires agencies to assign a tracking number to your request. Each agency must provide a telephone number or website by which a requester can use the assigned tracking number to obtain information about the status of a pending request.'

DoD 5400.11-R, May 14, 2007, paragraph C3.1.1O. states: "Time Limits. "DoD Components normally shall provide access within 20 working days after receipt of the request. If access cannot be given within the 20-working day period, the requester shall be notified in an interim response."

DoD 5400.11-R, May 14, 2007, paragraph C1.5.3. states: "Avoidance of Procedural Obstacles. DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components."

DoD 5400.11-R, May 14, 2007 paragraph C1.5.1. states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

This appeal is separate and distinct from any other appeals that I may file and may not be combined with any other appeal. I am not agreeing to combining separate appeals, as this would be improper, potentially distorting FOIA reporting to Congress and impeding separate judicial review (if that becomes necessary). If you deny all or any part of this appeal, please cite each specific exemption you think justifies your determination and notify me of further remedies available under the law.

I will greatly appreciate your thoughtful consideration of my request. Please contact me if you have any questions regarding this request. Thank you in advance.

Enclosure 2, September 20, 2017 Sample Correspondence

With my respect,

Robert Hammond

Enclosures: As stated.

la message dated 4/3/2015 5:43:40 A.M. Eastern Daylight Time, REDACTED writes:

Enclosure 2, September 20, 2017 Sample Correspondence



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Mr. Robert Hammond
REDACTED

Re: Compliance Inquiry

VIA: Email

Dear Mr. Hammond:

This responds to your June 28, 2018 e-mail, in which you request a formal reply related to your FOIA Compliance Inquiry.

In your communications with this Office, you have inquired about three distinct topics:

(1) the Annual FOIA Report process in general; (2) administrative FOIA appeals you have pending with the Defense Health Agency (DHA); and (3) the reporting of administrative appeals by DHA. I will address each of these below.

(1) In your email dated December 27, 2017, you asked this office a series of questions related to the Fiscal Year (FY) 2017 Annual FOIA Report process. The FY 2017 Annual FOIA Report submissions were finalized by our office on March 9, 2018, and the data for all agencies subject to the FOIA is available on FOIA.gov. You can also find a link to each agency's FY17 Annual FOIA Report on the "Reports" page of OIP's website. Agency Annual FOIA Reports are considered final once our Office reviews them and clears the agency to post them online. If discrepancies are discovered after the report is published, each agency has the opportunity to provide more information in their Chief FOIA Officer Reports or they can also supplement the next fiscal year's report with a footnote.

(2) Prior to December 2017, you inquired regarding the status of administrative FOIA appeals pending with DHA, a component of the Department of Defense (DOD). Our office has communicated with both DHA and DOD about your pending appeals. First,

Enclosure 2, September 20, 2017 Sample Correspondence

DHA informed us that your appeals from FY 2014 and FY 2015 have been adjudicated and a final response was sent to you. DHA noted that they still have appeals pending from FY 2016, FY 2017, and FY 2018, but that these appeals are in their queue, and they have assured us that they will be adjudicated as soon as practicable. With regard to the delay in responding to some of your appeals, DHA explained that when it was first created, it did not have established FOIA policies and procedures for all of its new entities. DHA has been working to improve these practices and procedures. DHA recently established a new FOIA Appeals Standard Operating Procedure (SOP) to ensure more efficient and consistent appeals adjudication.

- 2 -

DHA is also actively working on obtaining a new FOIA case management system that will assist in tracking and maintaining better visibility over their administrative appeal process. These steps are both aimed at improving the efficiency and management of DHA's FOIA appeals.

(3) You have also noted some concerns about the reporting of administrative appeals at DHA in DOD's Annual FOIA Reports. Our Office began communicating with both DHA and DOD about this issue during the FY 2017 reporting period, and we are continuing to work with them to ensure accurate reporting for the upcoming FY 2018 Annual FOIA Report. In our discussions, DHA acknowledged the discrepancies in their Annual FOIA Report data and also explained the steps they are taking to ensure proper tracking of their FOIA appeals going forward. As noted above, DHA recently established a new FOIA Appeals Standard Operating Procedure (SOP). DHA is also currently working on obtaining a new FOIA case management system that will assist in tracking its appeals for the Annual FOIA Report. With regard to any administrative appeals that were not reported, or under reported, in prior years' Annual FOIA Reports, DHA has committed to noting this in their upcoming FY 2018 Annual FOIA Report.

I want to thank you for bringing these issues to our attention. I sincerely apologize for the delay in responding to your earlier inquiries to our office. Please let us know if you have any additional questions or concerns.

Sincerely,

Bobby Talebian
Chief, FOIA Compliance Staff Office of Information Policy

Enclosure 2, September 20, 2017 Sample Correspondence

From: [REDACTED](#)

To: doj.oip.Complianceinquiry@usdoj.gov

Sent: 9/20/2017 8:37:47 PM Eastern Standard Time

Subject: FOIA Reporting and Compliance - Walter Reed/DHA Aged Appeal of FOIA WRNMC #13-29 LEUNG, ANGELA N 2LT Unavailability

Dear DOJ:

I am asking for your help.

Please address this from a FOIA Compliance perspective, as compliance is an integral part of your mission.

1. Please confirm that Walter Reed received my FOIA Request 13-21 on July 9, 2013. Indisputable
2. Please confirm that Walter Reed did not report my FOIA Request 13-21 at all. Indisputable.
3. Please determine from Walter Reed the reason for not reporting my FOIA Request,13-21 in their annual FOIA Report Submissions.
4. Please determine when DHA learned that Walter Reed has not reported my FOIA Request,13-21 in their annual FOIA Report Submission
5. Please confirm that Walter Reed received my FOIA Request 13-29 on August 18, 2013. Indisputable
6. Please confirm that Walter Reed did not report my FOIA Request 13-29 until FY 2015 and then not report it as of the date received.
7. Please determine from Walter Reed the reason for not reporting my FOIA Request,13-29 in their FY 2013 and FY 2014 Submissions.
8. Please determine when DHA learned that Walter Reed has not reported my FOIA Request,13-29 in their annual FOIA Report Submission
9. Please determine from DHA the date that DHA acknowledges receiving my administrative appeal of my Request 13-29.
10. Please confirm that DHA has not been reporting my open administrative appeal.
11. Please determine why DHA has not been reporting my open, aged administrative appeal.
12. Please determine why DHA is not processing administrative appeals in the order in which they are received.

Please also note that even duplicate requests (if Walter Reed considers these so) must be recorded and reported in annual FOIA reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, "Disposition of FOIA Requests," (available at

Enclosure 2, September 20, 2017 Sample Correspondence

http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf (“DOJ Handbook”).

It is important for your office to obtain factual responses to these questions as part of your compliance mission.

Please note that I am not seeking these records as part of any current litigation.

Please treat this request for assistance distinctly and apart from others that I may submit. There will be many.

The DOD point of contact for FOIA Compliance is Ms. Cindy Allard, cindy.l.allard.civ <cindy.l.allard.civ@mail.mil>. She may already have the answers to these questions. Her office has been very helpful in the past.

Thank you,

With my respect,
Robert Hammond

-----Original Message-----

From: [REDACTED](#)

To: [REDACTED](#); joo.y.chung2.civ <joo.y.chung2.civ@mail.mil>; cindy.l.allard.civ <cindy.l.allard.civ@mail.mil>; raquel.c.bono.mil <raquel.c.bono.mil@mail.mil>; mark.a.kobelja <mark.a.kobelja@mail.mil>; guy.t.kiyokowa.civ <guy.t.kiyokowa.civ@dha.mil>

Cc: Brian.K.Martin.civ <Brian.K.Martin.civ@mail.mil>; Judy.a.logeman.civ <Judy.a.logeman.civ@mail.mil>; mary.p.shaw <mary.p.shaw@navy.mil>; christopher.a.julka <christopher.a.julka@navy.mil>; isaac.j.jarvus.civ <isaac.j.jarvus.civ@health.mil>; rhonda.f.johnson2.civ <rhonda.f.johnson2.civ@mail.mil>; James.l.brady.civ <James.l.brady.civ@mail.mil>; jeffrey.oats <jeffrey.oats@us.army.mil>; madelyn.m.denson.civ <madelyn.m.denson.civ@mail.mil>; andrew.m.barr.mil <andrew.m.barr.mil@mail.mil>; david.a.lane <david.a.lane@med.navy.mil>; Jeffrye.b.clark4.mil <Jeffrye.b.clark4.mil@mail.mil>; robert.luciano.mil <robert.luciano.mil@mail.mil>; sean.c.brown4 <sean.c.brown4@mail.mil>; linda.s.thomas47.civ <linda.s.thomas47.civ@mail.mil>; joseph.e.davidge.civ <joseph.e.davidge.civ@mail.mil>; judy.j.bizzell.civ <judy.j.bizzell.civ@mail.mil>; paul.r.cordts.civ <paul.r.cordts.civ@mail.mil>; michael.s.heimall <michael.s.heimall@mail.mil>; voiceofthecustomer <voiceofthecustomer@dha.mil>; paul.t.crygarowicz.mil

Enclosure 2, September 20, 2017 Sample Correspondence

paul.t.crygarowicz.mil@mail.mil>; Stacy.a.cummings.civ <Stacy.a.cummings.civ@mail.mil>; lailanie.g.porciuncula.civ <lailanie.g.porciuncula.civ@mail.mil>

Sent: Wed, Sep 20, 2017 8:00 pm

Subject: Re: Appeal of FOIA WRNMC #13-29 LEUNG, ANGELA N 2LT Unavailability

...typo corrected +

also, please note that most addressees are included simply "for information only." [Brian.K.Martin.civ](mailto:Brian.K.Martin.civ@mail.mil) Brian.K.Martin.civ@mail.mil, [Judy.a.logeman.civ](mailto:Judy.a.logeman.civ@mail.mil) Judy.a.logeman.civ@mail.mil, [mary.p.shaw](mailto:mary.p.shaw@navy.mil) mary.p.shaw@navy.mil, [christopher.a.julka](mailto:christopher.a.julka@navy.mil) christopher.a.julka@navy.mil, [isaac.j.jarvus.civ](mailto:isaac.j.jarvus.civ@health.mil) isaac.j.jarvus.civ@health.mil, [rhonda.f.johnson2.civ](mailto:rhonda.f.johnson2.civ@mail.mil) rhonda.f.johnson2.civ@mail.mil, [James.l.brady.civ](mailto:James.l.brady.civ@mail.mil) James.l.brady.civ@mail.mil, [jeffrey.oats](mailto:jeffrey.oats@us.army.mil) jeffrey.oats@us.army.mil, [madelyn.m.denson.civ](mailto:madelyn.m.denson.civ@mail.mil) madelyn.m.denson.civ@mail.mil, [andrew.m.barr.mil](mailto:andrew.m.barr.mil@mail.mil) andrew.m.barr.mil@mail.mil, [david.a.lane](mailto:david.a.lane@med.navy.mil) david.a.lane@med.navy.mil, [Jeffrye.b.clark4.mil](mailto:Jeffrye.b.clark4.mil@mail.mil) Jeffrye.b.clark4.mil@mail.mil, [robert.luciano.mil](mailto:robert.luciano.mil@mail.mil) robert.luciano.mil@mail.mil, [sean.c.brown4](mailto:sean.c.brown4@mail.mil) sean.c.brown4@mail.mil, [linda.s.thomas47.civ](mailto:linda.s.thomas47.civ@mail.mil) linda.s.thomas47.civ@mail.mil, [joseph.e.davidge.civ](mailto:joseph.e.davidge.civ@mail.mil) joseph.e.davidge.civ@mail.mil, [judy.j.bizzell.civ](mailto:judy.j.bizzell.civ@mail.mil) judy.j.bizzell.civ@mail.mil, [paul.r.cordts.civ](mailto:paul.r.cordts.civ@mail.mil) paul.r.cordts.civ@mail.mil, [michael.s.heimall](mailto:michael.s.heimall@mail.mil) michael.s.heimall@mail.mil, [voiceofthecustomer](mailto:voiceofthecustomer@dha.mil) voiceofthecustomer@dha.mil, paul.t.crygarowicz.mil@mail.mil, Stacy.a.cummings.civ@mail.mil, lailanie.g.porciuncula.civ@mail.mil

-----Original Message-----

From: [REDACTED](#)

To: [joo.y.chung2.civ](mailto:joo.y.chung2.civ@mail.mil) <joo.y.chung2.civ@mail.mil>; [cindy.l.allard.civ](mailto:cindy.l.allard.civ@mail.mil) <cindy.l.allard.civ@mail.mil>; [raquel.c.bono.mil](mailto:raquel.c.bono.mil@mail.mil) <raquel.c.bono.mil@mail.mil>; [mark.a.kobelja](mailto:mark.a.kobelja@mail.mil) <mark.a.kobelja@mail.mil>; [guy.t.kiyokowa.civ](mailto:guy.t.kiyokowa.civ@dha.mil) <guy.t.kiyokowa.civ@dha.mil>

Cc: [Brian.K.Martin.civ](mailto:Brian.K.Martin.civ@mail.mil) <Brian.K.Martin.civ@mail.mil>; [Judy.a.logeman.civ](mailto:Judy.a.logeman.civ@mail.mil) <Judy.a.logeman.civ@mail.mil>; [mary.p.shaw](mailto:mary.p.shaw@navy.mil) <mary.p.shaw@navy.mil>; [christopher.a.julka](mailto:christopher.a.julka@navy.mil) <christopher.a.julka@navy.mil>; [isaac.j.jarvus.civ](mailto:isaac.j.jarvus.civ@health.mil) <isaac.j.jarvus.civ@health.mil>; [rhonda.f.johnson2.civ](mailto:rhonda.f.johnson2.civ@mail.mil) <rhonda.f.johnson2.civ@mail.mil>; [James.l.brady.civ](mailto:James.l.brady.civ@mail.mil) <James.l.brady.civ@mail.mil>; [jeffrey.oats](mailto:jeffrey.oats@us.army.mil) <jeffrey.oats@us.army.mil>; [madelyn.m.denson.civ](mailto:madelyn.m.denson.civ@mail.mil) <madelyn.m.denson.civ@mail.mil>; [andrew.m.barr.mil](mailto:andrew.m.barr.mil@mail.mil) <andrew.m.barr.mil@mail.mil>; [david.a.lane](mailto:david.a.lane@med.navy.mil) <david.a.lane@med.navy.mil>; [Jeffrye.b.clark4.mil](mailto:Jeffrye.b.clark4.mil@mail.mil) <Jeffrye.b.clark4.mil@mail.mil>; [robert.luciano.mil](mailto:robert.luciano.mil@mail.mil) <robert.luciano.mil@mail.mil>; [sean.c.brown4](mailto:sean.c.brown4@mail.mil) <sean.c.brown4@mail.mil>; [linda.s.thomas47.civ](mailto:linda.s.thomas47.civ@mail.mil) <linda.s.thomas47.civ@mail.mil>; [joseph.e.davidge.civ](mailto:joseph.e.davidge.civ@mail.mil) <joseph.e.davidge.civ@mail.mil>; [judy.j.bizzell.civ](mailto:judy.j.bizzell.civ@mail.mil) <judy.j.bizzell.civ@mail.mil>; [paul.r.cordts.civ](mailto:paul.r.cordts.civ@mail.mil) <paul.r.cordts.civ@mail.mil>; [michael.s.heimall](mailto:michael.s.heimall@mail.mil) <michael.s.heimall@mail.mil>; [voiceofthecustomer](mailto:voiceofthecustomer@dha.mil) <voiceofthecustomer@dha.mil>; [paul.t.crygarowicz.mil](mailto:paul.t.crygarowicz.mil@mail.mil) <paul.t.crygarowicz.mil@mail.mil>; [Stacy.a.cummings.civ](mailto:Stacy.a.cummings.civ@mail.mil) <Stacy.a.cummings.civ@mail.mil>; [lailanie.g.porciuncula.civ](mailto:lailanie.g.porciuncula.civ@mail.mil) <lailanie.g.porciuncula.civ@mail.mil>

Sent: Wed, Sep 20, 2017 4:28 pm

Enclosure 2, September 20, 2017 Sample Correspondence

Subject: Fwd: Appeal of FOIA WRNMC #13-29 LEUNG, ANGELA N 2LT Unavailability

Dear Ms. Chin, Ms. Allard:

Thank you for your ongoing assistance. Please also refer to my related email of 9/9/2017 8:50:01 AM," Potential Privacy Breach."

I want to call your attention to yet additional examples of ostensible FALSE FOIA and Privacy Act reporting by Walter Reed National Military Medical Center and Defense Health Agency. The integrity of the DoD FOIA and Privacy Act processes and the accuracy of reporting to the Attorney General of the United States and to Congress are under the purview of Mr. David Tillotson III, Deputy Chief Management Officer.

This is a DOD matter.

My FOIA Request below was submitted to Walter Reed National Medical Center (Judy Bizzell and Joseph E. Davidge) on August 18, 2013 (8/18/2013 5:50:50 A.M.) following a similar, still unanswered, and un- reported Request, "LEUNG, ANGELA N 2LT Transfer Duty Assignment" of July 9, 2013. There is no question that Walter Reed received my requests on those dates (attached emails + confirmed fax). Despite follow-ups, Walter Reed did not report either request in FY 2013 or 2014 and has never reported my July 9, 2013 Request. Then, absent any new Request, Walter Reed assigned an FY 2015 case tracking number, denying my August 18, 2013 request.

Despite follow-ups to Ms. Linda Thomas and Mr. Paul T Cygnarowicz (<https://www.linkedin.com/in/paul-cygnarowicz-3713a1a9>), DHA has still not acted upon or reported in their annual FOIA report submissions, my May 17, 2015 - electronically submitted - administrative appeal of Walter Reed's improper initial determination denial. Please see attached.

My August 18, 2013 Request seeks, with respect to provider: Nurse LEUNG, ANGELA N 2LT [now known as ANGELA N. MAMANGUN]:

"Any and all records relied upon by J. E. Davidge, Privacy Compliance Officer, in determining that Ms. Leung is unavailable to make my requested medical record correction, including the date that she became unavailable and the reason for her unavailability. Refer to WRNMMC letter dated AUG 09, 2013 subject: "Denial letter for legal correction of PHI/PII."

I submitted these requests after Mr. Davidge inaccurately stated that Nurse Leung/Mamangun was not available to act on amendment request to my medical records. Mr. Davidge repeated this inaccurate claim in an email of 11/13/2013 12:16:46 PM, stating "As stated

Enclosure 2, September 20, 2017 Sample Correspondence

in the letter 2LT Angela Leung is no longer a staff member at WRNMMC and we are not required under HIPAA, the Privacy Act or any other law to locate her to amend your medical record.”

Of course, from Ms. Leung’s/Mamangun’s Officer Records Brief, shown in my administrative appeal, Nurse Leung/Mamangun’s was still assigned to Walter Reed through September 2014 - more than a year later.

What is Walter Reed afraid of? Questionable medical decisions? Inaccurate entries in medical records? Re-writing history?

Additionally, I filed a Privacy Act complaint when Mr. Davidge initially refused to act on my amendment request (first submitted to Walter Reed’s Director, then to Deputy Commander of Medicine and Walter Reed’s Healthcare Resolutions Special Assistant to the Director, Judy Ann Logeman. I appealed that complaint to DON JAG. I submitted another complaint regarding Mr. Davidge’s apparent improper denial, which he confirms receiving (see attached). That Privacy Act complaint remains open... tough one to dispute. Also, it is the Covered Entity, DOD/Walter Reed, that is responsible for the accuracy of my medical records.

Ostensibly, none of these acknowledged Privacy Act complaints was reported in Walter Reed’s/DON JAG’s Privacy Act Reports to Congress under Section 803 Of Public Law 110-53.

Ms. Chung and Ms. Allard, with deep respect, please look into this matter of ostensive FALSE reporting. Please ensure that my FOIA Requests and appeals are properly reported. Please ensure that my open Privacy Act complaint is properly reported. I will greatly appreciate knowing your findings and action planned or taken. Please advise Mr. David Tillotson III.

Vice Admiral Bono, Mr. Kiyokowa, Captain Kobelja, with deep respect, please direct your staff to properly report and act on my open PA complaint and FOIA Appeal. Please ensure timely action in accordance with those statutes. I will similarly appreciate knowing what action DHA/Walter Reed are taking regarding this ostensible: false reporting, potentially inaccurate, disputed medical records entry, inaccurate statements by Walter Reed’s Privacy Officer. I would not want to believe that DHA/Walter Reed would condone this behavior, particularly with respect to the accuracy of a patient's medical records and FOIA/PA reporting.

Meanwhile, I will continue to document the file with numerous examples. It is my desire and hope that those responsible for these acts, and those participating in covering them up - now, at this late date, with knowledge and forethought - should be held accountable.

With the assistance of some of those on this email, perhaps these matters may soon be resolved.

Thank you.

With my deep respect,

Enclosure 2, September 20, 2017 Sample Correspondence

Robert Hammond

From: [REDACTED](#)

To: [dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mail.mil](#), [OGCFOIAAppeals@tma.osd.mil](#), [linda.s.thomas47.civ@mail.mil](#), [paul.t.crygarowicz.mil@mail.mil](#)

Cc: [FOIARequests@tma.osd.mil](#), [jewel.p.christmas.civ@mail.mil](#), [doritha.n.ross.ctr@mail.mil](#), [nadien.brown@tma.osd.mil](#), [dha.ncr.pcl.mbx.foia-requests@mail.mil](#), [Rahwa.Keleta@mail.mil](#), [Michelle.Johnson.ctr@mail.mil](#), [Michael.Tymkovich.ctr@mail.mil](#)

Sent: 12/28/2016 8:47:55 PM Eastern Standard Time

Subject: Fwd: Appeal of FOIA WRNMC #13-29 LEUNG, ANGELA N 2LT Unavailability

DHA,

Please advise me how you are reporting this aged appeal on your Annual FOIA reports and advise me of the status of my appeal. I have received no acknowledgment or reply.

Please provide your reply by email with PDF attachment. In the event that you send any correspondence to me by any other means, please send it by a traceable means only.

Thank you,

With my respect,

Robert Hammond

From: [REDACTED](#)

To: [REDACTED](#), [dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mail.mil](#), [OGCFOIAAppeals@tma.osd.mil](#), [linda.s.thomas47.civ@mail.mil](#), [paul.t.crygarowicz.mil@mail.mil](#) CC: [FOIARequests@tma.osd.mil](#), [jewel.p.christmas.civ@mail.mil](#), [doritha.n.ross.ctr@mail.mil](#), [nadien.brown@tma.osd.mil](#), [dha.ncr.pcl.mbx.foia-requests@mail.mil](#)

Sent: 9/21/2016 6:11:42 A.M. Eastern Standard Time

Subj: Re: Appeal of FOIA WRNMC #13-29 LEUNG, ANGELA N 2LTxxxx Unavailability

DHA,

Please advise me of the status of my appeal for the attached Walter Reed denial of my request, which are both attached and below. I have received no acknowledgement or other correspondence related to this appeal.

Enclosure 2, September 20, 2017 Sample Correspondence

Thank you.

With my respect,
Robert Hammond

In a message dated 12/30/2015 5:35:15 P.M. Eastern Daylight Time, [REDACTED](#) writes:

DHA,

Please advise me of the status of my appeal below and attached. Thanks.
With my respect, Robert Hammond

From: [REDACTED](#)

To: OGCFOIAAppeals@tma.osd.mil, linda.s.thomas47.civ@mail.mil, paul.t.crygarowicz.mil@mail.mil CC:
FOIARequests@tma.osd.mil, jewel.p.christmas.civ@mail.mil, doritha.n.ross.ctr@mail.mil, nadien.brown@tma.osd.mil

Sent: 5/16/2015 8:46:33 P.M. Eastern Daylight Time

Subj: Appeal of FOIA WRNMC #13-29 LEUNG, ANGELA N 2LTxxxx Unavailability

Robert Hammond
REDACTED

May 16, 2015

Office of General Counsel

National Capital Region Medical Directorate Attention: Lieutenant Colonel Paul T. Cygnarowicz Defense Health Agency

8901 Wisconsin Avenue (Building 27)

Bethesda, MD 20889

Phone: (703) 681-6012, FAX 301-319-8900

E-mail: OGCFOIAAppeals@tma.osd.mil

Linda S. Thomas, JD, CIPP/G, PMP, CISSP

Enclosure 2, September 20, 2017 Sample Correspondence

Chief, Freedom of Information Service Center, Defense Health Agency, 7700 Arlington Boulevard, Suite 5101
Falls Church, VA 22042- 5101
Office: 703-681-7500
Mobile: 571-286-9517
Linda.S.Thomas47.civ@mail.mil

Subject: Appeal of My FOIA Request of July 29, 2013 – LEUNG, ANGELA N 2LTxxxx Unavailability

My Personal Reference Number: FOIA WRNMC #13-29 WRNNMC Assigned Agency FOIA Case Number #15-20

References:

- (a) The Freedom of Information Act (FOIA)
- (b) The Privacy Act (c) CFR 164.526
- (c) DoD 5700.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (d) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (e) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011: “Your Right to Federal Records” (see <http://publications.usa.gov/USAPubs.php?PubID=6080>)
- (f) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (g) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>

Dear Lieutenant Colonel Cygnarowicz or Appellate Authority and Ms. Thomas,

This appeal is submitted under the references above for my FOIA request dated July 29, 2013 seeking records that Mr. Davidge relied upon in determining that 2LT Leung was unavailable to take action on my request for correction of my medical record. The Agency is improperly denying my request in full, inappropriately citing the FOIA Exemption (b)(6) and asserting that release would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C.552(b)(6).

There is no personal privacy interest in the information sought. The agency is also denying release under FOIA Exemption 5, 5 U.S.C. 552 (b)(5) stating that the documents are "inter-agency or intra-agency documents which would not be available by law to a party other than an agency in litigation with the agency." FOIA Exemption 5, 5 U.S.C. 552 (b)(5) is the deliberative process exemption. There is no deliberative process, no pending civil litigation and the documents sought are not inter-agency or intra-agency documents. Moreover, not all records sought would be covered under either of the two cited exemptions under any circumstance.

Enclosure 2, September 20, 2017 Sample Correspondence

This appeal is being provided to DHA FOIA Office as notice that the DHA FY 2014 Annual FOIA Report is incorrect in that it did not incorporate this outstanding FOIA request (and others). The DHA FY 2015 Annual FOIA Report will be inaccurate if this FY 2013 FOIA request and appeal is not incorporated into the statistics reported, DHA will be knowingly submitting a false report.

The email at Attachment A contains my most recent follow-up, my original FOIA request and the WRNMMC denial of my FOIA request. Attachment B contains a prior follow-up including a false assertion by the WRNMMC Privacy Officer that 2LT Leung was no longer a staff member at WRNMMC. There were many follow-ups. Attachment C contains the Officer Record Brief released by Army Personnel Command pursuant to a FOIA request that shows that 2LT Leung was still assigned to WRNMMC.

Information Requested via FOIA.

I am seeking the following with respect to provider: LEUNG, ANGELA N 2LTxxxx:

- Records of completed check out sheet for departing the organization, including date
- Records of Common Access Card Turn-in, including date
- Records of badge turn in, including date
- Records of WRNMMC network access termination, including date
- Any and all records relied upon by J. E Davidge, Privacy Compliance Officer in determining that Ms. Leung is unavailable to make my requested medical record correction, including the date that she became unavailable and the reason for her unavailability. Refer to WRNMMC letter dated AUG 09, 2013 subject: DENIAL LETTER FOR LEGAL CORRECTION OF PHI/PII.

Background.

By way of background, I submitted a HIPAA/Privacy Act request to WRNMMC on March 26, 2013 asking that 2LT Leung correct a medical record entry in my file. After considerable delay, I appealed that WRNMMC did not respond to my HIPAA/Privacy Act request. Mr. Davidge then denied my HIPAA/Privacy Act request, stating that 2LT Leung was not available to consider my request for correction of my medical record. Mr. Davidge stated further that 2LT Leung was no longer assigned to WRNMMC. That statement is not factual.

On July 29, 2013, I submitted this FOIA request seeking records that Mr. Davidge relied upon in determining that 2LT Leung was unavailable to take action on my request for correction of my medical record.

Enclosure 2, September 20, 2017 Sample Correspondence

The WRNMMC denial of my July 29, 2013 FOIA request is inappropriate. There is no statutory basis for WRNMMC to withhold the records that I am seeking.

Regarding exemption (b)(6), I clearly stated in my FOIA request and in subsequent correspondence that I am not seeking any personally identifiable information for 2LT Leung; only the records that Mr. Davidge relied on in determining that she was (purportedly) unavailable to act on my HIPAA/Privacy Act request. I noted that her name may have changed, as is common. Then, on September 18, 2014, I submitted a FOIA request to the Army Human Resources Command seeking the current Officer Record Brief for 2LT Angela N. Leung, whose last known assignment was WRNMMC. Please see the record at Attachment C released via the FOIA showing that 2LT Leung was still assigned to WRNMMC at that time. The WRNMMC Military Personnel Office would have had that same information. Other records sought in my FOIA request would have shown that she was still accessing WRNMMC computer systems and medical records. Mr. Davidge knew or should have known that 2LT Leung was still assigned to WRNMMC.

Regarding exemption (b)(5), there is no litigation, and this exemption would not apply in any case. These are simple records that Agencies maintain in the course of normal business, such as check out sheets. They do not involve opinions or deliberations and they are not pre-decisional.

Moreover, regarding the exemption, (b)(5) quote cited in the denial, the DOJ FOIA Guide states, “the President and Attorney General have issued memoranda to all agencies emphasizing that the FOIA reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure.” Furthermore, WRNMMC’s use of the (b)(5) exemption is not in line with a recent GAO report stating, “Office of Information Policy guidance stated that exemption 5 ... provides the best opportunity for increasing the release of information.”

Public Interest. There is public interest in ensuring that medical record entries are complete, timely and accurate and that the Privacy Officer is performing duties in accordance with governing laws, regulations and policies.

Basis for Appeal.

I am appealing that the Agency:

- (1) has improperly denied my request in full under 5 U.S.C. 552(b)(6) and 5 U.S.C. 552 (b)(5);
- (2) has not accounted for all records sought that would not be covered under either of the above exemptions (to the extent that the Agency asserts an exemption to release of any single document, the other documents sought must be released or the agency must assert that a compressive search for remaining records sought (i.e. check out sheet, Common Access Card turn in, etc.) resulted in no records found);
- (3) has not provided all reasonably segregable portions of documents;

Enclosure 2, September 20, 2017 Sample Correspondence

- (4) has not provided metadata for documents withheld, which would not be exempt even if the remaining portions of documents truly were exempt.
- (5) Further, I am appealing that WRNMMC and DHA by extension is not complying with the FOIA in that the WRNMMC HIPAA/Privacy Act/FOIA/Civil Liberties Office did not:
- (6) provide a tracking number for this request within ten days of receipt of my original request as required by the FOIA and various regulations and policies;
- (7) provide a reply within the statutory and regulatory twenty-day time period or provide an interim reply within 20 days as required by the FOIA and various regulations;
- (8) process FOIA requests in the order in which they were received; and,
- (9) properly report this FOIA request on its FY 2013 and FY 2014 Annual FOIA Report submissions, thereby submitting false reports.

Appellate Authority Action Requested. I am asking that:

- (1) each element of the basis of my appeal be addressed separately;
- (2) each element of my appeal be sustained [granted];
- (3) my FOIA request be remanded back to the Agency for direct reply to me; and,
- (4) I be granted new appellate rights following a subsequent reply by the Agency.

Discussion – FOIA Exemption 5 U.S.C. 552(b)(6).

- No documents qualify as exempt.
 - As demonstrated by the Army Personnel Command release of 2LT Leung’s Officer Record Brief, records may not be withheld simply because they show 2LT Leung’s current name. That is not exempt. Name exempt under FOIA.
 - In my follow-ups, I consistently stated that I was not seeking Privacy Act protected information. Any portions of a record containing truly protected Privacy Act information (should any exist) would be redacted, but the record would still be releasable.
- Release of Segregable Portions.
 - I contend that every item sought under my FOIA request is fully releasable without redaction in accordance with reference (g). The Agency must justify each item being withheld.
 - The FOIA requires that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this

Enclosure 2, September 20, 2017 Sample Correspondence

subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

- Further, when a requested document contains some information which falls under one of the exemptions, the FOIA requires that all non-exempt portions of the record must still be released. The Act expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction (the deletion of part of a document to prevent disclosure of material covered by an exemption) of the parts which are exempt. 5 U.S.C. § 552(b). This is a very important aspect of FOIA because it prohibits an agency from withholding an entire document merely because one line, one page or one picture are exempt.
- Strong Presumption in Favor of Disclosure.
 - "In the Act generally, and particularly under Exemption (6), there is a strong presumption in favor of disclosure." *Local 598 v. Department of Army Corps of Engineers*, 841 F.2d 1459, 1463 (9th. Cir. 1988) (emphasis added). In that case, the Ninth Circuit reviewed the context of applicable Exemption 6 case law:
 - The Freedom of Information Act embodies a strong policy of disclosure and places a duty to disclose on federal agencies. As the district court recognized, 'disclosure, not secrecy, is the dominant objective of the Act.' *Department of the Air Force v. Rose*, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976). 'As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information.'
 - *Nationwide Bldg. Maintenance, Inc. v. Sampson*, 559 F.2d 704, 715 (D.C.Cir.1977). As a consequence, the listed exemptions to the normal disclosure rule are to be construed narrowly. See *Rose*, 425 U.S. at 361, 96 S.Ct. at 1599. This is particularly true of Exemption (6). Exemption (6) protects only against disclosure which amounts to a 'clearly unwarranted invasion of personal privacy.' That strong language 'instructs us to 'tilt the balance [of disclosure interests against privacy interests] in favor of disclosure.'"
 - *Id.* (emphasis added), citing *Washington Post Co. v. Department of Health and Human Servs.*, 690 F.2d 252, 261 (D.C.Cir.1982) (quoting *Ditlow v. Shultz*, 517 F.2d 166, 169 (D.C. Cir.1975)).

Discussion FOIA Exemption 5, 5 U.S.C. 552 (b)(5).

Regarding exemption (b)(5), there is no litigation, and this exemption would not apply in any case. These are simple records that Agencies maintain in the course of normal business such as check out sheets. They do not involve opinions or deliberations and they are not pre-decisional.

Moreover, regarding the exemption, (b)(5) quote cited in the denial, the DOJ FOIA Guide states, "the President and Attorney General have issued memoranda to all agencies emphasizing that the FOIA reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure." Furthermore, WRNMMC's use of the (b)(5)

Enclosure 2, September 20, 2017 Sample Correspondence

exemption is not in line with a recent GAO report stating, “Office of Information Policy guidance stated that exemption 5 ... provides the best opportunity for increasing the release of information.”

Agency’s Burden to Claim Exemption B5 Process Privilege Exemption B5.

United States Department of Justice Freedom of Information Act Guide May 2004

The three primary, most frequently invoked privileges that have been held to be incorporated into Exemption 5 are the deliberative process privilege (referred to by some courts as "executive privilege"¹⁴), the attorney work-product privilege, and the attorney-client privilege.¹⁵ First, however, Exemption 5's threshold requirement must be considered. "Inter-Agency or Intra-Agency" Threshold Requirement. The initial consideration under Exemption 5 is whether a record is of the type intended to be covered by the phrase "inter-agency or intra-agency memorandums."¹⁶ The documents sought would not be inter-agency or intra-agency documents.

"Inter-Agency or Intra-Agency" Threshold Requirement

The initial consideration under Exemption 5 is whether a record is of the type intended to be covered by the phrase "inter-agency or intra-agency memorandums."¹⁶ Though the "most natural reading" of this language would seem to encompass only records generated by and internal to executive branch agencies. See DOJ v. Julian, 486 U.S. 1, 19 n.1 (1988); see also, e.g., Maydak v. DOJ, 362 F. Supp. 2d 316, 322 (D.D.C. 2005) (ruling that documents exchanged between federal prisoner and prison staff do not meet threshold standard); Homick v. DOJ, No. C 98-00557, slip op. at 18 (N.D. Cal. Sept. 16, 2004) (holding that document exchanged between agency employee and private attorney does not qualify under threshold standard).

- Documents relating to an attorney representing 2LT Leung are not exempt;
- Any document provided to WRNMMC by an attorney representing 2LT Leung would not be exempt; it would be an Agency document subject or release under FOIA.
- There is no attorney client privilege for any document provided by an attorney representing 2 LT Leung.
- Documents indicating that 2LT Leung retained an attorney would not be exempt.
 - The above would apply even if the attorney was a WRNMMC employee.
- For any document that WRNMMC asserts is exempt, the metadata regarding the document would not be exempt.

Process Privilege

Enclosure 2, September 20, 2017 Sample Correspondence

- a. Exemption 5 is: the deliberative process privilege, the general purpose of which is to "prevent injury to the quality of agency decisions." Specifically, three policy purposes consistently have been held to constitute the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.
- b. Traditionally, the courts have established two fundamental requirements, both of which must be met, for the deliberative process privilege to be invoked. (73)
First, the communication must be predecisional, i.e., "antecedent to the adoption of an agency policy." (74) Second, the communication must be deliberative, i.e., "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." (75) The burden is upon the agency to show that the information in question satisfies both requirements. (76)
In determining whether a document is predecisional, an agency must establish "what deliberative process is involved, and the role played by the documents in issue in the course of that process." (77)
In contrast, however, are postdecisional documents. They generally embody statements of policy and final opinions that have the force of law, (84) that implement an established policy of an agency, (85) or that explain actions that an agency has already taken. (86)
Second, one must consider the nature of the decisionmaking authority vested in the office or person issuing the document. (98)
Finally, even if a document is clearly protected from disclosure by the deliberative process privilege, it may lose this protection if a final decisionmaker "chooses expressly to adopt or incorporate [it] by reference." (112) ... courts have suggested a less stringent standard of "formal or informal adoption."
- c. A second primary limitation on the scope of the deliberative process privilege is that of course it applies only to "deliberative" documents and it ordinarily is inapplicable to purely factual matters, or to factual portions of otherwise deliberative memoranda. (117) Not only would factual material "generally be available for discovery," (118) but its release usually would not threaten consultative agency functions. (119)
- d. Documents that are commonly encompassed by the deliberative process privilege include "advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated," (141) the release of which would likely "stifle honest and frank communication within the agency." (142)

Footnotes.

65. See *ITT World Communications, Inc. v. FCC*, 699 F.2d 1219, 1237-38 (D.C. Cir. 1983) (dictum) (suggesting that otherwise exempt predecisional material "may" be ordered released so as to explain actual agency positions), rev'd on other grounds, 466 U.S. 463 (1984).

Enclosure 2, September 20, 2017 Sample Correspondence

73. See *Mapother v. Dep't of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993) ("The deliberative process privilege protects materials that are both predecisional and deliberative." (citing *Petroleum Info. Corp. v. United States Dep't of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992))).
74. *Jordan*, 591 F.2d at 774.
75. *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).
76. See *Coastal States*, 617 F.2d at 866.
77. *Id.* at 868; see also *Providence Journal Co. v. United States Dep't of the Army*, 981 F.2d 552, 559 (1st Cir. 1992) (protecting IG's recommendations even though decisionmakers were not obligated to follow them); *Formaldehyde Inst. v. HHS*, 889 F.2d 1118, 1123 (D.C. Cir. 1989) (protecting recommendations on suitability of article for publication, though decision on "whether and where" to publish article had not yet been made); *Greenberg*, 10 F. Supp. 2d at 17 (stating that "an evaluation of the legal status" of a case would be protected, but an "instruction from a senior to a junior official as to what legal action should be taken -- a final decision . . . does not merit Exemption 5 protection"); *Horsehead Indus. v. EPA*, No. 94-1299, slip op. at 14 (D.D.C. Oct. 1, 1996) ("In determining whether material is predecisional in nature, courts must look to see what role the material played in the decisionmaking process . . . A statement of an opinion by an agency official or preliminary findings reported by a public affairs official do not necessarily constitute a statement of EPA policy or final opinion that has the force of law."); *Knowles v. Thornburgh*, No. 90-1294, slip op. at 5-6 (D.D.C. Mar. 11, 1992) (holding information generated during process preceding President's ultimate decision on application for clemency was predecisional); cf. *Sw. Ctr. for Biological Diversity v. USDA*, 170 F. Supp. 2d 931, 940 (D. Ariz. 2000) (rejecting as "tenuous" defendant's position that releasing information would "result in humans disturbing nesting goshawks," which in turn would alter agency's deliberative process by affecting results of scientific study), *aff'd on other grounds*, 314 F.3d 1060 (9th Cir. 2002); *Animal Legal Def. Fund, Inc. v. Dep't of the Air Force*, 44 F. Supp. 2d 295, 299 (D.D.C. 1999) (rejecting privilege claim because agency "utterly failed to specify the role played by each withheld document" in policy-formulation process).
84. See, e.g., *Taxation With Representation Fund v. IRS*, 646 F.2d 666, 677-78 (D.C. Cir. 1981).
86. See, e.g., *Sears*, 421 U.S. at 153-54; *Judicial Watch, Inc. v. HHS*, 27 F. Supp. 2d 240, 245 (D.D.C. 1998) ("deliberative process privilege does not protect documents that merely state or explain agency decisions"); cf. *Horowitz v. Peace Corps*, No. 00-0848, slip op. at 9-10 (D.D.C. Oct. 12, 2001) (ordering parties to submit additional evidence of whether final decision had been made at time disputed memorandum was written). But cf. *Murphy v. TVA*, 571 F. Supp. 502, 505 (D.D.C. 1983) (protecting two "interim" decisions, which agency retains option of changing).
98. See *Pfeiffer*, 721 F. Supp. at 340 ("What matters is that the person who issues the document has authority to speak finally and officially for the agency.").
112. *Sears*, 421 U.S. at 161; see, e.g., *Afshar*, 702 F.2d at 1140 (finding recommendation expressly adopted in postdecisional memorandum); *Niemeier v. Watergate Special Prosecution Force*, 565 F.2d 967, 973 (7th Cir. 1977) (ordering disclosure of an "underlying memorandum" that was "expressly relied on in a final agency dispositional document"); *Shumaker*, No. 97-7139, slip op.

Enclosure 2, September 20, 2017 Sample Correspondence

at 14 (ordering disclosure of advisory document written by agency general counsel and "thereafter adopted as the official position of the agency"); *Bhd. of Locomotive Eng'rs v. Surface Transp. Bd.*, No. 96-1153, 1997 WL 446261, at **4-5 (D.D.C. July 31, 1997) (finding that staff recommendation was adopted in both written decision and commission vote); *Burkins v. United States*, 865 F. Supp. 1480, 1501 (D. Colo. 1994) (holding that final report's statement that findings are same as those of underlying memorandum constituted adoption of that document); *Atkin v. EEOC*, No. 91-2508, slip op. at 23-24 (D.N.J. July 14, 1993) (holding recommendation to close file not protectible where it was contained in agency's actual decision to close file); cf. *Tax Analysts*, 117 F.3d at 617 (finding that documents "routinely used" and "relied upon by agency personnel," in a particular factual setting, were "statements of the agency's legal position" and accordingly not protectible).

113. *Coastal States*, 617 F.2d at 866; see *Pentagon Fed. Credit Union v. Nat'l Credit Union Admin.*, No. 95-1475, slip op. at 5-8 (E.D. Va. June 7, 1996) (finding that board of directors' action "embracing" recommendations in "substantially same language" made documents postdecisional); *Pension Actuaries*, 746 F. Supp. at 192 (ordering disclosure simply on the basis that the IRS's budget assumptions and calculations were "relied upon by the government" in making its final estimate for the President's budget); cf. *Skelton*, 678 F.2d at 39 n.5 (declining to express opinion on whether reference must be to specific portion of document for express incorporation of that portion to occur).

117. See, e.g., *EPA v. Mink*, 410 U.S. 73, 91 (1973) (refusing to extend deliberative process privilege protection to "factual material otherwise available on discovery merely [on the basis that] it was placed in a memorandum with matters of law, policy, or opinion"); *Coastal States*, 617 F.2d at 867 (citing *Mink*, 410 U.S. at 93); *Bilbrey v. United States Dep't of the Air Force*, No. 00-0539, slip op. at 10-11 (W.D. Mo. Jan. 30, 2001) (holding privilege inapplicable to factual statements underlying predecisional recommendations), *aff'd*, No. 01-1789, 2001 WL 1222471, at *1 (8th Cir. Oct. 16, 2001) (unpublished table decision); *Sw. Ctr. for Biological Diversity*, 170 F. Supp. 2d at 941 (concluding that release of "raw research data" would not expose agency's deliberative process, on grounds that such data were not recommendations, not subject to alteration upon further agency review, and not "selective" in character).

118. 410 U.S. at 87-88 (1973).

119. See *Montrose Chem. Corp. v. Train*, 491 F.2d 63, 66 (D.C. Cir. 1974); see also *Rashid v. HHS*, No. 98-0898, slip op. at 11-12 (D.D.C. Mar. 2, 2000) (declining to extend the privilege to agency requests for outside experts' evaluations on the basis that although "[t]he requests were predecisional, . . . they were not deliberative in that they did not 'reflect the give-and-take of the consultative process'" (quoting *Coastal States*, 617 F.2d at 866)); *D.C. Technical Assistance Org. v. HUD*, No. 98-0280, slip op. at 4-5 (D.D.C. July 29, 1999) (ordering release of factual portion of an otherwise deliberative record because it "does not evaluate the actions taken, but only describes them"); *Horsehead*, No. 94-1299, slip op. at 16 (D.D.C. Oct. 1, 1996) ("EPA has not demonstrated how the disclosure of either the testing processes . . . or the data from that testing involves [sic] its deliberative process.").

141. *Sears*, 421 U.S. at 150; *Judicial Watch, Inc. v. Dep't of Justice*, 306 F. Supp. 2d 58, 70 (D.D.C. 2004) (protecting "handwritten notes" on an invitation to the Attorney General, because disclosure "would reveal what the staff member who wrote the notes

Enclosure 2, September 20, 2017 Sample Correspondence

considered to be important . . . and how the decision to attend the event may have been reached" (quoting agency declaration)); *Dorsett v. Dep't of the Treasury*, 307 F. Supp. 2d 28, 37-38 (D.D.C. 2004) (protecting Secret Service document evaluating threats presented by plaintiff and others to Secret Service protectees); *Warren*, 2000 WL 1209383, at *2 (protecting applicant scoresheets on basis that "[t]he decisions of a hiring panel to emphasize certain types of skills or how many points to award to an applicant for a particular educational experience or previous employment experience are deliberative decisions in that they set the policy for the hiring process"); see also *Jernigan v. Dep't of the Air Force*, 1998 WL 658662, at *2 (9th Cir. Sept. 17, 1998) (protecting "opinions and recommendations" of agency investigating officer); *Nat'l Wildlife*, 861 F.2d at 1121 ("Recommendations on how to best deal with a particular issue are themselves the essence of the deliberative process."); *Canning v. Dep't of the Treasury*, No. 94-2704, slip op. at 7 (D.D.C. Mar. 21, 2001) ("Allowing disclosure of the pre-decisional opinions of Secret Service Special Agents on whether particular organizations pose protective security risks could compromise the agency's ability to complete its protective mission by stifling honest and frank communication within the agency."); *Judicial Watch*, 102 F. Supp. 2d at 16 (protecting notes taken by Attorney General at campaign finance task force meeting, but not shared with any other person, because their release "could reveal how the [Attorney General] prioritized different facts and considerations in deliberating whether or not to appoint an independent counsel . . . [and] reveal her interpretation of public policies which she deemed relevant" to decision whether to appoint independent counsel); *Fine v. United States Dep't of Energy*, No. 88-1033, slip op. at 9 (D.N.M. June 22, 1991) (finding that notes written in margins of documents constitute deliberations of documents' recipient); *Jowett*, 729 F. Supp. at 875 (protecting documents that are "part of the give-and-take between government entities"); *Strang v. Collyer*, 710 F. Supp. 9, 12 (D.D.C. 1989) (approving withholding of meeting notes that reflect the exchange of opinions between agency personnel or divisions of agency), *aff'd sub nom. Strang v. DeSio*, 899 F.2d 1268 (D.C. Cir. 1990) (unpublished table decision).

142. *Coastal States*, 617 F.2d at 866; see also *Missouri*, 147 F.3d at 711 ("Perhaps a fuller description [of the record] and why it is exempt might have avoided this litigation, but it was not improper for the [agency] to conclude that open and frank intra-agency discussion would be 'chilled' by public disclosure."); *Schell*, 843 F.2d at 942 ("It is the free flow of advice, rather than the value of any particular piece of information, that Exemption 5 seeks to protect.").

Some Additional References.

- Reference (e) states that for requests "that will require more than ten days for the agency to process, the FOIA requires agencies to assign a tracking number to your request. Each agency must provide a telephone number or website by which a requester can use the assigned tracking number to obtain information about the status of a pending request."
- DoD 5400.11-R, May 14, 2007, paragraph C3.1.10. states: "Time Limits. "DoD Components normally shall provide access within 20 working days after receipt of the request. If access cannot be given within the 20-working day period, the requester shall be notified in an interim response."

Enclosure 2, September 20, 2017 Sample Correspondence

- Note that the Agency did not follow the FOIA requirement to provide me case a tracking number within ten days and did not then comply with statutory and regulatory requirements to complete the request within twenty days.
- DoD 5400.11-R, May 14, 2007, paragraph C1.5.3. states: “Avoidance of Procedural Obstacles. DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.”
 - I contend that this capricious and arbitrary denial is intended to delay/deny release of information by introducing procedural obstacles.
- DoD 5400.11-R, May 14, 2007 paragraph C1.5.1. states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.”
 - In my view, the WRNMMC HIPAA/Privacy Act/FOIA/Civil Liberties Office has not met that standard.

This appeal is separate and distinct from any other appeals that I may file and may not be combined with any other appeal. I am not agreeing to combining separate appeals, as this would be improper, potentially distorting FOIA reporting to Congress and impeding separate judicial review (if that becomes necessary). If you deny all or any part of this appeal, please cite each specific exemption you think justifies your determination and notify me of further remedies available under the law.

I will greatly appreciate your thoughtful consideration of my request. Please contact me if you have any questions regarding this request. Thank you in advance.

With my respect,

Robert Hammond

Enclosures: As stated.

Copy to: Nadine Brown, DHA FOIA Officer, nadine.r.brown4.civ@mail.mil,

Footnotes.

Enclosure 2, September 20, 2017 Sample Correspondence

16. 5 U.S.C. § 552(b)(5) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175,
62. See FOIA Update, Vol. VI, No. 1, at 6. 63. 5 U.S.C. Â§ 552a (2000).
65. See, *ITT World Communications, Inc. v. FCC*, 699 F.2d 1219, 1237-38 (D.C. Cir. 1983) (dictum) (suggesting that otherwise exempt predecisional material "may" be ordered released so as to explain actual agency positions), rev'd on other grounds, 466 U.S. 463 (1984).
73. See *Mapother v. Dep't of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993) ("The deliberative process privilege protects materials that are both predecisional and deliberative." (citing *Petroleum Info. Corp. v. United States Dep't of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992))).
74. *Jordan*, 591 F.2d at 774.
75. *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).
76. See *Coastal States*, 617 F.2d at 866.
77. *Id.* at 868; see also *Providence Journal Co. v. United States Dep't of the Army*, 981 F.2d 552, 559 (1st Cir. 1992) (protecting IG's recommendations even though decisionmakers were not obligated to follow them); *Formaldehyde Inst. v. HHS*, 889F.2d 1118, 1123 (D.C. Cir. 1989) (protecting recommendations on suitability of article for publication, though decision on "whether and where" to publish article had not yet been made); *Greenberg*, 10 F. Supp. 2d at 17 (stating that "an evaluation of the legal status" of a case would be protected, but an "instruction from a senior to a junior official as to what legal action should be taken -- a final decision . . . does not merit Exemption 5 protection"); *Horsehead Indus. v. EPA*, No. 94-1299, slip op. at 14 (D.D.C. Oct. 1, 1996) ("In determining whether material is predecisional in nature, courts must look to see what role the material played in the decisionmaking process A statement of an opinion by an agency official or preliminary findings reported by a public affairs official do not necessarily constitute a statement of EPA policy or final opinion that has the force of law."); *Knowles v. Thornburgh*, No. 90-1294, slip op. at 5-6 (D.D.C. Mar. 11, 1992) (holding information generated during process preceding President's ultimate decision on application for clemency was predecisional); cf. *Sw.Ctr. for Biological Diversity v. USDA*, 170 F. Supp. 2d 931, 940 (D. Ariz. 2000) (rejecting as "tenuous" defendant's position that releasing information would "result in humans disturbing nesting goshawks," which in turn would alter agency's deliberative process by affecting results of scientific study), aff'd on other grounds, 314 F.3d 1060 (9th Cir. 2002); *Animal Legal Def. Fund, Inc. v. Dep't of the Air Force*, 44 F. Supp. 2d 295, 299 (D.D.C. 1999) (rejecting privilege claim because agency "utterly failed to specify the role played by each withheld document" in policy-formulation process).
84. See, e.g., *Taxation With Representation Fund v. IRS*, 646 F.2d 666, 677-78 (D.C. Cir. 1981).
86. See, e.g., *Sears*, 421 U.S. at 153-54; *Judicial Watch, Inc. v. HHS*, 27 F. Supp. 2d 240, 245 (D.D.C. 1998) ("deliberative process privilege does not protect documents that merely state or explain agency decisions"); cf. *Horowitz v. Peace Corps*, No. 00-0848, slip op. at 9-10 (D.D.C. Oct. 12, 2001) (ordering parties to submit additional evidence of whether final decision had been made at time disputed memorandum was written). But cf. *Murphy v. TVA*, 571 F. Supp. 502, 505 (D.D.C. 1983) (protecting two "interim" decisions, which agency retains option of changing).

Enclosure 2, September 20, 2017 Sample Correspondence

98. See Pfeiffer, 721 F. Supp. at 340 ("What matters is that the person who issues the document has authority to speak finally and officially for the agency.").
112. Sears, 421 U.S. at 161; see, e.g., Afshar, 702 F.2d at 1140 (finding recommendation expressly adopted in postdecisional memorandum); Niemeier v. Watergate Special Prosecution Force, 565 F.2d 967, 973 (7th Cir. 1977) (ordering disclosure of an "underlying memorandum" that was "expressly relied on in a final agency dispositional document"); Shumaker, No. 97-7139, slip op. at 14 (ordering disclosure of advisory document written by agency general counsel and "thereafter adopted as the official position of the agency"); Bhd. of Locomotive Eng'rs v. Surface Transp. Bd., No. 96-1153, 1997 WL 446261, at **4-5 (D.D.C. July 31, 1997) (finding that staff recommendation was adopted in both written decision and commission vote); Burkins v. United States, 865 F. Supp. 1480, 1501 (D. Colo. 1994) (holding that final report's statement that findings are same as those of underlying memorandum constituted adoption of that document); Atkin v. EEOC, No. 91-2508, slip op. at 23-24 (D.N.J. July 14, 1993) (holding recommendation to close file not protectible where it was contained in agency's actual decision to close file); cf. Tax Analysts, 117 F.3d at 617 (finding that documents "routinely used" and "relied upon by agency personnel," in a particular factual setting, were "statements of the agency's legal position" and accordingly not protectible).
113. Coastal States, 617 F.2d at 866; see Pentagon Fed. Credit Union v. Nat'l Credit Union Admin., No. 95-1475, slip op. at 5-8 (E.D. Va. June 7, 1996) (finding that board of directors' action "embracing" recommendations in "substantially same language" made documents postdecisional); Pension Actuaries, 746 F. Supp. at 192 (ordering disclosure simply on the basis that the IRS's budget assumptions and calculations were "relied upon by the government" in making its final estimate for the President's budget); cf. Skelton, 678 F.2d at 39 n.5 (declining to express opinion on whether reference must be to specific portion of document for express incorporation of that portion to occur).
117. See, e.g., EPA v. Mink, 410 U.S. 73, 91 (1973) (refusing to extend deliberative process privilege protection to "factual material otherwise available on discovery merely [on the basis that] it was placed in a memorandum with matters of law, policy, or opinion"); Coastal States, 617 F.2d at 867 (citing Mink, 410 U.S. at 93); Bilbrey v. United States Dep't of the Air Force, No. 00-0539, slip op. at 10-11 (W.D. Mo. Jan. 30, 2001) (holding privilege inapplicable to factual statements underlying predecisional recommendations), aff'd, No. 01-1789, 2001 WL 1222471, at *1 (8th Cir. Oct. 16, 2001) (unpublished table decision); Sw. Ctr. for Biological Diversity, 170 F. Supp. 2d at 941 (concluding that release of "raw research data" would not expose agency's deliberative process, on grounds that such data were not recommendations, not subject to alteration upon further agency review, and not "selective" in character).
118. 410 U.S. at 87-88 (1973).

In a message dated 5/16/2015 8:09:52 P.M. Eastern Daylight Time, REDACTED writes:

Enclosure 2, September 20, 2017 Sample Correspondence

Dear Mr. Davidge and Ms. Bizzell,

I simply want my records to be timely, complete, and accurate.

By way of background, I submitted a HIPAA/Privacy Act request to WRNMMC on March 26, 2013 asking that 2LT Leung correct a medical record entry in my file. After considerable delay, I appealed that WRNMMC did not respond to my HIPAA/Privacy Act request. Mr. Davidge then denied my HIPAA/Privacy Act request, stating that 2LT Leung was not available to consider my request for correction of my medical record. Mr. Davidge stated further that 2LT Leung was no longer assigned to WRNMMC. That statement is not factual.

On July 29, 2013, I submitted this FOIA request seeking records that Mr. Davidge relied upon in determining that 2LT Leung was unavailable to take action on my request for correction of my medical record.

Your denial of my July 29, 2013 FOIA request is inappropriate. There is no statutory basis for WRNMMC to withhold the records that I am seeking.

Regarding exemption (b)(6), I clearly stated in my FOIA request and in subsequent correspondence that I am not seeking any personally identifiable information for 2LT Leung; only the records that Mr. Davidge relied on in determining that she was (purportedly) unavailable to act on my HIPAA/Privacy Act request. I noted that her name may have changed, as is common. Then, on September 18, 2014, I submitted a FOIA request to the Army Human Resources Command seeking the current Officer Record Brief for 2LT Angela N. Leung, whose last known assignment was WRNMMC. Please see the attached record released via the FOIA showing that she was still assigned to WRNMMC at that time. The WRNMMC Military Personnel Office would have had that same information. Other records sought in my FOIA request would have shown that she was still accessing WRNMMC computer systems and medical records. Mr. Davidge did or should have known that 2LT Leung was still assigned to WRNMMC.

Regarding exemption (b)(5), there is no litigation, and this exemption would not apply in any case. These are simple records that Agencies maintain in the course of normal business. They do not involve opinions or deliberations and they are not pre-decisional. It appears that Walter Reed may be simply trying to mislead and to rationalize statements that are not factual.

Moreover, regarding the exemption, (b)(5) quote cited in your denial, the DOJ FOIA Guide states, "the President and Attorney General have issued memoranda to all agencies emphasizing that the FOIA reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure." Furthermore, your use of the (b)(5)

Enclosure 2, September 20, 2017 Sample Correspondence

exemption is not in line with a recent GAO report stating, "Office of Information Policy guidance stated that exemption 5 ... provides the best opportunity for increasing the release of information."

Please advise me why Walter Reed did not respond to my FOIA request in 2013. There have been many follow ups to this request. If WRNMMC did not report this open request properly, in FY 2013 and 2014, those Annual FOIA Report submissions are inaccurate. If you fail to report my FOIA request properly in FY 2015 with an effective date of July 29, 2013, WRNMMC and your higher headquarters, Defense Health Agency, will be knowingly submitting false reports.

Thank you.

With my respect,

Robert Hammond

Notice: this correspondence and the attachments may contain information protected under the Privacy Act and Health Insurance Portability and Accountability Act. I am not authorizing further disclosure.

In a message dated 4/9/2015 4:02:22 P.M. Eastern Daylight Time, judy.j.bizzell.civ@mail.mil writes:

Dear Mr. Hammond

This is a final response to your request for information under the Freedom of Information Act (FOIA). The case number for this request is WRNMMC case #15- 20.

Please refer to this number when inquiring about this matter.

In this case you are "requesting the following with respect to provider: LEUNG, ANGELA N 2LTxxxx

- Records of completed check out sheet for departing the organization, including date Records of Common Access Card Turn-in, including date

Enclosure 2, September 20, 2017 Sample Correspondence

- Records of badge turn in, including date
- Records of WRNMMC network access termination, including date
- Any and all records relied upon by J. E. Davidge, Privacy Compliance Officer in determining that Ms. Leung is unavailable to make my requested medical record correction, including the date that she became unavailable and the reason for her unavailability. Refer to WRNMMC letter dated AUG 09, 2013 subject: DENIAL LETTER FOR LEGAL ORRECTION OF PHI/PII (LEUNG, ANGELA N 2LTxxxx)."

Your request was reviewed in accordance with the FOIA and Privacy Act (PA). The Freedom of Information Act Exemptions (b)(5) and (b)(6) were used to determine if the requested information is releasable. FOIA Exemption 5, 5 U.S.C. 552 (b)(5) protects "inter-agency or intra-agency documents which would not be available by law to a party other than an agency in litigation with the agency." FOIA Exemption 6, 5 U.S.C. 552(b)(6), allows for the withholding of information in personnel, medical, and similar files where disclosure "would constitute a clearly unwarranted invasion of personal privacy."

Therefore, your request for the above information is Denied in Full.

Release of information under FOIA pertains to transparency in government, not a means of finding information about private individuals.

FOIA's central purpose is "to open agency action to the light of public scrutiny." Dep't of Air Force v. Rose, 425 U.S. 352, 372, 96 S.Ct. 1592, 1604, 48 L.Ed.2d 11 (1976). Weighing a balancing test over the rights of an individual's privacy against the public interest, the Supreme Court held the interest of shedding light on an agency's performance is "not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct." U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749, 773, 109 S.Ct. 1468, 1481 (March 22, 1989). Moreover, the Court held "[W]hen the request seeks no 'official information' about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted'." 489 U.S. at 780.

If you are dissatisfied with the above determination for any reason, you may file an appeal with the designee of the Secretary of the Navy. Such an appeal should be addressed to:

Defense Health Agency
National Capitol Region Medical Directorate Office of the General Counsel

Enclosure 2, September 20, 2017 Sample Correspondence

ATTN: Mr. Paul T. Cygnarowicz
8901 Wisconsin Avenue Building 27, 3rd Floor
Bethesda, MD 20889

The appeal must be postmarked within 60 calendar days from the date of this letter, and you should attach this letter/email with a statement regarding the basis of your appeal. I recommend you annotate both the letter of appeal and envelope with the words "Freedom of Information Act Appeal."

Fees associated with the processing of your request, by this Command, have been waived. If you have any questions or require further assistance, you may contact me at (301) 400-2315 or by email at Judy.J.Bizzell.civ@mail.mil.

Sincerely,

Judy J. Bizzell
Freedom of Information Act Officer
Walter Reed National Military Medical Center 4650 Taylor Road
Bethesda, MD 20889

-----Original Message-----

From: [REDACTED](#) [mailto:[REDACTED](#)]

Sent: [Wednesday, April 08, 2015 5:21 AM](#)

To: [Bizzell, Judy J CIV DHA NCR MEDICAL DIR \(US\); joe.e.davidge.civ@mail.mil](#) Cc: [FOIARequests@tma.osd.mil; Christmas, Jewel P CIV DHA HEALTH IT DIR \(US\); Ross, Doritha N CTR DHA ADMIN MD \(US\); nadien.brown@tma.osd.mil; Thomas, Linda S CIV DHA CMD GRP \(US\)](#)

Subject: Re: FOIA WRNMC #13-29 LEUNG, ANGELA N 2LTxxxx Unavailability follow- up 2015...

Good morning,

Ms. Bizzell Thank you.

With my respect,

Robert Hammond

In a message dated 4/7/2015 6:04:18 P.M. Eastern Daylight Time, judy.j.bizzell.civ@mail.mil writes:

Enclosure 2, September 20, 2017 Sample Correspondence

Dear Mr. Hammond

This is an interim response to your request for information under the Freedom of Information Act. Your request has been assigned case number 15-20. Please refer to this number when inquiring about this matter.

Your request is being reviewed and when/if responsive documents are available we will notify you promptly.

Sincerely,
Judy J. Bizzell
Freedom of Information Act Officer
Walter Reed National Military Medical Center
8901 Wisconsin Ave
Bethesda, MD 20889

-----Original Message-----

From: [REDACTED \[mailto:REDACTED\]](mailto:REDACTED)

Sent: Sunday, March 29, 2015 5:42 AM

To: joe.e.davidge.civ@mail.mil; [Bizzell, Judy J CIV DHA NCR MEDICAL DIR \(US\)](#)

[Cc: FOIARequests@tma.osd.mil; Christmas, Jewel P CIV DHA HEALTH IT DIR \(US\); Christmas, Jewel P CIV DHA HEALTH IT DIR \(US\); REDACTED; Ross, Doritha N CTR DHA ADMIN MD \(US\); nadien.brown@tma.osd.mil; Thomas, Linda S CIV DHA CMD GRP \(US\); Thomas, Linda S CIV DHA CMD GRP \(US\)](#)

Subject: Fwd: FOIA WRNMC #13-29 LEUNG, ANGELA N 2LTxxxx Unavailability follow-up 2015...

Good morning, Mr. Davidge and Ms. Bizzell.

I am again following up on my still unanswered FY 2013 FOIA request below. Please:

- ensure that this request is entered into the DHA FOIA central tracking database under an FY 2013 case number with an effective date of August 18, 2013.

Enclosure 2, September 20, 2017 Sample Correspondence

- preserve all records responsive to or potentially responsive to this request that existed at the time of this request until final action has been taken and the statutory time for judicial review has passed or for the time prescribed by a NARA approved records schedule, if longer;
- preserve all correspondence, including this letter, emails and other communications regarding this request in the FOIA case file;
- preserve all records of searches that you have conducted and any future searches, including but not limited to searches with WRNMMC personnel, security, information assurance and computer network offices, etc.;
- recover and retain any records that have been archived;
- provide a final decision letter for this request.

You may wish to consult with the Walter Reed Records Manager (not Medial Records) regarding laws, regulations and policies for record retention/destruction of official government records, including requirements for emails and other electronic records.

You may also consider seeking guidance from the Department of Navy and DHA for correcting or amending your FY 2013 and FY 2014 Annual FOIA Report submissions via your chains of command. Was this request properly reported on those reports?

Thank you,

With my respect,
Robert Hammond

From: [REDACTED](#)

To: joe.e.davidge.civ@mail.mil, judy.j.bizzell.civ@mail.mil

Sent: 3/24/2015 7:47:39 A.M. Eastern Daylight Time

Subj: Fwd: FOIA WRNMC #13-29 LEUNG, ANGELA N 2LTxxxx Unavailability follow-up 2015...

Good morning, Mr. Davidge and Ms. Bizzell.

Enclosure 2, September 20, 2017 Sample Correspondence

I am following up on my FOIA request below. I do not recall seeing an acknowledgement of this request or a reply assigning a FOIA case tracking number.

Thank you.

With my respect,
Robert Hammond

From: [REDACTED](#)
To: joe.e.davidge.civ@mail.mil, judy.j.bizzell.civ@mail.mil
CC: FOIARequests@tma.osd.mil, Jewel.P.Christmas.civ@mail.mil, Jewel.P.Christmas.civ@health.mil, [REDACTED](#), doritha.n.ross.ctr@mail.mil
Sent: 3/16/2015 5:06:50 A.M. Eastern Daylight Time
Subj: FOIA WRNMC #13-29 LEUNG, ANGELA N 2LTxxxx Unavailability follow- up 2015.03.16

Robert Hammond
22180 REDACTED

March 16, 2015

Mr. Joe E. Davidge,
Privacy Compliance Administrator
Walter Reed National Military Medical Center
Building 1, 2nd Floor, Room 2430
8901 Rockville Pike
Bethesda, MD 20889-5600

Ms. Judy Bizzell,

Freedom of Information Act (FOIA) Administrator
Walter Reed National Military Medical Center (WRNMMC)
8901 Rockville Pike

Enclosure 2, September 20, 2017 Sample Correspondence

Bethesda, MD 20889-5600

Subject: Privacy Act Request/FOIA Request - LEUNG, ANGELA N 2LTxxxx Unavailability;

Follow-up of March 15, 2015

Requester Assigned Personal Reference Control Number: FOIA WRNMC #13-29

Enclosure: (1) My Privacy Act Request/FOIA Request dated August 18, 2013; subject: LEUNG, ANGELA N 2LTxxxx Unavailability

References:

- (a) My Privacy Act Request/FOIA Request dated August 18, 2013; subject: LEUNG, ANGELA N 2LTxxxx Unavailability
- (b) Walter Reed letter Ser 00QM/00965 of AUG 09 2013, subject Denial Letter for Legal Correction of PHI/PII
- (c) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, "Your Right to Federal Records"
- (d) DoD 5400. 11-R, May 14, 2007
- (e) Department of Defense Directive Number 5400.07 of January 2, 2008
- (f) DoD 6025.18-R, Jan. 24, 2003

Dear Mr. Davidge and Ms. Bizzell,

I am following up on my FOIA/Privacy Act request at reference (a), which I have included as Enclosure (1) for your convenience. You have not provided a response to this request. I view this as a matter of compliance with the FOIA and the Privacy Act.

Please:

- ensure that this request is entered into the DHA FOIA central tracking database under an FY 2013 case number with an effective date of August 18, 2013.
- preserve all records responsive to or potentially responsive to this request that existed at the time of this request until final action has been taken and the statutory time for judicial review has passed;

Enclosure 2, September 20, 2017 Sample Correspondence

- retain all correspondence, including this letter, emails and other communications regarding this request in the FOIA case file;
- retain all records of searches that you have conducted, including but not limited to searches with WRNMMC personnel, security, information assurance and computer network offices, etc.;
- recover and retain any records that have been archived;
- provide a final decision letter for this request.
- Among other things, my request states that: I am requesting the following with respect to provider: LEUNG, ANGELA N 2LTxxxx
- Records of completed check out sheet for departing the organization, including date Records of Common Access Card Turn-in, including date
- Records of badge turn in, including date
- Records of WRNMMC network access termination, including date
- Any and all records relied upon by J. E. Davidge, Privacy Compliance Officer in determining that Ms. Leung is unavailable to make my requested medical record correction, including the date that she became unavailable and the reason for her unavailability. Refer to WRNMMC letter dated AUG 09, 2013 subject: DENIAL LETTER FOR LEGAL ORRECTION OF PHI/PII (LEUNG, ANGELA N 2LTxxxx)

Please note that I submitted this request under both the Freedom of Information Act, U.S.C. subsection 522 and the Privacy Act, 5 U.S.C. subsection 522a.

Reference (c) states, “If you are in doubt about which law applies or would better suit your needs, you can refer to both in your request letter. If you request records about yourself and do not specify a statute, the agency will, as a matter of policy, process the request under both the FOIA and the Privacy Act and withhold requested information from you only if it is exempt under both laws.”

Reference (c) also states that for requests “that will require more than ten days for the agency to process to FOIA requires agencies to assign a tracking number to your request. Each agency must provide a telephone number or website by which a requester can use the

Enclosure 2, September 20, 2017 Sample Correspondence

assigned tracking number to obtain information about the status of a pending request.” As previously requested on numerous occasions, please provide me an Agency assigned FOIA case tracking number for this request.

Reference (d) states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.” I have that same expectation of WRNMMC regarding Privacy Act requests. References (e) and (f) also apply.

As noted in previous correspondence to your office, completing this request promptly will likely yield information regarding 2LT Angela Leung’s location (and current name, if changed) that will allow her to be contacted now, affording her a fresh opportunity to correct (or expunge) a potential oversight in her record entry of 0305 December 26, 2013 to close that matter - which is clearly optimal compared to other alternatives. In addition, this will demonstrate that WRNMMC is committed to ensuring that WRNMMC records regarding my PHI/PII are accurate, relevant, timely, and complete. It will demonstrate that WRNMMC is endeavoring to comply with the Privacy Act, the FOIA, applicable regulations and policies; thereby obviating the need for appeal or other actions that unnecessarily increase effort for everyone. And it will demonstrate that WRNMMC is processing my requests in a fair, uniform and consistent manner relative to other requests and is respecting my civil liberties.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing. If you believe that my request is defective and cannot be completed, please deny the request on that basis so that I may appeal or resubmit a new request.

References (a) through (f) apply.

In your reply, please provide a copy of my original request. This is an integral part of my Privacy Act/FOIA request, which helps to ensure that you fully address the request.

With my respect,

Robert Hammond

Copy to:

[Linda Thomas, Defense Health Agency FOIARequests@tma.osd.mil](mailto:Linda.Thomas@tma.osd.mil)

Enclosure 2, September 20, 2017 Sample Correspondence

Jewel.P.Christmas.civ@mAIL.mil <mailto:Jewel.P.Christmas.civ@mAIL.mil> ; Jewel.P.Christmas.civ@health.mil <mailto:Jewel.P.Christmas.civ@health.mil> ; doritha.n.ross.ctr@mail.mil <mailto:doritha.n.ross.ctr@mail.mil>;

Robert Hammond
REDACTED

August 18, 2013

Freedom of Information Act (FOIA) Administrator,
Ms. Judy Bizzell/Privacy Officer,
Walter Reed National Medical Center (WRNMMC)
8901 Rockville Pike
Bethesda, MD 20889-5600

Subject: Privacy Act Request/FOIA Request – LEUNG, ANGELA N 2LTxxxx Unavailability

Requester Control Number: FOIA WRNMC #13-29 Dear Ms. Bizzell and/or Privacy Officer

I [am submitting this] under submitting this request under both the Freedom of Information Act, U.S.C. subsection 522 and the Privacy Act, 5 U.S.C subsection 522a. Please provide a response that satisfies the provisions of both Acts and process this request under the Act that results in the lowest cost. If there are fees for searching or copying the records less than \$200 (which I agree to pay), please advise me before proceeding. If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law. Please cite the requester control number and include a copy of this request in your reply. Returning a copy of this letter is a part of the FOIA request. Do not reply to more than one requestor control number in a single letter. Please provide your written reply within the prescribed time frames. Should you fail to provide all records within the prescribed timeframe, please notify me of appeal procedures available under the law.

I am requesting the following with respect to provider: LEUNG, ANGELA N 2LTxxxx

- Records of completed check out sheet for departing the organization, including date

Enclosure 2, September 20, 2017 Sample Correspondence

- Records of Common Access Card Turn-in, including date
- Records of badge turn in, including date
- Records of WRNMMC network access termination, including date
- Any and all records relied upon by J. E Davidge, Privacy Compliance Officer in determining that Ms. Leung is unavailable to make my requested medical record correction, including the date that she became unavailable and the reason for her unavailability. Refer to WRNMMC letter dated AUG 09, 2013 subject: Denial letter for legal correction of PHI/PII.

Please provide your written reply within the prescribed timeframes and return a copy of this request with your reply.

If you have any questions, do not close this request; please contact me by email. I ask that you comply with the FOIA, DoD 5400.7-R, and DoD FOIA policy in the letter and spirit. Please do not introduce procedural obstacles to unnecessarily impede me from obtaining the requested records promptly.

I am a private citizen seeking this information. I do not believe that there should be any charge for providing these records.

Thank you in advance.

With my respect,

Robert Hammond

Enclosure 3, October 23, 2017 Sample Correspondence

From: [REDACTED](#)
To: matt.gardner@usdoj.gov
Cc: oip.Complianceinquiry@us.doj.gov
Sent: 10/23/2017 10:08:49 AM Eastern Standard Time
Subject: Fwd: Fwd: Re: FOIA Non-Compliance by Walter Reed (requests submitted 6...

Matt,

Here are some more. A couple of these were answered under FY 2017 tracking numbers, which is unsatisfactory. Please do your best to pin Walter Reed down. they may give you an answer that says that they did not receive them, but that is incorrect. I have tons of examples with supporting records. I would very much like to get truthful answers... which can only be "we got the requests on the dates indicated and did not report them. Again, I believe Cindy Allard is the best person , at the right level, to address these. She is aware that I was planning to go to DOJ. I held off for quite some time. I think she and her staff will help. Good people. Couple of bad apples withing DOD.

cindy.l.allard.civ@mail.mil.

1. Please confirm that Walter Reed received my FOIA Requests on the dates indicated (indisputable).
2. Please confirm that Walter Reed did not report my FOIA Requests at all. Indisputable.
3. Please determine from Walter Reed the reason for not reporting my FOIA Requests in their annual FOIA Report Submissions.
4. Please determine when DHA learned that Walter Reed has not reported my FOIA Requests, in their annual FOIA Report Submissions
5. Please confirm that DHA has not been reporting these requests as of the dates received.
6. Please determine why DHA has not been reporting requests as of the dates received.

From: REDACTED
To: joo.y.chung2.civ@mail.mil
Cc: cindy.l.allard.civ@mail.mil
Sent: 9/8/2017 3:04:46 PM Eastern Standard Time
Subject: Fwd: Re: FOIA Non-Compliance by Walter Reed (requests submitted 6...

Dear Ms. Chung and Ms. Allard,

Enclosure 3, October 23, 2017 Sample Correspondence

With respect, I would much rather handle these things within DOD, so long as the desired outcome is timely and efficiently achieved. The scope of my concern is limited.

As you are aware, some time ago, I asked DHA to notify your office of past inaccurate reporting, to begin reporting and answering all of my open FOIA requests and appeals for both DHA and Walter Reed as of the dates that they were received and to begin reporting and answering all of my Privacy Act Complaints. That has not happened. They at least need to be honest with you.

These are not errors of omission. Walter Reed and DHA simply ignore requests, appeals, P/A complaints that they do not intend to answer and then they do not report them. There are no factual explanations otherwise. Any that are offered will fail. Unless there is accountability, these practices will not change.

At the DOD level, the reports are not accurate. I know that you are both working to correct this. Thank you. I am also mindful that you have many priority issues demanding your time.

I will delay sending this incident to DOJ until at least September 24, 2017, pending a reply. Such reply may come from Ms. Thomas. Such a reply may include tracking numbers and status for all of my open request, appeals, complaints.

Finally, the tone of my email below is inappropriate. frustrated.

Go Navy, beat Tulane.

Have a great weekend.

With my respect,
Robert Hammond

From: REDACTED

To: david.tillotson1.civ@mail.mil

Cc: joo.y.chung2.civ@mail.mil, raquel.c.bono.mil@mail.mil, linda.s.thomas47.civ@mail.mil, joseph.e.davidge.civ@mail.mil, michael.s.heimall@mail.mil, mark.a.kobelja@mail.mil, guy.t.kiyokowa.civ@dha.mil, robert.luciano.mil@mail.mil, cindy.l.allard.civ@mail.mil, david.a.lane@med.navy.mil, Jeffrye.b.clark4.mil@mail.mil, voiceofthecustomer@dha.mil, judy.j.bizzell.civ@mail.mil

Enclosure 3, October 23, 2017 Sample Correspondence

Sent: 9/7/2017 7:06:17 AM Eastern Standard Time

Subject: Re: FOIA Non-Compliance by Walter Reed (requests submitted 6...

Dear Mr. Tillotson,

Unfortunately, I have not received any reply from DHA regarding the ostensive non-compliance in FOIA processing and false reporting discussed below. I have not received any response indicating that DHA has taken any action whatsoever to address this, including actions to preclude reoccurrence.

I am interested in the factual reasons for the ostensive non-compliance and false reporting. I am interested in what DHA is doing to begin factually reporting open FOIA requests and appeals as of the dates received (and in a related matter, open Privacy Act complaints).

I will very soon be referring this matter to the Department of Justice.

There may be many, many, many more emails to follow. The example below is just the tip of a very large iceberg.

With my deep respect,

Robert Hammond

-----Original Message-----

From: [REDACTED](#)

To: david.tillotson1.civ <david.tillotson1.civ@mail.mil>

Cc: linda.s.thomas47.civ linda.s.thomas47.civ@mail.mil

Sent: Sat, Feb 25, 2017 9:18 am

Subject: Re: FOIA Non-Compliance by Walter Reed (requests submitted 6...

Dear Mr. Tillotson,

I am forwarding the email thread below regarding the integrity of the Walter Reed/Defense Health Agency (DHA) FOIA (and Privacy Act (PA)) processes for your information or action as you may consider appropriate. This email thread of October 10, 2016 addresses some (of many) open FOIA requests dating back to FY 2014 that are almost certainly not being reported on Annual FOIA Reports to the Attorney General. Moreover, earlier and subsequent FOIA requests are likely not being accurately reported and PA matters are almost certainly not being properly reported to Congress.

Unfortunately, Ms. Linda S. Thomas (571-286-9517) who signs the DHA FOIA reports and is responsible for FOIA and HIPAA/PA compliance within DHA, has taken no action on this matter since she became aware of it several months ago. Moreover, no corrective

Enclosure 3, October 23, 2017 Sample Correspondence

action has been taken on many other FOIA/PA non-compliance matters dating back several years to the present. My personal observation is that non-complaint processes and inaccurate reporting may be ongoing at a significant level.

These are not “complex requests.” One might ask why Walter Reed and DHA are fighting so hard to keep secret Walter Reed’s FOIA report submissions, Walter Reed’s FOIA, PA and mail room procedures and inspections records and Walter Reed’s “Request for Amendment of Health Information” records.

One might surmise that these may be more management/leadership influence issues and DHA/Walter Reed legal staff advice that may not be in the best interest of the Department and individual employees rather than exclusively working-level employee intentional non-compliance issues. Consideration might be given to particular employees if that is the case.

Some have been rearranging deck chairs on the Titanic for many years. Now, there is only one lifeboat left within DoD and there aren't many seats left. This correspondence is being forwarded to others within DoD for situational awareness and to provide visibility. It may also be forwarded to others later.

Thank you in advance for your consideration of these matters.

With my deep respect,

Robert Hammond

In a message dated 1/18/2017 8:53:00 A.M. Eastern Standard Time, linda.s.thomas47.civ@mail.mil writes:

I will respond in due course. I am unable to give a precise date at this time. You have given us quite a number of actions to process.

Linda S. Thomas, JD, CIPP/G, PMP, CISSP

Chief, DHA Privacy and Civil Liberties Office

Office: 703-275-6363

Mobile: 571-286-9517

Linda.S.Thomas47.civ@mail.mil

"Quality and Service Above All"

Please comment on our service at: VoiceoftheCustomer@dha.mil

-----Original Message-----

From: REDACTED [mailto:REDACTED]

Enclosure 3, October 23, 2017 Sample Correspondence

Sent: Tuesday, January 17, 2017 5:52 PM

To: [Thomas, Linda S CIV DHA PCL \(US\)](#)

Cc: [DHA NCR PCL Mailbox FOIA Requests; Brown, Nadine R CIV DHA PCL \(US\); Ross, Doritha N CTR \(US\); Rahwa.Keleta@mail.mil; Michelle.Johnson.ctr@mail.mil; Michael.Tymkovich.ctr@mail.mil; REDACTED; Bizzell, Judy J CIV DHA NCR MEDICAL DIR \(US\); Davidge, JOSEPH E \(Joe\) JR CIV DHA WRNMMC \(US\)](#)

Subject: [Non-DoD Source] FOIA Non-Compliance by Walter Reed (requests submitted 6.2.2014 - 6.2.2014)

Dear Ms. Thomas,

When might I receive your findings and results of action taken on each of the very serious FOIA non-compliance matters identified below? As previously noted, you are personally responsible for FOIA compliance and the accuracy of FOIA reporting via your reporting chain to the Attorney General of the United States.

Per DHA web site:

=====

"Freedom of Information Act (FOIA)

The Defense Health Agency (DHA) Freedom of Information Service Center has principal authority to ensure Health Affairs (HA), DHA, and its components are in full compliance with the FOIA.

Liaison Officer

If you are concerned about service received from the HA/DHA FOIA Service Center, please contact the FOIA Liaison Officer at:

Defense Freedom of Information Policy Office

ATTN: Ms. Linda S. Thomas

Chief, Freedom of Information Service Center Defense Health Agency

7700 Arlington Boulevard, Suite 5101 Falls Church, VA 22042-5101

Phone: 1-703-275-6363"

=====

Enclosure 3, October 23, 2017 Sample Correspondence

Thank you,

With my respect,
Robert Hammond

In a message dated 12/28/2016 6:18:42 A.M. Eastern Standard Time, REDACTED writes:

Dear Ms. Bizzell,

Please address the 15 matters below and provide me the status of each FOIA request.

Dear Ms. Thomas and Ms. Brown,

Please advise me of action taken to address these capacious and arbitrary violations of the FOIA and regulations and policies. Please address the 15 matters listed below.

Please preserve this correspondence in each FOIA case file until the longer of the statutory time for judicial review has passed or the NARA approved schedule.

With my respect,

Robert Hammond

In a message dated 12/2/2016 8:44:12 A.M. Eastern Standard Time, REDACTED writes:

with attachment.

In a message dated 12/2/2016 8:42:48 A.M. Eastern Standard Time, REDACTED writes:

Dear Ms. Bizzell,

Enclosure 3, October 23, 2017 Sample Correspondence

You have not addressed the important matters in this correspondence which was sent to you via email, fax and mail. In particular, you have not addressed the delayed processing and delayed assignment of tracking numbers to my requests at the time - and within the same fiscal year – that they were submitted. Moreover, you have not acknowledged my request for Walter Reed’s FY 2014 Annual FOIA Report Submission records. I contend that your FY 2014 report submission is inaccurate and incomplete.

Regarding tracking numbers, FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

Your actions and failure to act, together with those actions and failures to act of the Walter Reed Department Chief, HIPAA/Privacy Act/FOIA/Civil Liberties Office, [Redacted] constitute clear violations of the Freedom of Information Act and governing regulations and policies that go to the heart of the integrity of the FOIA process and the accuracy of FOIA reporting via your reporting chain to the Attorney General of the United States.

Ms. Thomas,

Your office has responsibility for FOIA compliance within DHA and any errors or omissions in Walter Reed’s FOIA reporting to you affects the accuracy and integrity of the DHA Annual FOIA report submissions. You have previously been provided numerous examples of potential violations and inaccurate reporting. These matters are worthy of Senior Leadership attention and are instructive for your staff members on this email.

I am requesting that you acknowledge this correspondence by return email to all and that you promptly open an investigation to address the matters in this correspondence. Hard copy will be faxed and mailed to you.

Thank you,

With my respect,
Robert Hammond

From: REDACTED

To: judy.j.bizzell.civ@mail.mil, joseph.e.davidge.civ@mail.mil, linda.s.thomas47.civ@mail.mil

Enclosure 3, October 23, 2017 Sample Correspondence

CC: dha.ncr.pcl.mbx.foia-requests@mail.mil, nadine.r.brown4.civ@mail.mil, doritha.n.ross.ctr@mail.mil, Rahwa.Keleta@mail.mil, Michelle.Johnson.ctr@mail.mil, Michael.Tymkovich.ctr@mail.mil, REDACTED

Sent: 11/3/2016 6:14:03 A.M. Eastern Daylight Time Subj: Re: FOIA's Received

Dear Ms. Bizzell,

Your extraordinarily delayed reply and assignment of fiscal year (FY) 2017 FOIA tracking numbers to these prior FY FOIA requests in your email below, many of which were submitted to you over two years ago, suggests a lack of integrity in Walter Reed's FOIA processing as well as a lack of integrity and accuracy of your annual FOIA report submissions via your reporting chain to the Attorney General of the United States. This is worthy of senior leadership and Defense Health Agency (DHA) Privacy and Civil Liberties Office oversight attention and action. Your annual FOIA report submissions also impact the accuracy of those within your reporting chain, which has been the subject of significant correspondence with Walter Reed and DHA dating back to 2013.

Please reply to all parties on this email when addressing the FIFTEEN action items in this email.

For your convenience, I am including as “Attachment A” a 44-page PDF file containing the relevant initial FOIA submissions to you, which are summarized in the table below. The table omits some intervening FOIA requests so as not to confuse matters; however, FOIA tracking numbers and Walter Reed responses are due for those as well.

=====

My Personal Requester CTRL #

Title/Subject

Date Submitted

Best Guess of WRNMMC Agency

Assigned # (?)

=====

WRNMC #14-X

Enclosure 3, October 23, 2017 Sample Correspondence

WRNMMC Correspondence containing Six D Forms 2870 6/2/2014
17-01

=====

WRNMC#14-AA

WRNMMC Mail Room Procedures 7/27/2014
17-02

=====

WRNMC#14-AB

WRNMMC FOIA Instructions, SOPs, Desk Guides 9/2/2014
17-04

=====

WRNMC#14-AC

WRNMMC Privacy Act (PA) and Health Insurance Portability Accountability Act (HIPAA) Instructions, SOPs, Desk Guides
9/2/2014

17-05

===== WRNMC#14-AD
WRNMMC FOIA Office Scanner Repair

9/2/2014

??

===== WRNMC#14-AE
Privacy Act (PA)/ Health Insurance Portability and Accountability Act

Enclosure 3, October 23, 2017 Sample Correspondence

(HIPAA) Training Completed by the WRNMMC Department Chief, Privacy Act/FOIA/Civil Liberties Office

9/2/2014

17-03

===== WRNMC#14-AF
WRNMMC Privacy Office Inspections 9/2/2014

17-14

WRNMMC #15-B

FOIA WRNMMC #15-B Form Entitled "Request for Amendment of Health Information 6/20/2015

17-15

===== WRNMMC #15-C

Privacy Act Requests From January 1, 2013 6/20/2015

17-06

===== WRNMC #16-A

Records Associated With Request for Correction of Medical Record Entries of Ms. Michele O. Afriye, and Ms. Angela N. Leung
(subsequently known as Angela Ngar Jee Mamangun)

11/8/2015

17-07

===== WRNMC #16-B

Records of Inpatient Disclosure for Hammond, Robert for June 28th 2007 to June 29th 2013 11/8/2015

Enclosure 3, October 23, 2017 Sample Correspondence

17-16

===== WRNMC #16-C

Medical Records Correction Request - MHT TURA Y MARIATU H. CIV 3374 11/8/2015
17-08

WRNMC #16-D

Records Associated Medical Records Correction Request 1to 1 Sitter/Catheter 11/8/2015
17-09

===== WRNMC #16-E

Medical Records Correction Request - Laboratory values 1/8/2015
17-10

===== WRNMMC #16-F

FY 2015 Annual FOIA Report Supporting Records 9/19/2016
17-11

===== WRNMMC #16-G

FY 2014 Annual FOIA Report Supporting Records 9/19/2016
??

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Please address the following:

1. Please address your assignment of a fiscal year 2017 FOIA tracking number for each of the FOIA requests noted above and in Attachment A along with your rationale for not assigning a FOIA tracking number in the correct fiscal year when each request was received.

Enclosure 3, October 23, 2017 Sample Correspondence

2. Please address the non-sequential tracking numbers and gaps in your FY 2017 tracking numbers. You don't get to pick/alter the order in which requests are recorded as received in order to sequence them for processing.
3. Please address the omission of my Request #14-AD seeking records of the WRNMMC FOIA Office Scanner Repair, which was submitted after you alleged that Walter Reed did not have the capability to create PDF files in order to reply to my requests in the required format. PDF files remove any ambiguity in the what records were/are sent in reply to my FOIA requests, as some of past assertions of records provided in paper form are not factual.
4. Please address your omission of my Request 15-G seeking your FY 2014 Annual FOIA Report Supporting Records.
5. Please provide for each request the projected date of Walter Reed's reply providing your determination of each request with release of responsive records (or the statutory basis for denial thereof), the reason for delay in processing and if you are asserting that any request is complex.
6. Please indicate if you did not receive each FOIA request on the date indicated above and in Attachment A.
7. Please indicate if you entered each request in your FOIA tracking log at the time that it was submitted/received.
8. Please indicate why no FOIA tracking number was assigned within ten days of the dates noted above and in Attachment A.
9. In recent adjudication of HIPAA matters and FOIA mediation, statements have been attributed to you specifically and/or your office that you did not receive certain FOIA request submissions. Please indicate if it is your assertion that you did not receive any of the emails in Attachment A and if so the circumstances supporting your assertion.
10. It now appears that you and the Walter Reed FOIA and legal staffs may be preparing to assert (as a feeble explanation for inaccurate FOIA reporting and non-compliance with governing laws, regulations and policies) that Walter Reed does not respond to FOIA requests submitted by email [and accompanying fax], which has not been your past practice. You have been communicating with me by email at this email address continuously since 2013, responding to requests, follow-ups and various other matters, and you have never notified me of such a policy (despite FOIA requests seeking your policies and procedures). Both you and Mr. Davidge were recently each provided DVDs containing relevant email correspondence, which you acknowledge receiving thereby enabling you both to access each and every email. Please state for the record whether or not you and/or Walter Reed are asserting that Walter Reed

Enclosure 3, October 23, 2017 Sample Correspondence

does not respond to FOIA requests submitted by email and if that is your assertion when that policy/practice went into effect and who was notified of the change.

11. In recent adjudication of HIPAA matters and FOIA mediation, statements have been attributed to you specifically and/or your office that you spoke to me by telephone regarding FOIA requests, which is **FACTUALLY INCORECT**. In fact, Walter Reed abruptly withdrew from mediation regarding a 2013 FOIA request (that you acknowledge receiving in FY 2013) when challenged on that factually incorrect assertion and asked to provide any and contemporaneous records supporting the false statement(s). You have never spoken to me on the phone and my only telephonic contact with your office was with Mr. [Redacted] in early 2013 when Mr. [redacted] initiated phone contact to falsely state that two medical professionals were no longer assigned to Walter Reed and that Walter Reed therefore had no responsible to address medical record amendment requests related to them.

- a. Please state for the record if it is your assertion that you have spoken to me by telephone at any time whatsoever and if that is your assertion please and identify the time, date, call initiator and any and all contemporaneous records supporting your assertion (such as entries in your FY 2013 FOIA processing log, etc.).

12. Please note that for each request , the records sought are as of the time and date of each request as indicated above and Attachment A. For example, my FOIA Request #14-AB seeks WRNMMC (Walter Reed) FOIA Instructions, SOPs, Desk Guides that existed at the time of my request on September 2, 2014 and my FOIA Request #15-B seeks records related to the Form Entitled "Request for Amendment of Health Information" as of the time of my request on June 20, 2015.

13. Please identify if notification of any of my requests was forwarded to any other party prior to my follow-up emails to you of September 11, 2016 and if so your purpose in doing so and to whom each such request was forwarded. Please note that any destruction of records following the date and time indicate in the emails contained in Attachment A would be a violation of governing laws, regulations and policies.

14. Attachment B contains 59 p[ages] of my most recent follow-up emails to you of September 11, 2016 regarding these requests. Please indicate if you did not receive each of the emails in Attachment B on September 11, 2016 and if it is your assertion that you did not receive any email, please indicate the circumstances as to why you did not.

15. Please state for the record what dates you assert that you received Attachment A and Attachment B. Your delayed reply suggests internal manipulation of receipt dates in order to cover up non-compliance with governing laws regulations and policies.

Enclosure 3, October 23, 2017 Sample Correspondence

There is significant public interest in the integrity of the FOIA process and the accuracy of FOIA reporting to the Attorney General of the United States as well as the subject matter of each request.

Thank you.

With my respect,
Robert Hammond

In a message dated 10/11/2016 6:39:00 P.M. Eastern Daylight Time, judy.j.bizzell.civ@mail.mil writes:

Mr. Robert Hammond
REDACTED

SUBJECT: Freedom of Information Act Requests

Dear Mr. Hammond:

The following Freedom of information Act requests have been received in this Office: Your 2016-E; 16-D; 16-A; 16-C; 16-B; 15-C; 15-B; 14-AF; 14-AE; 14-AD; 14-X; 14-AC; 14-AB and 14-AA.

Due to the sheer volume of requests received, along with other requests, they have not been reviewed in full at this time. Each request is being reviewed and you will receive a tracking number (if applicable) no later than 21 October 2016.

If you have questions please respond to this email or call (301) 400-2315.

Sincerely,

Judy J. Bizzell
Freedom of Information Act Officer
Walter Reed National Military Medical Center 8901 Wisconsin Ave
Bethesda, MD 20889

From: REDACTED

Enclosure 4, November 11, 2017 Sample Correspondence

To: [Matt.Gardner <Matt.Gardner@usdoj.gov>](mailto:Matt.Gardner@usdoj.gov); [OIP.ComplianceInquiry <OIP.ComplianceInquiry@usdoj.gov>](mailto:OIP.ComplianceInquiry@usdoj.gov)

Sent: Fri, Nov 3, 2017 6:35 am

Subject: Fwd: Appeal of DHA 17-B; Performance Standards Cygnarowicz

Hi Matt,

Please add this to your compliance review. Relates to my email "Part I. Got caught."

The Defense Privacy and Civil Liberties Office (DPCLC) (cindy.l.allard.civ@mail.mil and james.p.hogan4.civ@mail.mil) are aware of this one as well. Good people.

I am only sending your team select examples.

With my respect,

Robert Hammond

-----Original Message-----

From: REDACTED

To: [cindy.l.allard.civ <cindy.l.allard.civ@mail.mil>](mailto:cindy.l.allard.civ@mail.mil)

Cc: [raquel.c.bono.mil <raquel.c.bono.mil@mail.mil>](mailto:raquel.c.bono.mil@mail.mil); [guy.t.kiyokowa.civ <guy.t.kiyokowa.civ@dha.mil>](mailto:guy.t.kiyokowa.civ@dha.mil); [paul.t.cygarowicz.mil <paul.t.cygarowicz.mil@mail.mil>](mailto:paul.t.cygarowicz.mil@mail.mil); [voiceofthecustomer <voiceofthecustomer@dha.mil>](mailto:voiceofthecustomer@dha.mil)

Sent: Sun, Oct 29, 2017 5:06 pm

Subject: Fwd: Appeal of DHA 17-B; Performance Standards Cygnarowicz

Dear Ms. Allard,

With my respect and continued appreciation to you and your staff, please assist with the administrative appeal below seeking the performance standards of Paul T. Cygnarowicz, Deputy General Counsel, Defense Health Agency.

Enclosure 4, November 11, 2017 Sample Correspondence

As you can see, this administrative appeal was filed and also sent electronically EIGHT MONTHS AGO: 2/22/2017 5:22:29 AM Eastern Standard Time.

I am not seeking any personal information, just the rating standards themselves. Note that DHA's FOIA officer released her own standards without any claim of exemption, as have multiple other agencies for their personnel.

Please determine if DHA reported this aged administrative appeal on DHA's FY annual FOIA Reports submission. Please also determine the delay in acting on this appeal and if DHA is processing appeals in the order in which they are received.

Please advise Ms. Chung, and thru her Mr. Tillotson. of my ongoing concerns regarding the integrity of the FOIA/PA processes and the accuracy of reporting to the Attorney General of the United States and Congress.

As the addressees to this email know, DOD's FOIA and Privacy Act Programs are overseen by the honorable Mr. David Tillotson III (Deputy Chief Management Officer, Office of the Secretary of Defense) and, his fine compliance staff (Joo Clung (Senior Executive Service), Cindy Allard, James P. Hogan, et al), and Reports are submitted to the Attorney General and to Congress under his good name, based on information provided to his staff.

Mr. Tillotson is entitled to know the full extent of any inaccurate/false reporting submitted in his good name and the degree of the lack of integrity in the FOIA and Privacy Act processes by DOD's subordinate reporting commands. He is entitled to know the standards set for those holding appellate authority within DOD. The American Citizens are entitled to know.

I will be following up again soon; also considering other venues.

Vice Admiral Bono, with my deep respect, please review the actions of your staff operating under your delegated authority.

Thank you both

With my deep respect,

Robert Hammond

cc: Multiple

Enclosure 4, November 11, 2017 Sample Correspondence

From: [REDACTED](#)
To: dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mail.mil
Sent: 2/22/2017 5:22:29 AM Eastern Standard Time
Subject: Appeal of DHA 17-B; Performance Standards Cygnarowicz

Robert Hammond
REDACTED

February 18, 2017

Office of General Counsel
National Capital Region Medical Directorate
Defense Health Agency
8901 Wisconsin Avenue (Building 27)
Bethesda, MD 20889

Phone: 1-703-681-6012
Fax: 1-703-681-6231

dha.ncr.dgc-fc.list.ogc-foia-appeals-owners@mail.mil Also sent by certified mail: 7016 2710 0000 7877 0038

Subject: Appeal of My FOIA Request – Performance Standards of Paul T. Cygnarowicz, Deputy General Counsel, Defense Health Agency

My Personal Reference Number: FOIA DHA 17-B

Assigned Agency FOIA Control Number 2017-041

References:

- (a) The Freedom of Information Act (FOIA)
- (b) The Privacy Act (c) CFR 164.526
- (c) DoD 5700.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (d) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation

Enclosure 4, November 11, 2017 Sample Correspondence

- (e) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011: “Your Right to Federal Records” (see <http://publications.usa.gov/USAPubs.php?PubID=6080>)
- (f) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (g) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>
- (h) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act

Dear Sir:

This appeal is submitted under the references above for my FOIA request dated January 10, 2017 at Enclosure (1) seeking the Performance Standards of the position occupied by Paul T. Cygnarowicz, Deputy General Counsel, Defense Health Agency. The Agency’s denial letter is at Enclosure (2). The

Agency is improperly denying my request in full, inappropriately citing the FOIA Exemption (b)(6) and asserting that release would constitute a clearly unwarranted invasion of personal privacy under 5 U.S.C. 552(b)(6). There is no personal privacy interest in the information sought. This request does not seek any privacy information about Mr. Cygnarowicz. It only seeks the performance standards for the position under which Mr. Cygnarowicz is serving and not Mr. Cygnarowicz’s performance rating under those standards. This denial is capricious, arbitrary and a misuse of the privacy exemption.

Records sought under FOIA.

I am respectfully seeking:

- The performance standards Paul T. Cygnarowicz, Deputy General Counsel, Defense Health Agency for the current and most recent past rating period.
- A copy of this FOIA Request letter returned with the DHA reply, which is an agency record.

Discussion.

Enclosure 4, November 11, 2017 Sample Correspondence

- The performance standards will show if the Deputy General Counsel, Defense Health Agency is being evaluated against applicable laws, regulations and policies.
- DHA has released the performance standards of the DHA FOIA Officer pursuant to a similar request (as have other DoD entities), making the DHA denial capricious, arbitrary and otherwise contrary to governing laws, regulations and policies (enclosure (3)).

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

- Release of Segregable Portions.
 - I contend that every item sought under my FOIA request is fully releasable without redaction in accordance with reference (g). Notwithstanding that, the Agency is making the ridiculous assertion that the performance standards Agency’s Chief, DHA Privacy and Civil Liberties Office (a federal employee) is exempt under 5 U.S.C. 552(b)(6). The Agency must justify each item being withheld.
 - The FOIA requires that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.
 - Further, when a requested document contains some information which falls under one of the exemptions, the FOIA requires that all non-exempt portions of the record must still be released. The Act expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction (the deletion of part of a

Enclosure 4, November 11, 2017 Sample Correspondence

document to prevent disclosure of material covered by an exemption) of the parts which are exempt. 5 U.S.C. § 552(b). This is a very important aspect of FOIA because it prohibits an agency from withholding an entire document merely because one line, one page or one picture are exempt.

- Strong Presumption in Favor of Disclosure.

- "In the Act generally, and particularly under Exemption (6), there is a strong presumption in favor of disclosure." *Local 598 v. Department of Army Corps of Engineers*, 841 F.2d 1459, 1463 (9th. Cir. 1988) (emphasis added). In that case, the Ninth Circuit reviewed the context of applicable Exemption 6 case law:

- The Freedom of Information Act embodies a strong policy of disclosure and places a duty to disclose on federal agencies. As the district court recognized, 'disclosure, not secrecy, is the dominant objective of the Act.' *Department of the Air Force v. Rose*, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976). 'As a final and overriding guideline courts should always keep in mind the basic policy of the FOIA to encourage the maximum feasible public access to government information.' *Nationwide Bldg. Maintenance, Inc. v. Sampson*, 559 F.2d 704, 715 (D.C.Cir.1977). As a consequence, the listed exemptions to the normal disclosure rule are to be construed narrowly. See *Rose*, 425 U.S. at 361, 96 S.Ct. at 1599. This is particularly true of Exemption (6). Exemption (6) protects only against disclosure which amounts to a 'clearly unwarranted invasion of personal privacy.' That strong language 'instructs us to 'tilt the balance [of disclosure interests against privacy interests] in favor of disclosure.'"
- *Id.* (emphasis added), citing *Washington Post Co. v. Department of Health and Human Servs.*, 690 F.2d 252, 261 (D.C.Cir.1982) (quoting *Ditlow v. Shultz*, 517 F.2d 166, 169 (D.C. Cir.1975)).
- Public Interest. The public is entitled to this information.

Basis for Appeal.

I am appealing that the Agency:

- (1) has improperly denied my request under 5 U.S.C. 552(b)(6);
- (2) notwithstanding the improper denial above) has not provided all reasonably segregable portions of documents, nor properly justified and accounted for any redactions;
- (3) did not provide a copy of my Request, which is an agency record;
- (4) did not provide records in the requested format of electronic PDF by return email so that there can be no question about what DHA provided or when.

Enclosure 4, November 11, 2017 Sample Correspondence

- (5) Afforded an inconsistent period of time for filing an appeal (90 days vice 60 for other appeals), perhaps hoping that I would take additional time in filing the appeal;
- (6) Is acting in a capricious and arbitrary manner in that DHA – Ms. Brown personally – has already released the performance standards of the DHA FOIA Officer (Ms. Brown).

Appellate Authority Action Sought.

I am seeking that:

- (1) each element of the basis of my appeal be addressed separately;
- (2) each element of my appeal be sustained [granted];
- (3) my FOIA request be remanded back to the Agency for direct reply to me; and,
- (4) I be granted new appellate rights following a subsequent reply by the Agency.

Some Additional References.

- Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>, states:
 - Personal information about FOIA requesters, however, such as home addresses and home telephone numbers, should not be disclosed. (62) In addition, the identities of first-party requesters under the Privacy Act of 1974 (63) should be protected because, unlike under the FOIA, an expectation of privacy can fairly be inferred from the personal nature of the records involved in those requests. (64)
 - Note that the Agency did not follow the FOIA requirement to provide me case a tracking number within ten days and did not then comply with statutory and regulatory requirements to complete the request within twenty days.
- DoD 5400.11-R, May 14, 2007, paragraph C1.5.3. states: “Avoidance of Procedural Obstacles. DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.”

Enclosure 4, November 11, 2017 Sample Correspondence

DoD 5400.11-R, May 14, 2007 paragraph C1.5.1. states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.”

Legal Framework of FOIA:

1. The definition of “records” includes:

“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person. 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall— (A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request.” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that, “In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” 5 U.S.C. § 552(a)(3)(B).

5. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

6. 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 5 U.S.C. § 522(a)(6)(A).

7. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

Enclosure 4, November 11, 2017 Sample Correspondence

8. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). See also 5 U.S.C. § 552(a)(6)(C).
9. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.
10. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),
11. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).
12. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

13. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, “Disposition of FOIA Requests,” (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

14. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

15. The DOJ Handbook also states:

“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for

Enclosure 4, November 11, 2017 Sample Correspondence

ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

This appeal is separate and distinct from any other appeals that I may file and may not be combined with any other appeal. I am not agreeing to combining separate appeals, as this would be improper, potentially distorting FOIA reporting to the United States Attorney General and impeding separate judicial review (if that becomes necessary). If you deny all or any part of this appeal, please cite each specific exemption you think justifies your determination and notify me of further remedies available under the law.

I will greatly appreciate your thoughtful and timely consideration of my request. Please contact me if you have any questions regarding this request. Thank you in advance.

With my respect,

Robert Hammond

Enclosures:

- (1) Hammond FOIA Request 17-A
- (2) DHA Denial Letter
- (3) Performance Standards of Nadine Brown Released Pursuant to FOIA

62. See FOIA Update, Vol. VI, No. 1, at 6. 63. 5 U.S.C. Â§ 552a (2000).

64. See FOIA Update, Vol. VI, No. 1, at 6.

**Enclosure 5, Email to Mr. Tillotson III Inaccurate 2017 Chief FOIA Officer Report
As Forwarded**

From: [REDACTED](#)
To: [REDACTED](#); rahwa.a.keleta.civ
<rahwa.a.keleta.civ@mail.mil>; paul.t.cygnarowicz.civ <paul.t.cygnarowicz.civ@mail.mil>; raquel.c.bono.mil
<raquel.c.bono.mil@mail.mil>; guy.t.kiyokowa.civ <guy.t.kiyokowa.civ@dha.mil>; michael.tymkovich.ctr
<michael.tymkovich.ctr@dha.mil>; michelle.johnson.ctr <michelle.johnson.ctr@dha.mil>; michael.jordan.ctr
<michael.jordan.ctr@dha.mil>; doritha.n.ross.ctr <doritha.n.ross.ctr@mail.mil>
Cc: cindy.l.allard.civ <cindy.l.allard.civ@mail.mil>; usafepa.papublicaffairs
<usafepa.papublicaffairs@us.af.mil>; paul.r.cordts.civ <paul.r.cordts.civ@mail.mil>; Stacy.a.cummings.civ
<Stacy.a.cummings.civ@mail.mil>
Sent: Mon, May 7, 2018 9:05 pm
Subject: Re: Inaccurate FY 2017 DOD CIO Report to DOJ [DHA]

Dear Ms. Keleta and Mr. Cygnarowicz,

I am forwarding this to you as a matter under your cognizance; others for situational awareness.

Ms. Keleta, good luck in your new position as the Acting DHA Chief, Freedom of Information Service Center in place of Ms. Thomas. There certainly many open issues and challenges wrt DHA FOIA and Privacy Act compliance and reporting. I look forward to working with you and your staff.

With my respect,

Robert Hammond

From: Bob Hammond [mailto:[REDACTED](#)]
Sent: Monday, March 26, 2018 7:16 PM
To: linda.s.thomas47.civ@mail.mil
Cc: cindy.l.allard.civ@mail.mil; james.hogan@whs.mil; raquel.c.bono.mil@mail.mil; guy.t.kiyokowa.civ@dha.mil;
kelly.e.fletcher@navy.mil; andrew.m.barr.mil@mail.mil
Subject: FW: Inaccurate FY 2017 DOD CIO Report to DOJ [DHA]

Dear Ms. Thomas,

**Enclosure 5, Email to Mr. Tillotson III Inaccurate 2017 Chief FOIA Officer Report
As Forwarded**

While DHA corrected its ten oldest appeals to reflect nine of mine at 775 days old (presumably as a result of the ongoing DOJ inquiry and my email below), DHA's data is still incorrect.

Will DHA be amending its input to DOD's FY 2017 Annual FOIA Report? Will DHA be amending its input to the DOD CIO report?

Will DHA/Walter Reed be living up to the high standards which Mr. Tillotson has set for the Department with respect to FOIA and Privacy Act processes and reporting?

With my respect,

Robert Hammond

**Enclosure 5, Email to Mr. Tillotson III
Inaccurate 2017 Chief FOIA Officer Report
As Forwarded**

From: [REDACTED](#)

To: [REDACTED](#), [rahwa.a.keleta.civ <rahwa.a.keleta.civ@mail.mil>](mailto:rahwa.a.keleta.civ@mail.mil); [paul.t.cygnarowicz.civ <paul.t.cygnarowicz.civ@mail.mil>](mailto:paul.t.cygnarowicz.civ@mail.mil); [raquel.c.bono.mil <raquel.c.bono.mil@mail.mil>](mailto:raquel.c.bono.mil@mail.mil); [guy.t.kiyokowa.civ <guy.t.kiyokowa.civ@dha.mil>](mailto:guy.t.kiyokowa.civ@dha.mil); [michael.tymkovich.ctr <michael.tymkovich.ctr@dha.mil>](mailto:michael.tymkovich.ctr@dha.mil); [michelle.johnson.ctr <michelle.johnson.ctr@dha.mil>](mailto:michelle.johnson.ctr@dha.mil); [michael.jordan.ctr <michael.jordan.ctr@dha.mil>](mailto:michael.jordan.ctr@dha.mil); [doritha.n.ross.ctr <doritha.n.ross.ctr@mail.mil>](mailto:doritha.n.ross.ctr@mail.mil)

Cc: [cindy.l.allard.civ <cindy.l.allard.civ@mail.mil>](mailto:cindy.l.allard.civ@mail.mil); [usafepa.papublicaffairs <usafepa.papublicaffairs@us.af.mil>](mailto:usafepa.papublicaffairs@us.af.mil); [paul.r.cordts.civ <paul.r.cordts.civ@mail.mil>](mailto:paul.r.cordts.civ@mail.mil); [Stacy.a.cummings.civ <Stacy.a.cummings.civ@mail.mil>](mailto:Stacy.a.cummings.civ@mail.mil)

Sent: Mon, May 7, 2018 9:05 pm

Subject: Re: Inaccurate FY 2017 DOD CIO Report to DOJ [DHA]

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Ms. Keleta, good luck in your new position as the Acting DHA Chief, Freedom of Information Service Center in place of Ms. Thomas. There certainly many open issues and challenges wrt DHA FOIA and Privacy Act compliance and reporting. I look forward to working with you and your staff.

With my respect,

Robert Hammond

**Enclosure 5, Email to Mr. Tillotson III Inaccurate 2017 Chief FOIA Officer Report
As Forwarded**

From: Bob Hammond [
Sent: Monday, March 26, 2018 7:16 PM
To: linda.s.thomas47.civ@mail.mil
Cc: cindy.l.allard.civ@mail.mil; james.hogan@whs.mil; raquel.c.bono.mil@mail.mil; guy.t.kiyokowa.civ@dha.mil;
kelly.e.fletcher@navy.mil; andrew.m.barr.mil@mail.mil
Subject: FW: Inaccurate FY 2017 DOD CIO Report to DOJ [DHA]

Dear Ms. Thomas,

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Will DHA be amending its input to DOD's FY 2017 Annual FOIA Report?

Will DHA be amending its input to the DOD CIO report?

Will DHA/Walter Reed be living up to the high standards which Mr. Tillotson has set for the Department with respect to FOIA and Privacy Act processes and reporting?

With my respect,

Robert Hammond

From: Bob Hammond [REDACTED]
Sent: Monday, February 19, 2018 7:20 AM
To: 'david.tillotson1.civ@mail.mil' <david.tillotson1.civ@mail.mil>
Cc: 'joo.y.chung2.civ@mail.mil' <joo.y.chung2.civ@mail.mil>; 'cindy.l.allard.civ@mail.mil' <cindy.l.allard.civ@mail.mil>; 'james.p.hogan4.civ@mail.mil' <james.p.hogan4.civ@mail.mil>
Subject: Inaccurate FY 2017 DOD CIO Report to DOJ

Dear Mr. Tillotson,

I want to advise you of a significant error in the "Department of Defense Chief Freedom of Information Act Officer Report to the Department of Justice for 2017." At page 24, paragraph 5.4, "Status of ten Oldest Requests, Appeals, and Consolations," it states, "DCAA, DeCA, DFAS, DHA, DLA, DoDEA, DTIC and OSD/ JS, closed their entire ten oldest."

That cannot be true with respect to DHA. I believe your staff has been given inaccurate information.

**Enclosure 5, Email to Mr. Tillotson III Inaccurate 2017 Chief FOIA Officer Report
As Forwarded**

REDACTED. In fact, ten, still unreported FY 2015 appeals and some Walter Reed FY 2015 FOIA requests are currently being reviewed by your staff together with DOJ. Similarly, Walter Reed still has an open FY 2015 consultation from USPS, which contradicts DHA's claim to the contrary.

The number of aged, still open requests, appeals and consultations dating back to 2013 is staggering.

REDACTED

I am hoping that DOD will submit an accurate Annual FY 2017 FOIA Report to DOJ and to Congress.

It is my desire to resolve issues at the lowest level, within DOD, that achieves a timely and correct result. Results matter a great deal to me.

With my deep respect,

Robert Hammond

Abraham, Martin and John – Our Best Days Are Ahead

Abraham, Martin and John by Dion 1968

Has anybody here seen my old friend Abraham?
Can you tell me where he's gone?
He freed a lot of people
But it seems the good die young
But I just looked around and he's gone

Has anybody here seen my old friend John?
Can you tell me where he's gone?
He freed a lot of people
But it seems the good die young
But I just looked around and he's gone

Has anybody here seen my old friend Martin?
Can you tell me where he's gone?
He freed a lot of people
But it seems the good die young
But I just looked around and he's gone

Didn't you love the things that they stood for?
Didn't they try to find some good for you and me?
And we'll be free
Someday soon, it's gonna be
One day

Has anybody here seen my old friend Bobby?
Can you tell me where he's gone?
I thought I saw him walkin'
Up over the hill
With Abraham, Martin and John

Didn't you love the things that they stood for?
Didn't they try to find some good for you and me?
And we'll be free
Someday soon, it's gonna be
One day

Has anybody here seen my old friend Bobby?
Can you tell me where he's gone?
I thought I saw him walkin'
Up over the hill
With Abraham, Martin and John

Writer/s: Richard Holler
Publisher: REGENT MUSIC CORPORATION
Lyrics licensed and provided by LyricFind

We The People. Declaration of Independence 1776!

I am coming to you today from the ancestral lands of free, proud, unified, inclusive American citizens. **We The People of the United States of America.**

Thank you considering my oral comments and written public comments.

I would like to close with words of proud American citizens: Gouverneur Morris, Abraham Lincoln, Martin Luther King and Senator Bobby Kennedy.

“I have a dream.” (King). “Some men see things as they are and ask why. I dream of things that never were and say why not.” (Kennedy). Our best days are ahead of us.

We The People, enshrined in our Constitution, will not again be a house divided against ourselves no matter the rhetoric. In 1865, 166 years ago, we fought and won a bloody war to advance **equality of opportunity**, not guaranteed equity of outcomes as we are all unique in our pursuit of our dreams. Messy as it sometimes is, that is Our history. The greatest nation in the history of the world.

Let us all be judged by the content of our character.

God bless the United States of America!

The Declaration of Independence IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,
When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly, all experience hath

The U.S. Constitution

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America

-- Preamble to the United States Constitution

United States National Archives:

The Constitution acted like a colossal merger, uniting a group of states with different interests, laws, and cultures. Under America's first national government, the Articles of Confederation, the states acted together only for specific purposes. The Constitution united its citizens as members of a whole, vesting the power of the union in the people. Without it, the American Experiment might have ended as quickly as it had begun.

[The Constitution of the United States | National Archives](#)



We the People

domestic Tranquility, provide for the common and Posterity, do ordain and establish this Constitution

Article I