



**DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF RESOLUTION MANAGEMENT, DIVERSITY & INCLUSION
WASHINGTON DC 20420**

April 27, 2022

FOIA Request No.: **22-04535-F**

Mr. Reed Rubinstein
VIA ELECTRONIC MAIL: foia@aflegal.org

Dear Mr. Rubinstein:

This letter is the initial agency decision (IAD) on your March 30, 2022, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for:

“A. The Department’s “Equity Action Plan,” that was required by Section 7 of Executive Order 13985 (January 20, 2021) on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” to be submitted to the Assistant to the President for Domestic Policy and the Director of the Office of Management and Budget by January 20, 2022.

B. The Department’s “Equity Assessment,” that was required by Section 5 of Executive Order 13985 (January 20, 2021) on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” to be submitted to the Assistant to the President for Domestic Policy by August 8, 2021.”

Your request was received by VA Central Office on March 30, 2022. A review of the record on March 31, 2022, resulted in your request being transferred to Office of Resolution Management, Diversity and Inclusion (ORMDI). This IAD was processed Madeline Stephens, FOIA Officer and is assigned the tracking number written at the top of this letter. Please use it in any future correspondence you may have regarding this request.

Equal Employment Opportunity (EEO) complaint records are part of a Privacy Act system of records maintained in EEOC/GOVT-1 and titled “Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.” This system of records has been exempted from several provisions of the Privacy Act, including the access, amendment, and accounting of disclosures provisions of the Act in accordance with 29 C.F.R. § 1611.13 as published on March 14, 1991, in Federal Register Volume 56, Number 50 on pages 10900 through 10901.

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The FOIA provides that Federal agencies must disclose records requested unless they may be withheld in accordance with one or more of nine statutory exemptions (5 U.S.C. § 552(b)). My review of the documents revealed that they contain information that falls within the disclosure protections of FOIA Exemption 5 (5 U.S.C. §552(b)(5), FOIA Exemption 6 (5 U.S.C. §552(b)(6)), and FOIA Exemption 7(C) (5 U.S.C. §552(b)(7)(C)). I am therefore withholding portions of these records as indicated by the redactions, with the FOIA exemptions notated therein.

FOIA Exemption 5 permits VA to withhold a document or information contained within a document as “pre-decisional” if two requirements are met. First, if there is an identifiable deliberative process. Second, the agency generated the information or document as part of the agency decision process. Stated another way, VA may withhold information under Exemption 5 where the document or its content makes recommendations or expresses opinions about legal or policy matters during a decision-making process and the document is not the decision document or incorporated into the decision document. Additionally, as a matter of Federal policy, the agency must state an articulable, foreseeable harm to the agency or its activities that could occur as a result of the release of the document or information.

My review of the documents identified as responsive to your FOIA request reveals that they contain information that falls within the protection of Exemption 5. This information consists of opinions, recommendations and summaries of interviews conducted during the fact-finding process. These documents are part of a deliberative, pre-decisional process, the release of which would discourage open and frank discussion and would endanger the integrity of the agency’s decision-making process. Consequently, VA denies your request for this information under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

FOIA Exemption 6 permits VA to withhold a document or information contained within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual’s personal privacy. In other words, VA may withhold information under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual’s personal privacy without contributing significantly to the public’s understanding of the activities of the federal government.

Specifically, the information I am withholding under FOIA Exemption 6 consists of the names, positions, or other information that combined with information freely available to the public could identify individuals involved in the investigation. The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the requester is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public’s

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understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the materials provided, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest in this case. The individuals associated with this information have a personal privacy interest in information that outweighs any public interest served by disclosure of their identities under FOIA. Consequently, I am denying your request for this information under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6). Portions of the document applicable to Exemption 6 have been redacted and annotated with the exemption.

Exemption 7(C) permits VA to withhold a document or information in a document if the Agency compiled the document for a law enforcement purpose and if disclosure of the information could be reasonably expected to constitute an unwarranted invasion of a living individual's personal privacy. Stated another way, VA may withhold information under Exemption 7(C) where there is a reasonable likelihood that disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, could result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the Federal government. This exemption continues to apply to information after completion or cessation of the law enforcement activity in which the information was gathered.

Our review of the records revealed that they contain information that falls within the protection of FOIA Exemption 7(C). Specifically, the information covered by Exemption 7(C) consists of the names, positions, or other information that combined with information freely available to the public could identify individuals involved in the investigation. An individual associated with this information has a personal privacy interest in it, particularly when held in records compiled for law enforcement purposes, as in this case. Further, upon consideration of the matter, we have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest in this case. Consequently, VA denies your request for this information under FOIA Exemption 7(C), 5 U.S.C. § 552 (b)(7)(C). Portions of the document applicable to Exemption 7 have been redacted and annotated with the exemption.

If you disagree with my determinations to withhold the information under FOIA Exemptions 5, 6, and 7(C), please be advised that you may appeal to:

General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
OGCFOIAAppeals@va.gov

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If you should choose to make an appeal, your appeal must be postmarked no later than ninety (90) calendar days after the date of the adverse determination. It must clearly identify the determination being appealed and must include any assigned request number. The appeal should include:

1. The name of the FOIA Officer
2. The address of the component
3. The date of the component's determination, if any
4. The precise subject matter of the appeal

If you choose to appeal only a portion of the determination, you must specify which part of the determination you are appealing. The appeal should include a copy of the request and VA's response, if any. The appeal should be marked "Freedom of Information Act Appeal".

In addition to filing an appeal with the Office of General Counsel regarding my determination, you may also seek assistance and/or dispute resolution services regarding your FOIA request from VA Central Office FOIA Public Liaison and/or the Office of Government Information Services (OGIS) as provided below:

VA Central Office FOIA Public Liaison:

Email Address: VACOFIASEVICE@va.gov

Phone Number: 877-750-3642

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov

Fax: 202-741-5769

Mailing address:

National Archives and Records Administration

8601 Adelphi Road

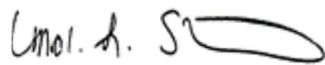
College Park, MD 20740-6001

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If you have any questions regarding your request, please contact me at Madeline.Stephens@va.gov. We at ORMDI take customer service seriously. It has been a pleasure to serve you.

Sincerely,



Printed/Typed Name: Madeline L. Stephens

Madeline Stephens
ORMDI FOIA Officer

Enclosures:

- EO13985 VA Final Equity Action Plan.....14 Pages

Non Responsive	0 Pages
Released in Full	14 Pages
Partially Released	0 Pages
Withheld in Full	21 Pages