



July 26, 2022

VIA email: OGCFOIAAppeals@va.gov

Catherine C. Mitrano
General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420

Freedom of Information Act Appeal: 22-04535-F Initial Agency Decision to Withhold Release of Report Required by Section 5 of Executive Order 13985

Dear Ms. Mitrano:

This is an appeal under the Freedom of Information Act.

On March 30, 2022, America First Legal Foundation (“AFL”) submitted to the United States Department of Veterans Affairs (“VA”) under the Freedom of Information Act (“FOIA”) a request for only two documents, both of which were required pursuant to the January 20, 2021 Executive Order 13985 entitled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (the “EO”): (1) the VA’s Equity Action Plan “that was required by Section 7 of [the EO],” and (2) the VA’s report “that was required by Section 5 of [the EO]” (“Final Report”). Exhibit 1. The VA Central Office assigned the request to the Office of Resolution Management, Diversity and Inclusion (ORMDI) and assigned it tracking number: 22-04535-F.

In the VA’s initial agency decision, dated April 27, 2022, FOIA Officer Madeline Stephens withheld the Final Report in full (21 pages) because her “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)).” Exhibit 2. To justify her withholding of the document under Exemption 5, she cited the pre-decisional and deliberative nature of the information, “which consists of opinions, recommendations and summaries of interviews conducted during the fact-finding process.”¹ To justify her withholding of “names, positions, or other information that ... could identify individuals involved in the investigation,” she cited their privacy interests under

¹ Exhibit 2 at 2.

Exemptions 6 and 7(C).² AFL does not appeal the VA’s determination to withhold personally identifiable information for individuals involved in an ongoing investigation. However, because the Final Report is not protected under the deliberative process privilege within the scope of Exemption 5, AFL appeals the VA’s initial agency decision to withhold it in full.

The Final Report as Described by Executive Order 13985

Section 5 of the EO directed each agency to “assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.”³ Specifically, within 200 days, the Secretary of Veterans Affairs (“Secretary”) was required to “in consultation with the Director of OMB, select certain [VA] programs and policies for a review that will assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities pursuant to those policies and programs,” to “conduct such a review,” and to “provide a report to the Assistant to the President for Domestic Policy (APDP) reflecting findings” on “potential barriers that underserved communities and individuals may face ... [w]hether new policies, regulations, or guidance documents may be necessary ... [and t]he operational status and level of institutional resources available.”⁴ Section 5 of the EO did not require the VA to provide its analysis or rationales to support those findings, nor did it require the VA to report any forward-looking strategies, plans, or goals. Section 3 of the EO clarified “[t]he role of the White House Domestic Policy Council (DPC) [led by the APDP] is to coordinate the formulation and implementation of Administration’s domestic policy objectives.”⁵

AFL specifically requested the post-decisional Final Report, as disclosed to the APDP. AFL did not request any pre-decisional drafts of the Final Report, any consultations with the OMB Director in selecting the VA programs and policies for review, nor any other communications leading up to the Final Report.

FOIA Exemption 5 Under the Deliberative Process Privilege

FOIA requires the VA to disclose records upon request unless the records fall within one or more enumerated exemptions.⁶ The exemptions are narrowly construed so as not to “obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.”⁷ As a threshold consideration, Exemption 5 covers “inter-agency or intra-agency memorandums.”⁸ “The deliberative process privilege protects agencies from

² *Id.* at 2-3.

³ Exec. Order No. 13985, 86 Fed. Reg. 7,009 (Jan. 25, 2021).

⁴ *Id.* at 7010.

⁵ 86 Fed. Reg. at 70,10 (Jan. 25, 2021).

⁶ *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7 (2001).

⁷ *Id.* (quoting *Dept’ of Air Force v. Rose*, 425 U.S. 352, 361 (1976)) (internal quotations omitted).

⁸ 5 U.S.C. § 552(b)(5); *See Shapiro v. DOJ*, 969 F. Supp. 2d. 18, 25 (D.D.C. 2013).

being ‘forced to operate in a fishbowl.’”⁹ To qualify for Exemption 5 protection under the deliberative process privilege, “an agency’s materials must be both ‘predecisional’ [sic] and part of the ‘deliberative process.’”¹⁰ The VA asserted FOIA Exemption 5 under the deliberative process privilege to justify withholding the Final Report in full, but the Final Report is neither pre-decisional nor deliberative.

The Final Report Is Not Pre-decisional

The Final Report is final, not pre-decisional. To determine whether a document is pre-decisional or “a final, official agency position,” the D.C. Circuit considers: “1) the decision-making authority, or lack thereof of the document’s author; 2) the position of the document in the chain of command; and 3) whether the document is intended as an expression of the individual author’s views or as an expression of the agency’s official position.”¹¹ Under the Section 5 of the EO, agency reports must be submitted by “[t]he head of each agency, or designee ... to the [APDP].” Accordingly, the Secretary, or a designee under his authority, authored the Final Report. Under Section 5 of the EO, the Secretary’s report must reflect findings on:

- (a) Potential barriers that underserved communities and individuals my face to enrollment in and access to benefits and services in [VA] programs;
- (b) Potential barriers that underserved communities and individuals may face in taking advantage of [VA] procurement and contracting opportunities;
- (c) Whether new policies, regulations, or guidance documents may be necessary to advance equity in [VA] actions and programs; and
- (d) The operational status and level of institutional resources available to offices or divisions within [VA] that are responsible for advancing civil rights or whose mandates specifically include serving underrepresented or disadvantaged communities.¹²

The Secretary’s report reflecting those findings—which ultimately became the VA’s Final Report—necessarily occurred at the top of the VA’s chain of command, and it expressed the VA’s official position regarding: the VA’s programs; the VA’s procurement and contracting opportunities; the VA’s policies, regulations and guidance documents; and the VA’s offices and divisions, and their respective operational statuses and resource levels. Pointedly, the EO clarified that “[t]he role of the White House Domestic Policy Council (DPC) is to *coordinate* the formulation and implementation of my Administration’s domestic policy objectives.”¹³ As such,

⁹ Elec. Frontier Found. v. DOJ, 739 F.3d 1, 7 (D.C. Cir. 2014) (quoting EPA v. Mink, 410 U.S. 73, 87 (1973)).

¹⁰ Formaldehyde Inst. v. Dep’t of Health and Human Servs., 889 F.2d 1118, 1121 (D.C. Cir. 1989).

¹¹ See Pfieffer v. CIA, 721 F. Supp. 337, 339 (D.D.C. 1989) (citing Authur Anderson & Co. v. IRS, 679 F.2d 254, 257-59 (D.C. Cir. 1982).

¹² 86 Fed. Reg. at 7,010 (Jan. 25, 2021).

¹³ *Id.* (emphasis added).

the Secretary submitted the Final Report to the APDP merely for interagency coordination, not for additional drafting or higher decision making.

AFL specifically requested the Final Report, as “required by Section 5 of [the EO] to be submitted to the [APDP]”.¹⁴ AFL did not request any pre-decisional drafts that were passed up to the Secretary before the Secretary decided on a final version to submit to the APDP for interagency coordination. AFL did not request the Secretary’s consultations with the OMB Director in selecting the VA programs and policies for review. AFL did not request any communications relating to either of those processes. AFL only requested the final document that was intended to express the VA’s official position.

The Final Report Is Not Deliberative

In addition to being pre-decisional, the withheld material must be “deliberative” in order to fall within the deliberative process privilege.¹⁵ “In deciding whether a document should be protected by the privilege,” the D.C. Circuit looks to “whether the document is ‘deliberative’ whether it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.”¹⁶ Courts also “ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency.”¹⁷ There is nothing subjective or personal about the Final Report; it is simply an objective compilation of findings on VA programs, VA procurement and contracting, VA policies and regulations, and VA offices and divisions’ operational statuses and resource levels. Nor does it reflect agency give-and-take of the consultative process. Disclosure of the Final Report will not cause rank and file VA employees to be less frank or honest when compiling similarly objective findings in the future. AFL did not request their drafts or communications. Section 5 of the EO did not require the VA to provide its analyses or forward-looking plans, and AFL did not seek them. AFL only requested the Secretary’s final, as submitted, version of the document containing the VA’s official findings.

Exemption 5 has a “narrow scope” and FOIA has a “strong policy ... that the public is entitled to know what the government is doing and why. The exemption is to be applied ‘as narrowly as consistent with efficient Government operation.’”¹⁸ Public knowledge of the Final Report will not affect either the efficient Government

¹⁴ Exhibit 1 at 1.

¹⁵ *McKinley v. Bd. of Governors of Fed. Res. Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

¹⁶ *Coastal States Gas Corp. v. U.S. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

¹⁷ *Id.*

¹⁸ *Id.* (quoting S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965)).

operation or any one of the various policies to be served by the Exemption.¹⁹ Even if the Final Report were somehow pre-decisional, it is certainly not deliberative, and it may not be withheld under the deliberative process privilege within the scope of Exemption 5.

No Reasonably Foreseeable Harm Would Result From Disclosure

Even if the Final Report were pre-decisional and deliberative, it should still be disclosed. The VA must comply with the Attorney General's *Memorandum on Freedom of Information Guidelines*: "Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail."²⁰ In its initial agency decision, the VA suggested that release of the Final Report "would endanger the integrity of the agency's decision-making process."²¹ In contrast other federal agencies, including NASA and SBA, have determined that there was no foreseeable harm in releasing their findings and reports in response to FOIA requests, and the Departments of Agriculture and Interior made proactive disclosures of the underlying information.²² No identifiable harm has resulted from any of these disclosures. Unless the VA has unique institutional characteristics that distinguish its inter-agency or intra-agency memorandums from those of other departments and agencies, it is unreasonable that the VA's disclosure of the Final Report would uniquely result in harm.

The Final Report May Not Be Withheld in Full

Even if parts of the Final Report were exempt from disclosure, the document may not be withheld in full. Under FOIA, the VA must "take reasonable steps necessary to segregate and release nonexempt information."²³ By withholding the Final Report in full, it is apparent that the VA made no effort to take any steps necessary to segregate and release nonexempt information.

It is inconceivable, for example, that the Secretary's finding on the operational status of certain VA offices would reflect the agency give-and-take of the consultative process, would reflect his personal opinions rather than the VA's official position, or would be so candid or personal in nature that public disclosure would likely stifle honest and frank communication within the agency.

¹⁹ *See Id.*

²⁰ U.S. DEP'T OF JUST. (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download>.

²¹ Exhibit 2 at 2.

²² *See e.g.*, U.S. DEP'T OF AGRIC., *RFI Summary Report*, <https://www.usda.gov/equity/rfi-summary> (last visited July 26, 2022); U.S. DEP'T OF THE INTERIOR, *Department of the Interior Executive Order 13985 Final Findings Report*, <https://www.doi.gov/sites/doi.gov/files/final-eo13985-final-report.pdf> (last visited July 26, 2022).

²³ 5 U.S.C. § 552(a)(8)(A)(ii)(II).

While recommendations for new policies, regulations, or guidance documents might be withheld from disclosure in some circumstances, the mere finding on whether they are necessary to advance equity is neither pre-decisional nor deliberative. Certainly, the VA could disclose the Final Report's finding that new policies are affirmatively necessary or unnecessary without revealing communications of a deliberative nature or information that is not final for agency purposes.

To the extent that any of the Final Report's findings were identified and addressed in the VA's publicly disclosed Equity Action Plan, the VA waived its justification to withhold that information. Because Section (7)(a) of the EO required the VA's Equity Action Plan to address "(i) any barriers to full and equal participation in programs identified pursuant to section 5(a) of [the EO]; and (ii) any barriers to full and equal participation in agency procurement and contracting opportunities identified pursuant to section 5(b) of [the EO],"²⁴ disclosure of these two findings in the Final Report would not chill the VA's internal deliberations or otherwise affect its ability to provide information on agency policies in a candid manner.

As explained above, the Final Report's four core findings, enumerated in Section 5(a)-(d) of the EO, are each final agency positions. Even if they were later utilized in formulating other future agency actions, the findings in the Final Report reflect the fixed, official VA policy position that resulted from the Secretary's completion of the EO's directive to select certain programs and policies for review, to conduct such a review, and to provide a report to the APDP reflecting those enumerated findings. As discussed above, Section 3 of the EO clarified that the APDP served merely to coordinate, not to approve or disapprove of the Final Report she received from the Secretary. If the Final Report also included extraneous pre-decisional and deliberative information, the VA must take any steps necessary to segregate it from the nonexempt information.

The VA Must Disclose the Final Report

Because the Final Report is not exempt from disclosure under the deliberative process privilege within the scope of Exemption 5, and harm would not reasonably result from its disclosure, we respectfully request the VA to reverse its initial agency decision and release the Final Report—subject to the withholding of personally identifiable information under Exemptions 6 and 7(C).

Thank you for your consideration of this appeal.

Sincerely,

/s/ Michael Ding
Michael Ding

²⁴ 86 Fed. Reg. 7,009, 7011 (Jan. 25, 2021).

America First Legal Foundation

EXHIBIT 1



March 30, 2022

Via Email – vacofoiase@va.gov

Department of Veterans Affairs
FOIA Service
810 Vermont Avenue, NW
(005R1C) VACO
Washington, DC 20420

Freedom of Information Act Request: VA Equity Action Plan

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we communicate with a national audience through traditional and social media platforms. AFL's email list contains over 30,000 unique addresses, our Facebook page has over 15,000 followers, our Twitter page has over 11,000 followers, the Twitter page of our Founder and President has over 116,000 followers, and we have over 28,000 followers on GETTR.

Pursuant to 5 U.S.C. § 552(a), AFL requests the following records.

I. Requested Records

- 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.

II. Processing

The Department of Veterans Affairs must comply with the processing guidance in the Attorney General's Memorandum of March 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>. This means, among other things, the following.

- You may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law.
- Information that might technically fall within an exemption should not be withheld unless you can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail.
- If you cannot make full disclosure of a requested record, then the FOIA requires that you consider whether partial disclosure of information is possible and take reasonable steps necessary to segregate and release nonexempt information.
- You must properly apply the foreseeable harm standard by confirming for and demonstrating to AFL that you have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.
- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then you must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. AFL's request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please give full effect to all applicable authorities and broadly construe our Item and your obligations to provide responsive records.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such

as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please prevent deletion by instituting a litigation hold or other appropriate measures.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees. These authorities provide for fee waivers when, as here, “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

AFL’s request concerns identifiable operations or activities of the government, and the information requested is likely to contribute significantly to the public understanding of the steps taken by the Biden Administration across the federal government in the name of advancing equity.

Also, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content.

As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL's financial interest. Our status as a qualified non-commercial public education and news media requester has been recognized by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

V. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. Finally, please contact us immediately if AFL's request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation

EXHIBIT 2



**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.

Reed Rubenstein

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

Reed Rubenstein

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

Reed Rubenstein

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: VACOFIASEERVICE@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

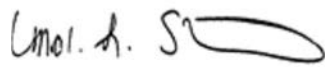
College Park, MD 20740-6001

Page 5.

Reed Rubenstein

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