

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT ET AL.,)	
)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. 19-cv-2519 (RDM)
)	
U.S. DEPARTMENT OF VETERANS)	
AFFAIRS ET AL.,)	
)	
)	
<i>Defendants.</i>)	

NOTICE AND STIPULATION OF VOLUNTARY DISMISSAL

This matter arises out of an action brought by Plaintiffs American Oversight and Democracy Forward Foundation against Defendants U.S. Department of Veterans Affairs (“VA”), VA Secretary Robert Wilkie, the National Archives and Records Administration, and Archivist David Ferriero under the Federal Records Act and Administrative Procedure Act. *See* Compl., ECF No.1. This matter concerned the removal of federal records from VA custody by former VA Secretary David Shulkin through the use of personal email accounts for communications regarding agency business. *Id.*

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiffs voluntarily dismiss this action against Defendants. Voluntary dismissal by plaintiffs without a court order is appropriate “by filing . . . a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii). Each side will bear its own costs and fees. Plaintiffs dismiss this action in reliance on the representations made by former Secretary Shulkin in the declaration attached as Exhibit A.

December 21, 2020

Respectfully submitted,

/s/ Daniel A. McGrath

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF VETERANS
AFFAIRS, *et al.*,

Defendants.

Civil Action No. 1:19-cv-02519-RDM

DECLARATION OF DAVID SHULKIN, MD

I, David Shulkin, MD, do hereby declare and state as follows:

1. From July 6, 2015 through February 13, 2017, I served as the Under Secretary of Veterans Affairs for Health in the United States Department of Veterans Affairs (“VA”), and from February 14, 2017 through March 28, 2018, I served as the United States Secretary of Veterans Affairs.
2. This Declaration sets forth the process I used to identify and produce messages sent from or received by my personal email accounts during my tenure at the VA that might constitute federal records and certifies that, to my knowledge, I have produced to the VA all federal records in my possession.
3. I engaged counsel at Gibson, Dunn & Crutcher LLP to advise me on the requirements of the Federal Records Act and to assist with my review and production of any federal records in my possession. If I had questions regarding whether an email pertained to VA business, counsel from Gibson Dunn reviewed the email and made a recommendation on whether it constituted a federal record.

4. My search and review for federal records proceeded under the guiding principle that any email sent or received during my tenure as Under Secretary of Veterans Affairs for Health or Secretary of Veterans Affairs that pertained to agency business constitutes a federal record.

5. With the assistance of Gibson Dunn, I first consolidated all messages in the inboxes of the two personal email accounts I used during my tenure at the VA. Gibson Dunn then collected and loaded into a document review platform all emails sent or received between July 6, 2015, the date I became Under Secretary of the VA, through March 28, 2018, the end of my tenure as Secretary of the VA. In total, 68,099 emails were collected.

6. Using broad search terms, I conducted an initial search of all emails in the inboxes of my two personal email accounts in order to identify the potential universe of federal records in my personal email. Through this review, I compiled a set of search terms to run against the database of 68,099 emails. I then reviewed the search results and marked for production any emails pertaining to VA business.

7. At the time, I excluded from my review communications between my personal email accounts and official government email addresses, because it was my understanding that those emails were already preserved on federal servers.

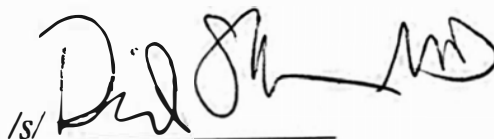
8. On June 21, 2019, with the assistance of Gibson Dunn, I transmitted to the VA an encrypted disc containing all of the documents I had identified as federal records during my review. The production included a total of 9,004 documents.

9. Upon learning that communications with government email addresses must also be produced, I prepared a supplemental production of all emails sent to or received from government email addresses.

10. On December 23, 2019, with the assistance of Gibson Dunn, I transmitted to the VA an encrypted disc containing all emails sent to or received from email addresses ending in “.gov” or “.mil,” which were not included in my previous production. The production included a total of 9,369 additional documents.

11. The two productions I submitted to the VA contain all of the federal records that I am aware of in my personal email accounts. To my knowledge, I have not deleted or withheld any documents that constitute federal records.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of December, 2020, at Washington, D.C.


/s/ David Shulkin, MD