



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

October 16, 2018

In Reply Refer To: 001B
FOIA Request: 18-12527-F

Adam Grogg, Esq.
Democracy Forward Foundation
foia@democracyforward.org

Dear Mr. Grogg, Esq.:

This is the Partial Initial Agency Decision (IAD) to your Freedom of Information Act (FOIA) request to the Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA) dated September 3, 2018, referred to this FOIA office on September 17, 2018, and assigned FOIA tracking number **18-12527-F**. You requested, as you phrase it:

1. All communications, calendar entries (including any associated attachments or notes), call sheets, visitor logs, and meeting minutes or notes reflecting meetings or communications between any of (a) David Shulkin, Robert Wilkie, Peter O'Rourke, Thomas Bowman, Scott Blackburn, Camilo Sandoval, or Pamela J. Powers; and any of (b) Isaac "Ike" Perlmutter, Laura Perlmutter, Bruce Moskowitz, Aaron Moskowitz, Marc Sherman, Thomas "Jake" Leinenkugel, or individuals with email addresses ending in "@frenchangel59.com."
2. All communications, calendar entries (including any associated attachments or notes), call sheets, visitor logs, and meeting minutes or notes containing any of the following terms: Ike, Perlmutter, Moskowitz, or Sherman. Please limit this search to the Office of the Secretary.
3. All communications, calendar entries (including any associated attachments or notes), call sheets, visitor logs, and meeting minutes or notes containing any of the following terms: Ike, Perlmutter, Moskowitz, Sherman, frenchangel59.com, American College of Surgeons, ACS, or Zinner. Please limit this search to the following VA employees: David Shulkin, Robert Wilkie, Peter O'Rourke, Thomas Bowman, Scott Blackburn, Camilo Sandoval, Pamela J. Powers, William Gunnar, Carolyn Clancy, Clifford Ko, and David Hoyt.
4. All communications, calendar entries (including any associated attachments or notes), call sheets, visitor logs, and meeting minutes or notes containing any of the following terms: Ike, Perlmutter, Moskowitz, Sherman, Apple, app for veterans, mobile application, mobile app, or Aaron. Please limit this search to the following VA employees: David Shulkin, Robert Wilkie, Peter O'Rourke, Thomas Bowman, Scott Blackburn, Camilo Sandoval, Pamela J. Powers, Richard Stone, Melissa Glynn, and John Windom.
8. All records or communications concerning the Federal Advisory Committee Act where any of the following are included or mentioned: Isaac "Ike" Perlmutter, Laura Perlmutter, Bruce Moskowitz, Aaron Moskowitz, Marc Sherman, or individuals whose email address ends in "frenchangel59.com." Please limit this search to the Office of the Secretary and the Office of General Counsel.

Scott Blackburn, Camilo Sandoval, William Gunnar, Carolyn Clancy, Clifford Ko, Richard Stone, Melissa Glynn, and John Windom are not OSVA employees, but employees of other VA components. Other VA FOIA offices will respond to you separately for responsive records relating to non-OSVA employees, such as the VHA FOIA office (FOIA **18-12530-F**), OIT FOIA office (**18-12525-F**), VBA FOIA office (**18-12529-F**), OEI FOIA office (**18-12714-F**), OGC FOIA office (**18-12531-F**), and OEHRM FOIA office (**18-12715-F**).

Additional Ninety (90) Business Day Extension to Original October 16, 2018, Deadline

38 C.F.R. § 1.557(c) says, "If the request must be referred to another component, **the response time will begin** on the date that the request was received by the appropriate component" (emphasis added). As OSVA received your referred FOIA request on September 17, 2018, after counting the October 8, 2018, federal holiday, OSVA's original deadline to respond to you is Tuesday, October 16, 2018.

Your FOIA request presents unusual circumstances because OSVA must search for and collect responsive records from the VA OIT (Office of Information Technology) office inputting email records into Clearwell (email search platform) and because the requested records are voluminous (estimated thousands of responsive pages). 5 U.S.C. § 552(a)(6)(B)(i) & 38 C.F.R. § 1.556(c)(i)-(ii). As such, we extend our October 16, 2018, deadline an additional ninety (90) business days. We also offer you the opportunity to modify your FOIA request or arrange an alternative time period to process your FOIA request. In the meantime, we intend to issue you rolling partial releases.

September 18, 2018, Beginning of Reasonable Searches

On September 18, 2018, our search cut-off date, and October 16, 2018, the OSVA FOIA office searched through Jacquelyn Hayes-Byrd's emails and calendars from November 8, 2016, to June 22, 2018. OSVA used the search terms Sherman, Perlmutter, Moskowitz, and @frenchangel59.com. This search yielded dozens of responsive emails and their attachments totaling hundreds of pages, for which OSVA expects to release some redacted documents this Friday, October 19, 2018. The OSVA FOIA office will conduct follow-up searches of Jacquelyn Hayes-Byrd's emails and calendars from June 23, 2018, to September 18, 2018.

On October 12, 2018, and October 18, 2018, the OSVA FOIA office searched through former VA Acting Secretary Peter O'Rourke's emails and calendars from February May 3, 2018, to June 22, 2018. The OSVA FOIA office used the search terms Sherman, Perlmutter, Moskowitz, and @frenchangel59.com. This search yielded nine responsive emails and their attachments totaling dozens of pages, for which OSVA expects to release some redacted pages this coming Friday, October 19, 2018. The OSVA FOIA office will conduct follow-up searches of former VA Acting Secretary Peter O'Rourke's emails and calendars from June 23, 2018, to September 18, 2018.

The OSVA FOIA office searched through former VA Acting Secretary Peter O'Rourke's emails and calendars from February 15, 2018 (the date he became VA Acting Chief of Staff), to May 3, 2018. The OSVA FOIA office searched through former VA Secretary David Shulkin's emails and calendars from February 14, 2017 (the date he became VA Secretary), to March 30, 2018 (the date he left VA). The OSVA FOIA office searched through VA Secretary Robert Wilkie's emails and calendars from April 1, 2018 (the date he became VA Acting Secretary) to June 5, 2018. The OSVA FOIA office will conduct a follow-up search of Secretary Wilkie's emails and calendars from June 6, 2018, to September 18, 2018.

For the VA Office of the Secretary, if we have not already done so, the OSVA FOIA office expects to search through the calendars and emails of the following custodians from January 20, 2017, to September 18, 2018:

- 1) Wilkie, Robert L., Jr., VA Secretary;
- 2) Shulkin, David, former VA Secretary;
- 3) O'Rourke, Peter M., former VA Acting Secretary;
- 4) Bowman, Thomas, former VA Deputy Secretary;

- 5) Powers, Pamela J., current VA Chief of Staff;
- 6) Hayes-Byrd, Jacquelyn, former VA Acting Chief of Staff;
- 7) Wright-Simpson, Vivieca, former VA Chief of Staff;
- 8) Selnick, Darin, former VA White House Senior Advisor;
- 9) Lukach, Michael, former VA White House Senior Advisor;
- 10) Leinenkugel, Jake, former VA White House Senior Advisor; and,
- 11) Spero, Casin D, former VA White House Liaison.

Initial Agency Decision

The OSVA FOIA office's search thus far through Wilkie's and O'Rourke's emails and calendars up to May 3, 2018, and Shulkin's emails and calendars up to March 30, 2018, yielded two hundred forty-two (242) pages. After reviewing the two hundred forty-two (242) pages, OSVA redacts some information with FOIA Exemptions 5, 6, 7(C), and 7(E).

5 U.S.C. § 552(b)(5) exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The government is entitled to redact confidential government information given "the sensitivity of the commercial secrets involved, and the harm that would be inflicted upon the Government by premature disclosure." Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979). Redacted information includes VA electronic mail server code usernames and government conference phone numbers and access codes. The release of this information would expose the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks. Releasing even a single VA username reveals the pattern to ascertain VA usernames that VA employees use to log into VA Systems of Records. Releasing VA usernames exposes the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks.

5 U.S.C. § 552(b)(6) exempts from required disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 6 permits VA to withhold a document or information within a document if 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 being withheld, as indicated on the enclosed documents, under FOIA Exemption 6, consists of names, identities, email addresses, VA usernames, phone numbers, cellular numbers, facsimile numbers, and approximate resident addresses of federal employees and private citizens; we however release the names and VA email addresses of VA Senior Executives. Federal civilian employees and private citizens retain a significant privacy interest under certain circumstances, such as in instances where the release of their information could represent a threat to their well-being, harassment, or their ability to function within their sphere of employment. The federal civilian employees and private citizens whose information is at issue have a substantial privacy interest in their personal information. In weighing the private versus the public interest, except names and VA email addresses of VA Senior Executives, we find that there is no public interest in knowing the names, identities, email addresses, VA usernames, phone numbers, cellular numbers, facsimile numbers, and approximate resident addresses of federal civilian employees and private citizens. 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 FOIA 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 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 records, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest of the individuals whose names are redacted. The protected information has been redacted and (b)(6) inserted. Releasing even a single VA username reveals the pattern to ascertain VA usernames that VA employees use to log into VA Systems of Records. Releasing VA usernames exposes the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks. "Withholding a telephone number or e-mail address, alone, is not sufficient to protect that [privacy] interest; alternate means of contacting and harassing these employees would be readily discoverable on the Internet if this court ordered their names disclosed." Long v. Immigration & Customs Enf't, 2017 U.S. Dist. LEXIS 160719 (D.C. Cir. 2017).

5 U.S.C. § 552(b)(7)(C) exempts from required disclosure information law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Redacted information includes names, email addresses, phone numbers, facsimile, and usernames of VA law enforcement employees or White House employees with security clearances, as well as the VA Secretary's approximate resident address. The release of this information would risk impersonation of law enforcement personnel and White House employees and jeopardize the health and safety of not only law enforcement personnel, but those persons the law enforcement personnel protect.

5 U.S.C. § 552(b)(7)(E) exempts from required disclosure information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." Redacted information includes the VA Secretary's approximate resident address. The release of this information would compromise the safety of VA law enforcement personnel and VA employees.

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Name: John Buck

Email Address: vacofoiaservice@va.gov

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

Mr. Adam Grogg, Esq.

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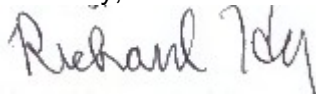
FOIA Appeal

This concludes OSVA's partial IAD response to request **18-12527-F**. Please be advised that should you desire to do so, you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response. Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

Sincerely,

A handwritten signature in black ink that reads "Richard Ha". The signature is written in a cursive, slightly slanted style.

Richard Ha, JD, CIPP/G
OSVA FOIA Officer

Attachments

- Two hundred forty-two (242) pages redacted emails and calendars from Wilkie and O'Rourke up to May 3, 2018, and Shulkin up to March 30, 2018