



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

February 26, 2019

FOIA Request No.: **18-12715-F**

Adam Grogg
Democracy Forward Foundation
foia@democracyforward.org

Dear Mr. Grogg:

This letter is the Office of Electronic Health Record Modernization's (OEHRM) Initial Agency Decision (IAD) in response to your request dated September 4, 2018 and submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

As stated in the Acknowledgment Letter dated September 18, 2018, the requested records also fall under the cognizance of the following offices:

- The Office of Information & Technology (OIT) FOIA Office will respond separately for responsive OIT records (FOIA **18-11384-F**)
- The Office of Acquisition, Logistics, & Construction (OALC) FOIA Office will respond separately for responsive Technology Acquisition Center (TAC) records (FOIA **18-11910-F**)
- The Veterans Health Administration (VHA) FOIA Office will respond separately for responsive VHA records (FOIA **18-12530-F**)
- The Office of the Secretary (OSVA) FOIA Office will respond separately for responsive OSVA records (FOIA **18-12527-F**)
- The Veterans Benefits Administration (VBA) FOIA Office will respond separately for responsive VBA records (FOIA **18-12529-F**)
- The Office of Enterprise Integration (OEI) FOIA Office will respond separately for responsive OEI records (FOIA **18-12714-F**)
- The Office of General Counsel (OGC) FOIA Office will respond separately for responsive OGC records (FOIA **18-12531-F**).

You have requested copies of the following records:

1. All communications, calendar entries (including any associated attachments or notes), call sheets, visitor logs, and meeting minutes or notes reflecting meetings or communication between David Shulkin, Robert Wilkie, Peter O'Rourke, Thomas Bowman, Scott Blackburn, Camilo Sandoval or Pamela J. Powers and any of the following:
 - A. Issac "Ike" Perlmutter
 - B. Laura Perlmutter
 - C. Bruce Moskowitz

- D. Aaron Moskowitz
- E. Marc Sherman
- F. Thomas “Jake” Leinenkugel
- G. Individuals with emails addressed 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:

- A. Ike
- B. Perlmutter
- C. Moskowitz
- D. 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:

- A. Ike
- B. Perlmutter
- C. Moskowitz
- D. Sherman
- E. frenchangel59.com
- F. American College of Surgeons
- G. ACS
- H. 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:

- A. Ike
- B. Perlmutter
- C. Moskowitz
- D. Sherman
- E. Apple
- F. App for veterans
- G. Mobile application
- H. Mobile app
- I. 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.

5. 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:

- A. Ike
- B. Perlmutter
- C. Moskowitz
- D. Sherman
- E. frenchangel59.com
- F. Electronic health records
- G. EHR
- H. Interoperability
- I. Cerner

Please limit this search to the Office of Electronic Health Record Modernization, the Veterans Health Administration, and the Office of Information and Technology.

6. All emails sent or received by Genevieve Morris and Ash Zenooz containing any of the following terms:

- A. Cerner
- B. Privitize
- C. Privitization
- D. White House
- E. Trump
- F. Ike
- G. Perlmutter
- H. Moskowitz
- I. Sherman
- J. frenchangel59.com

7. All records or communication concerning the VA final rule VA Claims and Appeals Modernization, 83 Fed. Reg. 39818 (August 10, 2018) where any of the following individuals are included or mentioned:

- A. Issac "Ike" Perlmutter
- B. Laura Perlmutter
- C. Bruce Moskowitz
- D. Aaron Moskowitz
- E. Marc Sherman
- F. Individuals with emails addressed ending in "@frenchangel59.com"

Please limit this search to the Veterans Benefits Administration

8. All records and communications concerning the Federal Advisory Committee Act where any of the following are included or mentioned:

- A. Issac "Ike" Perlmutter
- B. Laura Perlmutter
- C. Bruce Moskowitz

- D. Aaron Moskowitz
- E. Marc Sherman,
- F. Individuals with emails addressed ending in “@frenchangel59.com”

Please limit this search to the Office of the Secretary and the Office of General Counsel

Your FOIA request was received in my office on September 20, 2018.

OEHRM will address inquiries regarding Genevieve Morris, former Chief Health Information Officer (CHIO). **As such, this response pertains to requests numbers 5 and 6.** As a reminder, the search parameters were modified and now read as follows:

#5:

“Ike AND “electronic health records”

Ike AND EHR

Ike AND interoperability

Ike AND Cerner

Perlmutter AND ‘electronic health records’

Perlmutter AND EHR

Perlmutter AND interoperability

Perlmutter AND Cerner

Moskowitz AND “electronic health records” Moskowitz AND EHR

Moskowitz AND interoperability

Moskowitz AND Cerner

Sherman AND ‘electronic health records’

Sherman AND EHR

Sherman AND interoperability

Sherman AND Cerner

Frenchangel59.com AND ‘electronic health records’

Frenchangel59.com AND EHR

Frenchangel59.com AND interoperability

Frenchangel59.com AND Cerner”

#6

“Ike AND Cerner

Ike AND privatize

Ike AND privatization

Ike AND White House

Ike AND Trump

With separate, identical searches for Perlmutter, Moskowitz, Sherman, and frenchangel59.com”

IAD

On January 24, 2019, we performed a search of Genevieve Morris’ email server using the search terms you provided. Please note that the tenure of Ms. Morris’ VA email address was July 19-August 24, 2018. This search produced thirteen pages of identical, responsive records for both numbers 5 and 6. These documents are released with redactions in accordance with 5 U.S.C. § 552(b)(5) and 5 U.S.C. § 552(b)(6).

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. The release of this information would expose the VA, its employees, and its contractors to potential hacking and information technology security liabilities and risks.

FOIA Exemption 5 also 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. In addition, as a matter of Federal policy, the agency must state an articulable, foreseeable harm to the agency or its activities that could occur because of release of the document or information.

These documents contain candid assessments of a potential agency action. While the action has been completed, if statements of this nature were made public they would likely have a chilling effect on future recommendations, harming the ability of VA to make fully informed decisions in the future. In addition, withholding these documents will 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.

Therefore, the release of this information would likely cause injury to the deliberative process and harm agency operations. The deliberative process privilege of Exemption 5 is invoked as it is determined that the release of the pre-decisional document to the public would negatively impact frank discussion on matters of policy between contractors and the VA. It is my conclusion that the release would likely create public confusion from disclosure of reasons and rationales that were not in fact ultimately the grounds for an Agency action. As the information contained within these documents may not be consistent with the final actions of VA.

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." "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). Information withheld consists of the names of GS-15 and below VA employees and contractors. We've also redacted email addresses and contact information. The redacted information reveals nothing about how the agency performs its statutory duties.

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 individual is able to provide the requested information to members of the public and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Also, 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.

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

FOIA Appeal

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.

Thank you for your interest in VA.

Sincerely,

Mr. Fred Mingo, Jr.
FOIA Officer