



U.S. Department
of Veterans Affairs

MAY 28 2019

Mr. Adam Grogg
Democracy Forward Foundation
1333 H Street NW
Washington, DC 20005
Via Email: foia@democracyforward.org

In Reply Refer To: 005R1C
FOIA Request #: **18-12525-F**

Dear Mr. Grogg:

This letter is the initial agency decision (IAD) regarding your September 3, 2018, Freedom of Information Act (FOIA), 5 U.S.C. § 552, request to the Department of Veterans Affairs (VA). Portion of the request to the Office of Information & Technology (OI&T) was assigned FOIA tracking number 18-12525-F. For reasons outlined below, your request is granted in part.

To clarify, other VA FOIA offices will respond to you separately with responsive records relating to non- OI&T employees, such as VHA FOIA (18-12530-F), OSVA (18-12527-F), VBA FOIA (18-12529-F), OEI FOIA (18-12714-F), OGC FOIA (18-12531-F), and OEHRM FOIA (18-12715-F).

Initial Request

On September 3, 2018, you submitted a FOIA request for:

“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 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.

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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, 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, Perlmutter, Moskowitz, Sherman, or frenchangel59.com; and that also include any of the following terms: b) Electronic health records, HER, Interoperability, or 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: Cerner, Privatize, Privatization, White House, Trump, Ike, Perlmutter, Moskowitz, Sherman, or 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: 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 Veterans Benefits Administration

8. All records and 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."

Requester Category & Fees

Please be aware that the FOIA, 5 U.S.C. § 552 (A)(4)(a)(II), places all FOIA requesters in one of three categories for fee purposes. The three categories of FOIA requesters are 1) commercial use

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requesters; 2) educational institutions, noncommercial scientific institutions, and representatives of the news media; and finally, 3) all requesters “all other” who do not fall within either of the preceding two categories.

We have determined your request to be a “**News Media**” request. Our determination to classify this request as a News Media request is based on the FOIA Improvement Act of 2016 and VA FOIA regulations found at 38 C.F.R §1.561.

No fees were estimated/ charged for your request.

Search

On April 4, 2019, OI&T received its portion of the request and began processing. A complete search for information responsive to your request was conducted by VACO FOIA Service. During the search, we determined your request to be a complex FOIA as it presented unusual circumstances because OI&T must search for and collect responsive records, input those records into Clearwell (email search platform) - and because the requested records are voluminous (estimated thousands of responsive pages)- de-duplicate records, then conduct a line by line review of all responsive records. A total of five hundred and forty-eight pages (548) were found to be responsive to your request. One hundred and ninety-nine (199) pages are released to you in full, eleven (11) pages withheld in full (still released to you), and three hundred and thirty-eight (338) pages are released to you in part.

Relevant Law

We have thoroughly reviewed your submission under the provisions of the FOIA, which 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).

Analysis

By way of background, you initially requested answers to eight (8) items as mentioned above in your request. OI&T was deemed responsible for items: 1, 3, 4 and 5.

OI&T’s search for responsive records to your request yielded five hundred and forty-eight pages (548) pages. After conducting a comprehensive line by line rereview, OI&T withheld some information in part in accordance with one or more of nine statutory exemptions. 5 U.S.C. § 552(b). The information withheld was redacted under FOIA Exemptions (b)(4) [(5 U.S.C. § 552(b)(4)), (b)(5) [(5 U.S.C. § 552(b)(5))], and (b)(6) [(5 U.S.C. § 552(b)(6))].

5 U.S.C. § 552(b)(4) permits withholding of records related to trade secrets and other confidential business information. Here the information withheld consists of internal VA’s acquisition sensitive information.

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5 U.S.C. § 552(b)(5) permits withholding of information under the deliberative process privilege, including pre-decisional documents, inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency, or information that could be withheld under civil discovery, attorney-client privilege, or attorney work product privileges. Here the information withheld consists of communications under the deliberative process and VA Office of General Counsel attorneys-client and work product privileges. Furthermore, some information consists of executive privileged White House communications and was withheld pursuant to White House Liaison review and guidance.

5 U.S.C. § 552(b)(6) permits withholding of records and information about individuals when disclosure would be 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 withheld here consists of names, identities, email addresses, phone numbers, cellular numbers, facsimile numbers, and addresses of low level federal and private sector employees. Low grade 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. 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, we find that there is no public interest in knowing the names, identities, email addresses, phone numbers, cellular numbers, facsimile numbers, and addresses of federal civilian and private sector employees. 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. We, however, release the names and email addresses of VA and non-VA Senior Executives involved with this case.

Decision

In light of the foregoing, we believe the efforts taken to locate responsive records were sufficient to satisfy the duty of the Department under the FOIA. Accordingly, your request has been granted in part/ denied in part under FOIA Exemptions b4, b5, and b6; thus, we are releasing 548 total pages to you enclosed on a CD with this letter.

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Mediation and Appeal Rights

Please be advised that you may appeal the response to:

Office of the General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Email: ogcfoiaappeals@va.gov

If you should choose to file an appeal, your appeal must be postmarked or electronically transmitted no later than ninety (90) calendar days from the date of this letter. Please include a copy of this letter with your written appeal and clearly state why you disagree with the determinations set forth in this response.

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

VA FOIA Public Liaison:
Director, VA FOIA Service
810 Vermont Avenue, NW (005R1C)
Washington, DC 20420

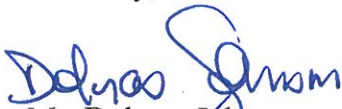
E-mail: vacofoiaservice@va.gov
Telephone: 1-877-750-3642
Facsimile: 202-632-7581

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

We appreciate your interest in the VA. If you have any questions about this letter, please contact Mr. Jay Riahi of my staff at 202-461-7762.

Sincerely,



Ms. Doloras Johnson
Director, VACO FOIA Service
Quality, Performance, and Risk (QPR)
Office of Information and Technology (OIT)

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Enclosed: (548 total pages released to you)
338 pages withheld in part under b5 & b6
199 pages released in full
11 pages withheld in full under b4 & b5