

September 14, 2023

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OIP.compliance.Inquiry@usdoj.gov; National.FOIAPortal@usdoj.gov;
lindsay.Steel@usdoj.gov; 'joo.y.chung2.civ@mail.mil'; 'james.p.hogan4.civ@mail.mil';
'cindy.l.allard.civ@mail.mil'; 'whs.mc-alex.esd.mbx.osd-js-foia-requester-service-
center@mail.mil'; 'osd.mc-alex.ocmo.mbx.foia-liaison@mail.mil';
'david.tillotson1.civ@mail.mil' Honorable John H. Gibson II;
nadine.r.brown4.civ@mail.mil; foirequests@tma.osd.mil; ogis@nara.gov;
amy.bennett@nara.gov; paul.t.cygnarowicz.civ@mail.mil; rahwa.a.keleta.civ@mail.mil;
doritha.n.ross.ctr@mail.mil; osd.mc-alex.odcmo.mbx.dod-foia-policy.office@mail.mil;
nikki.gramian@nara.gov; DOJ.OIP.FOIA@usdoj.gov;
Mark.Dorgan@DODIG.MIL'christopher.a.julka@navy.mil'; 'DONFOIA-PA@navy.mil';
'Patterson.robin.w.civ@us.navy.mil'; 'usn.ncr.dns.mbx.don-foia-pa@us.navy.mil';
'usn.ncr.dns.mbx.don-foia-pa@us.navy.mil'; 'DONFOIAPublicLiaison@navy.mil'

Subject: Expedited FOIA Request DOJ 23-A.B Case Processing records of DOJ-2019-000086

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply.

*****This Request will be timely for Judicial Review in twenty working days*****

BACKGROUND.

Records sought are to expose potential corruption with seemingly malignant intent by DOJ's Office of Information Policy (DOJ OIP), the Department of Defense, and the Office of Government Information Services not only in processing my prior 2018 FOIA request seeking "All records of communications within DOJ and between the Department of Defense (DOD) and DOJ from 1 October 2016 to present regarding DOD's FY 2017 Annual FOIA report submission," but in other matters.

DOJ OIP knows that I initiated FOIA request of DOJ-2019-000086 because DOD submitted a knowingly materially inaccurate FY 2017 annual FOIA report and DOJ OIP knew this in advance before approving DOD's FY 2017 annual FOIA report based on my FOIA compliance inquiries and OGIS mediation documenting same. Yet DOJ OIP approved DOD's annual FOIA report and cooked the books" in DOJ OIP's 2017 Litigation and Compliance Report," according to my records. Defense Health Agency then did not include any individualized tracking numbers in its FOIA raw data as required making traceability impossible. DOJ OIP has refused to act. Department of Navy and other DOD entities have also acted improperly and continue to do so. For example, I have countless open FOIA requests and appeals dating back to 2013 that have never been reported.

There was an OIG complaint involving DOJ OIP's handling of DOD's FY 2017 FOIA reporting.

I literally located all those same emails in my files within 5 minutes, begging the question of why it took DOJ OIP five years to respond to my FOIA request and why now. Since it is impermissible/unlawful for DOJ OIP to redact or withhold anything in emails originating from me – a private requester in the public domain – pursuant to my own FOIA request, the review and redaction could easily have been completed within twenty working days.

DOJ OIP expended resources impermissibly redacting content and masking content by overlaying black boxes labeled "Duplicative" to my emails in the second section of released records beginning at page 783, which DOJ OIP reports are records that "were not provided by you." Even when that is not the case.

DOJ OIP divided its released responsive records into two categories: 779 Pages Provided by Requester" and "75 Pages for Release, which DOJ OIP states: "were not provided by you." The latter statement is materially false.

My initial review of those 75 pages shows that they consist of DOJ OIP or OGIS forwarding my emails with attachments or responding to them. **In 56 instances, DOJ OIP unlawfully blacked out everything below the "sent" line in my emails being forwarded or responded to, thereby obscuring who I sent them to, and the content sent to such persons.** This took some effort. It is unlawful. And the improper blackened emails are not even all duplicates of other content released.

Please see the example of where DOJ OIP unlawfully redacted content with black box labeled “Duplicate” for pages 783 to 787 of DOJ OIP’s “75 Pages for Release” (see “Purported duplicate #1. Pages 783 -787” See Enclosure 3.). I am attaching the original redacted email “Hammond original email to Pustay of 2018 10 26 w. attachment (pp 783 - 787).” See Enclosure 4. The blacked-out content at pages 783 – 787 are not duplicated within the released records. The subject email addresses “Department of Navy’s statement that FOIA initial determination letters do not have to contain a statement regarding the right to seek dispute resolution from OGIS.” I sent this email:

To: Melanie.A.Pustay@usdoj.gov; alina.semo@nara.gov
Cc: OGIS@nara.gov; nikki.gramian@nara.gov; alina.semo@nara.gov;
adam.yost@navy.mil;
wendy.winston@navy.mil; grant.lattin@navy.mil; emilee.k.baldini@navy.mil;
kirk.foster@navy.mil;
soto.alaric@mail.mil; paul.richelmi@navy.mil; eva.lose@navy.mil;
james.mckeeon@navy.mil;
Meredith.werner@navy.mil; matthew.roush@navy.mil; griffin.farris@navy.mil;
robin.patterson@navy.mil; donfoia-pa@navy.mil; mary.p.shaw@navy.mil;
richard.r.strong@navy.mil; joshua.portner.ctr@navy.mil; montant.johnson.ctr@navy.mil;
Raymond.Hartwick.ctr@navy.mil; montana.johnson.ctr@navy.mil;
robert.miller3.ctr@navy.mil; james.p.hogan4.civ@mail.mil
Subject: Compliance Inquiry. Initial Determination Letters Not Containing the Right to OGIS Dispute Resolution.

In its response to my subject FOIA request **DOJ OIP unlawfully redacted content with black boxes labeled “Duplicative” 56 times** to obscure the content within my original emails to DOJ OIP, including attachments, which DOJ OIP did not release. In my view this is fraud with intent.

Within those attachments are other emails with attachments.

This and other matters appear obstruction, and corruption with intent.

For example, DOJ OIP unethically and unlawfully blacked out the email header content below “Sent: Wednesday, Ju 18, 2018 1:43 PM” with a black box marked duplicate which would show the following:

Cc: 'DHA NCR PCL Mailbox FOIA Requests'; 'Angela W CTR DHA PCL (US)';
'Nadine R CIV DHA PCL
(US)'; raquel.c.bono@mail.mil; perseverance2013@aol.com;
Michael.Tymkovich.ctr@mail.mil;
guy.t.kiyokowa.civ@dha.mil; paul.t.cygnowicz.civ@mail.mil
Subject: DOJ + DHA Obfuscate. Cygnarowicz Performance Standards. FW: FOIA DHA
17-B - Fwd: Your DHA FOIA Request - Online Submission

Attachments:

APPEAL~2.pdf; FW: PART III. INTENT?? - Fwd: Request for Assistance-FOIA Compliance; O... (63.3 KB);

FW: PART II. INTENT? - Fwd: Request for Assistance - FOIA Compliance; O... (71.9 KB);

FW: PART 1. GOT CAUGHT? Re: DHA FOIA Compliance-Aged DHA Administrative ... (850 KB);

FOIA DHA 17-B - Fwd: Your DHA FOIA Request - Online Submission (295 KB);
Final Response to Appeal (310 KB)

DOJ OIP is tasked with FOIA procedures and FOIA compliance oversight, making the records I am seeking of great public interest.

RECORDS SOUGHT VIA FOIA.

DOJ 23-A.B Case Processing records of FOJ-2019-000086.

I am respectfully seeking:

1. All records of any kind in the possession of DOJ from October 5, 2018 to present related to the processing of my FOIA request with Agency Assigned case number DOJ-2019-000086 at Enclosure 1. *See* DOJ OIP's September 11, 2023 initial determination letter, Re: DOJ-2019-000086, DRH:ADF:ERH at Enclosure 2.
2. Records would include, but are not limited to:
 - a. All records in Agency FOIA case files (which should contain all records related to my Request).
 - b. All records of any searches performed, who performed them, when they were performed, the manner of searching and locations searched, and the results of those searches.
 - c. All internal DOJ OIP records in any format.
 - d. Emails, with any email attachments, forwarding of emails including blind copies, and responses to or from (but not limited to) the following DOJ, DOJ OIP, DOD, OGIS:

alina.semo@nara.gov;
amy.bennett@nara.gov;
any @nara.gov email;
any @dodig.mil email;
any @navy.mil email address;

any communications with DOD's Secretary of Defense and Joint Staff (OSD/JS)
FOIA;

Beth.fidler@nara.gov;
Bobak.Talebian@usdoj.gov;
'cindy.l.allard.civ@mail.mil';
'david.tillotson1.civ@mail.mil' Honorable John H. Gibson II;
DOJ.OIP.FOIA@usdoj.gov;
doritha.n.ross.ctr@mail.mil;
Douglas.Hibbard@usdoj.gov;
'FOIA Advisory Committee Mailbox' <foia-advisory-committee@nara.gov>;
foiacompliance@gmail.com;
foiarequests@tma.osd.mil;
'james.p.hogan4.civ@mail.mil';
'joo.y.chung2.civ@mail.mil';
kirsten.mitchell@nara.gov;
Laurie.Day@usdoj.gov;
lindsay.Steel@usdoj.gov;
Matt.Gardner@usdoj.gov;
nadine.r.brown4.civ@mail.mil;
National.FOIAPortal@usdoj.gov.;
nikki.gramian@nara.gov;
ogis@nara.gov;
OIP.complaine.Inquiry@us.doj.gov;
OIP-NoReply@usdoj.gov;
osd.mc-alex.oatsd-pclt.mbx.foia-liaison@mail.mil;
'osd.mc-alex.ocmo.mbx.foia-liaison@mail.mil';
osd.mc-alex.odcmo.mbx.dod-foia-policy office@mail.mil;
paul.t.cygnarowicz.civ@mail.mil;
rahwa.a.keleta.civ@mail.mil;
toni.fuentes.civ@mail.mil;
Vanessa.R.Brinkmann@usdoj.gov;
'whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil';
DOJ.OIP.FOIA@usdoj.gov;
Douglas.Hibbard@usdoj.gov;
Laurie.Day@usdoj.gov;
Matt.Gardner@usdoj.gov;
Melanie.A.Pustay@usdoj.gov;
National.FOIAPortal@usdoj.gov
OIP.complaine.Inquiry@us.doj.gov;
OIP-NoReply@usdoj.gov;
Vanessa.R.Brinkmann@usdoj.gov;
Vanita.Gupta19@usdoj.gov;

- e. All fax transmissions, notes, meetings records.

3. I am also seeking a copy of this FOIA Request, which is an Agency record subject to FOIA that exists and is in the Agency's possession at the time of my FOIA request. This record is a responsive record integral to my Request. Release of the Agency's copy is not optional.
4. **Preemptively Searches.** The searches to locate records are extremely simple and can be performed well within my two hours of free search time as an "all other requester." Similarly, since I am requesting electronic records, there should not be any fees for copying.
5. **Preemptively B6.** There cannot be any redactions or withholding within records that I provided to federal departments and agencies, including email addresses. Those email addresses and other content originated from me, a private requester within the public domain and include email addresses that federal agencies and departments provided me.
6. **Preemptively B5.** There cannot be any redactions or withholdings under Exemption B5 because there are no policy or legal issues related to such communications.

REQUESTED FORMAT.

I am also seeking records in their native format (MS. Outlook, PowerPoint, Excel, ADA accessible PDF files or other mutually agreed by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency's letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done.

Further, I request that these records be sent in any digital formats in which they exist (such as PDF and Excel). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request.

Each record must be provided as a distinct record in their native format. Emails should be provided as MS Outlook files, if not encrypted or otherwise unable to be opened by me. Only if this is not possible, emails should be produced with their embedded hyperlinked attachments by using the "File => Save as Adobe PDF" command within Outlook or by other software that produces the same result.

I am also seeking the "**Description Available to the Public**" field I FOIAonline be set to yes and that all records be released to and viewable in the application by the general Public. The release type must be set to "**Unredacted – Releasable to the General Public: Will be available**

to the general public,” or to “**Redacted – Releasable to the General Public:** Will be available to the general public.”

This request is distinctly separate from any other. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

In all correspondence, return a copy of my FOIA request, cite my personal request number, and cite records sought.

FEE WAIVER/ PUBLIC INTEREST/PUBLIC RELEASE. Notwithstanding my agreement to pay fees below if my fee waiver is denied, I am seeking a fee waiver due to significant public interest in this information. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest. See below AGREEMENT TO PAY FEES and EXPEDITED PROCESSING for justification.

Preemptively. The searches to locate records are extremely simple and can be performed well within my two hours of free search time as an “all other requester.” Records are located in the FOIA case file, FOIAonline and simple email searches. Similarly, since I am requesting electronic records, there should not be any fees for copying.

By way of further amplification to above.

Factor 1. The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.

- Records sought concern the integrity of DOJ OIP’s FOIA processing. See EXPEDITED PROCESSING below.

Factor 2. The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

- Records sought concern the integrity of DOJ OIP’s FOIA Processing.

Factor 3. The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to "public

understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

- Records sought concern the integrity of DOJ OIP's FOIA Processing.

Factor 4. The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced significantly by the disclosure. The FOI Office will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

- Records sought concern the integrity of FOIAonline and EPA's management of same. See above. See EXPEDITED PROCESSING below. The disappearance of 71 of my Navy FOIA requests from FOIAonline is of great public interest and interest to the entire FOIA community, particularly as FOIAonline is decommissioning with the potential loss of records.

Factor 5. The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The FOI Office will consider any commercial interest of the requester or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

- There is no commercial interest nor is the information of commercial value.

Factor 6. The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. FOI Offices ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

- Records sought concern the integrity of DOJ OIP's FOIA processing.
- **of DOJ-2019-000086**

- Additionally, I am an individual/organization primarily engaged in the dissemination of information who can prove the information is urgently needed to inform the public concerning some actual or alleged government activity. My primary activity is informing the public, which I do through a variety of means, such as open meeting public comments, blogs, etc., and I may from time to time collaborate on articles. There is extraordinary, off the charts interest in this matter. I make oral public comments at every open FOIA meeting. I have an active email distribution list of over 1,200 Chief FOIA Officers, FOIA professionals, FOIA advocacy groups media and interested parties via various email accounts including but not limited to foiacomplaine@gmail.com, dod.foia.pa@gmail.com and others. I also communicate regularly with members of Congress.
- See examples below.
 - **Public Comments Submitted to the Chief FOIA Officers Council**
<https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council>
 - **Public Comments Submitted to the FOIA Advisory Committee | National Archives** <https://www.archives.gov/ogis/foia-advisory-committee/public-comments>
 - **OGIS Annual Open Meeting Public comments**
<https://www.archives.gov/ogis/outreach-events/annual-open-meeting>
 - **Document Cloud. Org**
<https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20> (e.g., “Sample FOIA Template With Recent Developments to Combat Agency Misconduct.”)

The Agency must evaluate all my public comments along with my methods of dissemination and state that it has done so in any denial of expedited processing or fee waiver.

- The subject of the requested records concerns government operations and activities.
- The disclosure is likely to contribute to understanding of these operations or activities.
- Disclosure will likely result in public understanding of the subject.
- The contribution to public understanding of government operations or activities will be significant.
- The requester has no commercial interest.
- The public interest in disclosure is great.
- I use “editorial skills to turn the raw materials into a distinct work.”

- My work is distributed to an audience with active distribution of over 1,200 plus members of the media, Chief FOIA Officers, FOIA professionals, FOIA/Open records Advocacy groups and interested parties.

Should the Agency believe that further justification is needed, please advise me.

AGREEMENT TO PAY FEES.

I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount, please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting an electronic file, there should not be a per page copy fee. The OMB Guidelines direct that searches for responsive records should be done in the "most efficient and least expensive manner." See OMB Fee Guidelines, 52 Fed. Reg. at 10,017. As an "all others" requester, I may only be assessed search and duplication fees and not fees for review. See 32 CFR 286.12 - Schedule of fees. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: " United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

([Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980](#) ; [Pub. L. 97-452, §1\(19\), Jan. 12, 1983, 96 Stat. 2477.](#))

EXPEDITED PROCESSING.

See also AGREEMENT TO PAY FEES for justification. I am seeking expedited processing due to:

1. **“an urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.”**
 - a. The information sought involves possible questions about the government's integrity that affect public confidence related to the integrity of DOJ OIP's FOIA processing.
 - b. The subject is of widespread and exceptional interest.
 - c. I am a person "primarily engaged in disseminating information.
 - d. The request is urgently needed to inform the public concerning some actual or alleged government activity.

- e. Records sought are to expose potential corruption with seemingly malignant intent by DOJ's Office of Information Policy (DOJ OIP), the Department of Defense, and the Office of Government Information Services not only in processing my prior 2018 FOIA request seeking "All records of communications within DOJ and between the Department of Defense (DOD) and DOJ from 1 October 2016 to present regarding DOD's FY 2017 Annual FOIA report submission," but in other matters.

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To: Melanie.A.Pustay@usdoj.gov; alina.semo@nara.gov
Cc: OGIS@nara.gov; nikki.gramian@nara.gov; alina.semo@nara.gov; adam.yost@navy.mil; wendy.winston@navy.mil; grant.lattin@navy.mil; emilee.k.baldini@navy.mil; kirk.foster@navy.mil; soto.alaric@mail.mil; paul.richelmi@navy.mil; eva.lose@navy.mil; james.mckeeon@navy.mil; Meredith.werner@navy.mil; matthew.roush@navy.mil; griffin.farris@navy.mil; robin.patterson@navy.mil; donfoia-pa@navy.mil; mary.p.shaw@navy.mil; richard.r.strong@navy.mil; joshua.portner.ctr@navy.mil; montant.johnson.ctr@navy.mil; Raymond.Hartwick.ctr@navy.mil; montana.johnson.ctr@navy.mil; robert.miller3.ctr@navy.mil; james.p.hogan4.civ@mail.mil
Subject: Compliance Inquiry. Initial Determination Letters Not Containing the Right to OGIS Dispute Resolution.

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Cc: 'DHA NCR PCL Mailbox FOIA Requests'; 'Angela W CTR DHA PCL (US)'; 'Nadine R CIV DHA PCL (US)'; raquel.c.bono@mail.mil; perseverance2013@aol.com; Michael.Tymkovich.ctr@mail.mil; guy.t.kiyokowa.civ@dha.mil; paul.t.cygnarowicz.civ@mail.mil

Subject: DOJ + DHA Obfuscate. Cygnarowicz Performance Standards. FW: FOIA DHA 17-B - Fwd: Your DHA FOIA Request - Online Submission

Attachments:

APPEAL~2.pdf; FW: PART III. INTENT?? - Fwd: Request for Assistance-FOIA Compliance; O.... (63.3 KB);

FW: PART II. INTENT? - Fwd: Request for Assistance - FOIA Compliance; O.... (71.9 KB);

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• See examples below.

- **[Public Comments Submitted to the Chief FOIA Officers Council](https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council)**
<https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council>
- **[Public Comments Submitted to the FOIA Advisory Committee | National Archives](https://www.archives.gov/ogis/foia-advisory-committee/public-comments)**
<https://www.archives.gov/ogis/foia-advisory-committee/public-comments>
- **[OGIS Annual Open Meeting Public comments](https://www.archives.gov/ogis/outreach-events/annual-open-meeting)**
<https://www.archives.gov/ogis/outreach-events/annual-open-meeting>
- **[Document Cloud. Org](https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20)**
<https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20> (e.g., “[Sample FOIA Template With Recent Developments to](#)

[Combat Agency Misconduct.](#)”)

The Agency must evaluate all my public comments along with my methods of dissemination and state that it has done so in any denial of expedited processing or fee waiver.

- The subject of the requested records concerns government operations and activities.
- The disclosure is likely to contribute to understanding of these operations or activities.
- Disclosure will likely result in public understanding of the subject.
- The contribution to public understanding of government operations or activities will be significant.
- The requester has no commercial interest.
- The public interest in disclosure is great.
- I use “editorial skills to turn the raw materials into a distinct work.”
- My work is distributed to an audience with active distribution of over 1,200 plus members of the media, Chief FOIA Officers, FOIA professionals, FOIA/Open records Advocacy groups and interested parties.

Should the Agency believe that further justification is needed, please advise me.

ESTIMATED COMPLETION DATES

Provide me with the initial estimated completion date (ESD) for this matter along with contemporaneous adjusted ESDs as they change.

- Subsection (a)(7)(B) of the FOIA also requires agencies to establish a phone number or an Internet site that will provide information to the requester "using the assigned tracking number." The information required to be provided to the requester includes: (1) the date the request was received by the agency and (2) an estimated date by which the agency will finish processing the request.
- See **Office of Government Information Services Advisory Opinion No. 2020-01: Agencies Must Provide Estimated Dates of Completion Upon Request** <https://www.archives.gov/ogis/advisory-opinions/2020-01-agencies-must-provide-edcs>
- See also DOJ Guidance [Assigning Tracking Numbers and Providing Status Information for Requests \(Updated Guidance\) \(justice.gov\)](https://www.justice.gov/oip/assigning-tracking-numbers-and-providing-status-information-requests-updated-guidance) <https://www.justice.gov/oip/assigning-tracking-numbers-and-providing-status-information-requests-updated-guidance>.

STILL-INTERESTED PREEMPTIVE REPLY. This is a preemptive reply to the Justice Department guidelines the procedure known as a “still interested” inquiry, through which a FOIA officer can confirm that the requester has not lost interest in obtaining the documents.

My interest in all FOIA requests and appeals submitted to your office is enduring, meaning that my interest in seeking replies to all past and future FOIA request remains in effect until each request has been answered fully and the time for judicial review has passed. Please do not initiate

any "still interested" inquiries. This serves as my notice of enduring interest and automatic reply to any future questions of interest by your office. There are no reasonable grounds to ever conclude in the future that I am not interested in this request.

Implementation Checklist for DOJ OIP Guidance on "Still-Interested" Inquiries

1. Ensure there are reasonable grounds to make a "still-interested" inquiry in first instance.
2. Absent good cause, do not make multiple "still-interested" inquiries.
3. Use requester's preferred method of communication and in the absence of a preference, communicate by telephone or email as the default.
4. Memorialize any decision by a requester to withdraw a request that is conveyed by telephone by sending the requester a brief email or letter noting the withdrawal.
5. Provide requesters no less than thirty (30) working days to respond to the "still-interested" inquiry and ensure that there is a simple way to do so.
6. Advise the requester that if they elect not to respond to the inquiry, the request will be administratively closed at the conclusion of the designated time period (which must be at least 30 working days).
7. Prior to administratively closing a request based upon the lack of a response by the requester, make good faith efforts to reach out to the requester using multiple methods of communication.
8. In the event a requester responds to the "still-interested" inquiry within a reasonable time after the deadline has passed, reopen the request and place it back into the processing queue where it would have been.

PRESERVE RECORDS AND SEARCHES FOR JUDICIAL REVIEW.

Please search for, locate, and preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later. Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved.

In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In as much as applicable staff and leadership have knowledge of my subject request, the Agency must search for, locate, and preserve all responsive or potentially responsive records and records of searches in their FOIA case file, and leadership must ensure

that this is done. Failing to do so and allowing records to be deleted IAW any other records management schedule may be a violation of law.

ELECTRONIC RECORDS PRESERVATION.

The Agency must preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which the Agency maintains, relevant to this action I am seeking electronic data in the Agency's custody and control that is relevant to this action, including without limitation emails, along with metadata, and other information contained on Agency computer systems and any electronic storage systems. I consider this electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. No procedures should have been implemented to alter any active, deleted, or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. (ETL Institute for Advancement of America's Legal System).

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware. Notify all individuals of the need and duty to take the necessary affirmatives steps to comply with the duty to preserve evidence. (2008 Thomson Delmar Learning).

The Agency's Director of Information Operations or similar organization must initiate procedures to preserve electronic records.

ALTERATION/DESTRUCTION OF RECORDS

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107-204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.).

18 U.S.C. 641 and 2071. The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

36 CFR § 1230 UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

§1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention

period of a temporary record (other than court-ordered disposal under §1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	<p>Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: • granting the request in full • granting the request in part • denying the request for any reason including: o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid</p>	<p>Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.</p>	<p>DAA-GRS-2016-0002-0001</p>
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32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

36 CFR § 1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § 1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

UNLAWFUL REMOVAL, DEFACING, ALTERATION, CORRUPTION, DELETION, ERASURE, OR OTHER DESTRUCTION OF RECORDS

(a) FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98–497, title I, § 107(b)(21), title II, § 203(b), Oct. 19, 1984, 98 Stat. 2290, 2294; Pub. L. 113–187, § 4, Nov. 26, 2014, 128 Stat. 2009)

IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

PERJURY

Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and

contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under [section 1746 of title 28, United States Code](#), willfully subscribes as true any material matter which he does not believe to be true;

a. is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 U.S. C. § 1621 - Perjury generally (June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88–619, §1, Oct. 3, 1964, 78 Stat. 995 ; Pub. L. 94–550, §2, Oct. 18, 1976, 90 Stat. 2534 ; Pub. L. 103–322, title XXXIII, §330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.

SUBORDINATION OF PERJURY

The term subornation of perjury further describes the circumstance wherein an [attorney at law](#) causes a client to lie under oath or allows another party to lie under oath.

Title [18 U.S.C. § 1622](#) provides:

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

FALSE OFFICIAL STATEMENTS.

18 U.S.C. § 1001. Statements or entries generally:

2. Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully --
 - a. falsifies, **conceals**, or covers up by any trick, scheme, or device a **material fact**;
 - b. makes any materially false, fictitious, or fraudulent statement or representation; or
 - c. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

10 U.S. Code § 907. Art. 107. False official statements; false swearing:

- (a) FALSE OFFICIAL STATEMENTS. Any person subject to this chapter who, with intent to deceive—
 - (1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or
 - (2) makes any other false official statement knowing it to be false;

shall be punished as a [court-martial](#) may direct.”

LEGAL FRAMEWORK OF FOIA

1. The definition of “records” includes:
“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.”
44 U.S.C. § 3301 (emphasis supplied).
2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).
3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).
4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).
5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).
6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). See also 5 U.S.C. § 552(a)(6)(C).
7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.
8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),
9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, “Disposition of FOIA Requests,” (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:
“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert Hammond
Requester
Whistleblower

Enclosures:

1. Hammond FOIA Request DOJ-2019-000086 [Enclosure thereto omitted due to file size 933 pages]
2. DOJ OIP’s September 11, 2023 initial determination letter, Re: DOJ-2019-000086, DRH:ADF:ERH [Attachments omitted due to file size]
3. Purported duplicate #1. Pages 783 -787
4. Hammond original email to Pustay of 2018 10 26 w. attachment (pp 783 - 787)

References:

- (a) The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., as amended,
- (b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”
- (c) The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, et seq., as amended
- (d) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (e) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (f) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (g) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act
- (h) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports
- (i) Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
- (j) DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- (k) DoD Directive 5145.04, “Defense Legal Services Agency (DLSA),” April 16, 2012
- (l) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- (m) DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014
- (n) Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- (o) Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990
- (p) Public Law 104-320, “Administrative Dispute Resolution Act of 1996,” October 19, 1996
- (q) Presidential Memorandum for Heads of Executive Departments and Agencies, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998
- (r) United States Code, Title 5
- (s) DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict Management”
- (t) Alternate Dispute Resolution Handbook (opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf)
- (u) President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines (justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf)

ENCLOSURE 1

Hammond FOIA Request DOJ-2019-000086

ENCLOSURE 2

.DOJ OIP's September 11, 2023 initial determination letter, Re:
DOJ-2019-000086, DRH:ADF:ERH

ENCLOSURE 3

Purported duplicate #1. Pages 783 -787

ENCLOSURE 4

Hammond original email to Pustay of 2018 10 26 w. attachment
(pp 783 - 787)

ENCLOSURE 1

Hammond FOIA Request DOJ-2019-000086

Robert Hammond
11828 Wayland Street
Oakton, VA 22124
perseverance2013@aol.com

October 4, 2018

DOJ Office of Information Policy

Submitted via FOIAonline: <https://foiaonline.regulations.gov>

Subject: FOIA Request DOJ 19-B; Hammond Communications Records

*****This Request will be timely for Judicial Review in twenty working days*****

***** Whistle Blower: FALSE Reporting to DOJ and Congress*****

Dear FOIA Officer,

I am submitting this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply. See “Whistleblower” below.

To the extent that your entity deems any portion of this request to be applicable to the Privacy Act, you must process this request under both Acts.

BACKGROUND.

DOD has incontrovertibly engaged in false reporting to the Attorney General and Congress. DOD’s Assistant Deputy Chief Management Officer (ADCMO), (formerly Deputy Chief Management Officer (DCMO)) submits reports to DOJ and to Congress. DOJ has imitated one or more compliance inquires at my request.

RECORDS SOUGHT VIA FOIA.

I am respectfully seeking:

1. All records of internal and external communications regarding Robert Hammond, perseverance2013@aol.com, Hammond, dha.walter.reed.foia.pa@gmail.com, or any code word used as an alias thereto, from August 8, 2017 to present regarding the FOIA or Privacy Act.
 - a. Records would include, but not be limited to emails, any email attachments, forwarding of emails including blind copies, fax, notes, meetings.

- b. Email accounts to be searched and account owners who would be aware of such records include, among others, Vanessa.R.Brinkmann@usdoj.gov, Bobak.Talebian@usdoj.gov, Matt.Gardner@usdoj.gov, Douglas.Hibbard@usdoj.gov, Laurie.Day@usdoj.gov, Melanie.A.Pustay@usdoj.gov, DOJ.OIP.FOIA@usdoj.gov, OIP.compliance.Inquiry@us.doj.gov, OIP-NoReply@usdoj.gov, OIP-NoReply@usdoj.gov, National.FOIAPortal@usdoj.gov.
- c. External communications would include but not be limited to but NOT BE LIMITED TO:
 - 'joo.y.chung2.civ@mail.mil'; 'james.p.hogan4.civ@mail.mil'; 'cindy.l.allard.civ@mail.mil'; 'whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil'; 'osd.mc-alex.ocmo.mbx.foia-liaison@mail.mil'; 'david.tillotson1.civ@mail.mil' Honorable John H. Gibson II, nadine.r.brown4.civ@mail.mil, foiarequests@tma.osd.mil, ogis@nara.gov, amy.bennett@nara.gov, paul.t.cygnarowicz.civ@mail.mil, rahwa.a.keleta.civ@mail.mil, doritha.n.ross.ctr@mail.mil, osd.mc-alex.odcmo.mbx.dod-foia-policy-office@mail.mil, nikki.gramian@nara.gov, DOJ.OIP.FOIA@usdoj.gov, michael.l.rhodes32.civ@mail.mil, kirsten.mitchell@nara.gov, lucille.w.deloach.ctr@mail.mil, denise.f.washington.civ@mail.mil, paul.t.cygnarowicz.civ@mail.mil, Kelly.e.fletcher@navy.mil, clinton.f.Faison.mil@mail.mil, terry.j.moulton.mil@mail.mil, guy.t.kiyokowa.civ@dha.mil, mark.a.kobelja@mail.mil, raquel.c.bono.mil@mail.mil, david.a.lane@med.navy.mil, Jeffrye.b.clark4.mil@mail.mil, joseph.e.davidge.civ@mail.mil, judy.j.bizzell.civ@mail.mil, jewel.p.christmas.civ@mail.mil, linda.s.thomas47.civ@mail.mil
- d. Sample records are at Enclosure 1.

2. A copy of this FOIA Request (which is an agency record) be included as a responsive record integral to my Request.

REQUESTED FORMAT. I am requesting that documents provided in electronic format by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF/electronic format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency's letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done. Further, I request that these documents be sent in any digital formats in which they exist (such as PDF and Excel). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request.

Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

PRESERVATION OF RECORDS AND SEARCHES PERFORMED. Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later. Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved. Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

AGREEMENT TO PAY FEES. I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues."

PUBLIC INTEREST. The accuracy and integrity of FOIA process and FOIA reporting are in the public interest. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest. See "**Whistle Blower: FALSE Reporting to DOJ AND Congress**"

WHISTLE BLOWER. FALSE REPORTING TO DOJ AND CONGRESS.

1. False Reporting to Attorney General and Congress.

Assistant Deputy Chief Management Officer (ADCMO), (formerly Deputy Chief Management Officer (DCMO)) consolidates DOD reports and submits final reports to DOJ and to Congress,

My FOIA requests address the operations of government, generally regarding what I consider is incontrovertible, massive, long standing and materially inaccurate/false FOIA/Privacy Act (PA)

reporting through DOD to the Attorney General (Department of Justice (DOJ)) and Congress. Also, inaccurate statements in official reports to DOJ/Congress regarding same.

Subsequent to my whistleblower activity, several entities admitted to prior false reporting and amended their FY 2017 Annual FOIA Report submissions, stating at pages 25 and 26:

“After reviewing their databases, AF, ARMY, DHA, DLA, NAVY, NSA, and OSD/JS updated the number of appeals pending as of the start of the Fiscal Year.”

“After reviewing their databases, AF, ARMY, CENTCOM, DIA, DLA, DSS, DTRA, EUCOM, NAVY, NGA, NGB, NRO, NSA, OSD/JS, and TRANSCOM updated the number of pending requests as of the start of the Fiscal Year.” See <https://open.defense.gov/Transparency/FOIA.aspx>.

DHA still did not come clean. DHA still did not update the number of outstanding FOIA requests and still did not accurately report all aged administrative appeals. I believe that inaccurate reporting is still occurring with respect to Walter Reed and DHA. I have concerns about Navy.

This has been going on for many years, despite my countless correspondences to Walter Reed, DHA, Navy, DOD staff and leadership and the DOD IG. I also include prominent DOD FOIA Officers (bcc) in many emails. I worked within the DOD chain of command from the bottom upward, through the DOD IG (DoD Hotline Complaint 20170605-044415, 2017801203417258 and follow-on complaint). I asked for an audit by an independent public auditor. I asked DOD staff to independently initiate a DOD IG investigation regarding intent, whether or not performance standards reflect statutory and DOD requirements, and whether or not supervisors are accurately measuring performance against those standards (cover up). I only referred very limited cases to DOJ after advising DOD leadership that I was going to do so.

By email, I advised Mr. Tillotson, the then Acting Deputy Chief Management Officer, of incontrovertible discrepancies.

Feb 25, 2017 9:18 AM and September 7, 2017 7:06 AM, Subject FOIA Non-Compliance by Walter Reed (requests submitted 6... (“tip of a very large iceberg.” “I will very soon be referring this matter to the Department of Justice.”)

February 19, 2018 7:20 AM, Subject: Inaccurate FY 2017 DOD CIO Report to DOJ (“The number of aged, still open requests, appeals and consultations dating back to 2013 is staggering.”)

Mr. Tillotson’s staff took action, apparently resulting in the corrections to DOD’s FY 2017 Annual FOIA Report cited above.

DHA's false statements and failure to report numerous aged appeals and requests in their annual reports through DOD to DOJ and Congress is now partially documented. See DOD's FY 2017 CIO report at 26 wrt DHA, "...DHA closed their entire ten oldest [appeals]," and DOD's FY 2016

Annual FOIA Report (oldest appeal 327 days contra FY 2017 Annual FOIA Report at 31 (revised subsequent to DOJ inquiry - oldest appeal 726 days, tenth oldest appeal 596 days). See <https://open.defense.gov/Transparency/FOIA.aspx> .

Inaccurate/false reporting continues, despite multiple, ongoing DOJ investigations and some minimal adjustments to DOD's FY 2017 Annual FOIA report above, after DHA got caught making false statements regarding having cleared its ten oldest appeals. This is the tip of a massive ice berg, involving potentially hundreds of requests and appeals, based on my records alone, let alone records of others.

As to DHA's recent stated cause (in an official report) for failing to report aged administrative appeals, it is inaccurate. Even following some minimal corrections to the FY 2017 Annual FOIA Report, DHA states:

"DHA continues to experience complications from multiple reorganizations and due to an oversight, failed to report appeals older than previously reported on the ten oldest and so cannot demonstrate what would have been progress against this metric during this reporting period." See Department of Defense Chief Freedom of Information Act Officer Report to the Department of Justice For 2018 at 22. <https://open.defense.gov/Transparency/FOIA.aspx> .

"An oversight" purportedly did not cause false reporting. I sent multiple correspondences to all relevant DHA persons in 2015 and thereafter (including DHA's appellate official, Paul Thomas Cygnarowicz, MD Bar 12- 9212150146). DHA admitted to OGIS that they had not been reporting the aged administrative appeals. Yet, DHA still did not report them until they got caught. And, there are administrative appeals older than those in DOD's FY 2017 Annual Report, as well as countless aged FOIA requests.

DHA could have just stated the facts, absent inaccurate narrative. "DHA failed to report."

Also, DHA subsumed Walter Reed as a subordinate reporting entity from Navy/Navy BUMED on October 1, 2013 - five years ago (while such activity was ostensibly ongoing).

DHA's appellate official, Paul T. Cygnarowicz, now states, "Regarding your complaints of incorrect annual FOIA reporting, the DHA will provide a list of corrections to the DOD chain of command contemporaneous with filing the annual FY 18 FOIA report." This, says nothing of the mandatory interim quarterly reports. Another year of promises and interim inaccurate reporting should be unacceptable to leadership.

DHA has also incontrovertibly been overriding date-and-time-stamped electronic records of on-line FOIA submissions to falsely shorten the processing time on both ends. This is similar to what the Veterans Administration was doing to our veterans. DHA leadership and CMO staff are aware of this. I am unaware of DHA having made any amendments to the Annual FOIA Reports regarding same. Department of Navy may have a similar issue (Patterson, DONFOIA-PA, statements).

Alteration and/or destruction of records in anticipation of judicial review may be a factor, including refusing to search for records in obvious, known locations and thereby allowing/encouraging them to be destroyed per agency records management schedules (cited in DONFOIA-PA emails, etc.). There are potentially other matters/violations of law, as noted in the citations within my requests.

PERJURY

Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under [section 1746 of title 28, United States Code](#), willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 U.S. C. § 1621 - Perjury generally ([June 25, 1948, ch. 645, 62 Stat. 773](#); [Pub. L. 88-619, §1, Oct. 3, 1964, 78 Stat. 995](#) ; [Pub. L. 94-550, §2, Oct. 18, 1976, 90 Stat. 2534](#) ; [Pub. L. 103-322, title XXXIII, §330016\(1\)\(I\), Sept. 13, 1994, 108 Stat. 2147](#).)

ALTERATION/DESTRUCTION OF RECORDS

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added [Pub. L. 107-204, title VIII, §802\(a\), July 30, 2002, 116 Stat. 800](#).)

IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding,

the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

SUBORDINATION OF PERJURY

The term subornation of perjury further describes the circumstance wherein an attorney at law causes a client to lie under oath or allows another party to lie under oath

Title 18 U.S.C. § 1622 provides:

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

LEGAL FRAMEWORK OF FOIA

1. The definition of “records” includes:

“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency

expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). See also 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, “Disposition of FOIA Requests,” (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:
“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert Hammond

Enclosure 1: Sample DOJ email records.

References: (a) The Freedom of Information Act (FOIA)

(b) The Privacy Act

(c) CFR 164.526

(d) DoD 5700.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program

(e) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation

(e) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011: "Your Right to Federal Records" (see <http://publications.usa.gov/USAPubs.php?PubID=6080>)

(g) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program

(h) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>

(i) [FOIA Improvement Act of 2016 \(Public Law No. 114-185\)](#)

ENCLOSURE 2

DOJ OIP's September 11, 2023 initial determination letter, Re:
DOJ-2019-000086, DRH:ADF:ERH



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

September 11, 2023

Robert Hammond
11828 Wayland Street
Oakton, VA 22124
perseverance2013@aol.com

Re: DOJ-2019-000086
DRH:ADF:ERH

Dear Robert Hammond:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on October 4, 2018, in which you requested records of internal and external communications in the Office of Information Policy regarding Robert Hammond, perseverance2013@aol.com, dha.walter.reed.foia.pa@gmail.com, or any alias thereof, dating since August 8, 2017.

Pursuant to our conversations of October 29 and 31, 2018, which were immediately memorialized via email, we agreed that your request could be satisfied by a search of the emails of Melanie Pustay, Bobby Talebian and Matt Gardner of this Office, and our email accounts OIP-NoReply@usdoj.gov and OIP.Compliance.Inquiry@usdoj.gov. Your request has been processed accordingly.

Please be advised that a search has been conducting in the Office of Information Policy and 879 pages were located that are responsive to your request. 779 pages were provided by you and we are returning this information to you. Additionally, 100 pages were located that were not provided by you. I have determined that seventy-five pages are appropriate for release with excisions made, pursuant to Exemptions 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(5) and (b)(6). Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Twenty-four pages are being withheld in full pursuant to Exemption 5 of the FOIA. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions. Additionally, please note that the enclosed pages also contain duplicative records, which have not been processed and are marked accordingly.

Finally, because the remaining one page is of primary interest to the Department of Defense's (DOD) Office of the Secretary of Defense (OSD), we have referred that material to DOD/OSD for processing and direct response to you. Contact information for DOD/OSD can be found at www.FOIA.gov.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this Office's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hibbard", written in a cursive style.

for

Douglas R. Hibbard
Chief, Initial Request Staff

Enclosures

ENCLOSURE 3

Purported duplicate #1. Pages 783 -787

75 Pages for Release

Talebian, Bobak (OIP)

From: Talebian, Bobak (OIP)
Sent: Monday, October 29, 2018 3:20 PM
To: Alina Semo
Cc: Mitchell, Kirsten
Subject: RE: Compliance Inquiry. Initial Determination Letters Not Containing Right to OGIS Dispute Resolution

No problem. Mr. Hammond reached out to me today though and asked for a call on all his inquiries to our office including this one, so I'll probably talk with him tomorrow.

From: Alina Semo <alina.semo@nara.gov>
Sent: Monday, October 29, 2018 3:16 PM
To: Talebian, Bobak (OIP) (b) (6)
Cc: Mitchell, Kirsten <kirsten.mitchell@nara.gov>
Subject: Re: Compliance Inquiry. Initial Determination Letters Not Containing Right to OGIS Dispute Resolution

Hi Bobby: Unfortunately, Kirsten is not in the office today; may we touch base with you later this week once she returns? Thank you, Alina

Alina M. Semo

Director, Office of Government Information Services
National Archives and Records Administration
Phone: (202) 741-5771; Fax: (202) 741-5769; Cel (b) (6)



Website: www.archives.gov/ogis
Blog: <https://foia.blogs.archives.gov/>
Twitter: https://twitter.com/foia_ombuds

Physical Address:

732 North Capitol Street, N.W., Suite A702
Washington, DC 20401-0001

Mailing Address:

8601 Adelphi Road – OGIS
College Park, MD 20740-6001

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On Fri, Oct 26, 2018 at 5:08 PM Talebian, Bobak (OIP) (b) (6) wrote:

You too!!

From: Alina Semo <alina.semo@nara.gov>

Sent: Friday, October 26, 2018 5:05 PM

To: Talebian, Bobak (OIP) (b) (6)

Cc: Mitchell, Kirsten <kirsten.mitchell@nara.gov>

Subject: Re: Compliance Inquiry. Initial Determination Letters Not Containing Right to OGIS Dispute Resolution

Thanks Bobby; have a good weekend. - Alina

Alina M. Semo

Director, Office of Government Information Services

National Archives and Records Administration

Phone: (202) 741-5771; Fax: (202) 741-5769; Cel (b) (6)



Website: www.archives.gov/ogis

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On Fri, Oct 26, 2018 at 4:36 PM Talebian, Bobak (OIP) (b) (6) wrote:

That sounds good, thank you! I should be available any time after 11.

From: Alina Semo <alina.semo@nara.gov>

Sent: Friday, October 26, 2018 4:23 PM

To: Talebian, Bobak (OIP) (b) (6)

Cc: Mitchell, Kirsten <kirsten.mitchell@nara.gov>

Subject: Re: Compliance Inquiry. Initial Determination Letters Not Containing Right to OGIS Dispute Resolution

Kirsten is out of the office today; I'll check in with her on Monday morning to see what works; is there a time that works for you? - Alina

Alina M. Semo

Director, Office of Government Information Services

National Archives and Records Administration

Phone: (202) 741-5771; Fax: (202) 741-5769; Cel (b) (6)





Website: www.archives.gov/ogis
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College Park, MD 20740-6001

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On Fri, Oct 26, 2018 at 4:22 PM Talebian, Bobak (OIP) (b) (6) wrote:

Yes, happy to connect on this next week. Can we try to connect Monday? I have a number of other issues I am working on re: DOD that he has come to us on as well.

From: Alina Semo <alina.semo@nara.gov>

Sent: Friday, October 26, 2018 3:48 PM

To: Talebian, Bobak (OIP) (b) (6)

Cc: Mitchell, Kirsten <kirsten.mitchell@nara.gov>

Subject: Fwd: Compliance Inquiry. Initial Determination Letters Not Containing Right to OGIS Dispute Resolution

Can we discuss/coordinate next week? Thanks, Alina

Alina M. Semo

Director, Office of Government Information Services

National Archives and Records Administration

Phone: (202) 741-5771; Fax: (202) 741-5769; Cel (b) (6)



Website: www.archives.gov/ogis
Blog: <https://foia.blogs.archives.gov/>
Twitter: https://twitter.com/foia_ombuds

Physical Address:

732 North Capitol Street, N.W., Suite A702
Washington, DC 20401-0001

Mailing Address:

8601 Adelphi Road – OGIS
College Park, MD 20740-6001

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recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e mail or by calling (202) 741 5771.

----- Forwarded message -----

From: **Bob Hammond** <perseverance2013@aol.com>

Date: Fri, Oct 26, 2018 at 2:55 PM

Duplicative

ENCLOSURE 4

Hammond original email to Pustay of 2018 10 26 w. attachment
(pp 783 - 787)

From: Bob Hammond <perseverance2013@aol.com>
Sent: Friday, October 26, 2018 2:54 PM
To: Melanie.A.Pustay@usdoj.gov; alina.semo@nara.gov
Cc: OGIS@nara.gov; nikki.gramian@nara.gov; alina.semo@nara.gov; adam.yost@navy.mil; wendy.winston@navy.mil; grant.lattin@navy.mil; emilee.k.baldini@navy.mil; kirk.foster@navy.mil; soto.alaric@mail.mil; paul.richelmi@navy.mil; eva.lose@navy.mil; james.mckeon@navy.mil; Meredith.werner@navy.mil; matthew.roush@navy.mil; griffin.farris@navy.mil; robin.patterson@navy.mil; donfoia-pa@navy.mil; mary.p.shaw@navy.mil; richard.r.strong@navy.mil; joshua.portner.ctr@navy.mil; montant.johnson.ctr@navy.mil; Raymond.Hartwick.ctr@navy.mil; montana.johnson.ctr@navy.mil; robert.miller3.ctr@navy.mil; james.p.hogan4.civ@mail.mil
Subject: Compliance Inquiry. Initial Determination Letters Not Containing Right to OGIS Dispute Resolution
Attachments: Righ to Dispute Resolution; Hammond 010040.pdf

Dear Ms. Pustay,

Please open a new DOJ compliance inquiry regarding Department of Navy's statement that FOIA initial determination letters do not have to contain a statement regarding the right to seek dispute resolution from OGIS. The statute is clear in that regard. My express purpose in pursuing this is for Navy to change this practice and afford ALL requests that statutory right. Please provide me a separate letter with your findings and include this compliance inquiry in your reporting. I look forward to a prompt reply to this straight forward matter.

Ms. Semo,

Please also address this matter.

Thank you.

With my respect,

Robert Hammond



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:
5720
Ser 14/009
October 24, 2018

Mr. Robert Hammond
11828 Wayland Street
Oakton, VA 22124
perseverance2013@aol.com

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-NME 18-44; FOIA APPEAL DON-NAVY-2018-012040

This letter responds to your September 14, 2018 FOIA appeal. You challenge Navy Medicine East's (NME) September 10, 2018 response to your FOIA request on four bases: (i) NME's failure to respond to your request within 20 working days; (ii) NME's failure to advise you of the right to seek dispute resolution services from the Office of Government Information Service (OGIS); (iii) NME's failure to release records in the requested format; and (iv) the adequacy of NME's search of their email records. Your underlying request sought emails from NME for the period of 1 Oct 12 through 30 Sep 14 from DON FOIA/PA Office or Navy BUMED including the words both "Quarterly" and "Privacy" in the subject.

Your appeal is a request for a final determination under the FOIA. For the reasons set forth below, your appeal is denied.

The first basis of your appeal is NME's failure to respond to your request within 20 working days. You submitted your FOIA request to NME on July 28, 2018. NME responded on September 10, 2018. NME exceeded the 20 working days time limit under the FOIA, but you already possess NME's response so no live dispute remains. For that reason, the first basis of your appeal is denied as moot as there is no relief that I can provide to remedy this situation.

The second basis of your appeal is NME's failure to advise you of your right to mediation by OGIS. You assert that such notification is required by statute. Your assertion is incorrect. The FOIA requires this agency to notify requesters of "the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services." 5 U.S.C. § 552(a)(6)(A)(i)(III)(bb) (emphasis added). NME's September 10, 2018 response notified you of your "right to seek dispute resolution services from the DOD Navy Component

FOIA Public Liaison, Mr. Chris Julka....” NME properly notified you of your right to seek dispute resolution services from the FOIA Public Liaison for this agency. The FOIA statute does not require this agency to also notify you of your right to seek such services from OGIS in addition to notifying you of your right to seek such services from the agency FOIA Public Liaison. Alternatively, your multiple FOIA requests to this agency have included many responses that inform you of your right to seek such services from OGIS, so you have not been harmed by the failure of NME to inform you of that right. For these reasons, the second basis of your appeal is denied.

The third basis of your appeal is NME’s failure to release responsive records to you in the requested format. The FOIA requires agencies to release a record “in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” 5 U.S.C. § 552 (a)(3)(B). In your July 28, 2018 FOIA request, you requested that “documents [be] provided as a single PDF file by return email....” Instead of emailing you the responsive records in PDF format, NME mailed you hardcopy records and provided no justification for deviating from the requested format. However, in your appeal to this office you include a single PDF of the responsive records. Because you already possess the responsive records in your requested format, there remains no live dispute. For that reason, the third basis of your appeal is denied as moot.

The fourth basis of your appeal is the adequacy of NME’s search of email records. In your underlying request you sought “all e-mails during the period of 1 October 2012 through 30 September 2014 from DNS-36 or BUMED” containing Privacy and Quarterly in the subject. NME responded to you that according to records retention regulations all emails from that time were destroyed, that NME no longer maintains emails on a local server and that they referred the search to the Defense Information Systems Agency (DISA), that DISA conducted an electronic search and no responsive records were found and that NME also conducted a physical search for the records you requested with no responsive records found.

After receiving your appeal my office contacted DISA and they informed me that three years ago NME migrated to @mail.mil email addresses. DISA maintains all current emails from NME. They do not maintain any non @mail.mil email address archives. As stated above NME does maintain a local email server and did not find any records responsive to your original request on that server.

The adequacy of an agency's search for information requested under the FOIA is determined by a "reasonableness" test. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Weisberg v. United States Dep't of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). As a general rule, an agency must undertake a search that is reasonably calculated to locate the requested information. *Kowalczyk v. Department of Justice*, 73 F.3d 386,

388 (D.C. Cir. 1996). Courts have found agencies satisfy the “reasonableness” test when they properly determine where responsive records are likely to be found and search those locations. *Lechliter v. Rumsfeld*, 182 F. App’x 113, 115 (3rd Cir. 2006) (concluding that agency fulfilled duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents (citing *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 55-56 (D.D.C. 2012) (concluding that agency’s search was reasonable because agency determined that all responsive records were located in a particular location created for express purpose of collecting records related to subject of request and searched that location).

Moreover, courts have found that an agency’s inability to locate a responsive record does not undermine an otherwise reasonable search. *Moore v. FBI*, 366 F. App’x 659, 661 (7th Cir. 2010) (noting that although agency had years earlier destroyed some potentially responsive records, that fact does not invalidate the search). Additionally, the mere speculation that requested documents exist does not undermine the finding that the agency conducted a reasonable search. *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004) (“Likewise, the agency’s failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.”).

In this case, NME first attempted to locate emails on a local email server for the time frame requested, but due to records retention policies and the migration of their email services to DISA, NME found no responsive records. NME also conducted a physical search. Likewise, DISA conducted an electronic search but, again, no responsive records were located. Based on the foregoing, I find NME’s search was reasonable for purposes of the FOIA. As the Seventh Circuit stated in *Moore*, an agency’s inability to locate responsive records does not undermine an otherwise reasonable search – even in a situation, exactly like this one, where the agency may have earlier destroyed some potentially responsive records. 366 F. App’x 659 at 661.

As the Department of the Navy’s designated adjudication official for this FOIA appeal, I am responsible for this decision. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

If you would like to seek dispute resolution services, you have the right to contact the Department of the Navy’s FOIA public liaison, Mr. Chris Julka, at (703) 697-0031, or christopher.a.julka@navy.mil.

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October 24, 2018

If you have further questions or concerns for my office, my point of contact is Major James Mckeon, USMC at james.mckeon@navy.mil, or (202) 685-4596.

Sincerely,

G. E. LATTIN
Director
General Litigation Division

Copy to:
NME
DNS-36
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