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November 10, 2020

Assistant Deputy Chief Management Officer (ADCMO),
Director, Directorate of Oversight and Compliance DO&C
Office of the Deputy Chief Management Officer
9010 Defense Pentagon
Washington, DC 20301-9010

via

OSD/JS FOIA Requester Service Center,
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Washington, DC 20301-1155
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Subject: FOIA Request CMO 20-A Joo Chung ADCMO DOD False Reporting 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.

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.

RECORDS SOUGHT VIA FOIA.

CMO 20-A Joo Chung ADCMO DOD False Reporting Records
See PDF.

I am respectfully seeking:

1. In her May 7, 2019 letter at Enclosure 1, responding to Robert Hammond's letter of January 27, 2019 to Acting Secretary of Defense Shanahan: Subject: Request for Investigation into DOD's Massive, Long-standing, Ongoing False FOIA Reporting to the Attorney General & Congress at Enclosure 2, Ms. Chung states that "Since 2017 you [Robert Hammond] have submitted over 300 letters or emails to my office." I am seeking those records referenced over "300 letters or emails" in their native format as received by Ms. Chung's Office.
 - a. An email with attachments must be provided in its native MS Outlook format with the embed attachments. DVD/CD with records would be required. If the Agency possesses software to convert Outlook PST files to PDF with attachments (e.g. PST to PDF Converter), that file format is acceptable to MUCKRUCK.com and is the preferred method.
 - b. Emails attachments must not be separated out counted separately in the count of over 300 "letters or emails" as the email is a single correspondence.
2. I am also seeking that a copy of this FOIA Request (which is an agency record) be included as a responsive record integral to my Request.
3. Please link this request to User Robert Hammond, perseverance2013@aol.com, in the OSD/JS Public Access Link (PAL) system.

REQUESTED FORMAT. I am requesting records in their native format with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) record page count for all records released records (3) a copy of this request in your reply. I seek records via email(s) with attachments along with a 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.

- An email with attachments must be provided in its native MS Outlook format with the embed attachments. DVD/CD with records would be required. If the Agency possesses software to convert Outlook PST files to PDF with attachments (e.g. PST to PDF Converter), that file format is acceptable and is the preferred method.
- Emails attachments must not be separated out counted separately in the count of over 300 "letters or emails" as the email is a single correspondence
- Due to volume, records may be provided via DVD.

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."

REQUEST FOR FEE WAIVER. I do not believe that there should be any charge for providing these records, as there is public interest in the operations of government and the inaccuracy of DOD FOIA reporting to DOJ and Congress. 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"

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**"

DOD POLICY – PUBLIC TRUST.

Reference (c) states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.”

WHISTLE BLOWER. FALSE REPORTING TO DOJ AND CONGRESS.

1. False Reporting to Attorney General and Congress.

Whistle Blower activity, following the DOD chain of command.

Assistant Deputy Chief Management Officer (ADCMO), (formerly Deputy Chief Management Officer (DCMO)) submits reports to DOJ and to Congress, in good faith, based upon the representations of subordinate reporting entities.

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.

With respect to Navy, Mr. Lattin, Director, DOJ JAG Litigation Division, who was responsible for the accuracy of DON JAG's FOIA appeals reporting in FY 2013 and remains so, has stated that past reports may not have been accurate, but further states that this has been corrected. Candor is much appreciated.

Similarly, Navy's U.S. Fleet Forces Command stated recently that certain FOIA records previously withheld that were being released on appeal remand contained data that "was incomplete, most likely incorrect, and provided to each FOIA coordinator as a tool to update or correct the FOIA online database." USFFC ltr 5720, Ser N01P (2018-34-007689),037, dtd August 28, 2018. Candor is much appreciated.

Whether or not U.S. Fleet Forces Command made such corrections in time to be accurately reflected in subsequent FOIA reports is a matter for U.S. Fleet Forces Command to address internally and with DOD's Chief Management Officer' staff.

I note that MuckRock.com (who services media originations and others), completely independent of me, has also taken an interest in FOIA report records, e.g. Freedom of Information Request: [FOIA logs 2016-2017: Military \(Defense Health Agency\)](#), [FOIA logs 2016-2017: Military \(US Navy Judge Advocate General\)](#), and various other FOIA Logs from 2010 – 2016.

In fact, an internet search for DHA's FOIA Logs initially lead me to this public media site, instead of DHA's raw statistical data which is required by statute to be released, "The raw, statistical data used in the agency's Annual FOIA Report must be available without charge, in an aggregated, searchable format, that may be downloadable in bulk." DHA (Cygnarowicz) has refused to release all raw statistical data, (including that related to appeals), denying my request/appeal for same.

Similarly, MuckRock.com also seeks FOIA processing records, e.g. [Processing Notes for Control Number 2016-007 \(FOIA\)](#), [Processing notes for DON FOIA 2014F-0380, DON 2014F-0383, and DON 2014F-0387 \(US Navy\)](#). I have sought the same types of records, but I am not using a media website to do so. The latter (0387) is not very flattering to DONFOIA-PA.

MuckRock seeks many Navy and other DOD records regarding government accountability. [Ronny Jackson Communications \(U.S. Navy Bureau of Medicine and Surgery\)](#) . [Copy of BUMED Letter 6300 Ser/M3B2/E12UGEN001444c](#)

"**MuckRock** is a collaborative news site that gives you the tools to hold the government accountable."

In contrast, I am working within the DOD chain of command, where I hope to resolve all issues, quietly, properly and in accordance with law.

2. Relevant GAO Report/Navy Inaccurate Statements to DOJ

It is worthy of noting a 2012 GAO audit found extensive deficiencies in DOD's FOIA practices, including (among others): deficiencies in assignment of tracking numbers; reporting to DOJ/Congress; over-use of Exemptions (b)(5) and (b)(6); and other matters. These are among the very same matters at issue herein. See GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act at <http://www.gao.gov/products/GAO-12-828>.

In a [2013](#) report to [DOJ](#), "Department of Defense Chief Freedom of Information Act Officer Report for 2013" at page nine, state, "*The Navy underwent an in-house audit of the FOIA organization at naval activities, and a GAO audit of its overall program. These reviews*

enabled the Navy to establish a plan for improvement.” Report is available at:
http://www.dod.mil/pubs/foi/dfoipo/docs/2013_ACFO_Report_FINAL_REPORT.pdf,

I sought such records. Robin Patterson (OPNAV) Head of Department of Navy DONFOIA-PA Program Office provided only a brief outline. DON’ initial determination letter stated that no such FOIA Improvement Plan was ever created, even though DON inaccurately reported through DOD to DOJ that it had done so.

I have questioned how much of DON’s reported subsequent improvement may be due to inaccurate reporting.

Relatedly, Ms. Patterson was caught coaching FOIA Officers on how to avoid disclosure when she inadvertently included a media outlet on a January 7, 2014 internal email. *See* <http://www.politico.com/blogs/media/2014/01/navy-mistakenly-sends-foia-plans-to-reporter-180712>.

Whether or not this practice is ongoing is the subject of multiple, outstanding FOIA requests.

Patterson has engaged in other false/inaccurate statements.

When I sought the “WRNNMC [Walter Reed] FY 2012 Annual FOIA Report Submission” from BUMED on September 21, 2014, Patterson stated in a letter to dated 7 Jan 2015 (which included Walter Reed, BUMED, DHA and others) that, “BUMED indicated that their offices have no record of a FOIA Annual Report submission from WRNNMC since Fiscal Year 2009.” All the while, BUMED’s Subcomponent/Component or Agency listing showed that Walter Reed submitted its report under BUMED. On appeal, via DON JAG letter dated November 16, 2015, BUMED released Walter Reed’s FY 2012 Annual FOIA Report submission, which Walter Reed had sent to them by email dated October 1, 2012 at 4:36 PM. However, BUMED did not address my assertion that BUMED had not ever reported my FOIA request of September 21, 2014, despite my follow-ups regarding same.

Similarly, I sought Navy’s FY 2013 Subcomponent/Component or Agency listing, which Patterson released, showing that Walter Reed had submitted its FY 2013 Annual Report through BUMED. Meanwhile, Patterson (OPNAV DNS-36 (DONFOIA-PA Office)) BUMED’s FOIA Officer were receiving quarterly FY 2013 FOIA reports from Walter Reed. There are serious concerns regarding the inaccuracy of said reports and Walter Reed’s/BUMED’s/DONFOIA-PA’s/ DHA’s knowledge of same.

3. Critical Job Performance Standards/Leadership wrt False Reporting

Pursuant to scores of FOIA requests, numerous employees across DOD have released their performance standard rating elements (absent ratings against those elements) and their reviewing/rating officials. Neither Patterson’s or Cygnarowicz’ have been released as of

September 9, 2018. Any attempt by rating officials, reviewers, or management to waive performance standards may be deemed as collusion in covering up false reporting through DOD to the Attorney General and Congress amid multiple DOJ investigations.

All mistakes can easily be corrected, particularly those lacking initial intent. Only cover-up really matters in the end, in my view.

The integrity of the processes and the accuracy of FOIA/PA reporting to DOJ and Congress and malfeasance, if any, are extremely serious matters, worthy of DOD leadership attention.

Having notified DHA senior leadership of this many times as well as DON FOIA/PA, I recently notified other senior leaders including The **Honorable Thomas B. Modly, Under Secretary of the Navy** and the **Honorable Thomas McCaffery, Principle DASD for Health Affairs**.

It is unclear what assertions have been/are being made to leadership. DHA and DON leadership as of September 9, 2018 is:

Honorable Thomas McCaffery, Principle DASD for Health Affairs
Vice Admiral R. C. Bono, Director, DHA
Guy T. Kiyokowa, Deputy Director, DHA
Captain Mark A. Kobelja, Director Walter Reed

Honorable Thomas B. Modly, Under Secretary of the Navy
Capt. Damen Hofheinz, DON CIO
Vice Admiral C. Forrest Faison, Surgeon General and Chief, Bureau of Medicine and Surgery
Rear Admiral Terry Moulton, Deputy Surgeon General and Deputy Chief, BUMED

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

- 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 \(Public Law No. 114-185\)](#)

OVERSIGHT AND
COMPLIANCEOFFICE OF THE CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

May 7, 2019

Mr. Robert Hammond
1828 Wayland Street
Oakton, VA 22124

Dear Mr. Hammond:

This responds to your letter to Acting Secretary Patrick M. Shanahan received by the Department of Defense (DoD) on February 15, 2019. In your letter, you allege that DoD "has not taken concrete action on many specific examples of ongoing false reporting and other violations provided recently and over many years." You also reference a separate letter that you sent to Mr. David Tillotson where you make six requests. I write to address those requests and inform you of the manner in which my office will respond to any future complaints and correspondence.

With regard to the six requests made in your letter to Mr. Tillotson, please be advised of the following:

1. The raw data for the DoD Annual Freedom of Information Act (FOIA) Report to the Attorney General are posted at <https://open.defense.gov/Transparency/FOIA/DoD-Annual-Reports-to-AG/>.
2. The FOIA does not require this type of accounting.
3. If you would like a list of your open FOIA or Privacy Act requests and appeals with the various DoD Components, please contact each component where you have filed requests or appeals. In addition, you reference an outstanding Privacy Act complaint for which you state that you are awaiting a response. Please be advised it is unclear to what Privacy Act complaint you are referring.
4. The FOIA does not require an agency to conduct an audit as you request.
5. If you would like to request that the Office of the Inspector General of the DoD conduct an investigation, please contact them directly at <https://www.dodig.mil/Components/Administrative-Investigations/DoD-Hotline/>.
6. As you have been advised, if you would like to engage in alternative dispute resolution (ADR) with the Department concerning one or more of your FOIA requests, you have the opportunity to request mediation with the FOIA Public Liaison for the relevant DoD Components processing your FOIA requests. We understand you have already contacted these FOIA Public Liaisons. Your remaining option is to contact the Office of Government Information Services, National Archives and Records Administration. Please understand that participation in an ADR process is completely voluntary for all parties.

With regard to your allegations of “false reporting and other violations” made in the correspondence that you have submitted “over many years,” please understand that the Department works to review allegations and complaints and takes appropriate actions, even if a direct response to an individual making such allegations is not warranted and has not been provided.

From your correspondence, you show a deep appreciation for the principles underlying the FOIA and a respect for the Department. However, your continued voluminous correspondence – much of which is duplicative, redundant, accusatory, and unsubstantiated in nature – seem to belie this appreciation and respect and, in fact, is counterproductive towards achieving resolution of pending matters. Since 2017, you have submitted over 300 letters or emails to my office, making it difficult to carefully review your complaints and sort through your requests and appeals. Therefore, I again respectfully ask that you refrain from submitting duplicative and redundant correspondence to my office and the Department. Also, I remind you that once a DoD Component FOIA appellate decision is made, it is final. Your next recourse is to challenge the agency action in federal district court.

The Department shares your goals in carrying out an accountable, compliant, and transparent FOIA program. With this letter, I am considering the complaints that you have previously submitted to the Department regarding alleged false reporting under the FOIA as closed. Moving forward, the Department will fulfill its obligations in responding to any new or pending FOIA requests and appeals, but we will not respond to any duplicative or redundant correspondence.

Sincerely,

CHUNG.JOO.Y
.1512306507

Digitally signed by
CHUNG.JOO.Y.15123065
07
Date: 2019.05.07
10:39:04 -04'00'

Joo Y. Chung
Director

Robert Hammond
1828 Wayland Street,
Oakton, VA 22124
Perseverance2013@aol.com

January 27, 2018
[2019]

Hon. Patrick M. Shanahan
Acting Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Subj: Request for Investigation into DOD's Massive, Long-standing, Ongoing False FOIA
Reporting to the Attorney General & Congress

Dear Sir,

This is in furtherance to my prior correspondence to you. After consideration, I am now asking that you respond on behalf of DOD addressing these matters, in lieu of Mr. Tillotson, and that you provide a copy to Senator Grassley. This has knowingly been going on for far too long.

Mr. Tillotson did not respond to my correspondence of December 31, 2018 9:50 AM, and has not taken concrete action on my many specific examples of ongoing false reporting and other violations provided recently and over many years, as discussed in my correspondence below.

False reporting to the Attorney General, Congress and the American people is abhorrent in its own right. People must be held accountable. In this case, coupled with other action/inaction, it undermines our democracy.

The "FOIA is often explained as a means for citizens to know 'what their Government is up to.'" The Supreme Court stressed that "[t]his phrase should not be dismissed as a convenient formalism." Rather it, "defines a structural necessity in a real democracy."

The raw statistical data that DOD refuses to release, in violation of law, accounts for every FOIA request and appeal by requester and agency-assigned tracking number, showing how/if each was processed. By refusing to release this data and submitting false reports that omit years-old aged requests and appeals that would grab attention, agencies may simply ignore confirmed-receipt requests and appeals and never act on them, no matter how many times one follows- up. I provided the entire DOD chain of command many incontrovertible examples of this while it was occurring, yet false reporting and other violations continued unabated and are continuing today.

Please respond with a copy to Senator Grassley, whom I am notifying along with Mr. Tillotson.

With my deep respect,

/s/

Robert Hammond

Whistleblower

From: Bob Hammond
Sent: Sunday, January 27, 2019 3:03 PM
To: david.tillotson; 'Chung, Joo Y SES OSD ODCMO (US)'
Cc: james.p.hogan; cindy.l.allard; clinton.f.Faison; terry.j.moulton; thomas.b.Modly; raquel.c.bono.mil; Thomas.b.McCaffery
Subject: Request for Investigation into DOD False Reporting to DOJ & Congress.
Whistleblower. Follow-up
Importance: High

Robert Hammond
1828 Wayland Street,
Oakton, VA 22124
Perseverance2013@aol.com

January 27, 2019

David Tillotson III, DOD Chief FOIA Officer &
Assistant Chief Management Officer
9010 Defense Pentagon
Washington D.C 20301-9010

Subj: Request for Investigation into DOD False Reporting to DOJ & Congress. Whistleblower.

Dear Mr. Tillotson,

This is in furtherance to my December 31, 2018 9:50 AM email addressing the matters below, regarding DOD's non-compliance with the Freedom of Information Act (FOIA) and related statutes, and DOD's widely-known, extensive, partially-admitted, long-standing and ongoing inaccurate reporting to the Department of Justice (DOJ) and Congress, particularly with respect to Walter Reed National Military Medical Center, Defense Health Agency (DHA) and Department of Navy (DON).^[i] I have not received an answer.

Over many years and very recently, I have provided countless, incontrovertible examples of DOD's ongoing false reporting, including correspondence to DHA and Navy leadership, you personally and to the Chief Management Officer's Director of Oversight and Compliance, Ms. Chung.^[ii] Yet, widespread false reporting continues.

First, please directly release/publish the raw statistical data used in DOD's annual FOIA reports, which, in violation of multiple statutes, DOD has refused to do.^[iii] This suggests efforts to cover-up DOD's false reporting. As to DHA's data, which I and others are seeking (presumably also as to false reporting), DHA has refused to release it in response to multiple FOIA requests.^[iv] Also, Mr. James. P. Hogan of your office refused to identify where it is. Others are also seeking records of the Department of Navy's Office of the Judge Advocate General, as I have done.

Second, please provide a complete accounting of every single correction by request and appeal of any adjustments that DOD makes from its FY 2017 Annual Report to its FY 2018 Report, rather than simply inserting an innocuous, general footnote in your FY 2018 Annual report. Ms. Chung and DHA's Mr. Cygnarowicz state that DHA will provide this information in response to my whistleblower activity compelling admissions of past false reporting.^[vi]

Third, please account for every one of my open requests and appeals, including requests that I submitted under both the FOIA and the Privacy Act (PA), which may only be excluded from FOIA reporting if they are exclusively PA and actually answered under PA.^[vii] To the extent that such requests remain unanswered, DOD is non-complaint with both Acts. Ms. Chung, DOD's Senior Official for Privacy, has an outstanding PA complaint in that regard, for which I am awaiting a response and proper reporting to Congress, per statute.^[vii] There are other unreported PA complaints.

Fourth, I am again requesting an independent audit of DHA's and Navy's known and partially admitted inaccurate FOIA reporting, accounting for every one of my requests and appeals.

Fifth, upon timely completion of the above (within 45 days), initiate a request for a thorough DOD Inspector General investigation into matters of potential intent, cover-up and violations of law. I want to actively participate.

Sixth, advise your staff and Department of Navy to promptly engage in alternative dispute resolution (ADR), as prescribed by multiple statutes and DOD policy and per my specific requests.^[viii] Had your office engaged my ADR requests, including my ADR request related to DHA's FY 2015 FOIA requests' and appeals' raw statistical data and others, which address false reporting, DOD's FOIA reports the Attorney General would have been more accurate.

Thank you.

With my deep respect,

/s/

Robert Hammond
Whistleblower

Copy to:

Hon. Patrick Shanahan, Acting Secretary of Defense

Lisa W. Hershman, Acting Chief Management Officer of the Department of Defense

Hon. Thomas McCaffery, Principle DASD for Health Affairs

Vice Admiral R. C. Bono, Director, DHA

Guy T. Kiyokowa, Deputy Director, DHA

Captain Mark A. Kobelja, Director Walter Reed

Hon. Thomas B. Modly, Under Secretary of the Navy/DON CIO

Capt. Damen Hofheinz, Director, Office of the CIO (OCIO).

Vice Admiral C. Forrest Faison, Surgeon General and Chief, Bureau of Medicine and Surgery

Rear Admiral Terry Moulton, Deputy Surgeon General and Deputy Chief, BUMED
DOD IG (for situational awareness at this time)

- Glenn A. Fine Principal Deputy Inspector General, performing the duties of the Inspector General
- [Steven A. Stebbins](#), Chief of Staff
- [Jacqueline L. Wicecarver](#), Deputy Inspector General for Audit
- [Dermot F. O'Reilly](#), Deputy Inspector General for Investigations
- [Marguerite C. Garrison](#), Deputy Inspector General Administrative Investigations
- [Randolph R. Stone](#), Deputy Inspector General Policy and Oversight

Hon. Senator Chuck Grassley
Committee on the Judiciary.
135 Hart Senate Office Building
Washington, D.C. 20510
Phone: 202-224-3744
Fax: 202-224-6020

whistleblower@judiciary-rep.senate.gov

^[i] As a result of my whistleblower activity, DHA's false statements and failure to report numerous aged appeals and requests in their annual reports through DOD to the Attorney General and Congress is now **partially** documented. See DOD's FY 2017 Chief Information Officer Report at 26 [24 of 28 numbered] wrt DHA, "...DHA closed their entire ten oldest [appeals]," and DOD's FY 2016 Annual FOIA Report (oldest appeal 327 days *contra* DOD's FY 2017 Annual FOIA Report at 31 - oldest appeal 726 days, tenth oldest appeal 596 days). See <https://open.defense.gov/Transparency/FOIA.aspx>. Following further whistleblower activity, DHA made additional admissions, "DHA failed to report appeals older than previously reported on the ten oldest. "See "Department of Defense Chief Freedom of Information Act Officer Report to the Department of Justice For 2018" at page 22. <https://open.defense.gov/Transparency/FOIA.aspx>. Navy's U.S. Fleet Forces Command stated recently that certain FOIA records previously withheld that were being released on appeal remand contained data that "was incomplete, most likely incorrect, and provided to each FOIA coordinator as a tool to update or correct the FOIA online database." USFFC ltr 5720, Ser N01P (2018-34-007689),037, dtd August 28, 2018. Mr. Grant E. Lattin, Navy's Office of the Judge Advocate General has made similar admissions "the processing/reporting of FOIA requests/appeals may have been compromised." I notified Mr. Tillotson and Navy's Ms. Fletcher by email on 2/17/2018 9:36:00 AM.

^[ii] Example: Hammond email of May 18 2015 advising DHA and the DOD chain of command: ("By the action that you are taking, you will be knowingly submitting a false Annual FOIA Report to leadership, the Attorney General of the United States and in turn to the United States Congress") [See also. Example: Hammond email to Mr. Tillotson (regarding exact same issue w/ 3 more years of follow-ups and known false reporting), February 19, 2018 7:20 AM, Subject: Inaccurate FY 2017 DOD CIO [Chief FOIA Officer] Report to DOJ: ("That cannot be true with respect to DHA... being reviewed by your staff together with DOJ... The number of aged, still open requests, appeals and consultations dating back to 2013 is staggering"). Example: Hammond email to Mr. Tillotson & DHA, Feb 25, 2017 9:18 am, Subject: Re: FOIA Non-Compliance by Walter Reed (15 examples). Numerous other specific examples.

^[iii] [Section 8 of the OPEN Government Act of 2007](#), Pub. L. No. 110-175, 121 Stat. 2524, added to the FOIA the requirement that each agency "make the raw statistical data used in its reports available electronically to the public upon request." The [FOIA Improvement Act of 2016](#) amended this provision to now require agencies to proactively make the raw data from their final, published Annual FOIA Reports available without the need for a request. See [5 U.S.C. § 552\(e\)\(3\)\(A\)-\(C\) \(2014\)](#), amended by [FOIA Improvement Act of 2016](#), Pub. L. No. 114-185, 130 Stat.

538. See “Posting the Raw Statistical Data from the Annual FOIA Report” at https://www.justice.gov/oip/oip-guidance/new_requirements_agency_annual_foia_reports_2016. See also, “Summary of Agency Chief FOIA Officer Reports” at <https://www.justice.gov/OIP/Reports/2018Summary%26Assessment/download#2018>.

[iv] MuckRock.com (who services media originations and others), has also taken an interest in FOIA report records, e.g. Freedom of Information Request: [FOIA logs 2016-2017: Military \(Defense Health Agency\)](#), [FOIA logs 2016-2017: Military \(US Navy Judge Advocate General\)](#), and various other FOIA Logs from 2010 – 2016.

[v] DHA’s, Paul T. Cygnarowicz (who is responsible for open appeals,) 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.” Ms. Joo Chung states, “DHA... will update the Department accordingly for reporting purposes.” This, says nothing of the mandatory interim quarterly reports to DOJ, which remain inaccurate.

[vi] “The Annual FOIA Report is designed to capture an agency’s FOIA activities and therefore should not include requests for records handled exclusively under the Privacy Act of 1974 (PA)... Agencies should still give incoming requests the potential benefit of access under both the PA and the FOIA.” DOJ Handbook for Agency FOIA Annual Reports, at 6 (Scope).

[vii] DoD Privacy and Civil Liberties Officer Reports (<https://dpcl.d.defense.gov/Reports>)

Pursuant to Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, [42 U.S.C. § 2000ee-1](#) requires DoD privacy officers and civil liberties officers to periodically, but not less than semi-annually, submit a report to:

- The appropriate committees of Congress, including the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;
- The head of such department, agency, or element; and
- The Privacy and Civil Liberties Oversight Board.

[viii] References:

- (a) The Freedom of Information Act (FOIA) [Improvement Act of 2016 \(Public Law No. 114-185\)](#), available at <https://www.justice.gov/oip/freedom-information-act-5-usc-552>
- (b) Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
- (c) DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- (d) DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- (e) DoD Directive 5145.04, “Defense Legal Services Agency (DLSA),” April 16, 2012
- (f) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- (g) DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014
- (h) Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- (i) Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990

From: perseverance2013@aol.com <perseverance2013@aol.com>

Sent: Monday, December 31, 2018 9:50 AM

To: david.tillotson; joo.y.chung

Cc: james.p.hogan; cindy.l.allard; clinton.f.Faison; terry.j.moulton

Subject: Request for Investigation into DOD False Reporting to DOJ & Congress.

Whistleblower.

Importance: High