



U.S. Department of Veterans Affairs
Office of Accountability and Whistleblower Protection
Freedom of Information Office

Ref: 21-00863-F

November 10, 2020

American Oversight
Attention: Mr. Austin Evers
1030 15th Street NW
Suite B255
Washington, DC 20005
Via Email: foia@americanoversight.org

Dear Mr. Evers:

This is the Initial agency decision to your July 28, 2020 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. Your request and one (1) record were referred to our office, from the Office of Executive Secretary (OSVA), on November 6, 2020; for our review, release determination and direct response to you. The assigned case number is 21-00863-F. We ask that you use this number when referring to your request.

Please be advised that our review has concluded and we have determined that the seven (7) pages, responsive record are being withheld in their entirety pursuant to FOIA exemption (title 5 U.S.C. § 552 (b)(5)), which protects internal Federal government documents which are both predecisional and deliberative.

The three primary, most frequently invoked privileges that have been held to be incorporated into Exemption 5 are the deliberative process privilege (referred to by some courts as "executive privilege"), the attorney work-product privilege, and the attorney-client privilege.

"Exemption 5 encompasses documents that fall within the deliberative process privilege, which shields documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. The general purpose of "deliberative process privilege" is to "prevent injury to the quality of agency decisions." Specifically, three policy purposes consistently have been held to constitute the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. Logically flowing from the foregoing policy considerations is the privilege's protection of the "decision making processes of government agencies." In concept, the privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm.

In this instance, fees for processing your request were below the threshold for requiring payment. Please note that fees may be assessed on future requests.

The VA FOIA Public Liaison is available at 1-877-750-3642 or by email at vacofoiaservice@va.gov to answer any concerns about the foregoing. Also, please note that the Office of Government Information Services (OGIS) at the National Archives and Records Administration offers services to requesters who have disputes with Federal agencies. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You have the right to appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Email: ogcfoiaappeals@va.gov

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

If you have any questions or concerns about the foregoing or about the processing of your request, please do not hesitate to contact the assigned FOIA Officer Mr. Jake Johnson at 202-718-7335.

Sincerely,

Tanya Guimont
Supervisory, OAWP FOIA

Enclosure:
As stated