



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

Ref: 21-01716-F

December 17, 2020

American Oversight
Attn: Mr. Austin Evers
1030 15th Street NW
Suite B255
Washington, DC 20005

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 two (2) records were referred to our office from the Department of Veterans Affairs (VA), Office of the Secretary (OSVA) on December 11, 2020; for our review, release determination and direct response to you. The assigned case number is 21-01716-F. We ask that you use this number when referring to your request.

The Freedom of Information Act, 5 U.S.C. § 552(A)(a)(ii), places all FOIA requesters in one of three categories for fee purposes. The three categories of FOIA requesters are commercial use, educational institutions, noncommercial scientific institutions, and representatives of the news media; and all other requesters. We have determined that you are a "News Media" requester for fee purposes. As such, [VA FOIA implementing regulations at 38 C.F.R. §1.561](#) states that we may charge you for some of our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. No fees will be assessed if our processing costs are less than \$25.00.

The Department of Veterans Affairs (VA), Office of Accountability and Whistleblower Protection (OAWP) has concluded its review of two (2) records, totaling ten (10) pages; bates numbers (20-08472-F) 010826-010832 and 019999-020011, referred to our office by OSVA. The ten pages of responsive records 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.

"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.

The above-mentioned record materials constitute all records in the custody of this Service which relate to the subject of your request. 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.

You may appeal the determination made in this response to:

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

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

As an alternative to submitting an appeal, you may contact the VA FOIA Public Liaison at (877) 750-3642 or by email at VACOFOIAService@va.gov. Also, please note that the Office of Government Information Services (OGIS), offers services to requesters who have disputes with Federal agencies. You may contact OGIS if you have concerns about the processing of your request. Their contact information is provided below:

Office of Government Information Services (OGIS)
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Fax: 202-741-5769
Telephone: (202) 741-5770
Toll-Free: 1(877) 684-6448

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 Senior FOIA Analyst, Mr. Jake Johnson at oawpfoiarequests@va.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Guimont', is centered on the page.

for Tanya Guimont
Supervisory, OAWP FOIA

Enclosure:
As stated