

November 10, 2020

FOIA Tracking: 20-09930-F

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

Dear Mr. Evers:

This is in response to your Freedom of Information Act (FOIA) request dated July 28, 2020, in which you asked for a copy of "All calendars and calendar entries for the agency officials listed below, including any calendars maintained on their behalf, reflecting events that took place from January 1, 2020 to the date the search is conducted." On October 29, 2020, a portion of your request was forwarded and received in the Office of Electronic Health Record Modernization.

Your request was processed by the undersigned. We have assigned FOIA Tracking Number **20-09930-F** to your request. Please refer to it whenever communicating with VA about your request.

The responsive document forwarded to our office is an intra-agency briefing that falls under the protection of FOIA Exemption 5 (5 U.S.C. § 552(b)(5)). Please be advised that we are withholding the subject document in full, comprising a total of six pages under FOIA Exemption 5, [5 U.S.C. § 552 (b)(5)]. FOIA Exemption 5 protects interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. Moreover, this exemption permits an agency to withhold material reflecting the thoughts, opinions, and recommendations of federal officials and consultants reviewing an issue.

Under the deliberative process privilege and FOIA Exemption 5, OEHRM redacts internal government deliberations, thoughts, opinions, recommendations, and proposed solutions from federal employees and consultants reviewing VA programs in their professional capacities, as well as non-final or draft documents. The information contained in the responsive record is both pre-decisional and deliberative because it reflects preliminary opinions, proposed solutions, and recommendations, which do not reflect VA's final decision. Exposure of premature discussions before a final decision is made could create undue public confusion. The release of the redacted information would negatively impact the ability of federal employees and consultants to openly and frankly consider issues amongst themselves when deliberating, discussing, reviewing, proposing changes to, and making recommendations on VA programs. The information reveals the thoughts, deliberations, and opinions that, if released, would have a chilling

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effect on the ability of federal officials and consultants to discuss, opine, recommend or be forthcoming about the agency's issues which require full and frank assessment. Here, the disclosure of the withheld information is likely to compromise the integrity of this deliberative or decision-making process. Moreover, the pre-decisional character of a document is not altered by the passage of time. *Bruscino v. BOP*, No. 94-1955, 1995 WL 444406 at *5 (D.D.C. May 15, 1995), *aff'd in part*, No. 95-5212, 1996 WL 393101 (D.C. Cir. June 24, 1996).

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison

Name: Doloras Johnson

Email Address: vacofoiaservice@va.gov

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov

Fax: 202-741-5769

Mailing address:

National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

You may also appeal the determination made in this response to:

General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

If you should choose to make an appeal, your appeal must be postmarked no later than sixty (60) calendar days after the date of the adverse determination. It must clearly identify the determination being appealed and must include any assigned request number. The appeal should include:

1. The name of the FOIA Officer
2. The address of the component
3. The date of the component's determination, if any
4. The precise subject matter of the appeal

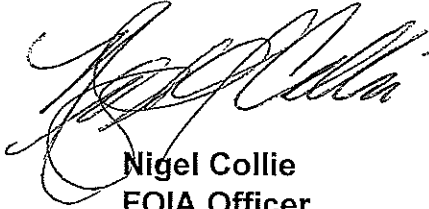
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If you choose to appeal only a portion of the determination, you must specify which part of the determination you are appealing. The appeal should include a copy of the request and VA's response, if any. The appeal should be marked "Freedom of Information Act Appeal".

If you have any questions or concerns, please feel free to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Nigel Collie".

Nigel Collie
FOIA Officer

cc: FOIA Officer, Office of the Secretary, Department of Veterans Affairs