



In Reply Refer To:

FOIA No.: 21-00862-F

November 30, 2020

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

E-mail: foia@americanoversight.org

Dear Mr. Evers:

This is letter is the initial agency decision to your July 28, 2020, Freedom of Information Act (FOIA), 5 U.S.C. § 552 request. You submitted your request to the United States Department of Veterans Affairs Central Office FOIA Service.

Initial Request

On July 28, 2020, you submitted a FOIA request to the VA FOIA Service where you requested “All calendars and calendar entries for the agency official 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.” The specific calendars that you are seeking pertain to the following:

- a. Secretary Robert Wilkie;
- b. Acting Deputy Secretary Pamela J. Powers; and,
- c. Acting Chief of Staff Brooks D. Tucker.

Search

A search was conducted by Ms. RuthAnne Parise, FOIA Officer for the Office of the Executive Secretary. Upon conducting her search, she located one (1) document that totaled five (5) pages; that were Bates numbered (20-08472-F) 010049-010053.

Analysis

In reviewing the five (5) pages that were referred to this office, I find that the five (5) pages are being withheld in their entirety pursuant to FOIA Exemption (5), 5 U.S.C § 552 (b)(5).

FOIA Exemption (b)(5) 5 U.S.C. § 552(b)(5) exempts from required disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” Under the attorney-client and work product privileges, the VA redacts portions of records, emails, and communications between VA employees and attorneys relating to federal lawsuits against the VA. The release of this information would impede the ability of VA employees and attorneys to speak openly and frankly about legal issues concerning lawsuits against the VA. The release of this information would also compromise the VA’s legal positions for its lawsuits. See, e.g., Kent Corp. v. NLRB, 530 F.2nd 612, 623 (5th Cir.1976); Citizens fir Responsibility and Ethics in Wash. V. NARA, 583 F.Supp 2d 146, 160 (D.D.C. 2008)

Conclusion

Consequently, I am denying your request in full under FOIA Exemption (b)(5) (5 U.S.C. 552(b)(5)) as the responsive pages that were referred to this office are protected are to be considered attorney work-product.

Appeal Rights

If you disagree with my determination to withhold the information pursuant to FOIA Exemption (b)(5) or wish to appeal, please be advised you may appeal to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
E-mail: ogcfoiaappeals@va.gov

Public Liaison and OGIS Options

For any questions regarding the processing of this request, you have the right to seek assistance from the VA FOIA Public Liaison or the Office of Government Information Services (OGIS). As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services. Similarly, as part of the FOIA Improvement Act of 2016, VA established a FOIA Public Liaison to offer mediation services. You may contact OGIS and the VA Public Liaison in any of the following ways:

Office of Government Information Services

E-mail: ogis@nara.gov

National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

VA FOIA Public Liaison:
Doloras Johnson
VA FOIA Service
810 Vermont Avenue, NW (005R1C)
Washington, DC 20420

E-mail: vacofoiaservice@va.gov
Telephone: 1-877-750-3642
Facsimile: 202-632-7581

Sincerely yours,

A handwritten signature in black ink that reads "Greg Draves". The signature is written in a cursive, flowing style.

Greg Draves
Acting FOIA Officer
Office of General Counsel