



In Reply Refer To:

FOIA No.: 21-01729-F

December 14, 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 six (6) pages of responsive documents that were referred to the Office of General Counsel, for a direct response to you.

Analysis

In reviewing the six (6) pages that were referred to this office. I find that those six (6) pages are being withheld in their entirety pursuant to FOIA Exemption (5), 5 U.S.C § 552 (b)(5).

FOIA Exemption (b)(5) permits VA to withhold any inter-agency or intra-agency memorandums or letters if two requirements are met. First, there is an identifiable deliberative process. Second, the agency generated the information or document as part of the agency decision process. Stated another way, VA may withhold information under Exemption (b)(5) where the document or its content makes recommendation or expresses opinions about legal or policy matters during the decision-making process and the document is not the decision documents or incorporated into the decision document. Additionally, as a matter of Federal policy, the agency must state an articulable, foreseeable harm to the agency or its activities that could occur as a result of release of the document or information. Specifically, Exemption (b)(5) of the FOIA protects “inter-agency or intra-agency memorandums or letters, emails, notes which would not be available by law to a party other than an agency in litigation with the agency.” The Deliberative Process Privilege of FOIA Exemption (b)(5) is invoked. See *Sears*, 421 U.S. at 150; see also *Missouri ex rel. Shorr v. U.S. Army Corps of Eng’r*, 147 F.3d 708, 710 (8th Cir. 1998).

Conclusion

Consequently, I am denying your request in full under FOIA Exemption (b)(5) (5 U.S.C. 552(b)(5)).

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

E-mail: ogis@nara.gov
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 script is fluid and cursive, with the first letters of "Greg" and "Draves" being capitalized and prominent.

Greg Draves
Acting FOIA Officer
Office of General Counsel