



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

November 6, 2020

In Reply Refer To: 001B
FOIA Request: 20-08472-F

Via Email: foia@americanoversight.org

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

Dear Mr. Evers:

This is the fifth interim Initial Agency Decision (IAD) to your July 28, 2020 Freedom of Information Act (FOIA) request to the Department of Veterans Affairs (VA), FOIA Service. You requested a copy of "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.

Your request was received by the VA FOIA Service on July 29, 2020 and assigned FOIA tracking number **20-08472-F**. Please refer to this number when corresponding with our office about this request.

On August 4, 2020, the VA FOIA Service requested clarification to the portion of your request pertaining to the records of Acting Deputy Secretary Pamela J. Powers and Acting Chief of Staff Brooks D. Tucker.

On August 7, 2020, you advised "American Oversight agrees to limit the calendars for Mr. Tucker and Ms. Powers to positions held in the Office of the Secretary...American Oversight further understands that Ms. Powers has not changed positions during the relevant time period."

Your request was referred to and received by the VA Office of the Secretary (OSVA) on August 7, 2020.

On August 10, 2020, I requested the Office of Information and Technology (OI&T) conduct a search for records as follows:

- a. Secretary Robert Wilkie, 8/1/20-8/10/20, the timeframe in which we have not submitted a request for his calendars under other FOIA requests;
- b. Acting Deputy Secretary Pamela J. Powers, 4/2/20-8/10/20, the timeframe in which she was assigned as the Acting Deputy Secretary to the date of the search tasker; and,

- c. Acting Chief of Staff Brooks Tucker, 4/30/20-8/10/20, the timeframe in which he was assigned as the Acting Chief of Staff to the date of the search tasker.

On August 11, 2020, for our first interim response, a total of 198 pages were released in their entirety, 772 pages were partially released, and 768 pages were withheld in full pursuant to FOIA exemptions 5, 7, and 7C. Records responsive to the first interim response were associated with Secretary Wilkie's January 2020 through March 2020 calendars to include invitees, notes, and attachments and were Bates numbered as (20-08427-F) 000001 through (20-08427-F) 001738.

On September 28, 2020, for our second interim response, a total of 1,381 pages were released in their entirety, 804 pages were partially released, and 787 pages were withheld in full pursuant to FOIA exemptions 5, 6, 7C, and 7E. Records responsive to the second interim response were associated with Brooks Tucker's April 30, 2020 to August 10, 2020 calendars, Pamela Powers' April 2, 2020 to August 10, 2020 calendars, Secretary Wilkie's August 1, 2020 to August 10, 2020 calendars, and Secretary Wilkie's May 2020 to August 10, 2020 calendar invitees, notes, and attachments, and were Bates numbered as (20-08472-F) 001739 through (20-08472-F) 004778. Additionally, our second interim response advised that 122 pages of responsive records were processed under another FOIA request and were available in the VA FOIA library under Frequently Requested Records at <https://www.va.gov/FOIA/Library.asp>.

On October 9, 2020 for our third interim response, a total of 367 pages were released in their entirety, 214 pages were partially released, and 1,703 pages were withheld in full pursuant to FOIA exemptions 5 and 6. Records responsive to the third interim response were associated with Secretary Wilkie's April 2020 calendar invitees, notes, and attachments, and were Bates numbered as (20-08472-F) 004779 through (20-08472-F) 007130.

On October 29, 2020, for our fourth interim response, a total of 1,372 pages were released in their entirety, 555 pages were partially released, and 279 pages were withheld in full pursuant to FOIA exemptions 5, 6, 7C, and 7E. Records responsive to the fourth interim response were associated with Acting Deputy Secretary Pamela Powers' June 1, 2020 through August 10, 2020 calendar invitees, notes, and attachments, and were Bates numbered as (20-08472-F) 007131 through (20-08472-F) 009492.

For our fifth interim response, I located 1,925 pages of responsive records associated with the portion of your request pertaining to Acting Deputy Secretary Pamela Powers' May 2020 calendar invitees, notes, and attachments. The records have been Bates numbered (20-08472-F) 009493 through (20-08472-F) 011417. I have determined that 1,089 pages are releasable in their entirety, 255 pages are partially releasable, and 305 pages are withheld in full pursuant to Title 5 U.S.C. §§ 552(b)(5), (b)(6), and (b)(7)(C), FOIA Exemptions 5, 6, and 7C.

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, OSVA 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 records is both predecisional 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 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 predecisional 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).

Additionally, FOIA Exemption 5 protects information under the presidential communications privilege. The presidential communications privilege protects agency communications to or from the President or his advisers. Loving v. DOD, 550 F.3d 32, 37-38 (D.C. Cir. 2008) (Exemption 5 "incorporates" Presidential Communications Privilege, which protects "'communications directly involving and documents actually viewed by the President,' as well as documents 'solicited and received' by the President or his 'immediate White House advisers'" (internal citations omitted)); Berman v. CIA, 378 F. Supp. 2d 1209, 1219-20 (E.D. Cal. 2005) (same), aff'd on other grounds, 501 F.3d 1136 (9th Cir. 2007); Judicial Watch, Inc. v. DOJ, 365 F.3d 1108, 1110 n.1 (D.C. Cir. 2004) ("embrac[ing] the definitional analysis set forth" in In re Sealed Case, 121 F.3d 729, 749-50, 752 (D.C. Cir. 1997), protecting documents covered by Presidential Communications Privilege); Amnesty Int'l USA v. CIA, 728 F. Supp. 2d 479, 522 (S.D.N.Y. 2010) ("all twenty documents reflect or memorialize communications between senior presidential advisers and other United States government officials and are therefore properly withheld").

FOIA Exemption 6 exempts from disclosure of personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test. Specifically, the information being withheld, as indicated on the enclosed documents, under FOIA Exemption 6, consists of names, identities, email addresses, VA usernames, phone numbers, cellular numbers, and of federal civilian employees and private citizens, as well as room numbers and conference codes; we however release the names of VA Senior Executives. Federal civilian employees and private citizens retain a significant privacy interest under certain circumstances, such as in instances where the release of their information could represent a threat to their well-being, harassment, or their ability to function within their sphere of employment. The federal civilian employees and private citizens whose information is at issue have a substantial privacy interest in their personal information. In weighing the private versus the public interest, except names of VA Senior Executives, we find that there is no public interest in knowing the names, identities, email addresses, VA usernames, phone numbers, cellular numbers, and facsimile numbers of federal civilian employees and private citizens, and room numbers and conference codes. The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public's understanding of the activities of

the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the records, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest of the individuals whose names are redacted. The protected information has been redacted and (b)(6) inserted. "Withholding a telephone number or e-mail address, alone, is not sufficient to protect that [privacy] interest; alternate means of contacting and harassing these employees would be readily discoverable on the Internet if this court ordered their names disclosed." Long v. Immigration & Customs Enf't, 2017 U.S. Dist. LEXIS 160719 (D.C. Cir. 2017).

FOIA Exemption 7(C) exempts from required disclosure law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Redacted information includes names, identities, job titles revealing identities room numbers, phone numbers, cellular numbers, facsimile numbers, and personal leave details of VA security personnel. The release of this information would risk impersonation, targeting, or violence against the health and safety of VA security personnel who are charged with protecting.

The following additional information is provided regarding the pages withheld in full in this fourth interim release:

Bates numbered pages (20-08472-F) 009503, 009553-009555, 009653-009659, 009982-009984, 010007-010033, 010037-010046, 010235-010245, and 010247-010265 have been withheld in full pursuant to FOIA Exemption 5 pre-decisional and/or deliberative process;

Bates numbered pages (20-08472-F) 009804-009845, 009896-009967, 010058-010059, 010096-010097, 010416-010434, 010442-010472, 010492-010525, 010672-010674, 010799-010801, and 011362-011374 have been withheld in full pursuant to FOIA Exemption 5 presidential communication privilege; and,

Bates numbered pages (20-08472-F) 009511, 009575, and 009706 have been withheld in full pursuant to FOIA Exemption 6.

All redactions made under FOIA Exemption 5 presidential communication privilege have been made pursuant to review by the White House Liaison.

The remaining 276 pages fall under the cognizance of other components within the VA. Those pages are being referred, under separate FOIA tracking numbers, as follows:

Bates numbered pages (20-08472-F) 009520-009550, 009591-009621, 009721-009751, 009753-009783, 010074-010093, 010578-010608, 010764-010777, 010778-010792, 011288-011303, and 011305-011320 are being referred, under FOIA tracking number **21-00860-F**, to the Veterans Health Administration at:

Department of Veterans Affairs
810 Vermont Avenue
(10P2C1) VACO
Washington, DC 20420

Attention: Michael Sarich
Phone: (877) 461-5038
Facsimile: (202) 273-9386
Vhafoia2@va.gov

Bates numbered pages (20-08472-F) 009792-009797 are being referred, under FOIA tracking number **21-00861-F**, to the Veterans Benefits Administration at:

Department of Veterans Affairs
810 Vermont Avenue, NW
(20M33) VACO
Washington, DC 20420

Attention: Angela Davis
Phone: (202) 461-9516
Facsimile: (202) 632-8925
Foia.vbaco@va.gov

Bates numbered pages (20-08472-F) 010049-010053 are being referred, under FOIA tracking number **21-00862-F**, to the VA Office of General Counsel at:

Department of Veterans Affairs
810 Vermont Avenue, NW
(026H) VACO
Washington, DC 20420

Attention: Michelle Jackson
Phone: (202) 461-1583
Facsimile: (202) 273-9299
ogcfoiarequests@va.gov

Bates numbered pages (20-08472-F) 010847-010853 are being referred, under FOIA tracking number **21-00863-F**, to the VA Office of Accountability & Whistle Blower Protection at:

Department of Veterans Affairs
810 Vermont Avenue, NW
(70A) VACO
Washington, DC 20420

Attention: Tanya Guimont
Phone: (202) 461-4214
Facsimile: (202) 501-2811
OAWPfoiarequests@va.gov

Bates numbered pages (20-08472-F) 011341-011353 are being referred, under FOIA tracking number **21-00864-F**, to the VA Office of the Assistant Secretary for Human Resources and Administration at:

Department of Veterans Affairs

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810 Vermont Avenue, NW
(006) VACO
Washington, DC 20420

Attention: Cynthia Hunter
Phone (202) 461-0734
Facsimile: (202) 273-4914

Bates numbered pages (20-08472-F) 011408-011417 are being referred, under FOIA tracking number **21-00865-F**, to the VA Office of the Assistant Secretary for Operations, Security, and Preparedness at:

Department of Veterans Affairs
810 Vermont Avenue, NW
(007) VACO
Washington, DC 20420

Attention: Amandeus Watkins
Phone: (202) 461-5617
Facsimile: (202) 461-0963
vacoospfoia@va.gov

All remaining releasable records, if any, will be provided on a rolling basis.

Additionally, in our third interim response I corrected for the record inaccuracies to the first and second interim IAD. Specifically, both the first and second interim IADs incorrectly stated "Ms. Hancock" in the greeting line vice "Mr. Evers." Additionally, both the first and second interim IADs incorrectly stated the records had been Bates numbered with the prefix (20-08427-F) vice (20-08472-F).

For our fourth interim response, I sent a corrected letter advising of discrepancies noted in the original fourth interim response.

Finally, please know the size of the releasable records exceeds that which may be sent in one email. As such the records are being uploaded to the VA FOIA Website Document Retrieval at https://www.va.gov/FOIA/Document_Retrieval.asp. Please allow up to three days for the records to post. Additionally, please know it will take a few minutes for the file to upload once you select it and input the password. The password to the file is QWhTD3MyEw9BWAK

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)

Mr. Austin Evers
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Email Address: ogis@nara.gov
Fax: 202-741-5769
Mailing address:
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

FOIA Appeal

Please be advised that should you desire to do so; you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

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.

Sincerely,

Ruthann

Parise 941640

Ruthann Parise
OSVA FOIA Officer

Digitally signed by Ruthann
Parise 941640
Date: 2020.11.06 14:28:15
-05'00'

Enclosure: 1,344 pages, 5th interim releasable records



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington DC 20420**

November 18, 2020

Via Electronic Mail:

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

Re: Initial Agency Decision: FOIA #21-00861-F

Dear Mr. Evers:

Veterans Benefits Administration (VBA) received a referral regarding your July 28, 2020 Freedom of Information Act (FOIA) request to the Department of Veterans Affairs (VA), FOIA Service. The referral, referenced on page 5 of correspondence to you dated November 6, 2020 (attached), was assigned FOIA case number 21-00861-F. The referral addresses the following document(s) explicitly:

Bates numbered pages (20-08472-F) 009792-009797

This letter serves as VBA's initial agency decision.

After careful review and consideration of the referenced documents, VBA has determined to release in full all six (6) pages of the document.

If you believe that the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision.

You must mail your appeal within 90 days from the date of receipt of this letter to:

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

Please clearly mark both the envelope and your letter or email "Freedom of Information Act Appeal."

If you should choose to file an appeal, you must postmark or electronically transmit the appeal no later than ninety (90) calendar days from the date of this letter. Please include a copy of this letter

with your written request and clearly state why you disagree with the determinations outlined in this response.

In addition to filing an appeal with the Office of General Counsel regarding my determination, you may seek assistance or dispute resolution services regarding your FOIA request from VBA's FOIA Public Liaison or Office of Government Information Services (OGIS) as provided below:

VA FOIA Public Liaison

Email Address: vacofoiaservice@va.gov

Phone Number: (877) 750-3642

Office of Government Information Services (OGIS)

Email: ogis@nara.gov

Fax: (202) 741-5769

Mailing address: Office of Government Information Services

National Archives and Records Administration

8601 Adelphi Road

College Park, MD 20740-6001

Sincerely,

A handwritten signature in black ink, appearing to read "Simon K. Caines".

Simon K. Caines

Program Specialist (FOIA/Privacy)



Veterans Benefits Administration

Contract Vendors Resuming In-Person Examinations COVID_19

May 14, 2020

Beth Murphy Executive Director Compensation Service

Agenda

- Exam Resumption Criteria
Phased Reopen
Approach
Guidance to Vendors
Stakeholder
Communications

Contract Vendor: In-Person Examinations

1 Criteria for Resuming In-Person Examinations

VBA will utilize standardized criteria for a state-by-state approach to resuming in-person examinations

State Criteria: Expiration of state shelter in place orders and/or, Executive Order that authorizes a state to resume elective out-patient medical care in accordance with state guidance

Vendor Criteria: Vendor Certification of an adequate Personal Protective Equipment (PPE) supply to support exam volume at every facility

Vendor Written Sanitation Plan to address all phases of examination (prior to examination, during, and post examination) per CDC guidance

2 Scheduling Process

- Behind the scenes, Vendors have been pre-positioning appointments on their calendars to enable resuming operations faster
- Contract Exam Vendors will begin contacting Veterans in a three-phased approach to schedule upcoming examinations.

3 Next Steps

- Provide guidance to Vendors and Regional Offices regarding exam priorities
- Allow each Vendor a ramp up period of two-weeks after notification to finalize scheduling and send out notifications for in-person exams
- Publish a web page with the current status of C&P exams in each state for public awareness

Phased Approach

	Phase I	Phase II	Phase III
Milestones	Prioritize the Oldest Cases First with the Exception of the Already Established <u>VBA Priority Groups</u> Excluding High-Risk Examinations*	Outpatient and In-Patient Examinations of <u>Entire Veteran Population</u> with the Exclusion of High-Risk Examinations*	Outpatient and In-Patient Examinations of Entire Veteran Population <u>Including All Examinations</u>
Workload Management	Prioritize cases with the vendors based on VBA priority groups Exclude exams that require the removal of PPE with a higher risk of aerosol transmission	All categories in Phase I to include all Veteran populations Exclude exams that require the removal of PPE with a higher risk of aerosol transmission	All categories of Phase I and Phase II to include all examinations

* High-Risk Examinations: Exams or diagnostics that require the removal of PPE, including procedures with higher risk of aerosol transmission (e.g. endoscopy, bronchoscopy, pulmonary function test [PFT], etc.) during the COVID-19 pandemic.

Specific Guidance to Vendors

- Maximize use of ACE and telehealth options
Arrange site space to support social distancing
Signage Greeter/Screeners (with appropriate PPE) at the door
Social distance seating and routing
Personal Protective Equipment Use and Supply
All Vendor and Veteran/accompanies must wear PPE at all times
Vendors will issue PPE at the door
Screening Prescreen during scheduling (including willingness to attend)
Temperature, symptom, and potential exposure check at the door, including Vendors Incarcerated and Housebound Veterans
Follow CDC and local guidelines/restrictions
Document all communications and activity
Restrictions Conduct no exams requiring removal of PPE until Phase III
All Vendor and Veteran personnel must be symptom/exposure free for 14 days to participate
Limit attendees to those medically required

Stakeholder Communications

- Ongoing updates to Hill and VSOs since mid-March regarding exams Frequency increased to weekly starting in May between 4 Corners staff and VBA (PDUSB and Compensation Service Executive Director) Included exam update in VBA FY20 Q2 Webcast that aired April 30