

November 13, 2020

Via Email: foia@americanoversight.org

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

Re: Final Response Letter 21-00660-F

Dear Mr. Evers,

This is in response to your 07/28/2020, Freedom of Information Act (FOIA) request, received by referral in our office on 10/30/2020. Within your request, you sought records regarding 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.

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

Veterans Benefits Administration (VBA) received by referral (18) eighteen pages that contained a presentation on Fiscal Year 2022 budget. After careful review and consideration, we have determined that (18) eighteen pages are withheld in full pursuant to Title 5 U.S.C. §§ 552(b)(5), FOIA Exemptions 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, VBA 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).

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:

VBA Office FOIA Public Liaison

Name: Angela Davis

Email Address: FOIA.VBACO@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

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 choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis of 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,

Paula G.

Presley

3422255

Paula Presley

VBA Program Specialist

Digitally signed by
Paula G. Presley
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Date: 2020.11.13
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