DEPARTMENT OF VETERAN AFFAIRS

ASSISTANT SECRETARY FOR CONGRESSIONAL AND LEGISLATIVE AFFAIRS
WASHINGTON DC 20420

May 6, 2020 **Ref: FOIA# 20-05074-F**

Mr. Austin Evers
American Oversight
foia@amricanoversight.org

Dear Mr. Evers,

This letter is to acknowledge receipt of your request dated March 8, 2020 for records under the Freedom of Information Act (FOIA), 5 U.S.C. §552. Your request was received on March 15, 2020, in the Office of Congressional and Legislative Affairs. For reason outlined below, your request is denied in full.

Specifically, you requested:

> "All final talking points or background materials prepared for any Congressional briefing or hearings or press engagements by the leadership officials at your agency specified regarding ongoing corona-virus outlook."

After conducting a comprehensive line by line review, the information was found to be protected under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

FOIA Exemption 5 [5 U.S.C. § 552(b)(5)] permits VA to withhold a document or information contained within a document as "pre-decisional" if two requirements are met. First, there must be an identifiable deliberative process. That is, the document must be a direct part of the deliberative process. Second, the agency generated the information or document as part of the agency decision process.

Our review reveals pages that contain information that falls within the protection of Exemption 5. Specifically, information is being withheld under Exemption 5 as the documents contain open pre-decisional communications between staff at various levels of the organization. There are several categories of documents that routinely are protected by the deliberative process privilege of Exemption 5 documents: recommendations and deliberations comprising parts of a process by which they are protected because, by their very nature, their release would likely "stifle honest and frank communication within the agency.

AMERICAN OVERSIGHT

Your request was processed by the undersigned. You may 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; and
4. The precise subject matter of the appeal.

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."

Respectfully Submitted,

/s/

Regina Mack-Abney

AMERICAN OVERSIGHT