

# CAUSE of ACTION

## INSTITUTE

Pursuing Freedom & Opportunity through Justice & Accountability<sup>SM</sup>

August 1, 2018

### VIA ELECTRONIC MAIL

U.S. Department of Veterans Affairs  
Office of Assistant Secretary for Information & Technology  
810 Vermont Avenue, N.W.  
(005R1C) VACO  
Washington, D.C. 20420  
E-mail: [vacofoiaservice@va.gov](mailto:vacofoiaservice@va.gov)

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.<sup>1</sup> In carrying out its mission, CoA Institute uses investigative and legal tools to educate the public about the importance of government transparency and accountability.

On July 25, 2018, a group of eight Democratic Senators, led by Ranking Member Jon Tester of the U.S. Senate Committee on Veterans’ Affairs, wrote to then-Acting Secretary Peter O’Rourke to express concern over the possible politicization of the Freedom of Information Act (“FOIA”) at the Department of Veteran Affairs (“VA”).<sup>2</sup> These senators requested various records concerning the involvement of political appointees in the FOIA decision-making process, as well as other “sensitive review”-type policies. The senators concurrently wrote to the VA’s Inspector General to request “an assessment of the role that political appointees play in the FOIA process, what types of oversight exist to ensure employees are providing all responsive material, and who makes determinations about what is or is not responsive to a request[.]”<sup>3</sup>

Despite previous claims by the VA Office of Inspector General that there has not been regular political interference leading to the delay of FOIA requests,<sup>4</sup> the public has long known of internal practices at the VA that likely contribute to FOIA politicization. In August 2007, for

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<sup>1</sup> See CAUSE OF ACTION INST., *About*, [www.causeofaction.org/about](http://www.causeofaction.org/about) (last visited Aug. 1, 2018).

<sup>2</sup> Letter from Hon. Jon Tester, Ranking Member, U.S. S. Comm. on Veterans’ Affairs, *et al.*, to Peter O’Rourke, Acting Sec’y, Dep’t of Veterans Affairs (July 25, 2018) (attached as Exhibit 1); *see also* Office of Sen. Jon Tester, Press Release, Tester Doubles Down on Fight to Protect Veterans from Political Agendas at VA (July 25, 2018), *available at* <http://bit.ly/2LIIMIL>.

<sup>3</sup> Letter from Hon. Jon Tester, Ranking Member, U.S. S. Comm. on Veterans’ Affairs, *et al.*, to Hon. Michael J. Missal, Inspector Gen., Dep’t of Veterans Affairs (July 25, 2018) (attached as Exhibit 2).

<sup>4</sup> *See* Letters from Hon. George J. Opfer, Inspector Gen., Dep’t of Veterans Affairs, to Hon. Charles E. Grassley, Ranking Member, U.S. S. Comm. on Finance, & Hon. Darrell Issa, U.S. H.R. Oversight & Gov’t Reform Comm. (Sept. 9, 2010) (on file with CoA Inst.); *see also* Letter from Linda A. Halliday, Deputy Inspector Gen., Dep’t of Veterans Affairs, to Hon. Ron Johnson, Chairman, U.S. S. Comm. on Homeland Sec. & Governmental Affairs (Sept. 18, 2015) (on file with CoA Inst.).

example, the agency issued a directive concerning the processing of “high visibility” or “sensitive” FOIA requests that implicate potentially embarrassing or newsworthy records.<sup>5</sup> Intra-agency politicization only worsened during the Obama Administration.<sup>6</sup> An October 2013 memorandum instructed all Central Office components to clear FOIA responses and productions through Jim Horan, Director of the VA FOIA Service, who is still part of the leadership in the Office of Privacy and Records Management.<sup>7</sup> This clearance process imposed a “temporary requirement” for front office review—although it is unknown whether the practice continues—and entailed a “sensitivity determination” leading to unnamed “specific procedures.”<sup>8</sup>

Although “sensitive review”—including the heightened scrutiny of FOIA requests from news media requesters and the pre-disclosure review of potentially embarrassing records by political appointees—is not a new phenomenon, that such a practice continues to exist, at the VA and other agencies, raises questions of fundamental fairness and impartial administration of the FOIA.

Pursuant to the FOIA, 5 U.S.C. § 552, CoA Institute requests access to following agency records<sup>9</sup> for the period of January 20, 2017 to the present<sup>10</sup>:

1. All records, including but not limited to communications, memoranda, guidelines, procedures, processing metrics, and tracking tables, concerning “sensitive review” FOIA processes, including any process for the handling of “politically charged” or “high visibility” requests or those submitted by representatives of the news media. The scope of this item includes any records defining or describing the sensitive review process.
2. All communications between (i) the VA’s Office of Privacy and Records Management, Office of FOIA Service, and/or Office of General Counsel, and (ii) the Office of the White

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<sup>5</sup> See Dep’t of Veterans Affairs, Assistant Sec’y for Info. & Tech., “Processing High-Visibility/Sensitive FOIA Requests (WebCIMS 380797) (Aug. 30, 2007).

<sup>6</sup> See Eliana Johnson, *The Obama Administration’s Newly Political Approach to FOIAs*, NAT’L REV. (June 9, 2015), <http://bit.ly/2Lz2Mcl> (“Agency documents also indicated that . . . the Department of Veterans Affairs has ha[s] sensitive-review procedures, though it’s unclear whether political appointees are involved in the process.”); see also CoA Inst., Press Release, “CoA Institute Sues Treasury for ‘Sensitive’ Records Concealed from Public Disclosure” (Nov. 1, 2016), available at <https://coainst.org/2NZ598U> (“According to information obtained from various agency inspectors general, similar sensitive review policies have been used at . . . the Department of Veterans Affairs.”).

<sup>7</sup> Mem. from Stephen W. Warren, Exec. in Charge & Chief Info. Officer for Info. & Tech., Dep’t of Veterans Affairs, to Under Sec’ys, Assistant Sec’ys, and Other Key Officials regarding Release of FOIA Information (VA IQ Folder 7413064) (Oct. 31, 2013) (attached as Exhibit 3); see also “Leadership,” *Office of Privacy & Records Mgmt.*, DEP’T OF VETERANS AFFAIRS, <http://bit.ly/2OzlzWH> (last visited Aug. 1, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> For purposes of this request, the term “record” means the entirety of the record any portion of which contains responsive information. See *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).

<sup>10</sup> The term “present” should be construed as the date on which the VA begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

House Counsel concerning the processing of FOIA requests containing “White House equities.”<sup>11</sup>

3. All communications between (i) the VA Office of Privacy and Records Management, Office of FOIA Service, and/or Office of General Counsel, and (ii) the VA Office of Inspector General concerning any audit, investigation, inspection, evaluation, or inquiry into the involvement of non-career officials in the FOIA process (*e.g.*, reviewing or approving proposed FOIA productions, *etc.*). The time period for this item of the request is September 1, 2015 to the present.

As set forth in the VA’s FOIA regulations, CoA Institute respectfully requests that portions of this request be referred to other VA Central Office components, including the Office of the General Counsel or the Office of Inspector General, as necessary.<sup>12</sup>

### **Request for a Public Interest Fee Waiver**

CoA Institute requests a waiver of any and all applicable fees. The FOIA requires the VA to furnish the requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>13</sup>

In this case, the requested records will unquestionably shed light on the “operations or activities of the government,” namely, the VA’s policies for handling “sensitive,” “high visibility,” or “politically charged” FOIA requests. Such “sensitive review” FOIA processes have led to impermissible politicization at other agencies, and they have prompted multiple congressional investigations and FOIA lawsuits.<sup>14</sup> The public has a right to view these records. Disclosure is likely to “contribute significantly” to public understanding because, to date, the records have not

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<sup>11</sup> See *White House FOLA Obstruction*, COA INST., <http://bit.ly/2r0hBub> (last visited Aug. 1, 2018); see also Mem. from Gregory Craig, Counsel to the President, The White House, to All Exec. Dep’t & Agency Gen. Counsels regarding Document Requests (Apr. 15, 2009), available at <https://coainst.org/2uz2NWT>.

<sup>12</sup> See 38 C.F.R. § 1.555(a), (c).

<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 38 C.F.R. § 1.561(n)(2)(i)–(ii); see also *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

<sup>14</sup> See, e.g., Johnson, *supra* note 6; COA INST., GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://coainst.org/2AEWiE2>; see also *EPA responds to House OGR Democrats, arguing FOLA “sensitive review” originated with the Obama Administration*, COA INST. (July 19, 2018), <https://coainst.org/2O2NMUJ>; *EPA Chief of Staff describes agency’s sensitive review process for “politically charged” FOLA requests*, COA INST. (July 16, 2018), <https://coainst.org/2muw1BU>; *New Records Reveal the FAA Has Been Tracking FOLA Media Requesters*, COA INST. (May 16, 2018), <https://coainst.org/2mZ6aSO>; *NOAA Records Demonstrate Expansion of Sensitive Review FOLA Procedures*, COA INST. (Mar. 12, 2018), <http://coainst.org/2tFnLp5>; *Politicizing FOLA review at the EPA and Interior*, COA INST. (Dec. 19, 2017), <https://coainst.org/2O1MucF>; *DHS Watchdog Claims Political Appointees No Longer Politicizing FOLA*, COA INST. (Oct. 20, 2017), <http://coainst.org/2j9dbT7>; *CLIA too busy for transparency*, COA INST. (Aug. 11, 2016), <http://coainst.org/2iDH0qO>; *White House and Treasury Department Politicize FOLA*, COA INST. (June 24, 2013), <http://coainst.org/2A4igPr>; *FOLA Follies: HUD Flags Sensitive Freedom of Information Act Requests for Extra Scrutiny; Political Appointees Involved*, COA INST. (July 31, 2013), <http://coainst.org/2kbV4Ix>.

been made publicly available. CoA Institute intends to educate the interested public about the processing of “sensitive” FOIA requests at the VA.

CoA Institute has the intent and ability to make the results of this request available to a reasonably broad public audience through various media. CoA Institute staff has considerable experience and expertise in other areas of government oversight, investigative reporting, and federal public interest litigation. Its professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and intend to share the resulting analysis with the public, whether through CoA Institute’s regularly published online newsletter, memoranda, reports, or press releases.<sup>15</sup> Additionally, CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and, accordingly, it has no commercial interest in making this request.

### **Request to Be Classified as a Representative of the News Media**

For fee purposes, CoA Institute also qualifies as a “representative of the news media.”<sup>16</sup> As the D.C. Circuit has held, the “representative of the news media” test is properly focused on the requestor, not the specific request at issue.<sup>17</sup> CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. CoA Institute does not merely make raw information available to the public, but rather distributes distinct work product, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.<sup>18</sup> These distinct works are distributed to the public through various media, including CoA Institute’s website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

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<sup>15</sup> See *Cause of Action*, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

<sup>16</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 38 C.F.R. § 1.561(b)(7).

<sup>17</sup> See *Cause of Action*, 799 F.3d at 1121.

<sup>18</sup> COA INST., *EVADING OVERSIGHT: THE ORIGINS AND IMPLICATIONS OF THE IRM CLAIM THAT ITS RULES DO NOT HAVE AN ECONOMIC IMPACT* (2018), <http://coainst.org/2mgpYAu>; CoA Inst., *Documents Reveal Special Interest Groups Lobbied HUD for Mortgage Settlement Funds* (Aug. 8, 2017), <http://coainst.org/2yLaTyF>; CoA Inst., *The GSA Has No Records on its New Policy for Congressional Oversight Requests* (July 26, 2017), <http://coainst.org/2eHooVq>; COA INST., *SENSITIVE CASE REPORTS: A HIDDEN CAUSE OF THE IRS TARGETING SCANDAL* (2017), <http://coainst.org/2y0fbOH>; COA INST., *INVESTIGATIVE REPORT: PRESIDENTIAL ACCESS TO TAXPAYER INFORMATION* (2016), <http://coainst.org/2d7qTRY>; James Valvo, *There is No Tenth Exemption* (Aug. 17, 2016), <http://coainst.org/2dojhBt>; CoA Inst., *CLA too busy for transparency* (Aug. 11, 2016), <http://coainst.org/2mtzhHP>; *Hearing on Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years Before the S. Comm. on Homeland Sec. & Gov’t Affairs*, 114th Cong. (June 3, 2015) (statement of Daniel Z. Epstein, Cause of Action Inst.), <http://coainst.org/2mrwHr1>; COA INST., *2015 GRADING THE GOVERNMENT REPORT CARD* (2015), <http://coainst.org/2as088a>; *Hearing on Potential Reforms to the Freedom of Information Act (FOIA) Before the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. (Feb. 27, 2015) (statement of Daniel Z. Epstein, Exec. Dir., Cause of Action Inst.), <http://coainst.org/2lLsph8>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), <http://coainst.org/2aj8sm5>; COA INST., *GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (2014), <http://coainst.org/2aFWxUZ>; see also CoA Institute, *Newsletters*, <http://causeofaction.org/media/news/newsletter/>.

The statutory definition of a “representative of the news media” contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>19</sup> In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute’s news media status in connection with its FOIA requests.<sup>20</sup>

### **Record Preservation Requirement**

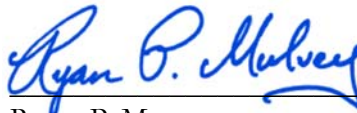
CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.<sup>21</sup>

### **Record Production and Contact Information**

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

Sincerely,



RYAN P. MULVEY  
COUNSEL

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<sup>19</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>20</sup> See, e.g., FOIA Request No. 2018-HQFO-01215, Dep’t of Homeland Sec. (July 10, 2018); FOIA Request No. CFA2018-05, U.S. Comm’n for Fine Arts (June 25, 2018); FOIA Request F-133-18, U.S. Agency for Int’l Dev. (Apr. 11, 2018); FOIA Request 18-HQ-F-487, Nat’l Aeronautics & Space Admin. (Apr. 11, 2018); FOIA Request 1403076-000, Fed. Bureau of Investigation (Apr. 11, 2018); FOIA Request 201800050F, Exp.-Imp. Bank (Apr. 11, 2018); FOIA Request 2016-11-008, Dep’t of the Treasury (Nov. 7, 2016); FOIA Requests OS-2017-00057 & OS-2017-00060, Dep’t of Interior (Oct. 31, 2016); FOIA Request 2017-00497, Office of Personnel Mgmt. (Oct. 21, 2016); FOIA Request 092320167031, Ctrs. for Medicare & Medicaid Servs. (Oct. 17, 2016); FOIA Request 17-00054-F, Dep’t of Educ. (Oct. 6, 2016); FOIA Request DOC-OS-2016-001753, Dept. of Commerce (Sept. 27, 2016); FOIA Request 2016-366-F, Consumer Fin. Prot. Bureau (Aug. 11, 2016); FOIA Request F-2016-09406, Dept. of State (Aug. 11, 2016).

<sup>21</sup> See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); 38 C.F.R. § 1.560; *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

# EXHIBIT

## 1

JOHNNY ISAKSON, GEORGIA,  
CHAIRMAN  
JERRY MORAN, KANSAS  
JOHN BOOZMAN, ARKANSAS  
DEAN HELLER, NEVADA  
BILL CASSIDY, LOUISIANA  
MIKE ROUNDS, SOUTH DAKOTA  
THOM TILLIS, NORTH CAROLINA  
DAN SULLIVAN, ALASKA

JON TESTER, MONTANA,  
RANKING MEMBER  
PATTY MURRAY, WASHINGTON  
BERNARD SANDERS, VERMONT  
SHERROD BROWN, OHIO  
RICHARD BLUMENTHAL, CONNECTICUT  
MAZIE HIRONO, HAWAII  
JOE MANCHIN III, WEST VIRGINIA

# United States Senate

COMMITTEE ON VETERANS' AFFAIRS

WASHINGTON, DC 20510

July 25, 2018

Peter O'Rourke  
Acting Secretary of Veterans Affairs  
810 Vermont Ave, NW  
Washington, DC 20420

Acting Secretary O'Rourke,

As a Department that frequently highlights its transparency, the Department of Veterans Affairs (VA) must also place a high priority on timely responses to Freedom of Information Act (FOIA) requests from the media, veterans, and other citizens. As you know, this process must be free from influence or interference by political appointees. Documents, emails from government servers, and other material that is responsive must be provided to the requestor, regardless of whether it is politically advantageous, embarrassing, or could shed light on errors or failures.

We are aware that the vast majority of FOIA requests that come to the Department are from veterans or family members of veterans seeking medical records, and that those generally are handled appropriately at local facilities. However, for those FOIA requests that come to VA central office that require significant document production and/or emails sent from government accounts, we would ask that you answer the following questions:

- Who in the Department is responsible for ensuring appropriate and complete response to FOIA requests? Additionally, please provide the same information for each administration and staff office.
- Who is responsible for searching and pulling emails or other documentation for responsive material? How does the Department ensure that an employee provides a complete production of responsive materials? What accountability is there for an individual who does not provide responsive material? If a FOIA Officer or FOIA staff believes they are not receiving full cooperation from employees, please describe the process in place for the FOIA staff to ensure they receive responsive information.
- Please provide an outline of the process, including for each step in the process, the individuals or individual positions responsible for managing it and the length of time it takes to do so. In particular, how does the Department ensure thorough responses when responsive materials are held by different organizations?
- Prior to responding to a FOIA, is there a notification period provided to any internal audiences? If so, please provide the list of positions who currently receive the notification and any instances from 2017 or 2018 in which they have requested an outgoing response be held.

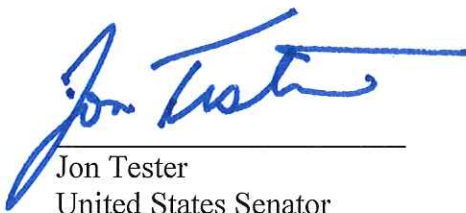


- Please describe any internal reporting that is provided to Department or administration and staff office leadership regarding the timeliness of FOIA productions. Please provide examples of reports or other documents provided to Department-level leadership for 2017 and 2018.
- Who in the Department, as well as each administration and staff office is responsible for determining what is included and excluded in the final production, as well as redactions and the appropriateness of those redactions?
- What role do any political appointees play in the FOIA process whether at the Department or subordinate level?
- Please provide information regarding the Department's actions to improve timeliness and thoroughness in responding to requests. Does the Department or its subordinate entities utilize any multi-track systems related to request complexity or use any other mechanisms to provide quicker responses?
- Please provide the following information for the 10 oldest outstanding requests and 10 oldest appeals: date received, administration or office, whether the requestor is an organization or individual, whether a partial disclosure has been made, and the basis for denial.
- Please provide the average length of time for providing FOIA responses from FY 2016, FY 2017, and FY2018 disaggregated by administration and staff office.
- How are requesters able to track the status of their pending requests?
- Please provide information about whether or not there has been any increase in the number of or complexity of requests received by the Department or its administrations or staff offices, and how the Department has responded to ensure these requesters do not experience long waits.
- Please provide information about how the Department determines whether FOIA Officers or staff are adequately trained and resourced.

We look forward to better understanding the process for FOIA productions within the Department, and to clarify the roles and responsibilities of those participating in the productions. We are especially interested in any oversight mechanisms that may be in place to ensure that responsive emails are turned over by employees.

Thank you for your timely response.

Sincerely,



Jon Tester  
United States Senator



Richard Blumenthal  
United States Senator





Sherrod Brown  
United States Senator



Tammy Duckworth  
United States Senator



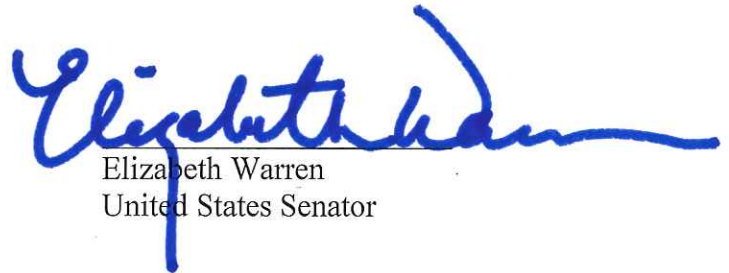
Heidi Heitkamp  
United States Senator



Mazie K. Hirono  
United States Senator



Tim Kaine  
United States Senator



Elizabeth Warren  
United States Senator

# EXHIBIT

## 2

JOHNNY ISAKSON, GEORGIA,  
CHAIRMAN  
JERRY MORAN, KANSAS  
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BILL CASSIDY, LOUISIANA  
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RICHARD BLUMENTHAL, CONNECTICUT  
MAZIE HIRONO, HAWAII  
JOE MANCHIN III, WEST VIRGINIA

# United States Senate

COMMITTEE ON VETERANS' AFFAIRS  
WASHINGTON, DC 20510

July 25, 2018

Honorable Michael J. Missal  
Inspector General  
Department of Veterans Affairs  
810 Vermont Ave, NW  
Washington, DC 20420

Mr. Missal,

Recent events at the Department of Veterans Affairs (VA) have raised questions about the extent of political influence that exists over what should be nonpolitical and non-partisan processes. One of these processes is the review of documents requested through the Freedom of Information Act (FOIA) process.


This longstanding disclosure requirement by Federal Agencies allows citizens to demand transparency from their government. In many cases, this is the mechanism through which family members have access to medical records of their loved ones. In other cases, it is the route through which media and other interested parties get answers and information after their requests to VA about policies and initiatives have gone unanswered.

The Committee has recently been told of concerns about the role of political appointees in the FOIA process, and their refusal to turn over emails from their government accounts that would be considered responsive. As a result, we are interested in getting an assessment of the role that political appointees play in the FOIA process, what types of oversight exist to ensure employees are providing all responsive material, and who makes determinations about what is or is not responsive to a request, and therefore, what is provided.

We request that you and your team look into this process at VA, to ensure that all responsive material is being provided, regardless of whether it is politically advantageous, embarrassing, or could shed light on errors or failures.

Thank you for your consideration.

Sincerely,

  
Jon Tester  
United States Senator  
Richard Blumenthal  
United States Senator



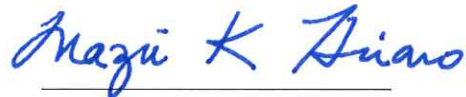
Sherrod Brown  
United States Senator



Tammy Duckworth  
United States Senator



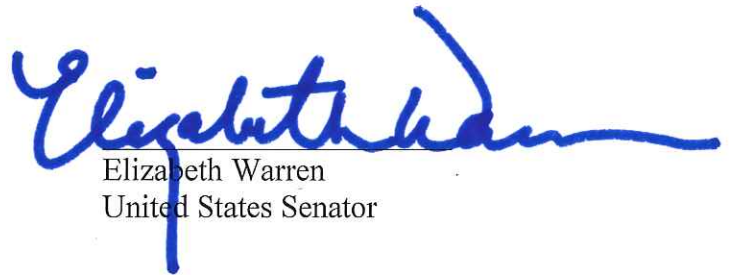
Heidi Heitkamp  
United States Senator



Mazie K. Hirono  
United States Senator



Tim Kaine  
United States Senator



Elizabeth Warren  
United States Senator

# EXHIBIT

## 3

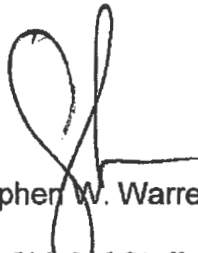


**Department of  
Veterans Affairs**

# Memorandum

Date: OCT 31 2013  
From: Executive in Charge and Chief Information Officer for Information and Technology (005A)  
Subj: Release of FOIA Information (VA IQ Folder 7413064)  
To: Under Secretaries, Assistant Secretaries, and Other Key Officials

1. Effective immediately, all responses to FOIA requests by VACO offices and field components will be reviewed by the designated officials prior to release to the public. This guidance will be reviewed in 90 days.
2. The designated officials are:  
VBA FOIA Officer for VBA Release  
VHA FOIA Officer for VHA Release  
NCA FOIA Officer for NCA Release  
Director, VA FOIA Service for all staff offices.
3. This temporary requirement to review FOIA releases does not apply to first and third party Privacy Act requests.
4. The purpose of the review will be for sensitivity determination after the request has been perfected and responsive records have been identified. Each of the designated review offices will develop specific procedures for review for their respective components. All field components are expected to follow these procedures.
5. The designated officials are required to approve FOIA requests prior to the release by the responsible office. Under no circumstances will a FOIA Officer release records without approval of the designated officials.
6. For additional information or any questions, please contact John Buck at 202-632-7385; [john.buck1@va.gov](mailto:john.buck1@va.gov) or Jim Horan at 202-632-7453; [james.horan@va.gov](mailto:james.horan@va.gov).



Stephen W. Warren

cc: Chief of Staff (00A)