



Office of the General Counsel
Washington DC 20420

In Reply Refer To: ILG024
OGC Case #: 98779

December 4, 2018

Ryan Mulvey, Esq.
Counsel
Cause of Action Institute
1875 Eye Street NW, Suite 800
Washington, DC 20006
ryan.mulvey@causeofaction.org

Re: FOIA Request No.: 18-10934-F

Dear Mr. Mulvey:

This letter is in response to your appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, dated August 16, 2018, of the Department of Veteran Affairs (VA) Office of the Secretary’s (OSVA) FOIA Officer decision. After careful legal review, **your appeal is being remanded back to the OSVA FOIA Office for further processing for the reasons stated below.**

By way of background, in a letter dated August 1, 2018, you sent the following request for documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to the OSVA FOIA Service:

“Pursuant to the FOIA, 5 U.S.C. § 552, CoA Institute requests access to following agency records for the period of January 20, 2017 to the present:

- 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 House Counsel concerning the processing of FOIA requests containing "White House equities."

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."

In the initial agency decision (IAD) dated August 7, 2018, the OSVA FOIA Officer, Richard Ha, granted your request by stating "the OSVA FOIA Officer searched through his paper and electronic FOIA folders for responsive records relating to 'sensitive review' FOIA requests. OSVA identified a February 11, 2014, Memorandum titled 'Release of Freedom of Information Act (FOIA) Information.' OSVA releases this two (2) page Memorandum in full without redactions."

You appealed that decision to this office. Your appeal was received on August 16, 2018.

We have thoroughly reviewed your submission under the provisions of the FOIA, which states that federal agencies must disclose records requested unless they may be withheld in accordance with one or more of nine statutory exemptions. 5 U.S.C. § 552(b). At this time, we cannot conclude that the search for responsive information was reasonable.

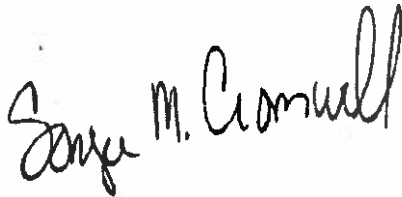
VA regulations implementing the FOIA provide that the "FOIA Officer must maintain copies of records that are the subject of a pending request, appeal, or lawsuit under the FOIA. A copy of all records shall be provided promptly to the Office of the General Counsel upon request." 38 C.F.R. §1.560(b). On August 16, 2018, we contacted the OSVA FOIA Officer and requested a complete copy of the administrative record. While the FOIA Office has worked with the Office of General Counsel to provide us with documents requested, based on the records and responses that our office received, we cannot conclude that the search for responsive information was reasonable.

Accordingly, we are remanding your request back to the OSVA FOIA Office for further processing. Specifically, the FOIA Officer should reconsider your request, confirm with you the scope of that request as necessary, use appropriate search terms

and search all reasonable databases, obtain and review the responsive information, list each responsive document, and provide a superseding decision with regard to any additional information that might be responsive.

Ultimately, should you disagree with the response once the superseding agency decision(s) is rendered, you may re-open the appeal by writing to the Office of General Counsel (024), 810 Vermont Avenue, NW, Washington, DC 20420. Please include the above referenced case number on any future communication in this regard.

Sincerely yours,

A handwritten signature in black ink that reads "Sonya M. Cromwell". The signature is written in a cursive, flowing style.

Sonya Cromwell
Chief Counsel, Information Law Group

cc: FOIA Officer – Richard Ha
VA FOIA Liaison –John Buck, Director, VA FOIA Service