VA FOIA SERVICE

REVIEW OF VA FOIA PROGRAM

Freedom of Information Act (FOIA) General Information

- Freedom of Information Act (FOIA) is a law that gives any person the right, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions

- Any individual or company, or agency may make a FOIA request except for:
  - Federal agencies.
  - Fugitives from justice when the requested records relate to the requestor's fugitive status.
  - Foreign governments (from intelligence agencies)

- All agencies within the executive branch of the federal government, including the Executive Office of the President and independent regulatory agencies.

VA Freedom of Information Act (FOIA) Processing

- VA FOIA Program is managed in a de-centralized manner with three main components: Veterans Health Administration, National Cemetery Service (NCA), and Veterans Benefit Administration (VBA). Along with more than 20 staff offices these components and staff offices comprise the VA FOIA program.

- VA FOIA Service controls the policy, reporting and FOIAXpress and operates as central point for receipt of FOIA requests either paper or electronic and performs initial review, processing assistance to other VA FOIA offices.

- The VA FOIA program is operating under current federal and departmental guidelines, including; *The Freedom of Information Act, as amended 5 U.S.C. 552, The FOIA Improvement Act of 2016, Department of Veterans Affairs, Release of Information From Department of Veterans Affairs Records, 38 CFR Parts 1 and 2*, President Obama's 2008 memorandum, and Attorney General's 2008 memorandum.

FOIAXpress Application

- FOIAXpress offers real-time processing and data support for the VA FOIA program
  - Used throughout VA to document FOIA requests and responses
  - Used as authoritative source for reporting requirements
  - Serves as the official tracking system for all FOIA Department-wide (does not track OIG FOIA requests but those are tracked by the OIG)

FOIA Exemptions and Statutes

The **Bolded** Exemptions are those that are most used in VA responsive releases

- Exemption 1 exempts Classified Information
- **Exemption 2 Protects records related solely to the internal personnel rules and practices of an agency**
- **Exemption 3: Allows the withholding of information if required by statute. (e.g., Title 38 US Code exempts Veterans names and addresses from being released under FOIA)**
- **Exemption 4: Concerns release of a corporation's trade secrets or business secrets**
- **Exemption 5: Exempts information subject to deliberative process (the process by which the agency makes decisions on policy or other matters) and lawyer client privilege**
- **Exemption 6: Exempts records that involve personal privacy**
- **Exemption 7: Exempts records concerning law enforcement activities**
- Exemption 8: Exempts records maintained by financial institutions
- Exemption 9: Exempts information on oil and gas wells and water wells

FOIA Improvement Act of 2016

- On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016 which is the most comprehensive law to address amending the FOIA since the OPEN Government Act of 2007.

- The Act addresses a range of procedural issues including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process.

- The law became effective on the date of signature, June 30, 2016.

FOIA Improvement Act of 2016 Highlights

Extending Time Limits – New Requirement when extending deadline beyond an additional ten days:

- Whenever agencies extend the time limits by more than ten additional working days, in the written notice to the requester the agency "must notify the requester of the right to seek dispute resolution services from the Office of Government Information Services."

Response Letters – New Required Elements for Response Letters

- When agencies make their determinations on requests they must offer the services of their FOIA Public Liaison and must notify requesters of their services provided by the Office of Government Information Services (OGIS). They must also allow requesters a period of at least 90 days within which to file an administrative appeal.
- Specifically, agencies must include in their notification to the requester:

✓The "right of such person to seek assistance from the FOIA Public Liaison of the agency;" and,
✓The "right to appeal within a period of time "that is not less than 90 days after the date of such adverse determination"; and,
✓The "right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services."

FOIA Improvement Act of 2016 Highlights

The “Rule of 3” (Proactive Disclosure) is Codified for Frequently Requested Records:

- Agencies are now required to “make available for public inspection in an electronic format ‘records’ that have been requested 3 or more times.”

Codification of Department of Justice foreseeable harm standard

- Agencies “shall withhold information” under the FOIA “only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”
- Agencies shall “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible.”
- Agencies shall “take reasonable steps necessary to segregate and release nonexempt information.”
- This provision does not require disclosure of information “that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under Exemption 3.”

VA (FOIA) Program Information

- VA FOIA backlog at end of FY 2017 was 3356 out of over 34,002 requests received in FY 2017 for an on time response rate of 98%.
- In comparison to other federal agencies FOIA programs that receive more than 30,000 requests, the VA has the lowest number of backlogged cases.
- VA uses an automated system (FOIAXpress) as the tracking system to compile and track responses. FOIAXpress generates unique identifiers and captures metrics, used by management on a monthly basis.
- VA's FOIA regulations are updated to incorporate the most recent legislation affecting FOIA, The Presidential Directive on FOIA and the Attorney General's Memorandum

Substantial FOIA Request Notification Process

Senior Leadership is alerted to an incoming request that may result in media or Congressional attention. This notification is for information only and will not impact any processing or release of responsive records. Step by Step process for working Substantial FOIA requests:

- FOIA request received by FOIA Officer anywhere in VA
- Receiving FOIA Officer makes Substantial FOIA Request determination and forward a notification package to OSVA, OPIA, OGC, OCLA, OIT for awareness
- OSVA FOIA Officer acknowledges receipt of the Substantial FOIA Request notification package
- The OSVA FOIA Officer works with the receiving FOIA Officer to clarify and/or determine if additional information is required
- FOIA request is processed in accordance with FOIA regulations

VA Chief FOIA Officer

- FOIA requires each agency to designate a senior official at the Assistant Secretary or equivalent level to act as the agency's Chief FOIA Officer. The statute gives the agency Chief FOIA Officer several specific responsibilities for ensuring implementation of the statute, oversight and customer service, 5 U.S.C. § 552(j).

VA Chief FOIA Officer

- The Chief FOIA Officer of VA shall, subject to the authority of the head of the VA
  - have VA-wide responsibility for efficient and appropriate compliance with this section;
  - monitor implementation of this section throughout the VA and keep the head of VA the chief legal officer of VA, and the Attorney General appropriately informed of the VA's performance in implementing this section;
  - recommend to the head of VA such adjustments to VA practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

VA Chief FOIA Officer

- Review and report to the Attorney General, through the head of VA, at such times and in such formats as the Attorney General may direct, on VA's performance in implementing this section;
- Facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both VA's handbook issued under subsection (g), and VA's annual report on this section, and by providing an overview, where appropriate, of certain general categories of VA records to which those exemptions apply;
- Offer training to VA staff regarding their responsibilities under this section;
- Serve as the primary VA liaison with the Office of Government Information Services and the Office of Information Policy; and
- Designate 1 or more FOIA Public Liaisons.

VA Chief FOIA Officer

- The Chief FOIA Officer VA shall review, not less frequently than annually, all aspects of the administration of this section by VA to ensure compliance with the requirements of this section, including —
  - VA regulations;
  - Disclosure of records
  - Assessment of fees and determination of eligibility for fee waivers;
  - Timely processing of requests for information under this section;
  - Use of exemptions
  - Dispute resolution services with the assistance of the Office of Government Information Services or the FOIA Public Liaison.