



U.S. Department of Veterans Affairs
Office of General Counsel
Information and Administrative Law Group

810 Vermont Avenue NW
Washington DC 20420
www.va.gov/ogc

August 8, 2022

In Reply Refer to: 024
FOIA Request: 22-06816-F

Mr. Walter Ochinko
Apartment 13
1320 13th Street, NW
Washington, DC 20005
Email: walter@vetsedsuccess.org

Dear Mr. Ochinko:

This is the Initial Agency Decision (IAD) to your June 27, 2022 Freedom of Information Act (FOIA) request, to the Department of Veterans Affairs (VA), Central Office FOIA Service. You requested a copy of the following records on be provided to Veterans Education Success:

- In October 2021, I requested copies of waivers for the requirements of 38 U.S.C. 3683 that were requested by, approved for, or denied for VA employees who work on the GI Bill program (FOIA request 22-00267-F). On February 24, 2022, I received redacted PDF files of 24 such applications received by VA's OGC between July 2018 and December 2021. Since February 28, 2022, I have sent several emails to Gregory Draves, the OGC FOIA officer who provided the 24 waiver applications seeking additional information on them but he never responded. As a result, I am submitting a new FOIA request to obtain the following information. • Eight of the 24 applications were marked pending and 2 stated that they were either "sent to SECVA for review" or "supervisor confirmed." Seven of the 10 applications were received in 2018 and 1 was from 2019: (1) which, if any, of the 10 applications were denied, including the reason for the denial; (2) which, if any, of the 10 applications are still pending, including the reason they are still pending; (3) copies of the 10 waivers showing their final status (e.g., approved, denied, etc.). I am attaching an excel file that identifies the 10 pending waivers. The number in Col. A is the page number in the PDF file for each pending application. • Copies of any memos, emails, or Power Point slides that provide guidance to waiver applicants or reviewing officials on completing the waivers. • Please provide a blank copy of the waiver application, which I assume is completed online, so that I can see the options in the drop-down menus. • Please provide the date that the waiver application form was made available for use. • Can you confirm that the waiver application is only for VA employees and if so, is there a separate form for SAA staff who must also obtain waivers? The Supervisor Acknowledgement portion of the form suggests the form is limited to VA employees because it states "Please enter your facility head or if you are not a VA facility, the Director Education Service (Charmain Bogue). Facility heads are Medical Center Directors, Regional Office Directors, and National Cemetery Directors."

On June 28, 2022, your request was received by the Office of General Counsel' FOIA Officer and assigned FOIA Tracking number **22-06816-F** for processing.

On June 28, 2022, the Office of General Counsel, contacted the Ethics Law Group and requested that they conduct a search for the information that you requested.

A total of 115 pages of responsive records were reviewed. I have determined that 68 pages are releasable in their entirety and 47 pages are being released in part pursuant to Title 5 U.S.C. § 552(b)(6), FOIA Exemption 6.

Furthermore, please find the response to your questions that mentioned in your request:

1. **Eight of the 24 applications were marked pending and 2 stated that they were either "sent to SECVA for review" or "supervisor confirmed." Seven of the 10 applications were received in 2018 and 1 was from 2019: (1) which, if any, of the 10 applications were denied, including the reason for the denial; (2) which, if any, of the 10 applications are still pending, including the reason they are still pending; (3) copies of the 10 waivers showing their final status (e.g., approved, denied, etc.). I am attaching an excel file that identifies the 10 pending waivers. The number in Col. A is the page number in the PDF file for each pending application.**
 - a. None of the 10 applications were denied. The requests were not finalized because employees responsible for reviewing the requests and acting upon the requests did not complete their reviews.
 - b. Five requests are still pending. The current status of each request is as follows:
 - i. P.1: The employee submitted information referring to their current VA duties, while the requirement is to provide information referring to their VA duties as they were at the time of the for-profit connection. The employee has been asked to submit a corrected waiver request.
 - ii. P.8 and P.74: There was no page 74, but we believe that the request refers to two waiver requests submitted by the same employee. Both requests are pending with the Acting Under Secretary for Benefits, and the Office of General has recommended that both requests be granted.
 - iii. P.21: This individual is no longer employed at VA.
 - iv. P.28: This request is pending with the employee's supervisor.
 - v. P.32: Approved
 - vi. P.55: This request is pending with the Acting Under Secretary for Benefits, and the Office of General has recommended that the request be granted.
 - vii. P.52: Approved
 - viii. P.68: Approved
 - ix. P.36: Approved
 - c. For the four waiver requests that were approved, copies are enclosed.
2. **Copies of any memos, emails, or Power Point slides that provide guidance to waiver applicants or reviewing officials on completing the waivers. Please provide a blank copy of the waiver application, which I assume is completed online, so that I can see the options in the drop-down menus.**
 - a. Requested documents enclosed.

- b. Providing a copy of the waiver application that lists all the different drop-down variations is not feasible. Instead, information for the various fields is below.
 1. The “Employing Office” drop-downs lists all of VA’s offices and facilities.
 2. The “FPEI” drop-down has options provided by VBA. A list of those options is attached.
 3. The “FPEI Connection Status and Dates” drop-down has the following options: past, current, and future. This refers to whether the employee’s FPEI connection is in the past, is ongoing, or will begin in the future.
 4. The “Waiver Criteria” drop-down has yes and no options.
3. **Please provide the date that the waiver application form was made available for use.** April 2018
4. **Can you confirm that the waiver application is only for VA employees and if so, is there a separate form for SAA staff who must also obtain waivers?** The waiver request form is only for VA employees. There is no specific form for an SAA employee waiver. If an SAA employee required a waiver, the SAA would contact VBA Education Service directly to request a waiver.

FOIA Exemption 6 exempts from disclosure of personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public’s right to disclosure against the individual’s right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test. Specifically, the information being withheld, as indicated on the enclosed documents, under FOIA Exemption 6, consists of names, identities, email addresses, VA usernames, phone numbers, cellular numbers, of federal civilian employees and private citizens; we do however release the names of VA Senior Executives. Federal civilian employees and private citizens retain a significant privacy interest under certain circumstances, such as in instances where the release of their information could represent a threat to their well-being, harassment, or their ability to function within their sphere of employment. The federal civilian employees and private citizens whose information is at issue have a substantial privacy interest in their personal information. In weighing the private versus the public interest, except names of VA Senior Executives, we find that there is no public interest in knowing the names, identities, email addresses, VA usernames, phone numbers, cellular numbers, of federal civilian employees and private citizens. The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public’s understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public’s need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the records, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest of the individuals whose names are redacted. The protected information has been redacted and (b)(6) inserted. “Withholding a telephone number or e-

mail address, alone, is not sufficient to protect that [privacy] interest; alternate means of contacting and harassing these employees would be readily discoverable on the Internet if this court ordered their names disclosed.” Long v. Immigration & Customs Enf’t, 2017 U.S. Dist. LEXIS 160719 (D.C. Cir. 2017).

FOIA Mediation

For any questions regarding the processing of this request, you have the right to seek assistance from the VA FOIA Public Liaison or the Office of Government Information Services (OGIS). As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services. Similarly, as part of the FOIA Improvement Act of 2016, VA established a FOIA Public Liaison to offer mediation services. You may contact OGIS and the VA Public Liaison in any of the following ways:

Office of Government Information Services:

E-mail Address: ogis@nara.gov

Fax: 202-741-5769

National Archives and Records Administration

Room 2510

8601 Adelphi Road

College Park, MD 20740-6001

VA FOIA Public Liaison:

Name: Michael Sarich

E-mail: vacofiaservice@va.gov

Appeal Rights

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, N.W.

Washington, D.C. 20420

E-mail: ogcfoiaappeals@va.gov

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

gregory A.

DRAVES 890714

Digitally signed by gregory
A. DRAVES 890714
Date: 2022.08.08 11:11:21
-04'00'

Greg Draves

FOIA/Privacy Officer
Office of General Counsel

Enclosure: 115pages