

EXHIBIT 1

JOSEPH E. SCHMITZ, PLLC

INTEGRITY • TRANSPARENT ACCOUNTABILITY • DISCIPLINED TEAMWORK • INDEPENDENCE

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Bethesda, MD 20816
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October 8, 2013

DoD Chief FOIA Officer
ATTN: Mr. Michael L. Rhodes, Acting Director of Administration
and Management (DA&M), Office of the Secretary of Defense
Defense Freedom of Information Office
1155 Defense Pentagon
Washington, DC 20301-1155

Subj: Expedited FOIA Request Relating to Robert W. Rodriguez' "Appeal to the Secretary of Defense" Pursuant to DoD Directive 7050.06, "Military Whistleblower Protection," implementing Military Whistleblower Protection Act, 10 U.S.C. §1034

Dear Mr. Rhodes:

On behalf of Robert W. Rodriguez, whom this law firm represents, and pursuant to the Department of Defense's expedited procedures under the Freedom of Information Act (FOIA), please provide any and all information related to "materials [Robert W. Rodriguez] submitted in this appeal [to the Secretary of Defense pursuant to 10 U.S.C. 1034(g)]," as described in the enclosed letter from P.M. Tamburrino, dated April 11, 2013. In particular, please provide on an expedited basis: (1) what the enclosed letter described as, "All of the materials [we] submitted in this appeal, on September 28, 2013, and October 22, 2012, respectively, as well as the prior reviews of the Army Board for Correction of Military records (ABCMR)," which "were carefully examined before a decision was made"; and (2) any and all documentation, including electronic correspondence, related in any way to what the enclosed letter describes as Mr. Tamburrino's "examin[ation and] review of this evidentiary record." As the materials were presumably reviewed by Mr. Tamburrino in his office, they should all be readily available.

While we believe that the information described above should be produced in its entirety, if any of the requested documents are withheld, please: (a) identify that document, the recipients, describe the basis for it being withheld, and explain any specific statutory exemptions that you think justify (or justifies) any such withholding of information; and (b) release any "reasonably segregable portions." DoD 5400.7-R, "DOD Freedom of Information Act Program," ¶C5.2.4 (September 1998). We agree to pay any and all reasonable copying charges associated with this request. If such charges are likely to exceed \$50, please contact the undersigned in advance of incurring such charges.

Pursuant to Paragraph C1.5.4.3 ("Expedited Processing") of DoD 5400.7-R, *supra*, the undersigned certifies that the information requested implicates an "imminent loss of substantial due process rights" (*id.*, ¶C1.5.4.3.4) in that our client's Petition for Review of the enclosed letter is before the U.S. Court of Appeals for the D.C. Circuit on Mr. Tamburrino's motion for dismissal on jurisdictional grounds. *See Rodriguez v. Tamburrino*, No. 13-1192 (D.C. Circuit). Accordingly, we respectfully requests expedited processing of this information request.

Please feel free to call me at 703-992-3095 if you have any questions or concerns.

Yours truly,

Joseph E. Schmitz

ENCLOSURE: As Stated



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

The Honorable Joseph E. Schmitz
5502 Parkston Road
Bethesda, MD 20816

APR 11 2013

Dear Mr. Schmitz:

This responds to your correspondence dated February 27, 2013, on behalf of your client, Lieutenant Colonel Robert W. Rodriguez (Retired), concerning his recent appeal under Title 10, United States Code, Section 1034, of the Military Whistleblower Protection Act (MWPA).

In response to your inquiry regarding the proper authority to review this appeal, please note that the Chief of Staff for the Under Secretary of Defense (Personnel and Readiness (P&R)), a member of the Senior Executive Service, was designated as the successor of the Deputy Under Secretary of Defense (Program Integration) for the purposes of Paragraph 5.2, of Department of Defense Directive 7050.06, "Military Whistleblower Protection," with decisional authority to review MWPA appeals, on behalf of the Secretary of Defense, by the Acting Under Secretary of Defense (P&R), on December 14, 2012.

All of the materials you submitted in this appeal, on September 28, 2012, and October 22, 2012, respectively, as well as the prior reviews of the Army Board for Correction of Military Records (ABCMR), were carefully examined before a decision was made in your client's case. On January 28, 2012, I notified Lieutenant Colonel Rodriguez, based on my review of this evidentiary record, that I did not find the ABCMR acted arbitrarily, capriciously, or contrary to law, or that its determination was unsupported by substantial evidence. A similar courtesy letter was sent to your office which contained a clerical error. We regret the error, and I have attached a copy of the original letter to Lieutenant Colonel Rodriguez, for your records.

As stated in the original correspondence, the decision made on behalf of the Secretary of Defense, is final. Accordingly, no further action will be taken regarding your client's appeal.

Sincerely,

A handwritten signature in blue ink, reading "P.M. Tamburrino", is written over a large, stylized blue circular flourish.

P.M. Tamburrino, SES
Chief of Staff

Attachment:
As stated

cc:
Lieutenant Colonel Robert W. Rodriguez (Retired)
Department of Defense Inspector General
Army Board for Correction of Military Records



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL 28 2015

Lieutenant Colonel Robert W. Rodriguez (Retired)
516 East 86th Street, Apt 6A
New York, NY 10024

Dear Colonel Rodriguez:

This responds to your attorney's correspondence dated September 28, 2012 and October 12, 2012, requesting review of the Army Board for Correction of Military Records (ABCMR) decision on behalf of the Secretary of the Army in your case under the provisions of Department of Defense Directive 7050.06, Military Whistleblower Protection Act (MWPA), paragraph 5.2.

I have considered all of the materials you submitted to me, the ABCMR, and the materials the ABCMR examined in reaching a decision in your case.

I do not find that the Board acted arbitrarily, capriciously, contrary to law, or that its determination was unsupported by substantial evidence. Accordingly, I sustain the Army's decision on behalf of the Secretary of the Army. This action, on behalf of the Secretary of Defense, is final.

Sincerely,

A handwritten signature in black ink that reads "P.M. Tamburrino" with a stylized flourish at the end.

P.M. Tamburrino, SES
Chief of Staff

cc:

Mr. Joseph E. Schmitz, PLLC
Department of Defense Inspector General
Army Board of Corrections of Military Records