

1. This is an action by Plaintiff pursuant to the Freedom of Information Act (hereinafter, "FOIA"), 5 USC § 552, et seq, to order the production of agency records maintained by the VA. Plaintiff seeks the documentation set forth below and seek this Court's assistance to compel production of documents wrongfully withheld from Plaintiff and to vindicate the statutory right to inspect federal agency documents. Plaintiff asserts that there is a "significant public interest in disclosure" of the records requested by Plaintiff.
2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), the Freedom of Information Act, and 28 U.S.C. § 2201, the Federal Declaratory Judgment Act.
3. The government records which Plaintiff requests are the request for, notes of, and report from, a Compensation and Pension Exam conducted (hereinafter, such documents will be collectively referred to as the Plaintiff's "C&P Packet") on/about April 2008 maintained by the VA in a system of records for Veterans making claims for Veterans Disability Compensation and/or Survivor Benefits claims pursuant to Title 38 of the United States Code. Exhibit A (Plaintiff's FOIA Request). The C&P Packet is an essential component of a claim for Service-Connected Disability Compensation under Title 38 as it is a medical opinion by a

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VA Doctor on the question of either/both whether the Veteran has a current disability subject to Title 38 compensation and/or whether the Veteran's current medical condition is "at least as likely as not" related to his military service".

4. The VA has a Duty to Assist the Veteran in his Title 38 Claim by providing a C&P Exam, and without a copy of the C&P Packet, the Plaintiff is substantially limited in his ability to appeal adverse decision. 38 USC 5103A (2012).

II. JURISDICTION AND VENUE.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, 5 U.S.C. § 552. In addition, this Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(b), under which, "the District Court of the United States, in the district in which the complainant resides ... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant", as Plaintiff's residence is in this district.

III. PARTIES.

6. Plaintiff is an individual, and a resident of the State of Utah and resides at 7051 W. Fieldview Dr., West Valley City, Utah, 84128.

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7. Defendant ROBERT MCDONALD is the Secretary of the Department of Veterans Affairs, which is believed to maintain facilities throughout this District.

8. Defendant LEIGH BRADLEY is the General Counsel of the Department of Veterans Affairs.

IV. SERVICE.

9. Defendant ROBERT MCDONALD, Secretary of the Department of Veterans Affairs, may be served by mailing a copy of this compliant and summons by certified mail to the following address: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.

10. Defendant LEIGH BRADLEY, General Counsel of the Department of Veterans Affairs, may be served by mailing a copy of this compliant and summons by certified mail to the following address: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.

11. The United States of America may be served by serving the U.S. Attorney for the district in which this action is brought [U.S. District of Utah Attorney's Office, 111 South Main Street Suite 1800 Salt Lake City, Utah, 84111] and by serving a copy of this complaint and a summons by certified mail to the Attorney General of the United States [U.S. Attorney General, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001].

V. FACTUAL ALLEGATIONS.

12. The FOIA requires U.S. government agencies to promptly make public records available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

13. The FOIA requires an agency to issue a final determination on any such information request within twenty (20) business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i)

14. The FOIA allows an agency to extend this determination deadline, however, by ten (10) working days when "unusual circumstances" exist and when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B).

15. An agency is entitled to only one (1) ten-business day extension. Id. The written notice provided to the requester must specify the specific unusual circumstances justifying the extension and the date on which a final determination is expected to be dispatched. Id.

16. In limited circumstances, the FOIA allows an agency to invoke an extension beyond ten (10) days. To invoke a longer extension, the FOIA requires an agency to provide written notification to the requester that (1) offers the requester an opportunity to limit the scope of the request so that it may be processed within that time limit, or (2) offers the requester an opportunity to arrange with the agency an alternative time frame for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii).

17. Plaintiff served, and the VA received, a FOIA Request on May 18th, 2020 seeking production of Plaintiff's "C&P Packet". Exhibit A.

18. The VA has not fulfilled this request.

19. Plaintiff served a timely FOIA Appeal to the VA OGC on June 29th, 2020, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). See Exhibit B. The United States Postal Service (hereinafter, "USPS") has indicated that the VA OGC signed for this appeal on July 31st, 2020. See, Exhibit C. Neither the VA nor the VA OGC has provided copies of Plaintiff's C&P Exam Packet, despite having actual knowledge

of the statutory deadline to respond within 20 working days from receipt of appeal.

See e.g., Exhibit A; Exhibit B.

VI. FIRST CAUSE OF ACTION.

(FOIA Request for Plaintiff's C&P Exam Packet)

20. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

21. FOIA mandates the disclosure of the documents that Plaintiff seeks in Plaintiff's FOIA request to the VA.

22. The VA has not provided Plaintiff with the records.

23. The VA has not sought extension to the lawful response time under FOIA.

24. No FOIA exemptions apply to this request.

25. No exceptional or unusual circumstances preclude a response to the request within twenty (20) business days of the request.

26. An actual and justiciable controversy exists as to whether the VA has violated the FOIA.

27. Plaintiff seeks declaratory judgment that FOIA entitles Plaintiff to the records it seeks as part of its FOIA request to the VA.

28. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, the VA will continue to violate the rights of Plaintiff and others

similarly situated by maintaining its pattern or practice of unlawfully delaying and/or denying and/or ignoring responses to FOIA requests and appeals.

IX. DEMAND FOR JURY TRIAL

29. Plaintiff respectfully prays for trial by jury, where not prohibited by law.

X. PRAYER FOR RELIEF

30. Wherefore, Plaintiff requests this Court:

- a) Order Defendant to provide true copies of all requested documents without further delay or obfuscation;
- b) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- c) IF APPROPRIATE: Award Plaintiff costs and reasonable attorney fees in this action, as provided in 5 U.S.C. §552(a)(4)(E), and/or under any other appropriate federal statute; and,
- d) Grant such other and further relief as the Court, in its wisdom, may deem just and proper, including any damages for any violation of the U.S. Constitution that may arise herein.

RESPECTFULLY SUBMITTED,

/s/ Steven Porschatis

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STEVEN PORCHATIS
7051 W. FIELDVIEW DR. WEST VALLEY CITY UTAH, 84128
801-833-3647