

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL VETERANS LEGAL	)	
SERVICES PROGRAM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF VETERANS	)	
AFFAIRS,	)	
	)	
Defendant.	)	

Civil Case No. 21-3228

COMPLAINT

Plaintiff National Veterans Legal Services Program (NVLSP) brings this action against Defendant United States Department of Veterans Affairs (VA) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (FOIA).

As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff NVLSP is a not-for-profit organization headquartered at 1600 K Street NW, Ste 500, Washington DC 20006. Founded in 1981, NVLSP is an independent veterans service organization recognized by the VA and dedicated to ensuring that the government honors its commitment to our nation’s twenty-two million veterans and active-duty personnel. Over the years, the organization has represented thousands of veterans in individual court cases and

educated countless people about veterans-benefits law. As part of its mission, NVLSP regularly requests records from VA and other federal agencies pursuant to FOIA, analyzes the responses, and disseminates its findings through trainings, webinars, and publications to inform the public, veterans, and their advocates about law and policies affecting veterans and service members.

4. Defendant VA is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f). VA has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. The Board of Veterans' Appeals is a part of the VA. The Board is responsible for making final decisions on behalf of the Secretary of Veterans Affairs regarding appeals for veterans' benefits and services from the Veterans Benefits Administration, Veterans Health Administration, and National Cemetery Administration, as well as the Office of General Counsel, that are presented to the Board for appellate review. Every year, the Board conducts hearing and decides appeals for thousands of veterans and their beneficiaries.

6. Each year, the Board provides an annual report to Congress, providing information about its activities. The report provides certain information about the types of cases the Board decides each year, and the dispositions that the Board provides. For Fiscal Year 2020, the Board provided information about the dispositions for a subset of Board decisions ("Board Legacy Dispositions"), broken down by the type of organizations or individuals, if any, who represented the claimant before the Board. *See* Department of Veterans Affairs (VA) Board of Veterans' Appeals Annual Report Fiscal Year (FY) 2020, at 36, *available at* [https://www.bva.va.gov/docs/Chairmans\\_Annual\\_Rpts/BVA2020AR.pdf](https://www.bva.va.gov/docs/Chairmans_Annual_Rpts/BVA2020AR.pdf).

7. However, the Board reported dispositions by “state service organizations”—the state government agencies that provide services and representation to veterans—as a single category. It is therefore unclear which state service organizations provide the bulk of representation to our nation’s veterans, either on an absolute basis or in relation to each states’ veteran population. Knowing more about the extent of state service organizations’ activities at the Board is in the public interest, so that the public, advocates, and veterans can know which state service organizations have the most capacity and experience representing veterans before the Board, and which state agencies may fall short in comparison to other states. Knowledge of this information will also allow NVLSP to inform the public, advocates and veterans about the capacity and experience of the state service organizations available to veterans for representation before the Board.

8. On April 14, 2021, Plaintiff submitted a FOIA request by email to VA seeking the production of:

A) “the first page of each Board of Veterans’ Appeals (BVA) decision issued from October 1, 2019, through and including September 30, 2020 (Fiscal Year 2020), in an appeal in which the appellant was represented before the Board by the veterans affairs office of a state or territory . . .” or “the first page of a BVA decision in which the name of the state government representative is included”, with the caveat that the VA could delete the name and other identifying information of the claimant in order to protect the privacy of the individual; or

B) in the alternative, a spreadsheet or other record providing, “for each state government representative, the number of BVA decisions issued in Fiscal Year 2020 in which the appellant was represented by that state government representative.”

9. By email dated July 21, 2021, VA acknowledged receipt of Plaintiff's FOIA and provided reference number 21-05089-F.
10. By email dated August 30, 2021, VA estimated that it would provide a response "by the end of September."
11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), VA was required to determine whether to comply with the FOIA request within twenty (20) working days of receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination.
12. The VA determination regarding Plaintiff's FOIA request was due by May 12, 2021, at the latest.
13. As of the date of this complaint, the VA has failed to: (i) determine whether to comply with Plaintiff's FOIA request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.
14. Because VA has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**

(Violation of FOIA, 5 U.S.C. § 552)

15. Plaintiff realleges paragraphs 1 through 14 as if fully stated herein.
16. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

17. Plaintiff has a legal right to obtain such records, and no legal basis exists for the Defendant's failure to disclose them.

WHEREFORE, Plaintiff respectfully requests that the Court:

(1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;

(2) order Defendant to immediately process and release to Plaintiff any and all non-exempt records to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;

(3) enjoin Defendant from charging Plaintiff search, review, or duplication fees for the processing of Plaintiff's FOIA request;

(4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

(5) grant such other relief as the Court deems just and proper.

Dated: December 9, 2021  
Washington, DC

Respectfully submitted,

/s/ Barton F. Stichman

Barton F. Stichman (D.D.C. Bar No. 218834)  
Renée A. Burbank (*Pro hac vice application  
forthcoming*)  
National Veterans Legal Services Program  
1600 K Street, NW  
Washington, DC 20006

*Attorneys for Plaintiff*