

Exhibit I



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

April 20, 2022

In Reply Refer To: 001B
FOIA Request: 21-08490-F

Via Email: jf@empowr.us

Empower Oversight
Attention: Jason Foster
2615 Columbia Pike, #445
Arlington, VA 22204

Dear Mr. Foster:

This is the fifth interim Initial Agency Decision (IAD) to your August 6, 2021, Freedom of Information Act (FOIA) request to the Department of Veterans Affairs (VA), FOIA Service in which you requested a copy of the following:

1. "The Department of Veterans Affairs' receipt of, discussions related to, processing of, and response to Senator Grassley's April 2, 2021 letter to Secretary McDonough and/or his July 20, 2021 letter to Secretary McDonough. (Attachments A and B).
2. Communications between the Department of Veterans Affairs OIG ("VA OIG") and Department employees relating to the VA OIG's "administrative investigation to evaluate the allegations that Ms. Charmain Bogue, Executive Director of VBA's Education Service, may have violated applicable conflict of interest laws or regulations concerning her official duties and her spouse's business interests." (see Attachment B).
3. Internal communications within the Department (other than the with VA OIG), as well as communications between Department employees and any other persons, relating to the VA OIG's investigation referenced above.
4. Any ethics opinions or recusal involving Ms. Bogue, including any related to VES, SVA, and any other entities with which her husband had a financial relationship.
5. Calendar entries and notes of any meetings between Ms. Bogue and VES/SVA representatives, including Barrett Bogue.
6. The alleged proposal to suspend Thomas Murphy for 10 days, including:
 - a. The February 25, 2019 proposal by Principal Under Secretary for Benefits Margarita Devlin,
 - b. The March 18, 2019 decision memo by Under Secretary for Benefits Paul Lawrence upholding the proposed suspension;
 - c. The April 30, 2019 decision memo summary for Secretary Wilkie from Assistant Secretary Sitterly, relative to the proposed suspension;

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- d. All communications relating to Assistant Secretary Sitterly's April 30, 2019 decision memo summary, including the May 7, 2019 approval thereof; and
 - e. Any resulting letter(s) of admonishment.
7. Communications between Department employees and any Congressional staff, member of the House of Representatives, or Senators, regarding the issues described above."

Your request was received by the VA FOIA Service on August 6, 2021, and assigned FOIA tracking number **21-08490-F**. Please refer to this number when communicating with the VA about this FOIA request.

Your request was referred to and received by the VA Office of the Secretary (OSVA) on August 23, 2021.

On August 24, 2021, I acknowledged receipt of your request and sought your clarification to item 5. Specifically, I requested that you provide a date time frame for the calendars that you are seeking.

That same day, August 24, 2021, I conducted two searches of Secretary Denis McDonough's and Chief of Staff Tanya Bradsher's email boxes. The searches were conducted as follows:

Search 1

From (Sender): McDonough OR DRM OR Bradsher
Sent Date: From Date: 4/2/21
 To Date: 7/28/21
Key Terms: Bogue OR Grassley OR 21-05571-F OR 04890714

Search 2

To (Recipient): McDonough OR DRM OR Bradsher
Sent Date: From Date: 4/2/21
 To Date: 7/28/21
Key Terms: Bogue OR Grassley OR 21-05571-F OR 04890714

Please know, the "From Date" consists of the date of Senator Grassley's initial letter to the VA. The "To Date" of 7/28/21 was used, as I was previously provided the Secretary's and Chief of Staff's email boxes by the VA Office of Information and Technology (OIT) in order to process other FOIA requests.

On August 25, 2021, Mr. Bryan Saddler, of Empower Oversight, clarified item 5 to the time frame of December 1, 2019 through July 20, 2021.

On August 26, 2021, I tasked the VA OIT to provide me with 20 email boxes, of VA employees from various offices, for the timeframe of April 2, 2021 (the date of Senator Grassley's letter) through August 6, 2021 (the date of your FOIA request). I've requested the following key terms be applied to the search: Bogue OR Grassley OR 21-05571-F OR 04890714. Additionally, I

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tasked the VA OIT to provide me with the calendar entries and notes of Charmain Bogue for the timeframe of December 1, 2019 through July 20, 2021.

On August 27, 2021, the Veterans Benefits Administration, the VA Office of General Counsel, and the VA Corporate Senior Executive Management Office (CSEMO) were tasked with conducting a search for the portion of your request pertaining to "Any resulting letter(s) of admonishment." The searches included a search of Mr. Murphy's electronic official personnel file. That same day, I was advised by all three offices that they were unable to locate records responsive to this portion of your request. As such, I am issuing a "No Records" response to item 6(e) of your request.

On September 7, 2021, for our first interim response, 249 pages and 1 Excel spreadsheet were released in their entirety, 330 pages were partially released, and 73 pages were withheld in full. The pages were Bates numbered (21-08490-F) 000001 through (21-08490-F) 000652.

On September 8, 2021, I sent a letter correcting an error discovered on page four of my September 7, 2021 first interim response. The corrected letter advised that Bates numbered pages (21-08490-F) 000321-000347 were in response to item 4 of your request vice item 3.

That same day, September 8, 2021, I received 23 pst files of 20 VA employee mailboxes and the calendars pertaining to Charmain Bogue.

On September 9, 2021, I sent a request for clarification to Mr. Bryan Saddler of your organization and requested that clarification to item 5 of your request. Specifically, I requested that you provide the names of the VES/SVA representatives that you are requesting aside from Barret Bogue.

On September 15, 2021, after multiple attempts at uploading the pst files, I requested the OI&T further reduce the size of three of the files. That same day, OI&T reduced the files size of the three files into 20 additional pst files.

On September 30, 2021, I received Mr. Saddler's response to my September 9, 2021, clarification. Item 5 has been clarified as follows:

VES

Carrie Wofford
Robert F Norton or Bob Norton
Tom Tarantino
Walter Ochinko
Michael Saunders
Tanya Ang

SVA

Jarod Lyon
William "will" Hubbard
Lauren Augustine
James Schmeling
Chris Cate
Rachel Norman
Dan Standage

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Fred Wellman
Rory Borsius”

On October 5, 2021, I requested the OI&T conduct a further search of item 5 of your request. I requested the search be conducted using the following key terms:

Barrett Bogue
VES
Carrie Wofford
Robert F Norton or Bob Norton
Tom Tarantino
Walter Ochinko
Michael Saunders
Tanya Ang
SVA
Jarod Lyon
William “will” Hubbard
Lauren Augustine
James Schmeling
Chris Cate
Rachel Norman
Dan Standage
Fred Wellman
Rory Brosius

That same day, October 5, 2021, I conducted a key term search of the 20 mailboxes provided by the OI&T. The key term search was limited to 04890714, the case number assigned to Senator Grassley’s request in the VA Integrated Enterprise Workflow Solution (VIEWS). The VIEWS is the official correspondence tracking system utilized by the VA.

On October 29, 2021, for our second interim response, 978 pages were released in their entirety, 290 pages were partially released, and 158 pages were withheld in full. The pages were Bates numbered (21-08490-F) 000653 through (21-08490-F) 002078.

That same day, October 29, 2021, I conducted a key term search of the 20 mailboxes provided by the OI&T. The key term search was limited to 22-05571-F, the case number utilized in FOIAXpress, the official FOIA processing system utilized by the VA for processing FOIA requests. While Senator Grassley’s request was not a FOIA request, records were uploaded to FOIAXpress in order to review and redact the records.

On December 23, 2021, for our third interim response, 6 pages were released in their entirety and 11 pages were partially released. The pages were Bates numbered (21-08490-F) 002079 through (21-08490-F) 002095.

On January 11, 2022, I conducted a key term search of the 20 mailboxes provided by the OI&T. The key term search was limited to Grassley. Attempts were made to exclude records that were previously processed and released under any of the prior key terms.

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On March 22, 2022, I conducted a key term search of the 20 mailboxes provided by the OI&T. The key term search was limited to Bogue. Attempts were made to exclude records that were previously processed and released under any of the prior key terms.

On April 6, 2022, I conducted five key term searches within the daily calendar of Charmain Bogue's calendars provided by the OI&T and reviewed as daily calendars. The searches were conducted as follows:

Search 1:

Key terms: Wofford OR Norton OR Tarantino OR Ochinko OR Saunders OR Ang OR Bogue

Search 2:

Key terms: Lyon OR Hubbard OR Augustine OR Schmeling OR Cate OR Norman OR Standage OR Wellman OR Broisius

Search 3:

Key terms: VES OR SVA

Search 4:

Key terms: "Veterans Education Success"

Search 5:

Key terms: "Student Veterans of America"

On April 7, 2022, I conducted a key term search of Charmain Bogue's calendar invitations/notes/attachments provided by the OI&T and uploaded in EDR. The search was conducted as follows:

Search:

Key terms: Barrett OR Wofford OR Norton OR Tarantino OR Ochinko OR Saunders OR Ang OR Lyon OR Hubbard OR Augsutine OR Schmeling OR Cate OR Norman OR Standage OR Wellman OR Broisius OR VES OR SVA OR "Veterans Education Success" OR "Student Veterans of America"

On April 13, 2022, for our fourth interim response, 596 pages were released in their entirety, 643 pages were partially released, and 74 pages were withheld in full. The pages were Bates numbered (21-08490-F) 002096 through (21-08490-F) 003408.

For this fifth interim release, a total of 503 pages of responsive records, subsequently Bates (21-08490-F) 003409 through (21-08490-F) 003911, were reviewed. Records contained in this release are responsive to items 1, 2, 3, 4, and 5 and consist of records from my searches conducted on March 22, 2022, April 6, 2022, and April 7, 2022. I have determined 388 pages

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are releasable in their entirety, 111 pages are partially releasable, and 4 pages are withheld in full pursuant to Title 5 U.S.C. §§ 552(b)(5), (b)(6), and (b)(7)(C), FOIA exemptions 5, 6, and 7C.

FOIA Exemption 5 protects interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. Moreover, this exemption permits an agency to withhold material reflecting the thoughts, opinions, and recommendations of federal officials and consultants reviewing an issue. Under the deliberative process privilege and FOIA Exemption 5, OSVA redacts internal government deliberations, thoughts, opinions, recommendations, and proposed solutions from federal employees and consultants reviewing VA programs in their professional capacities, as well as non-final or draft documents. The information contained in the responsive records is both predecisional and deliberative because it reflects preliminary opinions, proposed solutions, and recommendations, which do not reflect VA's final decision. Exposure of premature discussions before a final decision is made could create undue public confusion. The release of the redacted information would negatively impact the ability of federal employees and consultants to openly and frankly consider issues amongst themselves when deliberating, discussing, reviewing, proposing changes to, and making recommendations on VA programs. The information reveals the thoughts, deliberations, and opinions that, if released, would have a chilling effect on the ability of federal officials and consultants to discuss, opine, recommend or be forthcoming about the agency's issues which require full and frank assessment. Here, the disclosure of the withheld information is likely to compromise the integrity of this deliberative or decision-making process. Moreover, the predecisional character of a document is not altered by the passage of time. Bruscino v. BOP, No. 94-1955, 1995 WL 444406 at *5 (D.D. C. May 15, 1995), aff'd in part, No. 95-5212, 1996 WL 393101 (D.C. Cir. June 24, 1996).

Additionally, exemption 5 protects from disclosure under the attorney-client privilege. Courts have found that attorney-client privilege "encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts," as well as "communications between attorneys that reflect client-supplied information." *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005). In this case, "the agency is the 'client' and the agency's lawyers are the 'attorneys' for the purposes of attorney-client privilege." *Judicial Watch, Inc. v. United States Dep't of the Treasury*, 796 F. Supp. 2d 13, 22 (D.D.C. 2011). Portions of emails requesting and reflecting legal advice from OGC attorneys have been withheld under the attorney-client privilege.

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 and email addresses of federal civilian employees. We do however release the names of VA Senior Executives and individuals whose names are in the public domain. 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,

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email addresses, VA usernames, phone numbers, cellular numbers, social security numbers, dates of birth of federal civilian employees and private citizens as well as personal pronouns which if released could reveal the identity of individuals providing statements in a law enforcement record. 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 Exemption 7(C) exempts from required disclosure law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Redacted information includes names, email addresses, titles, and phone numbers of VA law enforcement employees, as well as contractor-customer portal website addresses containing such personal information. The release of this information would risk impersonation of law enforcement personnel and jeopardize the health and safety of not only law enforcement personnel, but those persons they are charged with protecting.

The following additional information is provided regarding records withheld in full:

Bates numbered pages (21-08490-F) 003429-003431 have been withheld pursuant to FOIA Exemption 5; and,

Bates numbered page (21-08490-F) 003835 has been withheld pursuant to FOIA Exemptions 5, 6, and 7C.

The VA FOIA regulations at 38 C.F.R § 1.556(c)(1) provide that FOIA Officers may encounter "unusual circumstances," where it is not possible to meet the statutory time limits for processing the request. In such cases, the FOIA Officer will extend the 20-business-day time limit for 10 more business days. In the case of this request, unusual circumstances consist of the need to search for and collect the requested records from the VA OIT, a component other than the office processing the request. As such, I am exercising the one time 10-business day extension at this time.

Finally, please know the size of the releasable records exceeds that which may be sent in one email. As such, the records are being uploaded to the VA FOIA website under Document Retrieval at [Document Retrieval - Freedom Of Information Act FOIA](#). Please allow up to three days for the records to post. The file is listed in Document Retrieval as 21-08490-F 5th Interim and will take a few minutes to upload once selected and the password is input. Once accessed, please download the files to your computer as the records will only be posted for ten calendar days before being removed. The password to the file is h4rBst6FXWE

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FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Email Address: vacofoiaservice@va.gov
Phone: (877) 750-3642
Fax: (202) 632-7581
Mailing address:
Department of Veterans Affairs
VA FOIA Public Liaison (005R1C)
810 Vermont Avenue, NW
Washington, DC 20420

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov
Fax: 202-741-5769
Mailing address:
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

FOIA Appeal

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, NW
Washington, DC 20420

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,

Ruthann

Parise 941640

Digitally signed by Ruthann Parise
941640
Date: 2022.04.20 10:55:58 -04'00'

Ruthann Parise
OSVA FOIA Officer

Enclosure: 499 pages, 5th interim releasable records