

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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STOP 7710
WASHINGTON DC 20593-7710
Staff Symbol: CG-6P
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FOIA 2020-CGFO-01886

Mr. J. Ryan Melogy
MLAS Chief Legal Officer
MLAS Open Government Project
maritimelegalaid@gmail.com

Dear Mr. Melogy:

This is the interim response to your Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG), dated June 30, 2020, and received by the USCG on July 6, 2020. You are seeking:

1. All reports of sexual offenses received by the USCG pursuant to [46 U.S. Code § 10104](#) since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to [46 U.S. Code § 10104](#) since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since [46 U.S. Code § 10104](#) was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

A search of the Administrative Law Judge (CG-OOJ) and the Coast Guard Investigative Service (CGIS) for documents responsive to your request produced a total of 395 pages. Of the 395 pages, it has been determined that 48 pages are releasable in their entirety, 135 pages are

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partially releasable, and 208 pages are being withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(6) and (b)(7)(C).

The Office of Investigations (CG-INV-3) and the Coast Guard Investigative Service (CGIS) are still processing your request. CGIS's processing includes a request to the National Archives and Records Administration (NARA) to retrieve and send copies of legacy cases which may be responsive to your request. Once the processing has been completed, all releasable responsive records will be provided to you and will complete the processing of your FOIA.

Enclosed are 183 pages with certain information withheld as described below:

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 7(C), 7(D), and 7(E).

FOIA Exemption 6 exempts from disclosure 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 privacy. The types of documents and/or information that we have withheld may consist of, driver license, Social Security Numbers (SSN), home addresses, dates of birth, merchant mariners document numbers, license numbers, medical records (including drug or alcohol test results), names of their parties or witnesses, names of junior Coast Guard personnel, identifying roles/descriptions for persons whose names are withheld, email addresses, passport numbers, and Tax ID numbers. 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.

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

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I am the person responsible for the denial of your request. Also participating in this decision are Mr. John C. Johns, Managing Attorney Advisor, Office of the Chief Administrative Law Judge; LCDR Jessica Burrell, Legal Counsel, Coast Guard Investigative Service; and Mr. Michael Berkow, Director, Coast Guard Investigative Service.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Commandant (CG-6P), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave., S.E. STOP 7710, Washington DC, 20593-7710 following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need any further assistance or would like to discuss any aspect of your request, please contact this office by sending an e-mail to efoia@uscg.mil or you may contact our FOIA Public Liaison, Mrs. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

WHITELAW.BARBARA.L.102571
RA.L.1025718573

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Barbara Whitelaw
Chief, Office of Information Management
U.S. Coast Guard Headquarters
By direction

Enclosures: (1) Four CGIS Case Files, 108 pages
(2) Eight ALJ Case Files, 75 pages