

Maritime Legal Aid & Advocacy, Ltd.

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May 18, 2022

VIA E-MAIL to “EFOIA@uscg.mil”

Commandant (CG-611)
Attn: FOIA Officer
U.S. Coast Guard Stop 7710
2703 Martin Luther King Jr. Ave. SE
Washington D.C. 20593-7710

Re: FOIA Appeal (USCG ALJ): FOIA 2021-CGFO-02053

Dear FOIA Coordinator:

This letter constitutes an Appeal under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the United States Coast Guard (“USCG”) by Maritime Legal Aid & Advocacy, Ltd. (“MLAA”).

MLAA is appealing the determinations of Lauren S. Staiti of the USCG Office of the Chief Administrative Law Judge, described in Staiti’s FOIA Final Response Letter dated May 2, 2022, concerning FOIA Request 2020-CGFO-01886 and Interim FOIA Appeal 2021-CGFO-02053.

Background:

MLAA is a registered 501(c)(3) non-profit organization fighting for the human rights of seafarers and fighting to make the maritime industry safe for everyone. MLAA seeks to change the culture of the U.S. maritime industry afloat and protect mariners from shipboard sexual violence by forcing the USCG to take seriously the issue of sexual harassment and sexual assault at sea aboard USCG-documented vessels.

MLAA’s principal place of business is in New York.

Bases of Appeal:

1. The USCG Office of the Chief Administrative Law Judge (“ALJ”) has **NOT** conducted a thorough search of its records in order to demonstrate beyond material doubt that its searches for documents responsive to MLAA’s FOIA Request 2020-CGFO-01886 and MLAA’s Interim Appeal FOIA 2021-CGFO-02053 were reasonably calculated to uncover all relevant records.

MLAA possesses irrefutable proof that the ALJ has not conducted a legally adequate search of its records, because MLAA is in possession of records originating from the ALJ that are responsive to FOIA Request 2020-CGFO-01886 and Interim Appeal FOIA 2021-CGFO-02053 that were obtained independently of the FOIA process, and which are clearly records responsive to our FOIA Request and Interim Appeal. However, these FOIA-independent records responsive to our records requests were not delivered to MLAA along with Ms. Staiti’s Final Determination Letter.

Therefore, MLAA appeals the Final Determination of Lauren Staiti on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG Office of the Chief Administrative Law Judge, and on the grounds that the ALJ has not conducted an adequate search of its records.

2. Ms. Staiti misstated Appeal Item #1, and therefore failed to provide a large number of records sought under Appeal Item #1, which states:

“Appeal #1:

MLAA appeals the USCG's failure to provide documents responsive to our FOIA request held by the USCG ALJ Program, including not only all final orders and opinions in S&R cases involving sexual misconduct by credentialed mariners since 1989, but also failure to provide MLAA with all documents, filings, exhibits, evidence, and other documents connected to each sexual misconduct case.

33 CFR § 20.903 “Records of proceedings,” states:

(a) The transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings constitute the official record of a proceeding. This record also includes any motions or other matters regarding the disqualification of the ALJ.

(b) Any person may examine the record of a proceeding at the U. S. Coast Guard Administrative Law Judge Docketing Center; Room 412; 40 S. Gay Street; Baltimore, MD 21201–4022. Any person may obtain a copy of part or all of the record after payment of reasonable costs for duplicating it in accordance with 49 CFR part 7.

Accordingly, the entire record of each case should be within the possession of the ALJ Docketing Center as required by law, and this complete case record in all

sexual misconduct S&R cases initiated since 1989 should be provided to MLAA pursuant to the FOIA.”

Therefore, MLAA appeals the Final Determination of Lauren Staiti and appeals Staiti’s failure to provide MLAA with the complete Records of Proceedings and complete case files for all cases involving credentialed-mariner sexual misconduct allegations since 1989, on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG Office of the Chief Administrative Law Judge, and on the grounds that the ALJ has not conducted an adequate search of its records.

New Narrowed Scope of Records and Data Requested from the USCG Office of the Chief Administrative Law Judge:

On May 13, 2022, MLAA sent a letter to the USCG FOIA Coordinator that sought to dramatically narrow and clarify the scope of FOIA Request 2020-CGFO-01886 and FOIA Interim Appeal 2021-CGFO-02053. With respect to records requested from the USCG Office of the Chief Administrative Law Judge, MLAA’s narrowed and clarified FOIA Request seeks only the following records:

“All complete case files and All Related Records for all mariner “Suspension & Revocation” cases that involved allegations of sexual misconduct committed by a USCG-credentialed mariner, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records from cases that were “docketed” as well as cases that were not “docketed” and includes all “Consent Orders” and “Settlement Agreements” between the USCG and credentialed mariners related to allegations of sexual misconduct, including for shipboard sexual misconduct as well as sexual misconduct discovered during safety and suitability investigations or flagged during background checks.”

Conclusion:

Thank you for your consideration of this FOIA Appeal. For questions regarding this request I can be contacted via email at help@maritimelegalaid.com.

Respectfully Submitted,

J. Ryan Melogy
Chief Legal Officer
Maritime Legal Aid & Advocacy

U.S. Department of
Homeland Security

United States
Coast Guard



United States Coast Guard
Office of the Chief Administrative Law Judge

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FOIA 2021-CGFO-02053
May 2, 2022

Mr. Ryan Melogy
Maritime Legal Aid and Advocacy, LTD
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Fernandina Beach, FL 32034

Dear Mr. Melogy:

This letter is the final response of the Office of Chief Administrative Law Judge (CG-00J) to your Freedom of Information Act (FOIA) request numbered 2021-CGFO-02053. On March 21, 2021 and April 1, 2021 respectively, you appealed the Coast Guard's response to FOIA request number 2021-CGFO-02053. After reviewing your appeal the Coast Guard FOIA Office (CG-6P) remanded appeal items 1, 2, 3, and 5 to CG-00J "to address the specific issues raised in your appeal."

In your original request you sought the following responsive records:

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 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. The request include 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.

In your appeal, items numbers 1, 2, 3, and 5 were remanded for CG-00J's response state the following:

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1. With respect to documents within the possession of the USCG ALJ Program that are responsive to our FOIA request, MLAA appeals the decision of Barbara Whitelaw on the grounds that records or parts of records responsive to our request have been withheld by USCG ALJ Program.
2. MLAA appeals the decision of Barbara Whitelaw to withhold all "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that the records or parts of records responsive to our request have been withheld by the USCG.
3. Settlement Agreements used in the S&R process are approved through consent orders issued by federal judges and represent "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases" and therefore the FOIA requires that these Settlement Agreements be proactively released to the public by the USCG on an ongoing basis. MLAA appeals the withholding of Settlement Agreements on the basis that records or parts of records responsive to our request have been withheld by the USCG, and on the basis that the FOIA requires these documents to be made available to the public on an ongoing basis.
5. MLAA appeals the decision of Barbara Whitelaw to withhold all documents generated in the negotiation of "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by USCG.

After reviewing your appeal it appears you did not receive all the responsive records we found. Therefore, to ensure you receive all responsive documents, we are resending all documents found responsive to the initial request, as well as, additional records found responsive to your request. In total, we found 871 pages of responsive records comprising of 28 individual cases. To find those cases we searched our paper files, Marine Information for Safety and Law Enforcement (MISLE) database for electronic files, and requested copies of older case files from the National Archives and Records Administration (NARA). These 871 pages are responsive to appeal items 1, 2, and 3 only.

Of these 871 pages, I determined 501 pages are releasable in their entirety and 370 pages are partially releasable after applying 5 U.S.C. § 552 (b)(6) (FOIA Exemption 6). Specifically, Exemption 6 protects from disclosure all "personnel or medical files" and "similar files" the release of which would constitute a clearly unwarranted invasion of personal privacy. Please note, I have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's guidance.¹ This requires a balancing of the public's right to disclosure against the individual's right privacy. To determine whether Exemption 6 protects against disclosure, an agency should engage in a four-step analysis:

1. Determine whether the information at issue is a personnel, medical, or similar file;
2. Determine whether there is a significant privacy interest in the requested information;
3. Evaluate the requester's asserted FOIA public interest; and

¹ Department of Justice (DOJ), "Freedom of Information Act Guidelines," March 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>

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4. If there is significant public interest, balance the competing interest between privacy and the public interest.

Wash. Post co. v. HHS, 690 F.2d 252, 261 (D.C. Cir. 1982).

Here, we have redacted the names and personal information concerning individuals involved in the S&R cases. I reviewed the 4 steps above and find witnesses' personal information in sexual assault cases fall squarely within the type of information Exemption 6 is meant to protect. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Accordingly, all 370 pages are partially redacted in accordance with Exemption 6.

Regarding Appeal item 5, CG-00J is not the record holder for any documents generated during settlement negotiations between the Coast Guard and credentialed mariner. The only records sent to CG-00J are settlement agreements which are included in our responsive documents. I informed CG-6P we did not have responsive records to that Appeal item and requested they forward the remand to an office who would possess responsive records.

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 or via email at EFOIA@uscg.mil 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.

If you need any further assistance or would like to discuss any aspect of your request, please contact this office. You may send an email to efoia@uscg.mil or you may contact our FOIA Public Liaison, Ms. 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,



LAUREN S. STAITI
Senior Attorney Advisor
United States Coast Guard
Office of the Chief Administrative Law Judge