

FOIA Request # 2020-CGFO-01886: Narrowing the Scope

From: J. Ryan Melogy <Ryan@maritimelegalaid.com>

To amanda.c.ackerson@uscg.milEFOIA@uscg.mil

CC

Date: Friday, May 13th, 2022 at 1:33 PM

FOIA Officer,

Please find attached a letter from our organization that seeks to narrow and clarify the scope of an existing FOIA Request (FOIA 2020-CGFO-01886). This letter does NOT constitute a new FOIA Request.

This letter is submitted on behalf of Maritime Legal Aid & Advocacy, Ltd. (“MLAA”) (a.k.a. “Maritime Legal Aid Society”) to the United States Coast Guard (“USCG”).

I would greatly appreciate a timely acknowledgement of your receipt of this letter. In the past, our many communications to your office concerning this FOIA Request have simply been ignored. We will no longer be ignored.

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

Acta Non Verba,

J. Ryan Melogy
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May 13, 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: Narrowing the Scope of FOIA Request # 2020-CGFO-01886

Dear FOIA Coordinator:

This letter constitutes a request under the Freedom of Information Act (“FOIA”) and seeks to narrow and clarify the scope of an existing FOIA Request (**FOIA 2020-CGFO-01886**). This letter does NOT constitute a new FOIA Request.

This letter is submitted on behalf of Maritime Legal Aid & Advocacy, Ltd. (“MLAA”) (a.k.a. “Maritime Legal Aid Society”) to the United States Coast Guard (“USCG”).

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.

Background:

MLAA submitted its original FOIA Request on June 30, 2020. The original FOIA request was received by the USCG on July 6, 2020 and was assigned FOIA number 2020-CGFO-01886. On July 29, 2020, MLAA submitted an amended FOIA Request to the USCG that narrowed and clarified the scope of FOIA Request #2020-CGFO-01886.

With respect to FOIA Request # 2020-CGFO-01886, the USCG granted MLAA’s request for “Expedited Processing” and granted MLAA’s request to waive all fees associated with the FOIA Request.

After receiving several partial responses to FOIA Request # 2020-CGFO-01886 over the past 22 months, MLAA again seeks to narrow and clarify FOIA Request #2020-CGFO-01886.

Records and Data Requested In July 29, 2020 FOIA Request:

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.

New Narrowed Scope of Records and Data Requested:

1. The USCG has not provided MLAA with any records responsive to request category #1. Specifically, the USCG has not produced any "*reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104.*" Additionally, since submitting the FOIA Request, MLAA has learned that the reporting requirement of 46 U.S. Code § 10104 was not added to the Code of Federal Regulations in 1989. MLAA has also learned that the USCG never began the rule-making process required to add the reporting requirements of 46 U.S. Code § 10104 to the Code of Federal Regulations.

Since submitting the FOIA Request, MLAA has learned that the requirement to report complaints of shipboard sexual offenses contained in 46 U.S. Code § 10104 was added to the United States Code in 1990. Since submitting the FOIA Request, MLAA has also learned that the USCG never created an electronic reporting mechanism for transmitting reports of sexual offenses from USCG-documented vessels to the USCG, and the USCG has never created any type of centralized database to collect and organize the reports of sexual offenses received by the USCG pursuant to the reporting requirement contained in 46 U.S. Code § 10104.

Instead, according to USCG officials, the reporting mechanism for "*a master or other individual in charge of a documented vessel*" submitting to the USCG a "*complaint of a sexual offense prohibited under [chapter 109A](#) of title 18, United States Code*" pursuant to 46 U.S. Code § 10104 has, for more than 32 years, been via a documented vessel's "*Official*

Logbook.”

The requirements for USCG-documented vessels to maintain *Official Logbooks* are contained in 46 U.S. Code § 11301 (“*Logbook and entry requirements*”).

Therefore, MLAA narrows and clarifies the scope of request category #1 to the following:

“All reports of complaints of sexual offenses and all related records received by the USCG via any documented vessel’s “Official Logbook” pursuant to 46 U.S. Code § 10104 since the reporting law was added to the United States Code in 1990, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. “All Related Records” includes all records of sexual misconduct by USCG-credentialed mariners reported to the USCG via a vessel’s Official Logbook, including allegations of “sexual harassment” by a USCG-credentialed mariner.”

Further, MLAA requests that the USCG conduct a thorough search of all USCG-documented vessels’ “Official Logbooks”—received since 1990 and currently within the custody of the USCG—in order to demonstrate beyond material doubt that its search for reports of complaints of sexual offenses received by the USCG via any documented vessel’s “Official Logbook” pursuant to 46 U.S. Code § 10104 was reasonably calculated to uncover all relevant records.

2. The USCG has not provided MLAA with any records responsive to request category #2. On September 10, 2021 MLAA received a letter from G.T. Vachon, Chief, USCG Hearing Office, stating that a search of the records of the Hearing Office for records responsive to FOIA Request category #2 had produced a total of 156 pages.

Vachon’s letter further stated that all 156 pages were being withheld from MLAA in their entirety, and that 131 pages of the 156 were being withheld pursuant to FOIA Exemption 7(A), which protects from disclosure records related to an ongoing law enforcement investigation or enforcement proceeding. Through documents contained in a case file released to MLAA by the USCG Administrative Law Judge Docketing Center, MLAA has since learned that the records being withheld by the USCG Hearing Office most likely relate to an enforcement action against shipping giant Maersk Line, Limited (“MLL”) due to the failure of MLL to comply with the reporting requirement of 46 U.S. Code § 10104.

However, in an article published by CNN on February 16, 2022 (“[Rape at Sea: Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted](#)”), CNN wrote, “A spokesman for Maersk Line, Limited said that while the company was initially fined for failing to notify the Coast Guard of Melogy’s [46 U.S. Code § 10104] complaint, it appealed and said those charges were dismissed.”

Further, according to documents obtained by MLAA, it appears the enforcement action in question against MLL was referred to the USCG Hearing Office by officials in the USCG “Office of Investigations & Casualty Analysis (CG-INV).” And yet the CG-INV has not provided any records related to the MLL 46 U.S. Code § 10104 enforcement action against MLL.

According to the “[Process Flow Chart](#)” on the [website of the USCG Hearing Office](#), if a Party appeals a final assessment, 1) the Hearing Officer may request comments from the initiating

unit, 2) the Hearing Officer then forwards initiating unit's appeal comments to Party, 3) the Hearing Officer then forwards the case to the Commandant of the USCG, 4) the appeal is then decided by the Commandant of the USCG.

If MLL was in fact issued a final assessment by the Hearing Officer and ultimately prevailed on appeal, there are records within the office of the Commandant of the USCG responsive to MLAA's FOIA Request, and if the appeal was granted, those records are no longer exempt under FOIA Exemption 7(A) because the enforcement proceedings have concluded.

Therefore, MLAA narrows and clarifies the scope of request category #2 to the following:

“All Records related to an investigation or punishment of any person or corporation (including Maersk Line, Limited) 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 United States Code in 1990. “All Records” includes, but is not limited to records held by the USCG JAG Office, USCG Hearing Office, USCG Office of Investigations and Casualty Analysis (CG-INV), any “Initiating Unit,” and the USCG Commandant’s Office. “All Records” also includes, but is not limited to, Appeals, Appellate Decisions, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. “All Records” also includes any and all correspondence, including correspondence via electronic mail, between any employee or agent of the USCG and any person or corporation (including any employee or agent of Maersk Line, Limited) related to an investigation into the failure of a person or corporation 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. “All Records” includes all records 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. When MLAA filed FOIA Request # 2020-CGFO-01886, MLAA was unfamiliar with the exact nature of the USCG's recordkeeping system, its filing practices, and the manner in which its files and records are compiled. MLAA was entirely “in the dark” about the structure and arrangement of the files and records that the USCG would be searching through in order to locate the particular records that were responsive to MLAA's FOIA Request.

Because of this, MLAA's FOIA Request category #3 was broadly drafted to include a potentially enormous volume of records held by the USCG related to any investigation of sexual misconduct of any kind initiated against any USCG-credentialed mariner since 1989. Since filing its FOIA request, MLAA has gained some limited understanding of the inner workings of the USCG and the manner in which its files and records are compiled. Therefore, MLAA now seeks to greatly narrow and clarify the scope of request category #3. Although the USCG is comprised of a vast number of departments, offices, and systems, the documents and records sought by MLAA likely reside in a limited number of those departments and offices.

Therefore, MLAA narrows and clarifies the scope of request category #3 for records related to investigations of sexual misconduct by USCG-credentialed mariners to specific offices, departments, and systems within the USCG:

3a. From the USCG “National Maritime Center” at Martinsburg, WV:

“All complete credentialed mariner files and All Related Records and communications related to every mariner application for a merchant mariner credential, whether original issue or renewal, that was flagged on a background check for a crime involving sexual misconduct during the USCG’s “safety and suitability evaluation,” during the credential issue or renewal process, or at any other time, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records of mariner applicants who had their applications for an original or renewal issue merchant mariner credential approved by the USCG as well as those mariners who were denied a merchant mariner credential because of a criminal record involving a crime of a sexual nature.”

3b. From the USCG “Headquarters”:

“All complete “Administrative Clemency” files and All Related Records and communications for all merchant mariner applications for “Administrative Clemency” where the underlying crime or offense committed by the mariner involved sexual misconduct, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records that indicate whether or not a mariner who was approved or denied “Administrative Clemency” in a case where the underlying crime or offense committed by the mariner involved sexual misconduct holds a current and valid merchant mariner credential, whether those documents are held at USCG Headquarters, the National Maritime Center, or elsewhere within the USCG. “All Related Records” also includes all records held by the “Administrative Clemency Review Board,” including all “Approval Letters” and “Denial Letters” where the underlying crime or offense committed by the mariner involved sexual misconduct. “All Related Records” also includes all records that contain the names of the members of the USCG “Administrative Clemency Review Board.””

3c. From the USCG “Administrative Law Judge Program”:

“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.”

3d. From the USCG Office of Investigations & Casualty Analysis (CG-INV):

“All complete investigation files and All Related Records for any investigation into sexual misconduct of any kind initiated against any USCG credentialed mariner, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes all records obtained through the discovery process, records obtained from any state or federal criminal justice system, “Letters of Warning” issued to credentialed mariners for sexual misconduct, and all communications between the USCG and credentialed mariners or their legal representatives concerning the negotiation of sexual misconduct Suspension & Revocation “Settlement Agreements.””

3e. From the USCG “Coast Guard Investigative Service (CGIS)”:

“All complete investigation files and All Related Records for all CGIS investigations into allegations of sexual misconduct committed by USCG-credentialed mariners, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes all records related to referrals of sexual misconduct investigations to any office of the U.S. Department of Justice by the CGIS or USCG, all communications between the U.S. Department of Justice and CGIS related to referrals of sexual misconduct investigations (including all emails between the USCG and @usdoj.gov email addresses concerning criminal referrals of sexual misconduct investigations), all records obtained by the CGIS through the discovery process, all records obtained from any state or federal criminal justice system, and all records related to referrals of CGIS sexual misconduct investigations to the USCG Office of Investigations & Casualty Analysis (CG-INV).”

Conclusion:

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

99.81 KB, 1 file attached
Respectfully Submitted,

MLAA-USCG 2nd Amended FOIA Request 2020-CGFO-01886.pdf 99.81 KB

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