

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

JAMES R. RUDISILL,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS
AFFAIRS,

Defendant.

Case No. 3:22cv703

COMPLAINT

Plaintiff James R. Rudisill (“Mr. Rudisill”) submits the following as his Complaint against the Defendant U.S. Department of Veterans Affairs (“VA”) and alleges as follows:

INTRODUCTION

1. Since 2015, Mr. Rudisill—a three-time Army veteran, current Federal Bureau of Investigation Special Agent, and Navy Reservist whose awards include the Bronze Star and Combat Action Badge—has been embroiled in litigation with the VA to establish his full entitlement to Post-9/11 and Montgomery GI Bill educational benefits. Following two appellate victories before the U.S. Court of Appeals for Veterans Claims, *BO v. Wilkie*, 31 Vet. App. 321 (U.S. App. Vet. Cl. 2019), and a panel of the U.S. Court of Appeals for the Federal Circuit, *Rudisill v. McDonough*, 4 F.4th 1297 (Fed. Cir. 2021), the Federal Circuit recently reheard the case en banc at the request of the VA, *Rudisill v. McDonough*, No. 2020-1637 (Fed. Cir. argued Oct. 6, 2022), https://oralarguments.cafc.uscourts.gov/default.aspx?fl=20-1637_10062022.mp3. A final victory for Mr. Rudisill will mean that an estimated nearly 2 million post-9/11 era veterans (and growing)

have earned billions of dollars in additional educational benefits through their qualifying service as defined by Congress. *See, e.g.,* Leo Shane III, *Want to use both Post-9/11 and Montgomery GI Bill benefits? Hurry up and wait*, Military Times (Feb. 8, 2022) <<https://perma.cc/5XAR-UH2P>>; Stephanie Zimmermann, *FBI agent who fought VA for GI Bill college benefits wins appeal; case could help vets nationwide*, Chicago Sun Times (July 9, 2021) <<https://perma.cc/HN4M-YXUM>>.

2. The crux of the foregoing GI Bill litigation is whether the VA has correctly implemented obscure provisions of the Post-9/11 program, namely 38 U.S.C. §§ 3322(d) and 3327 (the “benefit-exchange election provisions”). Since August 1, 2009 (when the Post-9/11 program went into effect), the VA has interpreted the benefit-exchange election provisions as requiring any veteran applying for Post-9/11 benefits, while also entitled to Montgomery benefits, to revoke entitlement to the latter to establish entitlement to the former. Then, the VA has limited veterans’ entitlement to Post-9/11 benefits to the amount of their revoked Montgomery entitlement and insisted that this supposedly voluntary election of Post-9/11 benefits is “irrevocable” under §§ 3327(d)(2) and (h). But, as the federal appellate courts have now twice determined, *see supra*, such irrevocable elections and their corresponding limitations are required only for those limited veterans who cannot independently establish entitlement to both GI Bill programs at the same time through separate periods of qualifying service as defined by Congress.

3. To help build his legal argument, Mr. Rudisill initially set out to understand the basis for the VA’s application of the benefit-exchange election provisions to all veterans, including him. On July 15, 2015, in the months before Mr. Rudisill would take an administrative appeal to the VA’s Board of Veterans’ Appeals, he filed two Freedom of Information Act (“FOIA”) requests with the VA. The first sought his personal educational benefits claim file maintained by the VA. *See Exhibit 1*. The second broadly sought VA records since 2008 of forms used by veterans to

apply for GI Bill educational benefits and manuals, handbooks, and other guidance documents for processing the same. *See* **Exhibit 2**. Following relatively brief delays and correspondence with VA FOIA officials, *see* **Exhibits 4 and 5**, the VA responded to both of Mr. Rudisill's initial FOIA requests, *see* **Exhibits 6 and 7**.

4. As Mr. Rudisill's litigation with the VA on the merits of its interpretation of the benefit-exchange elections provisions proceeded, however, it became clear that the VA failed to acknowledge the practical implications of its legal position on post-9/11 veterans. For example, the Board of Veterans' Appeals dismissively rejected Mr. Rudisill's administrative appeal in light of, among other things, its "historical application of the [Post-9/11] statutes" and the fact that Mr. Rudisill filed an application for GI Bill benefits on a mandatory VA form, even though Mr. Rudisill persuasively argued that this form fails to properly implement the statutory scheme. Mr. Rudisill therefore set out to develop information on precisely how many veterans had been erroneously forced by the VA and its application form to make benefit-exchange elections when they had no need to, thereby ostensibly revoking significant amounts of their entitlement to GI Bill benefits.

5. On October 13, 2016, two days before Mr. Rudisill filed his notice of appeal of the Board of Veterans' Appeals' decision to the U.S. Court of Appeals for Veterans Claims ("Veterans Court"), Mr. Rudisill filed a third FOIA request, the request at issue in this case. *See* **Exhibit 8**. In that request, Mr. Rudisill sought various VA records that would help quantify how many veterans are similarly situated to him and were wrongly forced to revoke valuable entitlement to benefits by the VA. *Id.* Despite numerous follow-up calls, voicemails, and e-mails, the VA completely ignored this FOIA request. *See* **Exhibit 9**. Now, nearly six years after the VA's twenty-day window to make a determination on Mr. Rudisill's third FOIA request expired, the VA has yet to respond to such request in any way.

6. Given the VA's complete failure to respond to his third FOIA request, Mr. Rudisill brings this action under FOIA. He seeks an order directing the VA to make a determination on his third FOIA request, conduct a search that is reasonably calculated to locate all records responsive to the request, and provide him with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

THE PARTIES

7. Plaintiff James R. Rudisill ("Mr. Rudisill") is a veteran residing in Richmond, Virginia. He has dedicated roughly eight years to the military and continues to serve his country today as both a Federal Bureau of Investigation ("FBI") Special Agent and Navy Reservist. Mr. Rudisill served as an enlisted soldier in the U.S. Army from January 2000 to June 2002 before attending college. After learning his close friends were killed in action, Mr. Rudisill returned to the Army in June 2004 and continued to serve until August 2011, attaining the rank of Captain before leaving the Army for the FBI.

8. Within the FBI, Mr. Rudisill has combatted domestic terrorism by white supremacists and ISIS supporters. *See* CBS News, *Bond Denied for 2 Accused of Plotting Church Attacks* (Nov. 12, 2015) <<https://perma.cc/7Q2R-8S53>>; Dep't of Just., *ISIS Supporter Sentenced to Prison for Firearms Offenses* (Feb. 12, 2018) <<https://perma.cc/TPA2-S632>>; Landon Shroder, *Domestic Terrorism Inside the FBI's Joint Terrorism in Richmond*, RVA Magazine (Aug. 1, 2018) <<https://perma.cc/9EDX-VGGS>>. Mr. Rudisill, as a Supervisory Special Agent Bomb Technician, responded to the January 6 Capitol attack in the capacity of a regional program manager. He currently leads the FBI's Counter-IED Section's International Operations desk.

9. Mr. Rudisill is currently litigating his right to receive educational benefits under both the Montgomery GI Bill, 38 U.S.C. § 3001 *et seq.*, and the Post-9/11 GI Bill, 38 U.S.C. §

3301 *et seq.*, based on his separate periods of qualifying service. He seeks to gather information about the number of veterans who are similarly situated with respect to their educational benefits.

10. Defendant VA is a department of the executive branch of the U.S. government with headquarters at 810 Vermont Avenue NW, Washington, D.C. 20421. It is an agency within the meaning of 5 U.S.C. § 552(f). The VA has possession, custody, and control of records to which Plaintiff seeks access.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, as this action arises under a law of the United States.

12. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1), as this is the district in which Mr. Rudisill resides.

13. Injunctive relief is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202. Declaratory relief is appropriate under 28 U.S.C. § 2201.

LEGAL FRAMEWORK

The Freedom of Information Act

14. The Freedom of Information Act (“FOIA”) requires federal agencies to produce records requested by the public unless the information is protected by one or more statutory exemptions. 5 U.S.C. § 552(b)(1)–(9).

15. Within twenty business days of receiving a FOIA request, federal agencies must determine whether to comply with the request and immediately notify the requesting party of the determination, the reasons supporting it, and the right to appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

16. If an agency fails to make a determination within the twenty-day statutory period,

the requesting party “shall be deemed to have exhausted his administrative remedies with respect to such request.” 5 U.S.C. § 552(a)(6)(C)(i).

17. In responding to a FOIA request, an agency must make reasonable efforts to review agency records in order to locate responsive records. 5 U.S.C. § 552(a)(3)(C), (D).

18. An agency must “promptly” disclose responsive records that are located in its search and are not subject to any statutory exemptions. 5 U.S.C. § 552(a)(3)(A).

19. Under FOIA, this Court has jurisdiction to “enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from” Mr. Rudisill. 5 U.S.C. § 552(a)(4)(B).

GI Bill Veterans Educational Benefits

20. Mr. Rudisill’s need for the information he seeks through the FOIA request at issue in this case emerges from ongoing litigation with the VA regarding its administration of certain veterans’ benefits programs. An understanding of the history and structure of the legislation that created such benefits is necessary to adequately appreciate the significance of the requested information.

21. Veterans of the Armed Forces are entitled to educational benefits in exchange for their qualifying military service.

22. In 1944, Congress passed the Servicemen’s Readjustment Act of 1944, Pub. L. 78-346, 58 Stat. 284, establishing the so-called original “GI Bill” and with it the first veterans’ educational benefits program. This “landmark legislation” provided World War II veterans “with education benefits to avoid high levels of unemployment, aid servicemembers in readjusting to civilian life, and afford returning veterans an opportunity to receive the education and training they could not pursue while serving in the military.” *BO v. Wilke*, 31 Vet. App. 321, 324 (U.S. App.

Vet. Cl. 2019). The Servicemen’s Readjustment Act of 1944 has been described as “one of the most important measures that has ever come before Congress.” 90 CONG. REC. (appx.) A1477, A1560 (1944) (statement of Sen. Ernest McFarland). Indeed, the VA itself describes the GI Bill as having “had more impact on the American way of life than any law since the Homestead Act of 1862.” U.S. Dep’t of Veterans Affairs, VA History <<https://perma.cc/5G8M-KFWZ>> (all websites last visited Nov. 2, 2022).

23. Since 1944, Congress has created several additional GI Bill educational benefits programs, benefiting both veterans and the country. GI Bill benefits provide a pathway to higher education for many individuals to whom it is not otherwise accessible. *See* Peter S. Gaytan, et al., *For Service to Your Country: The Insider’s Guide to Veterans Benefits* 6 (2008) (“You serve the country; the government pays you back by allowing you educational opportunities you otherwise wouldn’t have had . . .”). GI Bill benefits also benefit the country, as recruitment efforts “rely heavily on education assistance to advertise the benefits of military service.” Katherine Kiemle Buckley & Brigid Cleary, *The Restoration and Modernization of Education Benefits Under the Post-9/11 Veterans Assistance Act of 2008*, 2 *Veterans L. Rev.* 185, 203 (2010).

24. There are two GI Bills of particular importance in this case: the “Montgomery GI Bill,” Veterans’ Educational Assistance Act of 1984, Pub. L. No. 98-525, 98 Stat. 2553 (codified as amended at 38 U.S.C. § 3001 *et seq.*), and the “Post-9/11 GI Bill,” Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, Title V, 122 Stat. 2357 (codified at 38 U.S.C. § 3301 *et seq.*).

25. The Montgomery GI Bill has been in effect and applicable to active-duty military service since 1985. It provides 36 months of benefits for qualifying service as defined by Congress. *See* 38 U.S.C. § 3013(a).

26. The Montgomery GI Bill was primarily designed for peacetime service in the years after the Vietnam War. It was not meant to incentivize enlistment or account for the sacrifices borne during wartime.

27. Recognizing the limitations of the Montgomery program, Congress enacted the Post-9/11 GI Bill in 2008 to provide veterans with “enhanced educational assistance benefits that are worthy” of their arduous post-9/11 service. Pub. L. No. 110-252, Title V, § 5002. The Post-9/11 GI Bill went into effect in 2009 and applies retroactively to active-duty military service beginning after September 11, 2001.

28. Like the Montgomery program, the Post-9/11 program also provides 36 months of benefits for qualifying service as defined by Congress. *See* 38 U.S.C. § 3312(a).

29. The Post-9/11 GI Bill is a transformational benefit on par with the original World War II GI Bill and is far more generous than the Montgomery GI Bill. To illustrate, a veteran using Montgomery GI Bill benefits today for full-time education would be entitled to a monthly stipend of \$2,210.00. *See* U.S. Dep’t of Veterans Affairs, Education and Training: Rate Tables, <<https://perma.cc/76VF-AB58>>. In contrast, a veteran utilizing Post-9/11 GI Bill benefits for full time education is entitled to all tuition and fee payments for in-state schools or up to \$26,381.37 in tuition and fees for private or foreign schools per year, plus an annual \$1,000 stipend for books and supplies, and a monthly housing stipend that varies based on location. *Id.*

30. Because the Post-9/11 and Montgomery GI Bill programs are both in effect and applicable to active-duty service occurring on or after September 11, 2001, many veterans simultaneously meet the eligibility criteria for benefits under both programs. The question of how these dual entitlements may be established and utilized, therefore, regularly arises in the VA’s administration of the separate programs. As explained further below, Mr. Rudisill seeks

information under FOIA about the VA's coordination of veterans' benefits under these GI Bill programs.

FACTUAL BACKGROUND

31. As noted above, Mr. Rudisill served as an enlisted soldier in the U.S. Army from January 2000 to June 2002. He used that service to establish entitlement to Montgomery benefits, using approximately 26 months of those benefits to attend college.

32. After learning his close friends were killed in action, Mr. Rudisill returned to the Army in June 2004 and continued to serve until August 2011, thereby separately establishing his entitlement to Post-9/11 benefits.

33. Mr. Rudisill is currently employed by the FBI as a Special Agent. His responsibilities have included participating in counterterrorism operations against white supremacists and ISIS supporters, as well as other high-profile criminal cases. Serving as a Supervisory Special Agent Bomb Technician, Mr. Rudisill was called to respond to the January 6 Capitol attack as a regional program manager. Mr. Rudisill currently leads the FBI's Counter-IED Section's International Operations.

34. In 2015, Mr. Rudisill was admitted to Yale Divinity School where he hoped to study and then return to the Army as a chaplain. On March 18, 2015, Mr. Rudisill filed an electronic application form for VA education benefits, intending to use his 2004 to 2011 service to establish his entitlement to Post-9/11 GI Bill benefits. He hoped to use approximately 22 months of those Post-9/11 benefits, the amount available to him under 38 U.S.C. § 3695's 48-month aggregate cap.

35. Yet, when Mr. Rudisill applied for Post-9/11 GI Bill benefits, the VA's mandatory application form suggested that in order to receive Post-9/11 benefits immediately, he had to irrevocably revoke his entitlement to any remaining Montgomery benefits. Thus, according to the VA, he effectively had two options: (1) he could trade in his ~10 months of remaining Montgomery

benefits for ~10 months of Post-9/11 benefits, or (2) he could exhaust his Montgomery benefits and then apply for 12 months of Post-9/11 benefits.

36. The VA's treatment of Mr. Rudisill was not unique. Since August 1, 2009 (when the Post-9/11 program went into effect), the VA has interpreted 38 U.S.C. §§ 3322(d) and 3327 (the "benefit-exchange election provisions") as requiring any veteran applying for Post-9/11 benefits, while also entitled to Montgomery benefits, to revoke entitlement to the latter to establish entitlement to the former. The VA has accordingly limited veterans' entitlement to Post-9/11 benefits to the amount of their revoked Montgomery entitlement and insisted that this supposedly voluntary election of Post-9/11 benefits is "irrevocable" under §§ 3327(d)(2) and (h).

37. In 2015, Mr. Rudisill challenged the VA's decision in his case, arguing that Congress addressed the issue of dual entitlement in multiple provisions of the GI Bill statutory framework, such as 38 U.S.C. §§ 3322(a), 3322(h)(1), and 3695. These provisions allow separate periods of qualifying service to be credited to the separate programs and the resulting separately established entitlements to be used consecutively up to the 48-month aggregate cap. Under this interpretation of the Post-9/11 GI Bill, Mr. Rudisill would be able to obtain the approximately 22 months of Post-9/11 benefits he intended to use for Yale Divinity School.

38. Thus far, the federal appellate courts have agreed with Mr. Rudisill and rejected the VA's interpretation of 38 U.S.C. §§ 3322(d) and 3327's benefit-exchange election provisions as requiring veterans with separate periods of qualifying service to follow their procedures in order to establish entitlement to Post-9/11 benefits. *See Wilkie*, 31 Vet. App. at 321, *aff'd sub nom.*, *Rudisill*, 4 F.4th at 1297, *vacated and reh'g en banc granted*, 2022 WL 320680 (Fed. Cir. Feb. 3, 2020). Most recently, the VA's appeal was reheard by the en banc Federal Circuit. *See Rudisill*, No. 2020-1637 (Fed. Cir. argued Oct. 6, 2022),

https://oralarguments.cafc.uscourts.gov/default.aspx?fl=20-1637_10062022.mp3.

39. In support of his GI Bill litigation, Mr. Rudisill submitted three separate FOIA requests to the VA between 2015 and 2016. The VA responded to two of those requests. But the VA completely failed to respond in any way to the third FOIA request, the one at particular issue in this action.

40. Mr. Rudisill filed his first FOIA request on July 15, 2015. The first FOIA request sought access to Mr. Rudisill's own personal educational benefits claim file that the VA maintained. *See Exhibit 1*. On July 30, 2015, the VA confirmed it received Mr. Rudisill's FOIA request and produced Mr. Rudisill's Claim File in the same correspondence. *See Exhibit 7*.

41. Mr. Rudisill filed a second FOIA request (also filed on July 15, 2015), seeking VA records of forms used by veterans to apply for GI Bill educational benefits, manuals, handbooks, and other guidance documents for processing the same. *See Exhibit 2*. In a letter dated July 21, 2015, the VA confirmed receipt of Mr. Rudisill's second request, but this time the VA did not include responsive documents. *See Exhibit 3*.

42. On September 21, 2015, after waiting three weeks for the requested documents, Mr. Rudisill's counsel sent the VA his first inquiry regarding the status of the request. *See Exhibit 4*. The VA apologized for the delay in an e-mail the following day, and informed counsel for Mr. Rudisill that the VA was experiencing technical difficulties producing the requested materials. *Id.* One day later, on September 23, 2015, the VA again attempted to produce responsive documents to Mr. Rudisill but could not do so due to difficulties transferring the documents digitally. *See Exhibit 5*.

43. Almost a month later, on October 13, 2015, Mr. Rudisill's counsel sent the VA a second inquiry regarding the status of the request. *Id.* Once again, the VA apologized for the delay,

and indicated that Mr. Rudisill's second FOIA request had been assigned an elevated priority. *Id.* Finally on October 15, 2015, the VA confirmed that it had shipped responsive documents, thereby satisfying Mr. Rudisill's second request. *See Exhibit 6.*

44. On July 14, 2016, the Board of Veterans' Appeals issued a decision, finding that Mr. Rudisill was qualified for educational assistance benefits under both the Montgomery and Post-9/11 GI Bills but also affirming the VA's interpretation of the benefit-exchange election provisions and thus limiting Mr. Rudisill's entitlement to Post-9/11 benefits to the approximately 10 months. *See Wilke*, 31 Vet. App. at 327 (describing Board of Veterans Appeals decision). Mr. Rudisill appealed the Board's decision to the Veterans Court on October 15, 2016.

45. In conjunction with his appeal, Mr. Rudisill filed a third FOIA request in hopes of developing information on precisely how many veterans have been erroneously forced by the VA and its application form to make benefit-exchange elections when they had no need to. Thus, on October 13, 2016, and sought any and all VA records identifying:

- a. the number of individuals who have received Post-9/11 GI Bill Benefits on the basis of irrevocably electing Post-9/11 GI Bill benefits in lieu of another educational benefit;
- b. how many individuals have received Post-9/11 GI Bill benefits without having to irrevocably elect such benefits in lieu of another educational benefit;
- c. how many total individuals have received Post-9/11 GI Bill benefits while retaining entitlement to another educational benefit; and
- d. how many total individuals have received Post-9/11 GI Bill benefits in any capacity.

See **Exhibit 8**.

46. As mentioned, Mr. Rudisill seeks the records described in the FOIA request to support his efforts in the underlying GI Bill litigation on behalf of himself and, indeed, the entire post-9/11 era veterans community. As the GI Bill litigation to date has borne out, the VA has very likely caused hundreds of thousands of post-9/11 veterans—if not more—to irrevocably relinquish 12 months of valuable education benefits that they were entitled to under the Montgomery GI Bill and/or Post-9/11 GI Bill through its interpretation of the benefit-exchange election provisions. As a result, Mr. Rudisill seeks to learn more about how the VA has coordinated the administration of education benefits under the Montgomery GI Bill with those under the Post-9/11 GI Bill.

47. The VA completely ignored Mr. Rudisill's third FOIA request. The VA did not confirm it received the request, and Mr. Rudisill's counsel's follow-up phone calls and voicemails to the VA have all gone unanswered. See **Exhibit 9**. Mr. Rudisill's counsel made yet another attempt to contact the VA regarding the request via e-mail on January 5, 2017, but the VA did not respond in any way. *Id.* To this day, Mr. Rudisill has not received a response from the VA or any of the records requested in his third FOIA request.

CLAIMS FOR RELIEF

Count I

Violation of the Freedom of Information Act (5 U.S.C. § 552) for Failure to Make a Determination Regarding Mr. Rudisill's FOIA Request

48. Mr. Rudisill adopts and incorporates each and every allegation in this Complaint as if set forth fully herein.

49. Upon receiving a request for records, the VA is required to determine, within twenty days, whether to comply with such request, and to immediately notify the requestor of the determination and the right to appeal the agency's decision. 5 U.S.C. § 552(a)(6)(A)(i).

50. In response to Mr. Rudisill's first two FOIA requests delivered to the VA on July 15, 2015, the VA determined that it would comply with such requests within the statutorily prescribed twenty-day period.

51. On October 13, 2016, Mr. Rudisill caused to be delivered to the VA his third FOIA request, which reasonably described the records that he seeks and complied with the VA's rules for making a FOIA request.

52. In contrast to his first two requests, Mr. Rudisill's third FOIA request has been pending for six years without any initial determination from the VA, well beyond the twenty-day statutory period. The VA has not explained to Mr. Rudisill the nature and scope of documents that it will produce, the nature and scope of documents that it will withhold, or the right for Mr. Rudisill to appeal the VA's decision. In fact, as of this filing, the VA has not responded to Mr. Rudisill's request in any way.

53. The VA violated FOIA by failing to make an initial determination on Mr. Rudisill's third FOIA request within the twenty-day statutory period. 5 U.S.C. § 552(a)(6)(A)(i).

54. Accordingly, Mr. Rudisill has exhausted his administrative remedies with respect to his third FOIA request. *See* 5 U.S.C. §552(a)(6)(C); *Pollack v. Dep't of Just.*, 49 F.3d 115, 118–19 (4th Cir. 1995) (citing *Oglesby v. Dep't of the Army*, 920 F.2d 57, 62 (D.C. Cir. 1990) (holding that “a requester who has not received a timely notice of the agency’s decision, as required by 5 U.S.C. § 552(a)(6)(A)(i), may proceed immediately in court to enforce a FOIA request without exhausting any administrative remedies)).

55. As a result of the VA's failure to respond to Mr. Rudisill's request, Mr. Rudisill has been unable to utilize the relevant information in the ongoing GI Bill litigation.

56. Unless enjoined and made subject to a declaration of Mr. Rudisill's rights by this

Court, the VA will continue to violate FOIA's mandate that it produce public records to any requester within twenty days.

Count II

**Violation of the Freedom of Information Act (5 U.S.C. § 552)
for Failure to Conduct an Adequate Search for Responsive Records**

57. Mr. Rudisill adopts and incorporates each and every allegation in this Complaint as if set forth fully herein.

58. Upon receiving a request for records, the VA is required to make reasonable efforts to search for records with the purpose of locating records that are responsive to the request. 5 U.S.C. § 522(a)(3)(C), (D).

59. In response to Mr. Rudisill's first two FOIA requests delivered to the VA on July 15, 2015, the VA undertook such a search for records in accordance with 5 U.S.C. § 552(a)(3)(C), (D).

60. On October 13, 2016, Mr. Rudisill caused to be delivered to the VA his third FOIA request, which reasonably described the records that Plaintiff sought and complied with the VA's rules for making a FOIA request.

61. Upon information and belief, as of this filing, the VA has failed to undertake a search that is reasonably calculated to locate documents responsive to Mr. Rudisill's third FOIA request.

62. The VA thus not only violated FOIA by failing to make any determination on Mr. Rudisill's request, but also in failing to undertake a search that is reasonably calculated to locate records responsive to Mr. Rudisill's third FOIA request. 5 U.S.C. § 522(a)(3)(C), (D).

63. Given the VA's complete lack of response to Mr. Rudisill's third FOIA request, Mr. Rudisill has exhausted his administrative remedies. *See* 5 U.S.C. §552(a)(6)(C); *Pollack*, 49

F.3d at 118–19 (citing *Oglesby*, 920 F.2d at 62).

64. As a result of the VA’s failure to undertake a search that is reasonably calculated to locate records responsive to Mr. Rudisill’s request, Mr. Rudisill has been unable to utilize the relevant information in the ongoing GI Bill litigation.

65. Unless enjoined and made subject to a declaration of Mr. Rudisill’s rights by this Court, the VA will continue to violate 5 U.S.C. § 522(a)(3)(C), (D)’s requirement that it undertake a search that is reasonably calculated to locate records responsive to Mr. Rudisill’s third FOIA request.

Count III

Violation of the Freedom of Information Act (5 U.S.C. § 552) for Failure to Promptly Disclose Records Responsive to Mr. Rudisill’s FOIA Request

66. Mr. Rudisill adopts and incorporates each and every allegation in this Complaint as if set forth fully herein.

67. Mr. Rudisill has a statutory right to the prompt disclosure of records sought under FOIA as set forth in 5 U.S.C. § 552(a)(3)(A).

68. In response to Mr. Rudisill’s first two FOIA requests delivered to the VA on July 15, 2015, the VA promptly disclosed records sought under FOIA as set forth in 5 U.S.C. § 552(a)(3)(A).

69. On October 13, 2016, Mr. Rudisill caused to be delivered to the VA his third FOIA request, which reasonably described the records that he seeks and complied with the VA’s rules for making a FOIA request.

70. The VA has not identified any statutory exemptions that prevent disclosure of the requested records, and Mr. Rudisill is not aware of any such exemptions that would legitimately apply to the records that he seeks. As of this filing, the VA has failed to produce any documents.

71. The VA thus not only violated FOIA by failing to make any determination on Mr. Rudisill's request or search for any documents related to that request, but also in failing to promptly disclose records that are responsive to Mr. Rudisill's third FOIA request. 5 U.S.C. §552(a)(3)(A).

72. Given the VA's complete lack of response to Mr. Rudisill's third FOIA request, Mr. Rudisill has exhausted his administrative remedies. *See* 5 U.S.C. §552(a)(6)(C); *Pollack*, 49 F.3d at 118–19 (citing *Oglesby*, 920 F.2d at 62).

73. As a result of the VA's failure to respond to Mr. Rudisill's third FOIA request, Mr. Rudisill has been unable to utilize the relevant information in the ongoing GI Bill litigation.

74. Unless enjoined and made subject to a declaration of Mr. Rudisill's rights by this Court, the VA will continue to violate Mr. Rudisill's rights to receive public records through FOIA.

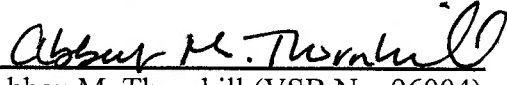
PRAYER FOR RELIEF

Plaintiff respectfully requests this Court to:

- (a) Declare that Defendant's failure to make an initial determination in response to Plaintiff's FOIA request is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- (b) Declare that Defendant's failure to undertake a search that is reasonably calculated to locate responsive records is unlawful under FOIA, 5 U.S.C. § 552(a)(3)(C), (D);
- (c) Order the Defendant to conduct a search that is reasonably calculated to locate all records responsive to Plaintiff's FOIA request, with a cut-off date for such search set by the court, and to provide Plaintiff with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action;
- (d) Declare that Defendant's failure to disclose the requested records to Plaintiff is unlawful under FOIA, 5 U.S.C. §§ 552(a)(3)(A), (6)(A);
- (e) Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (f) Grant such other relief as the court deems just and proper.

Dated: November 2, 2022

Respectfully submitted,


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