

EXHIBIT 23

From: Christa Lemelin [christa.lemelin@nara.gov]
Sent: Tuesday, August 16, 2016 5:08 PM
To: Charles Ornstein; MHixenbaugh PilotOnline
Subject: RE: FW: VHA Staus FOIA Request: 15-07638-F - OGIS Final Response Letter

Re: OGIS Case No. 201601045
Subject of Case: VHA FOIA Request No. 15-07638-F

Dear Mr. Ornstein and Mr. Hixenbaugh:

I attached a letter to this email that provides information about your Office of Government Information Services (OGIS) case.

Thank you for your patience while we handled your request for assistance and please contact me if you have any questions.

Sincerely,
Christa Lemelin

We would greatly appreciate it if you could take the time to give us your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.

On Thu, Jul 21, 2016 at 3:56 PM, Christa Lemelin <christa.lemelin@nara.gov> wrote:

Re: OGIS Case No. 201601045
Subject of Case: VHA FOIA Request No. 5-07638-F

Dear Mr. Ornstein and Mr. Hixenbaugh:

My name is Christa Lemelin. I am the facilitator assigned to your request for assistance concerning your Freedom of Information Act (FOIA) request to the Veterans Health Administration.

Thank you for contacting the Office of Government Information Services (OGIS). Congress created OGIS to serve as the federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

OGIS:

- Advocates for neither the requester nor the agency, but for the FOIA process to work as intended
- Provides mediation services to help resolve disputes between FOIA requesters and Federal agencies
- Strives to work in conjunction with the existing request and appeal process
- May become involved at any point in the FOIA administrative process

OGIS does not:

- Compel agencies to release documents
- Enforce FOIA
- Process requests or review appeals
- Provide assistance outside the realm of FOIA
- Make determinations or dictate resolutions to disputes

For tracking purposes, we assigned your request for assistance **OGIS Case No. 201601045**. Please refer to this case number in all communications to me regarding this matter.

I will handle your request for assistance as quickly as possible; however, due to the increase in the demand for OGIS's services, there may be a delay in my response. Thank you for your patience as I handle your case and please contact me if you have any questions.

Best,
Christa

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CHRISTA LEMELIN
Facilitator
Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road (OGIS)
College Park, MD 20740-6001
Email: christa.lemelin@nara.gov
Phone: [202-741-5773](tel:202-741-5773)
Fax: [202-741-5769](tel:202-741-5769)

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OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 16, 2016 — Sent via email

Mr. Charlie Ornstein
Senior Reporter, ProPublica
Charles.Ornstein@propublica.org

Re: Case No. 201601045
NG: HK: CM: CL

Dear Mr. Ornstein:

This responds to your July 7, 2016 request for assistance from the Office of Government Information Services (OGIS) concerning Mike Hixenbaugh's Freedom of Information Act (FOIA) request to Department of Veterans Affairs Veterans Health Administration (VHA).

As you are aware, Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. Our goal is to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

On September 1, 2015, Mr. Hixenbaugh submitted a six part FOIA request (No. 15-07638-F) to the VHA for records concerning Agent Orange. VHA FOIA's Office provided you with information about the status of your request, including that it assigned the VA's Office of Information and Technology (OI&T) with conducting a search for responsive records. You contacted OGIS because VHA's FOIA Office has not provided you with any documents responsive to your request; specifically, you are concerned about the status of OI&T's search for responsive records.

We carefully reviewed your submission and contacted VHA FOIA Public Liaison Timothy H. Graham and VHA FOIA Officer Deana Marakowski to inquire about the status of your request. We are glad to share what we learned from the VHA in response to our inquiry.

VHA explained to OGIS that when its FOIA Office receives a request, it logs the request into its tracking system and FOIA staff members review the request to determine the office(s) most likely to have responsive records. The FOIA Office then sends a search request to the appropriate office(s); any responsive records are returned to the FOIA Office for processing.

As you are aware, the VHA FOIA Office tasked OI&T with conducting a search for responsive records. Regarding OI&T's search, Mr. Graham explained that some of the subjects named in your email are no longer employed by VA. For that reason, much of

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769



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the email sent to and from the subjects of your request have been archived. Mr. Graham said that technical difficulties have made it challenging for OI&T to retrieve the emails you seek and delayed the processing of your request.

Mr. Graham said that although the VHA FOIA Office has yet to receive all of the records you seek, it has obtained and begun reviewing emails responsive to your request. Additionally, Mr. Graham noted that the VHA conducted a search of a second system, the VA Intranet Quorum (VAIQ), which VA uses to track Congressional correspondence. The agency located records responsive to your request in VAIQ, as well.

To respond more efficiently to your request, Mr. Graham said that the VHA FOIA Office will begin reviewing the responsive records and responding to you on a rolling basis. You may contact VHA FOIA Officer Deana Marakowski at Deana.Marakowski@va.gov or 717-450-4662 to discuss a production schedule.

Providing interim releases in response to records requests is an OGIS best practice and is in keeping with guidance from the Department of Justice Office of Information Policy (See <https://www.justice.gov/oip/blog/foia-post-2010-oip-guidance-importance-good-communication-foia-requesters>).

I hope you find this information useful. Thank you for bringing this matter to OGIS; at this time there is no further action for us to take and we consider this matter closed. Please contact us if you have any questions.

Sincerely,



NIKKI GRAMIAN
Acting Director

cc: Timothy H. Graham, VHA FOIA Public Liaison, via email
Deana Marakowski, VHA FOIA Officer, via email
Mike Hixenbaugh, via email

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.