

# **EXHIBIT 25**

From: "Marakowski, Deana M" <[Deana.Marakowski@va.gov](mailto:Deana.Marakowski@va.gov)>  
Date: Aug 26, 2016 8:50 AM  
Subject: VHA Partial Initial Agency Decision FOIA Request: 15-07638-F  
To: "[mike.hixenbaugh@pilotonline.com](mailto:mike.hixenbaugh@pilotonline.com)" <[mike.hixenbaugh@pilotonline.com](mailto:mike.hixenbaugh@pilotonline.com)>  
Cc: "VHA FOIA" <[vhafioa2@va.gov](mailto:vhafioa2@va.gov)>, "Marakowski, Deana M" <[Deana.Marakowski@va.gov](mailto:Deana.Marakowski@va.gov)>

Good Morning Mr. Hixenbaugh,

Attached is a partial initial agency decision to FOIA request 15-07638-F. At this time OI&T continues to work on retrieving the remaining responsive records.

If you should have any questions regarding the information you are receiving, please just let me know.

Thank you,

Deana

**Deana Marakowski**

**VHA FOIA Officer**

**Information Access and Privacy Office**

**Health Information Governance**

**Office of Informatics and Information Governance**

**810 Vermont Avenue, N.W.**

**Washington D.C. 20420**

**Tel. [717-675-8363](tel:717-675-8363)**

**Fax. [202-273-9387](tel:202-273-9387)**

**VA**



U.S. Department  
of Veterans Affairs

**Veterans Health Administration**  
Washington DC 20420

August 26, 2016

In Reply Refer To:

**Re: FOIA Request No. 15-07638-F**

Mike Hixenbaugh  
The Virginian-Pilot  
150 West Brambleton Avenue  
Norfolk, VA 23510

Dear Mr. Hixenbaugh:

This letter serves as a partial initial agency decision to your September 1, 2015, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 to the Department of Veterans Affairs (VA), FOIA Service requesting:

1. All correspondence (including emails and letters) as well as any memos and reports between Jan. 1, 2009 and the date this request is completed to and from the Secretary of Veterans Affairs (including previous and interim office holders, and the current office holder), regarding Agent Orange and dioxin, and its effects on veterans and/or their offspring.
2. All correspondence (including emails and letters) as well as any memos and reports between Jan. 1, 2009 and the date this request is completed to and from the Under Secretary for Health (including previous and interim office holders, and the current office holder), regarding Agent Orange and dioxin, and its effects on veterans and/or their offspring.
3. All correspondence (including emails and letters) as well as any memos and reports between Jan. 1, 2009 and the date this request is completed to and from the Under Secretary for Benefits (including previous and interim office holders, and the current office holder), regarding Agent Orange and dioxin, and its effects on veterans and/or their offspring.
4. All correspondence (including emails and letters) as well as any memos and reports between Jan. 1, 2009 and the date this request is completed to and from the Deputy Inspector General (including previous and interim office holders, and the current office holder), regarding Agent Orange and dioxin, and its effects on veterans and/or their offspring.
5. All correspondence (including emails and letters) as well as any memos and reports between Jan. 1, 2009 and the date this request is completed to and from the Assistant Secretary for Congressional and Legislative Affairs (including previous and interim office holders, and the current office holder), regarding Agent Orange and dioxin, and its effects on veterans and/or their offspring.

6. All correspondence (including emails and letters) as well as any memos and reports between Jan. 1, 2009 and the date this request is completed to and from the Assistant Secretary for Policy and Planning (including previous and interim office holders, and the current office holder), regarding Agent Orange and dioxin, and its effects on veterans and/or their offspring.

It was determined that records you seek within line item 2 above may be located within the Veterans Health Administration (VHA) and as a result your request was referred to the VHA FOIA Office on September 3, 2015 and was assigned FOIA tracking number 15-07638-F. Please note VHA is in the process of searching for records responsive to line item 2 only.

At this time VHA is rendering a partial initial agency decision. Provided are twenty-six (26) pages of responsive records. For ease of reference these pages have been bates numbered (000001-000026). Upon my review I have found information protected under the FOIA, specifically, FOIA exemption 6, 5 U.S.C. § 552(b)(6).

FOIA Exemption 6 [5 U.S.C. § 552 (b)(6)] covers "personnel and medical files and similar files of which the disclosure would constitute a clearly unwarranted invasion of personal privacy." Stated another way, VA may withhold information under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government.

In United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989), we must determine if a privacy interest is involved, and determine if disclosure of the requested information would serve the public interest, and balance the personal privacy interest against the public interest. In evaluating the public interest in a given case, we must focus on the nature of the requested document and its relationship to the public interest generally. We must consider whether disclosure of the requested document, or portions thereof that have been withheld, would "open agency action to the light of public scrutiny" rather than focus on the particular purpose for which the document is being requested. See Reporters Committee, 489, U.S. at 772.

The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the materials provided, it is recognized that you are in a position to provide the requested information to members of the general public however; I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest in this

case. Consequently, the names of Veteran's, name of Veteran's spouse, and health information provided by the Veteran to their respective Member have been redacted under Exemption 6. Inserted is (b6) to identify the FOIA Exemption applied.

It is noted on page 000019, that Dr. Shulkin advised Senator Sullivan that pages 000005 and 000006 were being referred to the Veterans Benefits Administration (VBA) because the subject matter fell under their purview. Please be advised pages 000007-000018 are in response to pages 000005 and 000006. Upon my review I have determined pages 000007-000018 require VBA release determination as these pages are records that were created by VBA. As a result, I have redacted the information and inserted the comment "For VBA Release Determination". You will receive a direct response from VBA on their release determination for page 000007-000018. Your request was previously assigned to VBA under FOIA tracking number 16-07639-F I will be referring pages 000007-000018 under the same tracking number 16-07639-F to Gwendolyn Smith, FOIA Officer, VBA.

At this time, the twenty-six (26) pages of records provided are all that VHA has to release to you at this time. However, to respond more efficiently to your request, once additional records are received, we will begin reviewing the responsive records and responding to you on a rolling basis. At this time I do not have a projected release date for the next set of records, however I will advise you via email when additional records become available.

If you disagree with my determinations, please be advised you may appeal to:

Office of the General Counsel (024)  
Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420

If you should choose to file an appeal, your appeal must be postmarked no later than ninety (90) calendar days from the date of this letter. Please include a copy of this letter with your written appeal and clearly state why you disagree with the determinations set forth in this response.

In addition you may also seek assistance regarding the determination rendered in this response from VHA's FOIA public liaison and or Office of Government Information Services (OGIS) as provided below:

**VHA FOIA Public Liaison:**

Name: Timothy Graham  
Email Address: [Timothy.Graham@va.gov](mailto:Timothy.Graham@va.gov)  
Phone Number: 215-823-4146

**Office of Government Information Services (OGIS)**

Email Address: [ogis@nara.gov](mailto:ogis@nara.gov)

**Fax:** 202-741-5769  
**Mailing address:** Office of Government Information Services (OGIS)  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

Sincerely,

*Deana Marakowski*  
Deana Marakowski  
VHA FOIA Officer

Enclosures