

# **EXHIBIT 10**

## Seth Watkins

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**From:** Seth Watkins  
**Sent:** Wednesday, November 08, 2017 5:22 PM  
**To:** 'OGC FOIA Requests'  
**Subject:** RE: 18-00643-F -- FOIA and Privacy Act Request

RE: #18-00643-F

This email concerns the October 16-17, 2017 Privacy Act and FOIA request on behalf of Celestino Almeda forwarded below. Expedited processing was granted by letter from OGC dated October 19, 2017.

Mr. Almeda's appeal to the U.S. Court of Appeals for Veterans Claims (CAVC) was settled on October 23, 2017 – after the above-identified request was submitted and after expedited processing was granted. Mr. Almeda hereby withdraws his argument for expedited processing with respect to “[r]easonable expectation of an imminent loss of a substantial due process right.” Nevertheless, Mr. Almeda still presses his argument that expedited processing is appropriate because his request concerns a “matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government’s integrity.”

Recent articles have continued to highlight the problematic nature of the eligibility determination process for the Filipino Veterans Equity Compensation Fund (FVECF) benefit. In addition to the articles cited in the October 17, 2017 FOIA request, see for example: Emil Guillermo, “Centenarian vet wins appeal as WWII Filvets get Congressional Gold Medal,” INQUIRER.NET (Oct. 25, 2017) (“[N]early 60 percent of all [FVECF] claims, about 23,775 claims at last count, were rejected. . . . [T]here is still \$56 million in the Filipino Veterans Equity Compensation Fund established by Congress. ¶ But getting at it . . . has rivaled the Bataan Death March.”), available at <http://usa.inquirer.net/7520/centenarian-vet-wins-appeal-wwii-filvets-get-congressional-gold-medal>; Britain Eakin, “World War II Vet Inks Settlement on Long-Awaited Benefits,” COURTHOUSE NEWS SERVICE (Oct. 24, 2017) (“Representatives for the government [have] offered little insight as to whether the VA complies with the [FVECF] law in requiring a veteran’s name to appear on the Missouri list, and why the VA tied eligibility for the benefit to that document instead of others showing eligible military service in the Philippines during WWII.”), available at <https://www.courthousenews.com/world-war-ii-vet-inks-settlement-long-awaited-benefits/>.

Thank you.

Sincerely,  
/s/  
Seth A. Watkins

**Seth A. Watkins, Ph.D.**  
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**From:** OGC FOIA Requests [<mailto:OGCFOIARequests@va.gov>]  
**Sent:** Thursday, October 19, 2017 12:36 PM  
**To:** Seth Watkins <[watkins@wlapllc.com](mailto:watkins@wlapllc.com)>  
**Subject:** FOIA Acknowledgement Letter

Mr. Watkins,

Attached is our acknowledgement of your amended FOIA request dated October 17, 2017.

**M. René Baxter**  
OGC FOIA Officer (VACO)  
FOIA, Privacy, and Records Management  
Office of General Counsel (026)  
810 Vermont Avenue, NW (1175H)  
Washington, DC 20420  
Office: (202) 461-7862 (8:00 – 5:30)  
**FOIA Requester Line: (202) 461-7860/ FAX (202) 273-9299**

CWS: 1<sup>ST</sup> Friday  
Telework: 2<sup>nd</sup> Tuesday Cell (202) 285-1430

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**From:** Seth Watkins [<mailto:watkins@wlapllc.com>]  
**Sent:** Tuesday, October 17, 2017 4:33 PM  
**To:** OGC FOIA Requests  
**Subject:** [EXTERNAL] FW: FOIA and Privacy Act Request (expedited processing; fee waiver) re Filipino Veterans Equity Compensation [REVISED]

The FOIA request submitted below is hereby amended as indicated in bold, red lettering.

Thank you.

/s/ Seth A. Watkins

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**From:** Seth Watkins

**Sent:** Monday, October 16, 2017 4:23 PM

**To:** 'ogcfoiarequests@va.gov' <[ogcfoiarequests@va.gov](mailto:ogcfoiarequests@va.gov)>

**Subject:** FOIA and Privacy Act Request (expedited processing; fee waiver) re Filipino Veterans Equity Compensation

U.S. Department of Veterans Affairs  
Office of General Counsel (OGC)

To whom it may concern:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, on behalf of a client, Mr. Celestino G. Almeda, who is a one hundred (100) year old WWII veteran. **Expedited processing is hereby requested.**

Copies of Form DOJ-361 "Certification of Identity" executed by Mr. Almeda on October 15, 2017 as well as a further Consent to Release Information executed by Mr. Almeda on July 5, 2017 are attached, authorizing the release of information related to Mr. Almeda to the undersigned attorney.

1. The following records are hereby requested under the **Privacy Act**, preferably sent to requester by email in electronic format (pdf):

all Records in the possession, custody, or control of the **Department of Veterans Affairs (VA)** that in any way relate to, concern, mention, describe, report, or discuss any review by or on behalf of the **White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI)** and/or the **Filipino Veterans Equity Compensation Fund (FVEC or FVECF) Interagency Working Group (IWG)** of a claim by Celestino G. Almeda to the **Filipino Veterans Equity Compensation Fund (FVEC or FVECF)**.

On information and belief, in 2012, the names of certain individuals whose FVEC claims had been denied were brought to the attention of WHIAAPI. On information and belief, in early January 2013, WHIAAPI provided Celestino G. Almeda's name and certain supporting documentation to the National Archives and Records Administration (NARA) as part of a small sample and/or pilot project aimed at identifying flaws in the FVEC claims review process. On information and belief, NARA provided feedback to WHIAAPI concerning its review and negative determination (verification) concerning Celestino G. Almeda's service (as undertaken in connection with his FVEC claim), and that information was conveyed, described, reported, reviewed, and/or discussed with and/or by the FVEC IWG and/or Chris Lu, who was the Assistant to the President and Cabinet Secretary and also Co-Chair of WHIAAPI. VA participated on the FVEC IWG. Richard Hipolit (SES) and Jill Kupec (VBAVACO) and Terri Beer participated on the FVEC IWG on behalf of VA. On information

and belief, WHIAAPI and the FVEC IWG considered issues with respect to the denial of FVEC claims during 2012-13.

2. The following records are hereby requested under **FOIA**, preferably sent to requester by email in electronic format (pdf):

all Records of **Richard Hipolit (SES) or Jill Kupec (VBAVACO) or Terri Beer** in the possession, custody, or control of the **Department of Veterans Affairs** that in any way relate to, concern, mention, describe, report, or discuss:

(a) communications—including but not limited to substantive comments, concerns, and/or edits to drafts and/or approvals on agency letterhead (e.g., by VA)—with respect to the preparation of a blog post by the FVEC IWG that ultimately was placed online on or about July 9, 2013 at <http://www.whitehouse.gov/blog/2013/07/09/recognizing-extraordinary-contribution-filipino-veterans> (now available at <https://obamawhitehouse.archives.gov/blog/2013/07/09/recognizing-extraordinary-contribution-filipino-veterans>), as referenced for example in attached **Exhibit 1** (email chain from 06/13/2013-07/09/2013 re Filipino Vets Blog Post and Report (yellow highlighting added));

(b) any sampling or pilot group of denied FVEC claimants (including but not limited to Celestino G. Almeda), considered by WHIAAPI and/or the FVEC IWG (including but not limited to VA) during 2012-13;

(c) the meeting between VA Secretary Shinseki and WHIAAPI on or about May 10, 2013 concerning FVEC;

(d) the names of all individuals who participated on the FVEC IWG on behalf of VA; and

(e) communications from 2012-13 that in any way reference, refer to, or relate to the report **U.S. Army Recognition Program of Philippine Guerrillas**, dated *circa* 1949.

It is believed that the most relevant time frame of requested Records is 2012-13.

It is believed that the email accounts of the following document custodians at VA likely contain relevant information:

- Richard Hipolit (SES) ([Richard.Hipolit@va.gov](mailto:Richard.Hipolit@va.gov)) -- he was an individual who participated on the FVEC IWG on behalf of VA and is believed to have been Assistant General Counsel, Professional Staff Group II, Office of the General Counsel at the time;
- Jill Kupec (VBAVACO) ([Jill.Kupec@va.gov](mailto:Jill.Kupec@va.gov)) -- she was an individual who participated on the FVEC IWG on behalf of VA, and is believed to have been the Executive

Management Officer for the Office of Field Operations of the Veterans Benefits Administration at the time;

- **Terri Beer ([terri.beer@va.gov](mailto:terri.beer@va.gov)) -- she was an individual who participated on the FVEC IWG on behalf of VA, and is believed to have been with the Veterans Benefits Administration at the time.**

As used herein, the term “Records” *includes but is not limited to* emails, letters, transmittals, communications, memoranda, reports, presentations (e.g., PowerPoint), instructions (such as to or from agency staff, contractors, or other providers), summaries, and advice, including all attachments and exhibits thereto.

For reference, information about the **White House Initiative on Asian Americans and Pacific Islanders** can be found at <https://sites.ed.gov/aapi/staff/>. Information about the FVECF IWG can be found for example at <https://obamawhitehouse.archives.gov/blog/2013/07/09/recognizing-extraordinary-contribution-filipino-veterans>.

**Expedited Processing** is hereby requested. Mr. Celestino G. Almeda, is involved in legal proceedings concerning the Filipino Veterans Equity Compensation Fund (the subject matter of the IWG) in which he has an **urgent need for the requested Records**. The following are circumstances that demonstrate a compelling need for expedited processing as well as “widespread and exceptional interest in which possible questions exist about the government’s integrity which affect public confidence” pursuant to 38 C.F.R. § 1.556(d)(iii) & (iv):

(1) **Reasonable expectation of an imminent loss of a substantial due process right:** Requester, Mr. Almeda, is one hundred (100) years old and has been denied eligibility to receive a one-time payment from the Filipino Veterans Equity Compensation Fund (“FVECF”). His appeal, pending at the U.S. Court of Appeals for Veterans Claims (“CAVC”), will in part argue that the denial of the FVECF benefit to him violates the equal protection component of the due process clause of the Fifth Amendment. In particular, by failing to accept the official documents that Mr. Almeda submitted to VA to demonstrate entitlement to the FVEC benefit, some of which NARA found in the government’s records—particularly Almeda’s PA AGO Form 23 Affidavit—the VA is intentionally, and unconstitutionally, discriminating against an individual of Filipino national origin by disregarding his records issued by a service department. Failure to grant expedited processing poses a risk to Mr. Almeda’s ability to argue these points as part of his appeal that he has been denied due process under the Fifth Amendment to the Constitution.

(2) **Matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity:** The dispute about how the government determines eligibility for the FVECF benefit has been widely covered by media including with respect to Mr. Almeda. See, e.g., Ben de Guzman, “Filipino WWII Veterans Immigration and Recognition: Connected Movements,” THE HUFFINGTON POST (May 13, 2016) (“The discrimination Filipino WWII veterans have faced as unrecognized U.S. veterans has lasted for more than seventy years . . .”; “inequity and struggles still exist as

work continues to try and fix the eligibility process and ensure everyone who served [receives] benefits”), available at [http://www.huffingtonpost.com/ben-de-guzman/filipino-wwii-veterans-im\\_b\\_9937400.html](http://www.huffingtonpost.com/ben-de-guzman/filipino-wwii-veterans-im_b_9937400.html); Emil Guillermo, “99-Year-Old WWII Veteran Seeks Response Over Denied Benefits,” NBC NEWS (May 31, 2016) (describing “a Filipino World War II veteran who is still seeking recognition and equity pay”), available at <http://www.nbcnews.com/news/asian-america/99-year-old-wwii-veteran-seeks-response-over-denied-benefits-n582126>; Beth Garbitelli, “Some Filipino Vets Still Awaiting Recognition,” PBS (July 31, 2012), available at <http://www.pbs.org/newshour/rundown/some-filipino-vets-still-awaiting-recognition/>; Emil Guillermo, “Filipino WWII veterans fight never-ending battle for equity,” INQUIRER.NET (Nov. 12, 2015). In fact, the government’s narrow interpretation of eligibility for compensation from the FVECF was the subject of *two* 2014 hearings in Congress. See Filipino Veterans Equity Compensation Fund: Examining the Department of Defense and Interagency Process for Verifying Eligibility, Hearing Before the Subcommittee on Oversight and Investigations of the Committee on Armed Services, House of Representatives (June 24, 2014), available at <https://www.gpo.gov/fdsys/pkg/CHRG-113hrg89507/pdf/CHRG-113hrg89507.pdf>; Filipino Veterans Equity Compensation Fund: Inquiry into the Adequacy of Process in Verifying Eligibility, Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs of the Committee on Veterans’ Affairs, House of Representatives (Nov. 20, 2014), available at <https://www.gpo.gov/fdsys/pkg/CHRG-113hrg96136/pdf/CHRG-113hrg96136.pdf>. It also was the focus of the Interagency Working Group (IWG) (referenced in the above FOIA request) convened by the White House from 2012-13 because “many Filipino veterans . . . believe[d] their claims were improperly denied.” See <https://obamawhitehouse.archives.gov/blog/2012/10/17/honoring-filipino-world-war-ii-veterans-their-service> (Oct. 17, 2012); <https://obamawhitehouse.archives.gov/blog/2013/07/09/recognizing-extraordinary-contribution-filipino-veterans> (July 9, 2013); <https://sites.ed.gov/aapi/filipino-world-war-ii-veterans/>. The government’s negative FVEC eligibility determinations clearly have raised possible questions about the government’s integrity which effect public confidence, particularly with respect to discrimination against Filipinos, which affects public confidence in the administration of benefits.

Requester hereby requests a **waiver of fees** to the fullest extent permitted by law. The subject of this request specifically concerns identifiable operations or activities of the government (WHIAAPI, the FVEC IWG, and denials of the FVEC benefit). The disclosable portions of the requested information will be meaningfully informative in relation to that subject matter as they directly concern it. Furthermore, disclosure of the requested information likely will contribute to public understanding of government operations, i.e., the understanding of the public at large, because requester may rely on that information in making legal arguments in public briefs filed at CAVC and requester commits to share the disclosed information with one or more entities that represent other interested Filipino veterans including but not limited to the advocacy organization the American Coalition for Filipino Veterans (“ACFV”). In addition, disclosure of the requested information will significantly contribute to public understanding of government operations or activities, because there is little publicly available information about the work of WHIAAPI and the FVEC IWG with respect to denials of the FVEC benefit, yet there have been many thousands of denials. Finally, the information sought by the request is not primarily in Requester’s commercial interest.

The above statements are certified to be true and correct to the best of the undersigned's knowledge and belief, including with respect to the truth of the circumstances alleged and/or other evidence of the requester's compelling need.

We hereby consent to pay all costs incurred for search, duplication and review of materials up to \$250.00. If additional costs will be required, please contact me for my approval.

If you have any questions about this request, please contact me immediately by the means listed below.

Thank you for your assistance with this matter.

Sincerely,

/s/

Seth A. Watkins

**Seth A. Watkins, Ph.D.**

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