



November 16, 2017

## FREEDOM OF INFORMATION ACT APPEAL

VIA E-EMAIL (ogcfoiaappeals@va.gov)  
Department of Veterans Affairs  
Office of the General Counsel  
810 Vermont Avenue NW  
Washington, DC 20420

Re: Veteran: Matthew D. McMenimen  
VA Claim No.: [REDACTED]

Dear Sir or Ma'am:

This is an appeal under the Freedom of Information Act.

On October 4, 2017, 2017 I requested, on behalf of Matthew D. McMenimen. ("McMenimen"), a complete copy of his C-File and a complete copy of documents and evidence created by the VA with regard to any Compensation & Pension Examination which relate to McMenimen's claim for disability benefits pursuant to the Freedom of Information Act (FOIA) (attached). The fax transmission was successful and acknowledged by the Department of Veterans Affairs Records Management Center via a letter dated October 16, 2017 (attached). This acknowledgment letter advised me that the request "will be processed under the Privacy Act."

In my letter, I asked that the request for documents be processed under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. 38 CFR § 1.550(c) states that "Requests for records relating to a claim administered by VA ... will be processed under the FOIA...." Further, 38 CFR § 1.550(b) provides that "requests for records about an individual protected by the Privacy Act ... will be processed under the FOIA *and* the Privacy Act." (emphasis added). Department of Justice overview of the Privacy Act, found at <https://www.justice.gov/opcl/individuals-right-access>, also notes that there is no practical effect of the FOIA and Privacy Act's differences with regard to processing timelines and administrative appeals because "agencies should process an individual's access request under both statutes."

The FOIA requires the agency make a determination on the request within twenty (20) business days from the date of VA's receipt of the request. 38 CFR § 1.557(c). The acknowledgment letter dated October 16, 2017 indicates that VA has not performed this required determination and, as such, is interpreted as a denial of release without justification. Please process this request under the FOIA and provide me a determination within the statutorily required twenty (20) business days.

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Exh C-2



This appeal is submitted within 60 days of the agency's October 16, 2017 letter denying the request and as such is timely pursuant to 38 CFR § 1.559(d).

I may be contacted at (504) 218-2510 if you have any questions regarding this request. Thank you for your assistance.

Please note our new address:  
1000 Bourbon St  
#B432  
New Orleans, Louisiana 70116

Best Regards,

A handwritten signature in blue ink, appearing to read "Alton P. Carriere", is written over a light blue horizontal line.

Alton P. Carriere

Enclosures

Cc: Mathew D. McMenimen