



Veteran Esquire Legal Solutions, PLLC
6303 Blue Heron Drive
Suite 400
Miami, FL 33126
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Veteran Esquire Legal Solutions

FREEDOM OF INFORMATION ACT REQUEST

VIA FACSIMILE & CERTIFIED MAIL (Return Receipt Requested)

FOIA/Privacy Act Officer
Department of Veterans Affairs
Claims Intake Center
P.O. Box 4444
Janesville, WI 53547-4444
FAX: 844-531-7818

November 21, 2017

RE: FREEDOM OF INFORMATION ACT REQUEST

Veteran: Mr. Maurice E Smith

VA Claim No: [REDACTED]

Veteran Social Security No.: [REDACTED]

To Whom it May Concern:

This is a request for documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, 5 U.S.C. § 552a, and 38 C.F.R. §1.577, on behalf of Mr. Maurice E. Smith. This request is properly made via facsimile as it contains the signature of the requester.

IDENTIFICATION OF DOCUMENTS

I hereby request all documents contained in any VA claims folder for any of Veteran Mr. Maurice E. Smith's VA claims, to include all documents in the right flap, left flap and center flap, AND, to include anything stored electronically, to include VBMS, Virtual VA, SHARE, or any electronic system where records about me or my claim are kept or stored.

Please include screenshots of all administrative pages from the Veteran's VBMS profile, including the "Veteran Profile" page, the "Rated Issues" page, and the "Notes" page.

Please include screenshots of each page of the Veteran's VACOLS profile(s) for each pending and historical appeal this Veteran has ever filed.

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Exhibit C -1

FORM IN WHICH TO PRODUCE INFORMATION

The FOIA and the VA's own internal policies related to FOIA requests, require that the records be produced in the format sought by the requester, if the record is readily reproducible in that form or format. To that end, please deliver electronic records to the Requester, ensuring that both sides of any two-sided documents are produced in response to this request, and scanning documents so that they do not "bleed-through" from one side of the document to the other.

TIME FOR RESPONSE

Your agency has a duty to respond to this request within TWENTY (20) BUSINESS DAYS of the date of this request pursuant to 5 U.S.C. § 552 (a)(6)(A)(2)(i).

Although your Agency may request an extension of time to respond, it may only be granted for "unusual circumstances." "Predictable agency workload" is not typically considered "unusual circumstances," as stated in 5 U.S.C. § 552(a)(6)(C)(ii). Moreover, even to the extent that unusual circumstances could be demonstrated in this instance, the time limit for the extension is limited to "10 working days" pursuant to 38 C.F.R. § 1.553(d).

Please also be aware that your agency's failure to respond to this request within twenty business (20) days can result in the filing of an administrative appeal with the office of the Secretary of the Department of Veterans Affairs pursuant to 38 C.F.R. § 1.557 and 5 U.S.C. § 552(a)(6)(A)(2) (ii), and/or, the filing of a federal lawsuit to compel the production of the information.

In any such appeal or lawsuit, I intend to seek not only injunctive and/or monetary relief related to this request, but to the extent permitted by law, injunctive and/or monetary relief based on the Department of Veteran's Affairs patterns and/or practices of responding to FOIA requests in a manner violative of the FOIA, as well as attorney fees and litigation expenses, and any other remedy/relief available at law.

FEES

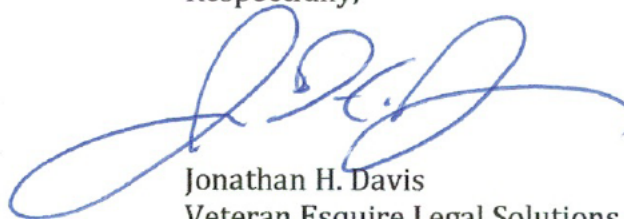
Fees may not be assessed for this request. *See* 38 C.F.R. §1.577(f).

POINT OF CONTACT

As discussed above, please respond to this request within twenty (20) business days. I may be contacted at 1-800-679-0791, 301-842-7038, or jon@veteranesquire.com.

Thank you, in advance, for your assistance. Please let me know if there is any further information I can provide to assist with the processing of this request.

Respectfully,



Jonathan H. Davis
Veteran Esquire Legal Solutions, PLLC
6303 Blue Heron Drive
Suite 400
Miami, FL 33126



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PRIVACY ACT WAIVER AND CONSENT TO RELEASE OF INFORMATION

I waive my rights under the Privacy Act, 5 U.S.C. § 552a(b), and under any other federal or state law or regulation that controls access to my records. I give my prior written consent to the Department of Veterans' Affairs, the Social Security Administration, the U.S. Department of Labor, the Office of Workers' Compensation, the Office of Personnel Management (OPM), the National Archives and Record Administration (NARA), the Department of Defense, the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard, and any other Federal Agency containing the military service, military medical records, and/or any records in or related to federal government benefits claims of the Veteran Maurice E Smith to disclose fully and promptly to Jonathan H. Davis, and law firm Veteran Esquire Legal Solutions, PLLC, any and all records contained in my file(s) which this Company may request.

I explicitly authorize this request with respect to any and all military, veteran, medical, psychiatric, drug or alcohol treatment, Discharge Review or Correction Board records and files, to release to my attorneys, or to any person designated by my attorneys, all records contained in those files.

If these records include information (protected under 38 U.S.C. Sec. 7332) regarding drug abuse, infection with human immunodeficiency virus (HIV), alcoholism or alcohol abuse, or sickle cell anemia, I specifically consent to that disclosure as well.

Maurice E Smith
Appellant's Signature

11/21/2017
Date

Maurice E Smith
Appellant's Printed Name

[REDACTED]
Appellant's Telephone Number

[REDACTED]
Appellant's Home Address

Jonathan H. Davis
Attorney's Counter Signature

11/21/2017
Date

Jonathan H. Davis
Attorney's Printed Name

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FREEDOM OF INFORMATION ACT APPEAL

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

VIA FACSIMILE

FOIA/Privacy Act Officer
Department of Veterans Affairs
Claims Intake Center
P.O. Box 4444
Janesville, WI 53547-4444
FAX: 844-531-7818

December 21, 2017

RE: FREEDOM OF INFORMATION ACT REQUEST

Veteran: Mr. Maurice E Smith

VA Claim No: [REDACTED]

To Whom it May Concern:

This is an appeal under the Freedom of Information Act ("FOIA"). On November 21, 2017, the undersigned requested a complete copy of the above-described C-File. *See attached.* To date, the VA Records Management Center has not acknowledged this request, nor has it provided the requested documents in the time required by the Freedom of Information Act.

I am seeking production of all documents related to the above-described VA benefits file. The Department of Veterans Affairs ("VA") is the Agency last known to have particular documents requested that are relevant and material to this appeal.

The Agency's 20 working days to respond to this request expired on 20 December 2017. The Agency did not request a 10-day extension of time, pursuant to the applicable provision of the FOIA.

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This is an appeal of the VA's failure to respond to the attached FOIA request. I am aware of no legitimate reason why the VA might withhold production of these records, why the VA would have failed to diligently search for the documents last known to be in its possession, control or custody, or why the VA would fail to respond to the production of the documents requested pursuant to my FOIA request.

An agency is required to make a "determination" on the merits of a FOIA appeal within 20 working days of receipt.

The undersigned's law firm practices FOIA and Privacy Act Law. Should the VA fail to respond to, or improperly deny, this appeal under the Freedom of Information Act, the undersigned's law firm is prepared to initiate a FOIA suit in the appropriate Federal District Court to compel disclosure of the documents, as well as any reasonable attorney fees and costs to which the Firm be entitled to under the law or in equity.

Please feel free to contact me to discuss any aspect of my appeal. I may be contacted at 1-800-679-0791, 301-842-7038, or jon@veteranesquire.com. Thank you for your prompt consideration of this appeal.

Respectfully,



Jonathan H. Davis
Veteran Esquire Legal Solutions, PLLC
6303 Blue Heron Drive
Suite 400
Miami, FL 33126

Enclosures

- (1) Photocopy of original FOIA Request
- (1) Photocopy of Certified Mail Return Receipt



DEPARTMENT OF VETERANS AFFAIRS
VA Records Management Center
4300 Goodfellow Blvd., Bldg. 104
St. Louis, MO 63120

December 13, 2017

JONATHAN H DAVIS ESQ
VETERAN ESQ LEGAL SOLUTIONS, PLLC
6303 BLUE HERON DR SUITE 400
MIAMI, FL 33126

In reply, refer to:
376/IPC/JAB
File Number: [REDACTED]
MAURICE SMITH

Re: Privacy Act Request

To Whom It May Concern:

This is an Acknowledgement letter that your request will be processed under the Privacy Act. In your request you asked for it to be processed under the Freedom of information Act (FOIA). After, reviewing your request for claims file or service treatment records retrieved by a personal identifier (i.e. Social Security Number or name of veteran) the request will be processed under the Privacy Act. Below I have attached the differences between the Privacy act and FOIA.

Differences between the Privacy Act and FOIA Act

- FOIA is an information access law; Privacy Act is an information protection law with limited access provisions.
- The Privacy Act, unlike the FOIA, applies only to U.S. citizens and permanent residents.
- Anyone may submit a FOIA request for any type of record, but a PA request may only be made by the individual retrieved by a personal identifier (or his or her legally authorized representative) covered by the requested records.
- Privacy Act protection does not apply to an individual once he/she has died, that is a FOIA request.
- **Response Times**, The Privacy Act 5 U.S.C. § 552a does not impose a response time for agency responses to requests. FOIA 5 U.S.C. § 552 has hard guidelines for response of the following; 20-day-time-limit for response with up to 10 days for approved extension.

Privacy Act Continued

- The Privacy Act guarantees individuals the right to access and/or view and obtain a copy of their own information, including Personally Identifiable Information (PII), contained in a VA or VBA System of Records.

File Number: [REDACTED]
SMITH, MAURICE

- Sussman v. DOJ, No. 03-3618, 2006 WL 2850608, at *5 (E.D.N.Y. Sept. 30, 2006) (“The Privacy Act . . . does not allow for ‘constructive exhaustion,’ and prohibits a requester from filing an action without having obtained a response from the agency.”); Anderson v. USPS, 7 F. Supp. 2d 583, 586 n.3 (E.D. Pa. 1998) (citing Pollack for proposition that “Privacy Act contains no section equivalent to the ‘constructive exhaustion’ provision of the FOIA,” but alternatively finding that access suit must be dismissed for failure to exhaust administrative remedies)
- Several courts have recognized that jurisdiction to consider a Privacy Act access claim exists only if the government has failed to comply with a request for records; once a request is complied with and the responsive records have been disclosed, a Privacy Act access claim is moot. See Campbell v. SSA
- See also Jacobs v. Reno, No. 3:97-CV-2698-D, 1999 U.S. Dist. LEXIS 3104, at *14-15 (N.D. Tex. Mar. 11, 1999) (dismissing access claim as moot where plaintiff had received access to records and finding no eligibility for award of attorney fees and costs based on plaintiff’s assertion that his lawsuit may have caused agency to comply with Privacy Act when it would not otherwise have done so, “particularly when § 552a(d)(1) imposes no deadline for agency compliance and absent evidence of extended and unjustified delay”), aff’d, 208 F.3d 1006 (5th Cir. 2000)

<http://www.justice.gov/sites/default/files/opcl/docs/1974privacyact-2012.pdf>

<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/amended-foia-redlined.pdf>.

Thank you for your interest in the Department of Veterans Affairs. Customer service is very important to us. If you have questions regarding this letter, please call our customer service line at 1-888-533-4558 and refer to the assigned case number.

Sincerely yours,

Records Management Center Director