

# **EXHIBIT 12**



**Office of the General Counsel**  
Washington DC 20420

In Reply Refer To: 024H/ILG  
OGC Case #: 92900  
FOIA No.: 16-00661-F

07/24/2017

Dr. Seth A. Watkins, Ph.D  
ADDUCI, MASTRIANI & SCHAUMBERG LLP  
1133 Connecticut Avenue, NW  
Washington, DC 20036

Dear Dr. Watkins:

This letter is in response to your appeal on behalf of your client under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, from the initial agency decision issued by the FOIA Officer for the Department of Veterans Affairs (VA) Insurance Center in Philadelphia, PA.

On October 8, 2015, you submitted a request to the VA Insurance Office via e-mail on behalf of your client Mr. Hugh C. McKinney, wherein you requested “all records in any way concerning or relating to the “comprehensive review” referenced in the statement “VA, in consultation with DoD, is currently conducting a comprehensive review of the TSGLI program as it approaches its 10<sup>th</sup> year anniversary in December 2015 to ensure that the program is operating effectively and meeting the intent of Congress,” which statement was made on page 2 of the attached letter from Robert L. Nabors II of the Department of Veterans Affairs to Seth A. Watkins, dated August 6, 2015, concerning denial by the VA of the Petition for Rulemaking by Army First Sergeant Hugh Campbell McKinney, Retired, to Amend 38 C.F.R. § 9.20 Governing Traumatic Injury Protection Provided by Statute at 38 U.S.C. § 1980A (note the denial of the rulemaking petition is the subject of a Petition for Review filed on behalf of petitioner/requester with the U.S. Court of Appeals for the Federal Circuit on October 5, 2015, *McKinney v. McDonald*, No. 16-1032).”

Furthermore, on October 8, 2015, following a phone conversation with the FOIA Officer, your client narrowed the scope of the request to the following “specific categories of records concerning the “comprehensive review of the TSGLI program as it approaches its 10<sup>th</sup> anniversary” (hereinafter, “Review”):

- Records that set out or reflect the timing of the Review (e.g., when started, when to be completed);

- Records that set out or reflect which individuals are conducting and/or participating in the Review;
- Records that set out or reflect the scope of the Review;
- Records that set out or reflect any decision or intention to include, not include, or consider including, in the Review any consideration of the issues raised in the Petition for Rulemaking by Army First Sergeant Hugh Campbell McKinney, Retired, to Amend 38 C.F.R. § 9.20 Governing Traumatic Injury Protection Provided by Statute at 38 U.S.C. § 1980A submitted to the VA on March 16, 2015 and denied by the VA by letter dated August 6, 2015;
- Records that set out or reflect the planned reporting of any observations, results, conclusions, and/or recommendations arising from the Review (e.g., will a formal assessment be compiled and distributed, and if so, to whom and will the assessment, or any portion or summary thereof, be made public);
- Records that set out or reflect any decision to limit the Review to being “internal” (e.g., not seeking public comment and/or involvement, and no notice to the public that the Review is being conducted);
- Records that set out or reflect which veteran and military service organizations (VSOs), if any, have been included, or will be included, as participants in the Review, and the extent of their involvement (e.g., are the opinions of VSOs being sought or otherwise offered in connection with the Review; are VSOs participating in any meetings concerning the Review);
- Records that set out or reflect any communications between the VA and any non-government entities or individuals, including but not limited to the VSOs, concerning the Review (requester expressly excludes communications solely between VA/DoD and Prudential concerning any review of Prudential’s role in the administration of the TSGLI program); and
- Records that set out or reflect any communications between the VA and Congress (including but not limited to any member of Congress, committee thereof, or staff member) concerning the Review.”

On June 7, 2017, the FOIA Officer provided the initial agency decision. In that decision the FOIA Officer disclosed twenty-seven (27) separate documents to you in their entirety.

In your appeal you stated that “VA did not conduct a reasonable search for responsive records and applied an improper cut-off date to its search.”

We have reviewed the decision provided by the FOIA Officer and in light of the response you originally received and your appeal, we are remanding this matter back to the FOIA Officer for further processing. Specifically, the FOIA Officer has not provided this office sufficient information for us to conclude that a reasonable search for responsive records was conducted. Therefore, we are instructing the FOIA Officer to conduct a new search; document those efforts thoroughly; review and additional responsive documents that the new search yields; consider the application of any FOIA exemptions; and, issue a superseding agency decision.

Ultimately, should you disagree with the response once the superseding agency decision(s) is rendered, you may re-open the appeal by writing to the Office of General Counsel

(024), 810 Vermont Avenue, NW, Washington, DC 20420. Please include the above referenced case number on any future communication in this regard.

Sincerely yours,

A handwritten signature in black ink that reads "Kymbleed-Poole". The signature is written in a cursive, flowing style.

Kenyatta McLeod-Poole  
Acting Chief Counsel, Information Law Group

cc: Jeanne King – FOIA Officer VA Insurance Service