

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WESTERN STAR HOSPITAL AUTHORITY	:	
INC., t/d/b/a METRO HEALTH EMS	:	CIVIL ACTION
Plaintiff	:	
vs.	:	
	:	
UNITED STATES DEPARTMENT OF	:	
VETERAN AFFAIRS	:	
Defendant	:	NO.

COMPLAINT FOR INJUNCTIVE RELIEF

EXHIBIT “2”



323 North Shore Drive
Suite 400
Pittsburgh, PA 15212
phone 412-822-3316
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April 18, 2018

FOIA Request 18-02250-F

Phinorice J. Boldin, Esq.
Fineman, Krekstein & Harris, P.C.
1801 Market Street, Suite 1100
Philadelphia, PA 19103

Dear Ms. Boldin:

This letter is the initial agency decision to your October 3, 2017 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the Department of Veterans Affairs, Office of Inspector General, which was then routed to the VA Central office FOIA Service who determined that one of the appropriate offices for processing of and conducting a search for certain elements of your request was the VA Healthcare VISN 4 FOIA office. In your original request you asked for "a copy of Department of Veterans Affairs, Office of Inspector General (OIG) records pertaining to any investigation regarding the contract between Western Star Hospital Authority inc. and the Department of Veterans Affairs."

The VA Healthcare VISN 4 FOIA office received your FOIA request on December 26, 2017 from the VHA FOIA office. In a response provided to you by the OIG FOIA office you were advised that your request for any related administrative investigations would not be maintained by the OIG and your request was referred to the VA Central office FOIA service for assignment to the appropriate VA component. This response will address records and /or documents maintained by the VA Healthcare VISN 4 office only. Your request has been assigned the tracking number at the top of this letter. Please include this tracking number in all future communications concerning this FOIA request. Also be advised that based on the amount of time necessary for processing this FOIA request, it has been placed in the complex processing track.

We began looking for record(s) responsive to your request pertaining to administrative investigations on December 28, 2017. A search for records responsive to your FOIA request was conducted.

My review of the documents revealed that they contained information that falls within the disclosure protections of FOIA Exemption 6, [5 U.S.C. § 552(b) (6)]. FOIA Exemption 6 permits VA to withhold information within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. Stated another way, VA may withhold information under 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.

www.visn4.va.gov

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Phinorice J. Boldin, Esq.

Page 2

April 18, 2018

Specifically, the information I am withholding, as indicated on the enclosed documents, under FOIA Exemption 6 consists of individual names, email addresses, phone numbers and addresses referenced in these documents, as the individuals associated with this information have a personal privacy interest in it.

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, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest in this case. The individuals associated with this information have a personal privacy interest in information that outweighs any public interest served by disclosure of their identities under FOIA. Consequently, I have redacted or blacked out this information under FOIA Exemption 6, 5 U.S.C. § 552 (b) (6).

Upon review of the responsive records, I have also determined they contain information which is protected under FOIA Exemption 5, 5 U.S.C. § 552(b) (5).

FOIA Exemption 5 permits VA to withhold a document or information contained within a document as "pre-decisional" if two requirements are met. First, if there is an identifiable deliberative process. Second, the agency generated the information or document as part of the agency decision process. Stated another way, VA may withhold information under Exemption 5 where the document or its content makes recommendations or expresses opinions about legal or policy matters during a decision-making process and the document is not the decision document or incorporated into the decision document. Additionally, as a matter of Federal policy, the agency must state an articulable, foreseeable harm to the agency or its activities that could occur as a result of release of the document or information.

My review of the documents identified as responsive to your FOIA request reveals that it contains information that falls within the protection of Exemption 5. Witness testimony that is part of the Administrative Investigation Board (AIB) individual names and email addresses, and contract pricing information provided as evidence has been withheld as this document's status is pre-decisional and part of the AIB. The deliberative process privilege of Exemption 5 is invoked as it is determined that the release of these documents to the public would negatively impact frank and open discussion and the willingness to provide testimony during an AIB. Additionally, it is my conclusion that the release would cause a negative impact on the ability to conduct AIB's and impair the agency's ability to fully investigate and resolve administrative investigations. Consequently, VA partially denies your request for this information under FOIA Exemption 5, 5 U.S.C. § 552(b) (5).



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Page 3
April 18, 2018

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If you disagree with my determination to withhold the information under FOIA Exemption 5 and 6, please be advised that you may appeal to the Office of General Counsel. Appeals may be submitted electronically to ogcfoiaappeals@va.gov or mailed to the following address:

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 to filing an appeal with the Office of General Counsel regarding my determination, you may also seek assistance and/or dispute resolution services regarding your FOIA request from VHA's FOIA Public Liaison and or Office of Government Information Services (OGIS) as provided below:

VHA FOIA Public Liaison:
Email Address: vhafioa2@va.gov
Phone Number: (877) 461-5038

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

You have been provide a copy of 1385 pages of electronic documents on the enclosed CD, however we have redacted or blacked out all information as cited above under FOIA exemption 5 and exemption 6.

Sincerely,

JEFFREY ADAMSON
(Acting) VA Healthcare VISN 4 FOIA Officer

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