

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

CAUSE OF ACTION INSTITUTE )  
1875 Eye Street, N.W., Suite 800 )  
Washington, D.C. 20006, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
U.S. DEPARTMENT OF VETERANS AFFAIRS )  
810 Vermont Avenue, N.W. )  
Washington, D.C. 20420, )  
) )  
Defendant. )

---

Civil Action No. 19-413

**EXHIBIT 2 TO COMPLAINT**



**DEPARTMENT OF VETERANS AFFAIRS**  
VA Great Lakes Health Care System  
500 E. Veterans Street  
Tomah, WI 54660

May 21, 2018

FOIA Request No.: 18-04113-F

John McGlothlin  
[john.mcglathlin@causeofaction.org](mailto:john.mcglathlin@causeofaction.org)

Dear McGlothlin:

This letter is the initial agency decision to your February 5, 2018 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the Tomah VA Medical Center for a copy of the following records for the time period of December 15, 2017 to the present:

1. All records, including but not limited to email communications and maintenance, inspection, and repair reports, relating to the climate control system at the Tomah VA Medical Center. This includes, but is not limited to, any records regarding temperature fluctuations or increases at the Tomah VA Medical Center pharmacy.
2. All records, including but not limited to email communications and maintenance, inspection, and repair reports, relating to disruptions in the dispensing of medication at the Tomah VA Medical Center pharmacy. This includes, but is not limited to, any records regarding temperature fluctuations on December 17, 2017 and any subsequent actions related to those fluctuations.

The Tomah VA Medical Center conducted a search for documents responsive to your request. The search was conducted by using the following key words to search in our electronic databases and to the appropriate offices: climate control, pharmacy, temperature fluctuation, temperature increase.

You will find documents pertinent to your first request on pages 1-37. Pages 38-54 are responsive to your second request.

My review of the documents revealed they contained information that falls within the disclosure protections of FOIA Exemption 3, 5 U.S.C. § 552(b)(3), FOIA Exemption 6, 5 U.S.C. § 552(b)(6) and FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

My review of the documents revealed that they contained information that falls within the disclosure protections of FOIA Exemption 3, 5 U.S.C. § 552(b)(3). FOIA Exemption

3 specifically exempts from disclosure all information that is specifically prohibited from disclosure by another federal statute. The applicable statute is 38 U.S.C. § 5705 which prohibits the unauthorized disclosure of designated VA medical quality assurance records.

FOIA Exemption 6 permits VA to withhold a document or information contained within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. VA may withhold information under FOIA 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.

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 able 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 am denying your request for this information under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6).

Specifically, the information I am withholding, as indicated on the enclosed documents, under FOIA Exemption 6 consists of employees and non-employee names, emails addresses, phone numbers and signature blocks; as the individuals associated with this information have a personal privacy interest in it.

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. 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 they contain information that falls within the protection of Exemption 5. Therefore, the deliberative process privilege of Exemption 5 is invoked as it is determined that the release of the pre-decisional document to the public would negatively impact frank discussion between subordinates and supervisors. Premature release of the information contained in the documents may confuse the public, as the information contained within

the report may not be consistent with the final actions of VA. Consequently, VA denies your request for this information under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

Please note that during the investigation, it was found that the original date of police journal entry was incorrect. There, a corrected email is included and can be found on pages 23 and 24. You will also note that some items have been marked as "non-responsive". This information was comingled within responsive documents but did not pertain to your request therefore it has been redacted.

If you disagree with my determination to withhold the information under FOIA Exemptions 5 and 6 please be advised you may appeal to:

Office of the General Counsel (024)  
Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
Email: [ogcfoiaappeals@va.gov](mailto:ogcfoiaappeals@va.gov)

If you should choose to file an appeal, your appeal must be postmarked or electronically transmitted 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.

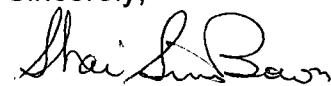
You may also seek assistance and/or dispute resolution services for any other aspect of your FOIA request, excluding the release determination, from VHA's FOIA Public Liaison and or Office of Government Information Services (OGIS) as provided below:

VHA FOIA Public Liaison:  
Email Address: [vhafoia2@va.gov](mailto:vhafoia2@va.gov)  
Phone Number: (877) 461-5038

Office of Government Information Services (OGIS)  
Email: [ogis@nara.gov](mailto: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

If you have any questions about your request, you may contact me at (608) 372-3971 ext. 66732 or via email at [TomahFOIA@va.gov](mailto:TomahFOIA@va.gov).

Sincerely,



Shai Sims Brown  
Privacy/FOIA Officer