

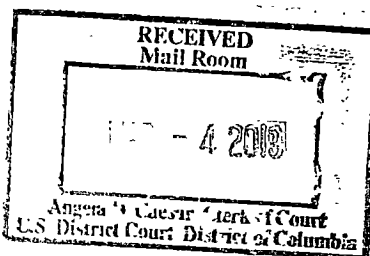
UNITED STATES DISTRICT COURT AND BANKRUPTCY COURTS  
FOR THE DISTRICT OF COLUMBIA

TARIK PHILIPS,  
SHAWANGUNK CORR. FAC.  
P.O. BOX 700  
WALLKILL, NEW YORK 12589  
06A0363

PLAINTIFF,

-against-

DEPARTMENT OF NAVY SECRETARY  
OF THE NAVY COUNCIL OF REVIEW  
BOARD DIRECTOR J.A. RIEHL  
720 KENNON STREET SE, SUITE 309  
WASHINGTON NAVY YARD, DC  
20374-5023/AND OFFICE OF THE JUDGE  
ADVOCATE GENERAL G.E. LATTIN  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD, DC 20314,  
DEFENDANT.



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PLAINTIFF SEEKS PRELIMINARY AND FINAL  
INJUNCTION DIRECTING DEFENDANTS FROM  
WITHHOLDING CERTAIN RECORDS CRITICAL TO  
THE INTEGRITY OF HIS CRIMINAL CONVICTION

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For its Complaint Plaintiff, TARIK F. PHILIPS, alleges as follows:

1. This action is brought under the Freedom of Information Act, as amended, 5 U.S.C.A. §552 (a)(4)(B), and seeks preliminary and final injunction, enjoining the withholding of certain records from defendants, and directing that the records be disclosed.
2. Plaintiff resides at Shawangunk Correctional Facility, 200 Quick Road, P.O. Box 700 Wallkill, New York 12589, County of Ulster. Defendant Department of Navy Counsel of

Review Board (C.O.R.B.) and Office of Judge Advocate General (JAG) is a Federal Administrative Agency within the meaning of the Act, and Defendant's Director J.A. Riehl and Advocate General G.E. Lattin are the heads of those agencies.

3. The venue of this action is properly laid in this Court.
4. Defendant Department of the Navy maintains certain records consisting generally of: (1) Jody Brown's (Mr. Brown) testimony and report(s) about a shooting incident which occurred on September 7<sup>th</sup>, 2002; and (2) correspondence recording(s), and/or report(s) between the Kings County, District Attorney Office and the Defendants. The plaintiff's interest of these records is critical to the extent that they may put into question the integrity of his conviction.
5. On or about April 12<sup>th</sup>, 2018, plaintiff duly requested in writing that defendant Department of the Navy, through the appropriate officer or employee of that agency, disclose the records mentioned above to plaintiff, and that it permit inspection and copying of them.
6. This request was denied in writing by an officer under defendant's command, Officer R. Claussen, on April 13<sup>th</sup>, 2018. On May 14<sup>th</sup>, 2018, plaintiff filed a timely appeal to the JAG. On June 27<sup>th</sup>, 2018, Dir. G.E. Lattin denied the appeal in part and resubmitted the matter to the CORE.
7. On June 28<sup>th</sup>, 2018, Dir. J.A. Riehl denied the request again in writing. On July 21<sup>st</sup>, 2018, plaintiff filed a timely appeal to the JAG and on September 11<sup>th</sup>, 2018, Dir. G.E. Lattin denied the appeal. (See, Exhibit A).

GROUNDS FOR RELIEF

CLAIM I

8. The JAG in their decision on September 11<sup>th</sup>, 2018, ruled that Mr. Brown, "Has a substantial privacy interest in the information within his medical file which outweighs any public interest in it's release. Release of Mr. Brown's private medical information will not shed any light on SECNAV CORB'S performance of it's duties, which is how the public interest is defined." (See, Exhibit A).
9. The JAG's denial clearly misconstrued the plaintiff's request. The plaintiff requested a copy of the hearing minutes of the medical review board (MRB) and files submitted thereto, not information contained inside of Mr. Brown medical file relating to his physical or mental health. At the MRB hearing, Mr. Brown was questioned about a shooting incident that the plaintiff was alleged to have been involved (See, Trial transcripts Pages 409-411); which plaintiff proclaims to have been wrongfully convicted of. And as a result of this hearing Mr. Brown was medically discharge.
10. Technically, the requested records are classified under the medical file banner solely because the proceeding was conducted by the "MRB". However, a number of questions, unrelated to Mr. Brown's physical and mental health, were posed at the MRB hearing. Therefore, the disclosure of those questions and answers, cannot be deemed an invasion of Mr. Brown's personal privacy related to his medical history.

15. Therefore, the MRB hearing documents would surely shed light on the defendant's

*Justice*, 642 F.3d 1161, 1176 (D.C. 2011).

could exonerate or corroborate the plaintiff's claim of innocence. *See, Roth v. U.S. Dept. of*

the public's more general interest in knowing whether the Navy is withholding information that

the shooting incident during the plaintiff's trial is narrower than and does not fully encompass

14. Certainly, the public interest in uncovering whether Mr. Brown was testifying truthfully about

wrongfully convicted.

physical information is sought and the public has an interest in ensuring that the innocent is not

would trigger "invasion of Mr. Brown's personal privacy", where no personal mental or

13. As shown, the records requested does not fall within the narrow category of issues which

5 U.S.C.A. 552 (b)(4)(D)(i).

any records not pertaining to the plaintiff request can be withheld or redacted in according to

plaintiff is seeking out the MRB hearing file to aid him with his legal affairs. And of course,

is purely personal to [the plaintiff] and [ ] does not qualify as a public interest", because the

12. Moreover, unlike the IAG's determination, the information requested is not "an interest that

matter of law, Mr. Brown's testimony at the MRB hearing is exculpatory in nature.

Page 402). This account contradicts Mr. Brown's testimony at the Plaintiff's trial, thus, as a

hearing that he sustained injuries in a "drive by shooting". (See, Exhibit Trial Transcripts

11. During the plaintiff criminal trial it was mentioned that Mr. Brown had testified at a MRB

performance of its duties, which is how the public's interest is defined.

16. Lastly, the "substantial privacy interest in the information within [Mr. Brown's] medical file", which the JAG's decision serves to protect, was voluntarily waived by Mr. Brown during the plaintiff's trial. This occurred when Mr. Brown testified about a criminal incident directly related to the plaintiff's trial during the MRB hearing (See, Trial transcripts Pages 409-411). By doing so, Mr. Brown indeed opened the door to have the MRB files subjected to disclosure, and inspection. Ultimately, Mr. Brown waived the cloak of confidentiality provided to him under FOIA Exemption (b)(6) with his testimony at the Plaintiff's trial, thereby making the MRB hearing file open for disclosure. Even if disclosure is limited.

#### CLAIM II

17. In addition, the JAG's decision never addresses the plaintiff's other request via FOIA for the correspondence (i.e., letters, E-mails, or testimony) between the Kings County, District Attorney Office and the defendants in relationship to the MRB hearing and/or the shooting incident.
18. The JAG's decision was a blanket ruling, yet, these correspondences do not pertain to Mr. Brown's personal medical privacy. Rather, these correspondences shed a light on the defendant's performance of its duties, because it's a direct reflection of what is taken into consideration while weighing matters within its agency.
19. Certainly, these records fall outside the protection from disclosure in accordance with FOIA

Exemption (b)(6). Therefore, they should not be exempt.

20. Attached as Exhibits "A" are the copies of the request made by plaintiff and the refusal by defendant's Dir. J.A. Riehl and Advocate General G.E. Lattin. Attached also, are the trial transcripts.
21. The records referred to were and are identifiable records within the meaning of the Freedom of Information Act. Defendant Department of the Navy's refusal to disclose the records to the plaintiff was wrongful and without lawful reason or excuse, and the plaintiff is entitled to relief provided by the Act.

WHEREFORE, plaintiff requests judgement for:

1. A preliminary and final injunction prohibiting defendants from withholding from Plaintiff, the records referred to and described above.
2. A preliminary and final injunction directing defendants to make the described records available to plaintiff and permit the inspection and copying of them.
3. Such other and further relief as the Court deems just and proper.

Dated: \_\_\_\_\_, 2019  
Wallkill, New York 12589

Respectfully Submitted,

\_\_\_\_\_  
Tarik F. Philips #06A0363

CC.:  
ATTN: GENERAL G.E. LATTIN  
DEPARTMENT OF NAVY OFFICE OF

THE JUDGE ADVOCATE GENERAL,  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD, DC 20314

ATTN: DIRECTOR J.A. RIEHL  
DEPARTMENT OF NAVY SECRETARY  
OF THE NAVY COUNCIL OF THE  
REVIEW BOARD,  
720 KENNON STREET SE, SUITE 309  
WASHINGTON NAVY YARD, DC  
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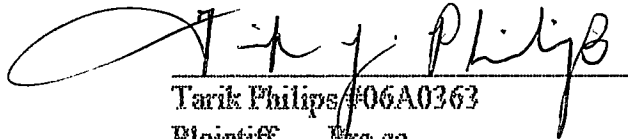
VERIFICATION

STATE OF NEW YORK )

)ss.:

COUNTY OF ULSTER )

Tarik Philips, being duly sworn, deposes and says under the penalty of perjury, that I am the Plaintiff in the enclosed entitled action, and have thoroughly read its contents and knows the same to be true and correct to the best of my knowledge, except for those matter therein stated upon information and belief of those I believe to be true and accurate.



Tarik Philips #06A0363  
Plaintiff -- Pro se

Shawangunk Correctional Facility  
P.O. Box 700  
Wallkill, New York 12589

Sworn to before me this  
21<sup>st</sup> day of February, 2019



Notary Public  
Notary Public in the State of New York  
in and for the County of Orange #01PE6211946  
My Commission Expires on Sept 8, 2021