

EXHIBIT A



DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE STE 309
WASHINGTON NAVY YARD DC 20374-5023

IN REPLY REFER TO

5815
CORB:003
April 13, 2018

Mr. Tarik F. Phillips
P.O. Box 700
Wallkill, NY 12589

Mr. Phillips:

This is in response to your Freedom of Information Act (FOIA) request (DON-NAVY-2018-006451) of April 12, 2018, in which you requested records maintained by the Physical Evaluation Board (PEB). Your request specifically asked for the following documents:

"I request the Medical Evaluation Board records in relation to the medical retirement of Jody Brown.... "

Your request provided insufficient identifying information for Ms. Jody Brown. A social security number and the approximate date Ms. Brown was evaluated by the PEB is required in order to identify documents responsive to your request.

If you believe that an adequate search was not conducted, or documents improperly withheld, you may consider this an adverse determination of your request that may be appealed, in writing, to the following office:

Judge Advocate General of the Navy (Code 14)
1322 Patterson Avenue SE, Suite 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be postmarked within 90 calendar days from the date of this letter to be considered. A statement as to why you believe a diligent search was not conducted should be included and a copy of this letter, as well as a copy of your request letter, must be attached. Your letter should bear the notation, "Freedom of Information Act Appeal."

You also have the right to seek dispute resolution services through the Department of the Navy Public Liaison Officer who can be contacted at: www.DONFOIAPublicLiaison@navy.mil.

Sincerely,


R. CLAUSSEN
By direction

Tarik Philips #06-A-0363
Shawangunk Correctional Facility
Wallkill, New York 12589
P.O. Box 700

April 18, 2018

Department's FOIA Public Liaison
Office of information Programs and Services
A/GIS/IPS/PP/LA, U.S. Department of State
Washington, DC 20522-8100

Re: Don-Navy-2018-006451
Request for FOIA Assistance

Dear Sir/Madam:

I am writing in reference to receiving some assistance with a Freedom of Information Act (FOIA) which was made with the Secretary of the Navy Council of Review Board. This FOIA request was rendered adversely and has become a matter of dispute which I'm hoping could be resolved.

The FOIA officer that directed the decision in this matter, based it's finding on the theory that I provided insufficient identifying information on Mr. Jody Brown. The FOIA officer requested that I provide Mr. Jody Brown's Social Security Number and the approximate date that he appeared before the Medical Review Board ("Physical Evaluation Board").

The information that the FOIA officer is suggesting I provide so a more thorough search can be conducted, is unreasonable. Mr. Jody Brown's Social Security Number is highly sensitive and classified material, that would not be within my care. As for, the approximate date that the PEB was performed on, this is also unknown. However, with all of the other information that I provided, the FOIA officer could have narrowed the search down to said person of interest. Therefore, I do not believe that an adequate search was conducted.

The only information that I'm able to provide in order to assist in the request before this institution, is the following information that was proffered by Jody Brown at trial. This information is:

NAME: Mr. Jody Dorset Brown
FROM: Baton Rouge, Louisiana
BASIC TRAINING: Great Lake, Illinois
DEPLOYED TO: San Diego, California - Naval Station 32ND Fleet - in the year of 2000.
SERVED ON: U.S.S. Anchorage, LSD 36 - In the year of 2002 - Boiler Technician.
APPEARED BEFORE: The National Navy Medical Care Center - in Bethesda, Maryland - Medical Evaluation Board. This happen sometime after September 7TH, 2002, but before August 1ST, 2005.
MEDICAL DISCHARGE DATE: February 14TH, 2005.

This FOIA request was not solely related to Mr. Jody Brown's testimony at said board. It is also inclusive to any/or all letters of recommendation and support that was written on Mr. Jody Brown's behalf, by any officer at the Kings County, District Attorney Office, 350 Jay Street, Brooklyn, New York, 11201.

I sincerely hope that your agency could be of some assistance. I was wrongfully convicted of a crime that I did not commit, 15 years ago. This testimony that I am requesting can possibly exonerate me. I look forward to hearing from you in the near future. Thank you.

Respectfully Submitted,

Tarik Philips #06-A-0363

CC.: Office of Government Information Services
National Archives and Records Administration

8601 Adelphi Road

College Park, MD 20740-6001

Department of the Navy (Attn. Dir. R. Claussen)

Secretary of the Navy Council of Review Boards

720 Keenon Street SE STE 309

Washington Navy Yard, DC 20374-5023

10F2

TAREK F. PHILLIPS 06A0363
SHAWANGUNK CORRECTIONAL FACILITY
WALL KILL, NEW YORK, 12589
P.O. BOX 700

MAY 14TH, 2018

JUDGE ADVOCATE GENERAL OF THE NAVY (CODE 14)
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD, DC 20374-5066

RE: "FREEDOM OF INFORMATION ACT APPEAL"
5815 CORB:003; DON-NAVY-2018-006451

DEAR JUSTICE ADVOCATE GENERAL,

THIS IS AN APPEAL OF THE DECISION
RENDERED IN A FREEDOM OF INFORMATION ACT (FOIA) REQUEST ON
APRIL 13TH, 2018. THIS FOIA REQUEST WAS MADE FOR:

- > THE MEDICAL EVALUATION BOARD RECORDS IN RELATION TO THE MEDICAL RETIREMENT OF JODY BROWN; AND
- > ANY LETTERS OF SUPPORT OR RECOMMENDATION BY ANY MEMBER OF THE BROOKLYN'S (KINGS COUNTY) DISTRICT ATTORNEY OFFICE. (SEE, FOIA REQUEST)

ON APRIL 13, 2018, FOIA PERSONNEL R. CLAUSSEN MADE AN ADVERSE DETERMINATION DENYING SUCH REQUEST ON THE GROUNDS THAT I PROVIDED, "INSUFFICIENT IDENTIFYING INFORMATION." (SEE, LETTER ATTACHED).

I BELIEVE THAT AN ADEQUATE SEARCH WAS NOT CONDUCTED IN REGARDS TO THIS INSTANCE. I PROVIDED MORE THAN ENOUGH INFORMATION SO THAT A MORE THOROUGH AND RESOURCEFUL SEARCH COULD OF BEEN CONDUCTED. AND, THE REQUEST THAT I PROVIDE THE

THANK F. PHILLIPS
06A0363

RESPECTFULLY SUBMITTED

SOCIAL SECURITY NUMBER AND THE APPROXIMATE DATE OF MR. JERRY BORDO'S EVALUATION BY THE PER (PHYSICAL EVALUATION BOARD) IN ORDER FOR SAID REQUEST TO BE SUCCESSFUL IS UNRESPONSIBLE. (SEE LETTER ATTACHED).

ON 2018 I SOUGHT TO SEEK DISPUTE RESOLUTION SERVICES THROUGH THE DEPARTMENT OF NAVY PUBLIC LIAISON OFFICER. HOWEVER DUE TO MY INABILITY OF RECEIVING INTERNET ACCESS, I WAS UNABLE TO USE THE ONLINE INFORMATION PROVIDED. (SEE LETTER ATTACHED).

INSTEAD, THROUGH THE LEGAL RESEARCH SYSTEM PROVIDED TO US AT THIS FACILITY, I WAS ABLE TO LOCATE A LIAISON BRANCH AND SUBMITTED THE LIAISON ASSISTANCE BY MAIL. (SEE LETTER ATTACHED). A COPY OF THIS REQUEST WAS ALSO FORWARDED TO FOIA PERSONNEL R. CRAUSTEN.

AS OF TODAY, I STILL HAVE NOT RECEIVED A RESPONSE FROM ANYBODY IN RESPONSE TO MY REQUEST, AND OUT OF FEAR OF THE TIME LIMIT LAPSING FOR MY APPEAL, I NOW PRESENT THIS CLAIM BEFORE YOUR HONOR. I IMPLORE YOUR ASSISTANCE WITH THIS MATTER AND WILL GREATLY APPRECIATE IT IF YOU WOULD BE KIND ENOUGH TO TAKE A STEERING EXAMINATION INTO THIS CASE BEFORE REACHING A CONCLUSION. THANK YOU.



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:
5720
Ser 14/249
June 27, 2018

Mr. Tarik F. Philips
P.O. Box 700
Wallkill, NY 12589

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-
2018-006451; FOIA APPEAL DON-NAVY-2018-008177

This letter responds to your FOIA appeal received in our office on June 4, 2018. In your appeal, you challenge the adequacy of the search conducted by the Office of the Secretary of the Navy Council of Review Boards (CORB) for "the Medical Evaluation Board records in relation to the medical retirement of Jody Brown."

On April 13, 2018, the CORB denied your request by mail, stating that you did not provide sufficient information to locate records for Ms. Jody Brown. The CORB indicated that a social security number and the approximate date of Ms. Brown's Physical Evaluation Board evaluation would enable a meaningful search. You provided some amplifying information in a letter dated April 18, 2018, addressed to the U.S. Department of State Office of Information Programs and Services' FOIA Public Liaison. I have construed your appeal as a challenge to the adequacy of the CORB's search, to allege that their request for a social security number was unreasonable, and to claim that the amplifying information you provided is sufficient for them now to conduct a search.

Your appeal is a request for a final agency determination under the FOIA. For the reasons set forth below, your appeal—as construed above—is granted in part and denied in part.

The adequacy of an agency's search for information requested under the FOIA is determined by a "reasonableness" test. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Weisberg v. United States Dep't of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). As a general rule, an agency must undertake a search that is reasonably calculated to locate the requested information. *Kowalczyk v. Department of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996). Courts have found agencies satisfy the "reasonableness" test when they properly determine where responsive records are likely to be found and search those locations. *Lechlitter v. Rumsfeld*, 182 F. App'x 113, 115 (3rd Cir. 2006) (internal citations omitted). Moreover, courts have found that an agency's inability to locate a responsive record does not undermine an otherwise reasonable search. *Moore v. FBI*, 366 F. App'x 659, 661 (7th Cir. 2010).

In this case, the CORB was correct to deny your request because you did not provide enough information for them to determine what might be responsive to your request. Because your request only included a first and last name with no further details, it is unreasonable to expect the

5720
Ser 14/249
June 27, 2018

CORB to identify the discrete records you seek.

However, the amplifying information that you sent to the Department of State, which was obtained subsequent to the CORB's denial of your initial request, will now be sent to the CORB. Therefore, in my discretion and in the interest of efficiency and transparency, I am remanding your case to the CORB by copy of this letter and including the amplifying information to facilitate a more targeted search.

Because I have remanded the case, your allegation that the CORB was unreasonable to request that you provide a social security number is now moot.

As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of this appeal. With respect to the portion of your appeal I have denied, you may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

If you would like to seek dispute resolution services, you have the right to contact the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031.

If you have further questions or concerns for my office, my point of contact is LCDR Adam Yost, JAGC, USN, who may be reached at adam.yost@navy.mil or (202) 685-5398.

Sincerely,



G. E. LATTIN
Director
General Litigation Division

Enclosure:
Tarik Philips U.S. State Dept OIP ltr dtd April 18, 2018

Copy to:
CORB
DNS-36
DON CIO



DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE STE 309
WASHINGTON NAVY YARD DC 20374-5023

IN REPLY REFER TO

June 28, 2018

Mr. Tarik F. Phillips
P.O. Box 700
Wallkill, NY 12589

Dear Mr. Phillips:

This is in further response to your Freedom of Information Act request of April 12, 2018 (DON_NAVY-2018-006451), in which you requested "...the Medical Evaluation board records in relation to the medical retirement of Jody Brown."

Following denial of your request on April 13 2018, you appealed to the Office of the Judge Advocate General (FOIA APPEAL DON-NAVY-2018-008177). Since your appeal contained additional identifying information, it was remanded to this office for a search of our records.

The governing regulations for the Department of the Navy FOIA program are Department of Defense (DoD) Regulation 5400.7R and Secretary of the Navy Instruction 5720.42F. Per those regulations, a requester must, as part of the request, agree to pay search, review, and duplication fees in order for a FOIA request to be processed. The above regulations provide for different fee categories based on the requester's status. We have determined you are in the "Other" fee category which affords a requester the first two hours of search time and 100 pages of documents at no charge. Search and duplication fees beyond that include clerical searches at \$20.00 per hour, professional searches at \$44.00 per hour, and executive searches at \$75.00 per hour. Duplication fees beyond the first hundred pages are \$0.15 per page.

The PEB has determined that a Physical Evaluation Board file does exist for a Mr. Jody Brown and is presently located at the Federal Records Center, Suitland, Maryland. However, I have determined the release of that record would constitute an unwarranted invasion of personal privacy pursuant to 5 USC §552(b)(6). In making the decision to withhold this information, I conducted a balancing test to determine whether the public's interest in the withheld information outweighed the personal privacy of the individual. I found it did not since the release of Mr. Brown's records would not "shed light" on the Department of the Navy's performance of its statutory duties.

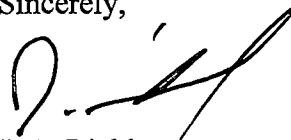
If you believe documents have been improperly withheld, you are advised you have the right to appeal, in writing, to the following office:

Judge Advocate General of the Navy (Code 14)
1322 Patterson Avenue SE, Suite 3000
Washington Navy Yard, DC 20374

Your appeal must be postmarked within 90 calendar days from the date of this letter to be considered. A statement as to your ground for appeal must be attached as well as a copy of your request letter. Your letter should bear the notation, "Freedom of Information Act Appeal."

I hope the above information is of assistance. If you have any questions or concerns, my point of contact is Mr. Roger Claussen, (202) 685-6398. I am the Initial Denial Authority in your case.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Riehl", with a long horizontal stroke extending to the right.

J. A. Riehl
Director, Secretary of the Navy
Council of Review Boards

Enclosure

1 PFS

TAREK F. PHILLIPS 06A0363
SHAWANGUNK CORRECTIONAL FACILITY
WALLKILL, NEW YORK 12589
PO. BOX 700

July 21st, 2018

JUDGE ADVOCATE GENERAL OF THE NAVY (CODE 14)
1322 PATTERSON AVENUE SE, SUITE 3000
WASHINGTON NAVY YARD, DC 20374-5066

RE: "FREEDOM OF INFORMATION ACT APPEAL"
DON - NAVY - 2018 - 006451
FOIA APPEAL DON - NAVY - 2018 - 008177

DEAR JUSTICE ADVOCATE GENERAL,

THIS IS A "FREEDOM OF INFORMATION ACT APPEAL" ON THE DECISION REACHED FROM A FOIA REQUEST MADE ON APRIL 12TH, 2018, THAT WAS RENDERED ON JUNE 28, 2018.

THE OFFICE OF THE SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARD (CORB) DETERMINED THAT THE PHYSICAL EVALUATION BOARD (PEB) FILE DOES EXIST FOR MR. JODY BROWN AND LOCATED IT AT THE FEDERAL RECORD CENTER IN SUITLAND, MARYLAND. THE CORB FURTHER FOUND THAT, THE RELEASE OF THESE RECORDS WOULD CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY PURSUANT TO 5 USC § 552 (D) (6). THE CORB ALSO CONDUCTED A BALANCING TEST TO DETERMINE WHETHER THE PUBLIC'S INTEREST IN THE WITHHELD INFORMATION OUTWEIGHED THE PERSONAL PRIVACY OF THE INDIVIDUAL. (SEE CORB DECISION ATTACHED). ESSENTIALLY, THE CORB CONCLUDED IT DID NOT.

THE CORP REASONING WAS THAT THE REQUEST OF MR. BROWN'S RECORDS WOULD NOT "SHED LIGHT" ON THE DEPARTMENT OF NAVY'S PERFORMANCE OF ITS STATUTORY DUTIES. (SEE DECISION ENCLOSED) I BELIEVE THAT THE DOCUMENTS THAT ARE BEING WITHHELD ARE OF THE PUBLIC INTEREST AND, IT IS THE PUBLIC INTEREST IN THESE DOCUMENTS THAT DEMANDS THE PERSONAL PRIVACY OF MR. BROWN. THEREFORE, THESE DOCUMENTS ARE BEING IMPROPERLY WITHHELD. ON THE 23RD OF JUNE 2005 MR. BROWN APPEARED BEFORE HONORABLE JUSTICE PLUMMER E. GOTT AT THE KINGS COUNTY SUPERIOR COURT PART 37. (SEE ATTACHED TRANSCRIPTS PG. 259) HERE, IS WHERE MR. BROWN PROVIDED UNDER OATH ACCOUNT AT SAID PUBLIC TRIAL ABOUT: (1) THE WOUNDS HE SUSTAINED; (2) WHAT HAPPENED TRANSPARENTLY LEADING UP TO THE INCIDENT; AND (3) HOW THE SHOOTING HAPPENED.

MR. BROWN TESTIFIED FURTHER THAT HE WOULD QUESTION ED IN REFERENCE TO THESE SAME AFFAIRS AT THE MEDICAL EVALUATION BOARD AT THE NAVY. (SEE ATTACHED TRANSCRIPT PG. 409-412) AFTER APPEARING BEFORE THE PEB, MR. BROWN WOULD MEDICALLY RETIRE FROM THE NAVY.

MR. BROWN TESTIFIED FURTHER THAT HE WOULD QUESTION ED IN REFERENCE TO THESE SAME AFFAIRS AT THE MEDICAL EVALUATION BOARD AT THE NAVY. (SEE ATTACHED TRANSCRIPT PG. 409-412) AFTER APPEARING BEFORE THE PEB, MR. BROWN WOULD MEDICALLY RETIRE FROM THE NAVY.

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THEY DEEM TO BE AN INVASION OF MR. BROWN'S PERSONAL
PRIVACY THAT'S COMPLETELY UNRELATED TO THE MATTERS
HERE, WHETHER INFORMATION OR DOCUMENTS THAT THE CORB
THIS BEING, THE

THE CONSTITUTION, 14TH AMEND, U.S. CONST.
WOULD RUN AFER OF THE OUT PROSS CHUSE OF THE FEDE-
RAW IS CONERN, THEREFORE, PRECLUSION OF THESE FILES
CONERN UNDER THE OTHER CIRCUMSTANCE, AS FERS, THE
DEVIATION OF THE FACTS, IN ONE CIRCUMSTANCE, IS OF VITAL
EQUALLY IMPORTANT TO THE INTEREST OF THE PUBLIC. ANY
VIEWED AS A INTEGRATE WHOLE FOR BOTH INSTANCES ARE
TRIAL CAN NOT BE CONSIDERED IN A VACUUM, AND MUST BE
THUS, THE PEB HEARING AND PUBLIC

STITUTIONAL PROVISIONS.
CLONK OF CONFIDENTIALITY WHICH IS AFFORDED TO HIM AND
EICALLY AT THE PEB, MR. BROWN AT THAT TIME WANTED THE
TESTIFIED AT THIS PUBLIC TRIAL ABOUT NAVY AFFAIRS, SPECI
ATTACHED MANUSCRIPTS PG. 262, 409-411). WHEN MR. BROWN
MR. BROWN OFFERED DETAILS ABOUT THE PEB HEARING. (SEE,
AT TRUTH, SO HELP HIM GOD, AND AT THIS SAME PUBLIC TRIAL
OF LRUW, THAT HIS TESTIMONY WOULD BE "TRUTH AND THE WHO
TESTIFIED AT A PUBLIC TRIAL, WHERE THE SWORD IN A COURT
NOT BE AN INVASION OF MR. BROWN'S PRIVACY. MR. BROWN
TO THE CORB'S CONTENTION, TURNING OVER THE PEB FILE WOULD
CONTRARY

THE INTEGRITY OF THE CONVICTION CRITICALLY IMPACTED,
Y OF BOTH OF THESE PROCEDURES CAN BE CROSS REFERENCED AND

REVERSED THE CONVICTION OF A PERSON FULLY COMMITTED
IT NEEDS TO BE TURNED OVER, BECAUSE SAID INVESTMENT CAN
CREDIBILITY OF MR. BROWN, IN THE INTEREST OF THE PUBLIC
THERE EXIST TO BE ANY EVIDENCE THAT MAY IMPROVE THE
CAST AT TRIAL WAS MR. BROWN'S CREDIBILITY, THEREFORE, IF
THE PRINCIPAL OF THE PROSECUTOR

OF MR. BROWN'S ASSERTION.
AS TO BE CONDUCTED IN ORDER TO INSURE THE VICTIM
REFUSED SUCH A CLAIM, A SEARCHING EXAMINATION NE
NG" (SEE ATTACHED TRANSCRIPT PG. 402). ALTHOUGH MR. BROW
TR OF THE BOARD THAT "IT HAD BEEN A DRIFT-BY SHOOT
EVEN ALLUDED TO THE FACT OF MR. BROWN TELLING HOW OFFI
HAD TOLD THE MEDICAL EXAMINATION BOARD. DEFENSE COUNS
AT TRIAL THERE WERE DISCREPANCIES ABOUT WHAT MR. BROWN

MR. BROWN
OVER SAID PER HEARING ANYTHING IN FAVOR OF
SUBMITTED IN WRITING TO ANY OFFICIAL PRESIDING
ATTORNEY OFFICE APPEARED, TELEPHONED, OR
> WHETHER OR NOT THE KINGS COUNTY DISTRICT

INQUIRIES HE SUSTAINED, AND
> MR. BROWN'S TESTIMONY OR REPORT(S) ABOUT WHAT
THINGS HAPPEN ON THE DAY IN QUESTION;
> MR. BROWN'S TESTIMONY OR REPORT(S) ON HOW
HAPPEN AND INSPIRED ON THE DAY IN QUESTION;

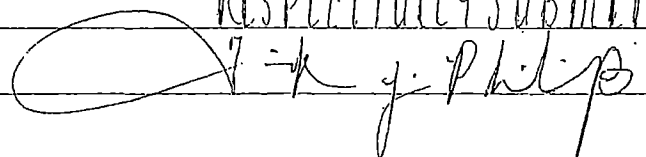
> MR. BROWN'S TESTIMONY OR REPORT(S) ABOUT WHAT
TO THE PUBLIC INTEREST ARE:
5 USC 552 (8)(A)(ii)(I). THE MATTERS OF MINOR IMPORTANCE
BE REDACTED OR EXTRACTED FROM THE FILE IN ACCORDANCE TO

AND INNOCENT MAN. MOREOVER, THE FILE THAT'S BEING WITH
 HELD IS OF SUCH MAGNITUDE THAT THE PUBLIC INTEREST
 DOES OUTWEIGH THAT OF MR. BROWN'S PERSONAL PRIVACY.

THE
 CORB DECISION IMPOSES UNSURMOUNTABLE LIMITATIONS THAT
 GOES AGAINST THE BASIC POLICY THAT DISCLOSURE, AND NOT SECR
 ECY, IS THE DOMINANT OBJECTIVE OF THE FOIA. THE FOIA WAS
 INTENDED TO PIERCE THE VEIL OF ADMINISTRATION SECRECY AND
 TO OPEN AGENCY ACTION TO THE LIGHT OF PUBLIC SCRUTINY. I
 THE SAME VEIN, THE GRAVITY SURROUNDING THE PEB FILE
 NEED TO BE SCRUTINIZED IN THE PUBLIC INTEREST.

HOWEVER, IN
 CORB SHOULD BE SUMMONED TO COMB THROUGH THE PEB FILE
 AND LOCATE ANY INFORMATION OR DOCUMENTATION THAT
 OF SENSITIVE STRUCTURE, AND REDACT OR EXTRACT SAID INFOR-
 MATION OR DOCUMENT OUT OF SAID FILE. THE PUBLIC'S INT
 REST IS ONLY RELATED TO THE INFORMATION TO WHICH
 MR. BROWN OFFERED AT THE PUBLIC TREAT. THEREFORE, A "PA
 TIAL DISCLOSURE" COULD REMEDY THE DISPUTE HERE. FOR THE FOREGO
 ING REASONS, AFOREMENTIONED, THE CORBS DECISION TO
 WITHHOLD SAID DOCUMENTS SHOULD BE DEEMED IMPROPER.
 APPRECIATE YOUR TIME AND CONSIDERATION. HOPE THAT A RE
 SONABLE RESOLUTION CAN BE PROVIDED TO RESOLVE THIS DISP
 UTE. THANK YOU.

RESPECTFULLY SUBMITTED



TARIK F. PHILLIPS



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:
5720
Ser 14/293
September 11, 2018

Mr. Tarik F. Philips
06A0363
P. O. Box 700
Shawangunk Correctional Facility
Wallkill, NY 02589

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-2018-006451; FOIA APPEAL DON-NAVY-2018-010743

This letter responds to your FOIA appeal dated July 21, 2018, which was received by my office on August 16, 2018. You appeal the Secretary of the Navy, Council of Review Boards' (SECNAV CORB) total withholding of the Medical Evaluation Board (MEB) file for Jody Brown due to FOIA Exemption (b)(6).

Your appeal is a request for a final determination under the FOIA. For the reasons stated below, your appeal is denied.

When an agency withholds documents based on FOIA Exemption (b)(6), federal courts undertake a two-step process to determine if the withholding was appropriate. First, "whether the information sought is to be found in personnel, medical or similar files" and second, if the information is contained within such files, would its release constitute a clearly unwarranted invasion of privacy. *Arieff v. Department of the Navy*, 712 F.2d 1462, 1466 (D.C. Cir. 1983). If an agency determines that information is protected from disclosure in accordance with Exemption (b)(6), the agency must then determine if the public interest in the requested information outweighs the privacy interests at stake. *See Lurie v. Department of the Army*, 970 F.Supp. 19, 35 (D.C. Dist. 1997) (citing *Department of the Air Force v. Rose*, 425 U.S. 352, 372 (1976)).

I have determined that the Sailor in question, Jody Brown, has a substantial privacy interest in the information within his medical file which outweighs any public interest in its release. Release of Mr. Brown's private medical information will not shed any light on SECNAV CORB's performance of its duties, which is how the public interest is defined. Rather, release of such information is solely to assist you to defend yourself from allegations that you committed a crime, an interest that is purely personal to you and which does not qualify as a public interest.

Though I am satisfied that Mr. Brown's medical information is not releasable to you, the documents you request could possibly be released pursuant to a valid court order directing the Department of the Navy to provide you with the information you seek. Accordingly, FOIA is not the proper vehicle with which to release these documents to you. Following receipt of your

September 11, 2018

appeal, SECNAV CORB confirmed that Mr. Brown's medical file is not retrievable by your name, so as to you, you are not entitled to access to those records under the Privacy Act. These medical records are kept within several Privacy Act System of Records, including the Health Care Record System (N06150-2) under Mr. Brown's name and can only be released to him. However, you can obtain Mr. Brown's Privacy Act records in accordance with SECNAVINST 5820.8A, which, as mentioned above, requires a valid court order or judge signed subpoena in order to effectuate release.

As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of your appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is, therefore, unable to assist you in this process.

If you would like to seek dispute resolution services, you have the right to contact the Department of the Navy's FOIA public liaison, Mr. Chris Julka, at christopher.a.julka@navy.mil or (703) 697-0031.

If you have further questions or concerns for my office, my point of contact is LCDR Adam Yost, JAGC, USN, who may be reached at adam.yost@navy.mil or (202) 685-5398.

Sincerely,



G. E. LATTIN

Director

General Litigation Division

Copy to:
SECNAV CORB
DNS-36
DON CIO

TRIAL
TRANSCRIPTS

Brown - Cross/Parnass

(Blue and Green)

402

1 A Yes, ma'am.

2 Q And you were dizzy and sweating?

3 A I never lost consciousness, I never lost
4 consciousness. I can't recall if I was sweating or not, but I
5 never was, at no point was I dizzy.

6 Q But you were in pain, right?

7 A Yes, ma'am.

8 Q Now, at some point you had to tell the medical board
9 in the Navy what happened, right?

10 A Yes, ma'am.

11 Q **Did you tell a member of the medical board that when**
12 **you were visiting with friends in New York, you were caught in**
13 **a drive-by shooting; did you say that?**

14 A **No, ma'am. No, ma'am.**

15 Q **You're sure?**

16 A **Yes ma'am.**

17 Q Now, it's your testimony that you went to a lineup,
18 correct?

19 A Yes, ma'am.

20 Q And that you made an identification in May of '03,
21 correct?

22 A Yes, ma'am.

23 Q And the way you arrived at the precinct was actually
24 you were transported by Detective Whelan and Detective Quinlan,
25 correct?

Brown - Redirect/Walsh (Blue and Green) 409

1 A Yes, sir.

2 Q Did you and Jonathan land on top of each other?

3 A Like I say, the way I fell, I fell down, my legs were
4 still out the door. So I fell down, it's like a domino effect.
5 When I fell, I fell on top of him and caused him to collapse
6 too. But when he fell down, part of his body got tangled up
7 with mine. But when they pulled him from underneath me, the
8 rest of my body, upper body, laid down on the floor.

9 Q Did you and Jonathan kind of land in a heap?

10 A Yes, sir.

11 Q Were you both on top of each other in the doorway ?

12 A Pretty much so. Like I say, part of his -- we were
13 entangled, because I was almost in between both of his legs.

14 Q ~~Sir, after you were shot, did you get evaluated, did~~
15 ~~you have to get several physical evaluations by the Navy?~~

16 A ~~Yes, sir.~~

17 Q ~~Do they have a name for that? Is it called a board or~~
18 ~~something like that?~~

19 A ~~It's called, actually it's called a medical evaluation~~
20 ~~board.~~

21 Q ~~And what's the purpose of the medical evaluation~~
22 ~~board?~~

23 A ~~They determine if you're physically fit, if you can~~
24 ~~run a mile and a half, if you can do a certain amount of~~
25 ~~sit-ups, a certain amount of push-ups in a certain amount of~~

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1 time for your age, at your age group. You have to be able to
2 do a certain quota, you got to reach a certain quota for your
3 age.

4 Q All right. Are they the guys that determine whether
5 or not you're fit to return to duty?

6 A Yes, sir.

7 Q Are they also the guys who determine if you have to be
8 medically discharged?

9 A Yes, sir.

10 Q When you're interviewed by these, by this medical
11 evaluation board, are there detectives in the room?

12 A No, sir.

13 Q Are they asking you details about how you were shot
14 and the circumstances?

15 A Actually when I arrived to the National Naval Medical
16 Center, they had already received the information through,
17 actually I think it was, either it was through the paper or my
18 ship had sent the information over as to what happened.

19 And when I first arrived there, they asked me to
20 give a brief description of what happened and what transpired
21 and how it happened and what injuries did I sustain. They
22 wanted to get a statement from myself.

23 Q All right. Did you ever tell anybody at the National
24 Navy Medical Center or anybody anywhere else that you were shot
25 in a drive-by?

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1 A **No, sir.**

2 Q Sir, was it a bunch of guys that came out that front
3 door of 418 Jerome?

4 A Yes, sir.

5 Q Did you do a head count to see exactly how many guys
6 there were?

7 A Not really. Because it was so much commotion going
8 on, people trying to get in the door, people trying to get out
9 the door, so it was all, it's in bunches.

10 Q Do you know who the second and third and fourth guy to
11 come out the door were?

12 A No, sir.

13 Q Now, this fellow Steve, who had gotten into the fight
14 with Kevin, you got a pretty good look at him during the course
15 of that fight, right?

16 A Yes, sir.

17 Q And you saw him in the schoolyard later on that
18 afternoon?

19 A Yes, sir.

20 Q Can you tell us one way or the other whether or not he
21 was one of the guys that came out that front door with Tarik?

22 A He could have been, but honestly I did not see him.

23 Q All right. Do you remember what Kevin was wearing on
24 his head at the time just before the shooting?

25 A A blue Cardinals hat with a red bill.