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VIA CERTIFIED MAIL AND EMAIL

9 Feb 2019

MEMORANDUM FOR AF/JAA (Mr. Von Wald)
1420 AF Pentagon
Washington, DC 20330-1420

SAF/IG/IGS (Attn: FOIA Officer)
1140 Air Force Pentagon
Washington, DC 20330-1140

SUBJECT: Col (Ret.) David B. Walker, XXX-XX-5105, Request for Discovery and FOIA
Request for Records Related to Letter of Admonishment (LOA) (Our File #19-1728)

Dear Mr. Von Wald and SAF/IG Official:

1. Please be advised that our office has been retained to represent the interests of the above referenced individual. To that end, enclosed please find a copy of Col (Ret.) Walker's Power of Attorney (Atch 1) that is executed in favor of this firm, and includes a Privacy Act release. Also enclosed, is an Authorization for Release of Information signed under Sworn Declaration by Col (Ret.) Walker. Please direct all future correspondence in this matter to undersigned counsel.
2. I am informed by military co-counsel, Lt Col Jason Van Wagner, that the documents requested in paragraph 3, below, were previously requested on five occasions in correspondence with SAF/IG and/or AF/JAA on 26 Nov 2018, 7 Dec 2018, 20 Dec 2018, 21 Dec 2018 and lastly on 11 Jan 2019. I maintain that Col (Ret.) Walker must be provided administrative due process in the matter of this LOA response. Col (Ret.) Walker must be afforded the opportunity to not only see the evidence against him from SAF/IG files that formed the basis of the substantiated allegation in Case Number: S8352P, but also to see the exculpatory evidence from others. The exculpatory evidence, including evidence of bias, motive to lie and character for truthfulness of witnesses strikes at the heart of credibility. General Wilson should also have this evidence as he decides whether to maintain this LOA or to withdraw it or decides whether or not to place the LOA in a UIF or not. Finally, SAF/IG should inform my Client and General Wilson of exculpatory evidence that was available, but ignored or not pursued by SAF/IG/IGS.
3. Pursuant to both the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, as well as under the authority of paragraphs 2.3, 2.3.4.1, 2.4.2, 4.1.3 and 4.5 of AFI 36-2907, *Unfavorable Information File (UIF) Program*, Col (Ret.) Walker seeks the following information in order be able to properly assess and respond to the conclusion of the

EXHIBIT B

SAF/IG investigation, which formed the basis of the IOA issued by the USAF Vice Chief of Staff (AF/CV) to Col (Ret. Walker) on 16 Nov 2018 (Atch 4).

- a. Complete and unredacted copy of the Secretary of the Air Force Inspector General investigative file and report, Case Number: S8352P.
- b. Complete and unredacted copies of any and all investigations, investigative files, reports, correspondence (whether electronic or in hard copy), dispositions, complaints, records, notes, and/or statements relating to and/or referencing the Secretary of the Air Force Inspector General Case Number: S8352P – regardless of medium in which the records are stored/maintained.
- c. All of the evidence from the related Command Directed Investigation (CDI) conducted by the DE Air National Guard's 166 AW into alleged Fraud, Waste and Abuse by Col Peter Bickel completed on or about 30 July 2017.
- d. All evidence that supports Col (Ret.) Walker – such as the Col Culcasi MFR that specifically addressed Col John J. Ptak, Jr.'s credibility – including but not limited to the following:
 - (1) Unredacted interview transcripts for any portions pertaining to Col (Ret.) Walker;
 - (2) Unredacted interview transcripts for any portions pertaining to Col Ptak;
 - (3) Unredacted interview transcripts for any portions pertaining to Maj Gen Carol A. Timmons;
 - (4) Unredacted Recorded testimony for any portions pertaining to Col (Ret.) Walker
 - (5) Unredacted Recorded testimony for any portions pertaining Col Ptak;
 - (6) Unredacted Recorded testimony for any portions pertaining to Maj Gen Timmons;
 - (7) Any other records (unredacted) of interviews in which questions were asked about or witnesses gave testimony regarding Col (Ret.) Walker, Col Ptak or Maj Gen Timmons;
 - (8) All unredacted versions of any MFRs or other evidence, including written answers or summaries of answers to investigator questions, that refer to Col (Ret.) Walker, Col Ptak or Maj Gen Timmons and or any knowledge that Col Ptak or Maj Gen Timmons may have had including knowledge of timelines.
- e. Specific evidentiary documents as follows:
 - (1) In light of Col Culcasi's MFR dated 22 May 2018, which noted: "regarding the credibility and whether or not he believes that Col Ptak would be dishonest or lie," please provide any other testimony transcripts/recordings/MFRs or other evidence of other individuals who were asked about the credibility of Col Ptak.
 - (2) Please provide all evidence that was considered in weighing credibility of any witness in the investigation against Col (Ret.) Walker or state there is no additional evidence. Col Culcasi specifically spoke to Col Ptak's credibility for truthfulness but Col Culcasi's assessment was not mentioned much less addressed in the credibility analysis section of the IG report on Case S8352P. Col (Ret.) Walker requests to know

whether there are other MFR's like Col Culcasi's and requests to have all such documents produced.

f. Specific evidentiary documents that were omitted from previous disclosures to Col (Ret.) Walker's counsel from Case S8352P, to include:

- (1) Transcripts cited as Exhibits 9-11, 13-18 and 61
- (2) Emails cited as Exhibits 27-28, 43 and 58-60
- (3) MFRs cited as Exhibits 27, 31, 44 (entitled MFR re Col Walker, 31 May 17), 52 and 63

g. Any and all exhibits which refer to Col Walker, Col Ptak, and/or Maj Gen Timmons, or which otherwise provide evidence regarding witness credibility.

h. In Col (Ret.) Walker's interview on 6 March 2018, IO2 (Maj Thomas Payne) asked if Col (Ret.) Walker was relying on Col Ptak's 30 May 2017 MFR for his memory of the timing of events and said "Because we have actually done extensive stuff on that timeline" and IO2 cutoff Col (Ret.) Walker when he referred to the timeline in that MFR. See, Col Walker Transcript at 8:34-40 and 27:18-26. Because the timeline and the Ptak MFR are critical to the conclusions in the SAF/IG report, Col (Ret.) Walker requests all evidence produced during the course of the investigation to determine the timeline of events regarding Col (Ret.) Walker and what he allegedly knew and when he allegedly knew it, and Col Ptak's testimony and evidence regarding the same.

i. Specific evidentiary documents that were omitted from previous disclosures to Col (Ret.) Walker's counsel, to include requested disclosure of redactions from Case S8352P:

- (1) Col Kirwan MFR: Significant portions of Col Kirwan's Phone Call MFR is redacted. The subject of the phone call was Col Ptak's credibility. Request the entire MFR be provided as unredacted;
- (2) Col Ptak: Col Ptak transcript is redacted from 6:35 – 8:1. The unredacted portions before and after refer to Col Walker. Request these portions and any other portions referring to Col Walker or to the timeline of events be unredacted and provided to assess relevance to the timeline and credibility which the investigator states in the report was used.
- (3) Major Bulford: Large portions of the Maj Bulford transcript are redacted in between discussions of Col Walker or Col Ptak. Request all portions relating to Col (Ret.) Walker, Col Ptak, or the timeline of events be provided as unredacted.
- (4) Lt Col Pollock: Lt Col Pollock stated "uh I know it was discussed with Colonel Walker. And uh and Colonel Walker, based on Colonel Ptak's account of the information Colonel Walker um uh admonished Colonel Ptak and, and uh told him to mind his own business and stay out of med group matters." When asked how he was aware of that, Lt Col Pollock stated "Through a conversation with Col Ptak." See, Lt Col Pollock Interview transcript dated 18 October 2017 at 9:11-18. But the answer to the follow up question "Sir, you mentioned speaking to [redacted] and Colonel Ptak. Do you have – can you recall when those conversations took place?" is redacted from 9:23 – 10:35. Request that this section, which appears highly relevant and directly related to Col (Ret.) Walker, be provided unredacted.

- (5) Lt Col Pollock Redaction #2: Lt Col Pollock Interview transcript dated 18 October 2017 at 10:40 -14:1 redacts most of Lt Col Pollocks answer to a question "So, did you personally ever speak to . . . Colonel Walker about your concerns regarding Colonel Bickel's teleworking? Request this highly relevant portion be unredacted and provided.
- (6) Lt Col Pollock Redaction #3: "So just to reiterate, you are aware that the potential telework abuse issue was brought to Colonel Walker's attention based on the conversations you had with Major Bulford and Colonel Ptak?" *See*, Lt Col Pollock Interview transcript dated 18 October 2017 at 13:38 - 14:1 but all of what is being "reiterated" is redacted. Request this section, which appears highly relevant and directly related to Col (Ret.) Walker and his knowledge of the telework issue be unredacted and provided.
- (7) Col Bevis: There were questionable redactions in the Col Bevis interview transcript at 19:41 - 20:28. The section before includes discussion about Col Walker and the section immediately after states: W: He could have engaged on things that I was not privy to obviously. But again, to be very clear, I was never made aware of any engagements by Colonel Walker on any of these issues. Again, I look at that as if he did have awareness. And that's-- you may recall I sent you the one message about what did Colonel Walker know and when. And it was after I had read this, I said okay, that's disturbing it to me. Because it was another opportunity to potentially address, you know, the challenges that we now see. Request: Notably, the question is redacted to which Col Bevis gives the response above, which removes context from the response. Redactions continue all the way from 20:39 – 45:25. The immediately following section states: "And the timelines are confusing. Between the Ptak and Walker engagement and Bulford's account of that. You know, obviously you all have different information. I'm not really tracking any of that. But - -." *See*, Col Bevis transcript at 45:27-29. Request unredacted versions of any of the Col Bevis transcript that discusses the timelines in any way. The question of what Col (Ret.) Walker knew and when he knew it, is central to the substantiated allegations and the credibility determination, we request any related testimony should be unredacted and provided.
- (8) Col Bevis #2: Col Bevis interview transcripts states that "And that's-- you may recall I sent you the one message about what did Colonel Walker know and when." *See*, Col Bevis interview transcript at 20:34-35. Col (Ret.) Walker requests to obtain that message sent from Col Bevis to the IO that purports to address what Col (Ret.) Walker knew and when he knew it. This appears to be extremely relevant to this case and Col (Ret.) Walker requests that you produce this message in its entirety.
- (9) LTC Hilferty: A redaction appears in Ex 8 LTC Hilferty Transcript from 20 Oct 17 interview that appears to be highly relevant to Col Walker:
IO: Okay. So did anyone ever speak to you about the telework agreement or any issues involving teleworking regarding the med group commander?
However, LTC Hilferty's answer at li. 3:32-34 is redacted. Next the IO asks "You don't remember speaking to Major Bulford, LTC Hilferty states "No" However, the remainder of answer at 3:38-41 and 4:1-9 is redacted. Request LTC Hilferty testimony in all of these sections be provided as unredacted as these statements are

highly relevant to Col (Ret.) Walker and his knowledge, if any, of problems with the telework agreement.

- (10) LTC Hilferty #2: LTC Hilferty was answering questions about conversations with Maj Bulford and gave the following testimony:

IO: And you don't recall having any conversations with the, the former MSG commander, Colonel Ptak, either?

W: Colonel Ptak?

IO: Yes.

W: Again, I don't remember that time, no. But we've had lots of discussions but I don't remember that time. And I-and ever since Colonel Pou's been hitting me I've been trying to think and think and think. But I don't remember, and I'm not going to sit here and say "Oh, yeah, I remember." You know, I don't remember. But if Major Bulford – If I said to someone "I'll take it upstairs." There's a 99.9 percent chance I took it upstairs and said "Hey, something's wrong with this telework."

IO: And by upstairs, you meant to the wing commander?

W: Correct. I'm not one to usually hold back when it comes to things. And I usually document stuff. But again, I would've—if he's saying I took it up, and I told him I would take it upstairs, I took it up and said something. I'm 99.9 percent sure if that's what I said to him, that's what I did...The remainder of answer from 5:35- 7:6 is redacted. Request that the reminder of the answer be unredacted and provided as this goes to directly to LTC Hilferty's recall on what he did, when he did it and how that plays into Col (Ret.) Walker's knowledge of problems with any telework agreement.

- (11) LTC Hilferty #3: LTC Hilferty is answering questions about Col (Ret.) Walker and gives the following testimony:

IO: What about Colonel Walker in your limited interactions with him?

W: He--I mean, again, he was M-day. So during drill weekends they would have their JAGs up there. So, and he was over at the wing, so they handle everything. Sometimes when questions came up, I'd be like "Address it to your JAGs." Because during drill weekend and if they're there, they can do the work. You know, they're more air specific than I am. However, the remainder of answer from 7:41- 8:41 is redacted. Testimony then follows on at 9:1 with more testimony about whether LTC Hilferty "went upstairs." The question of whether LTC Hilferty went upstairs and what he conveyed and to whom is central to the substantiated complaint. All related testimony should therefore be unredacted and provided.

- (12) LTC Hilferty#4: Ex 21 LTC Hilferty transcript dated 22 Mar18 is redacted from 5:43-7:43, which immediately follows questions about Col (Ret.) Walker. The questions of whether LTC Hilferty went upstairs and what he conveyed and to whom are central to the substantiated complaint. Request that all LTC Hilferty testimony in these areas be unredacted and provided.

j. Complete and unredacted copy of the AF102 Inspector General Complaint and any associated investigative file and report, filed 25 Jul 2018 by Col (Ret.) Walker with the DE Air National Guard.

k. Complete and unredacted copy of the Secretary of the Air Force Inspector General investigative file and report pertaining to the Case number SAF/IGQ2018-23-225 in response to DoD Hotline 20181001-054017- case 02 -re Col Ptak.

l. Complete and unredacted copy of the Secretary of the Air Force Inspector General investigative file and report pertaining to the DoD IG Hotline Complaint, time stamp 20180928130950084, submitted by Col (Ret.) Walker, and earlier anonymous version of the same complaint submitted to DoD IG Hotline by Lt Col Blair (DoD IG Hotline Complaint time stamp 20180906095736638).

m. Complete and unredacted copy of the Secretary of the Air Force Inspector General investigative file and report pertaining to DoD IG Hotline – Whistleblower Reprisal Complaint, time stamp 20190103111922849. submitted by Col (Ret.) Walker.

n. Complete and unredacted copies of any Secretary of the Air Force Inspector General complaints, investigative files and reports for any complaints submitted to the 166 AW/IG, SAF/IG or DoD IG during the course of the 166 AW CDI regarding Col Bickel and Secretary of the Air Force Inspector General Case Number: S8352P (from February 2017 to the present) regarding or mentioning Col Ptak, along with the date of receipt of each case, current disposition of each case, and any evidence in each of those cases that refers to Col Ptak or Col Walker.

o. Complete and unredacted copies of any and all investigations, investigative files, reports, correspondence (whether electronic or in hard copy), dispositions, complaints, records, notes, and/or statements relating to and/or referencing the three IG complaints noted above at paragraphs 3j, 3k, 3l, 3m and 3n – regardless of medium in which the records are stored/maintained.

p. Please provide each identified transcript, recording, MFR, document and exhibit noted above that has not been produced to date or state with regard to each exhibit the grounds on which it is being withheld.

4. Undersigned requests waiver of photocopy/production fees as these matters are required for administrative due process to respond to the Agency's LOA. However, if necessary, the undersigned is willing, pursuant to our representation agreement, to pay appropriate fees on behalf of Col (Ret.) Walker associated with the processing of this request as outlined by 32 C.F.R. § 286 Subpart F, up to \$25.00. Should the fees exceed \$25.00 kindly contact undersigned counsel as to the estimate of fees and for approval of said fees.

5. If Col (Ret.) Walker's request is denied in whole or part, please justify all deletions by reference to specific exemptions of the act. We also expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

6. A scanned or email copy of the requested documents is a suitable alternative to a hardcopy or cd by mail. Otherwise, please mail all of the records above in either hard copy or on compact disk (cd) to undersigned's attention at the address provided in the letterhead above.

7. I look forward to your timely and responsive reply. I understand that under FOIA, the Agency has 20 days to reply. Please realize that Col (ret.) Walker requires these documents in order to respond to the LOA he received from AF/CV. That LOA response deadline is currently set as 8 Mar 2019. Should we not receive the requested information by 20 Feb 2019, we will require an additional extension of time to respond to the LOA at issue.

8. Should you have any questions, kindly contact me at (202) 375-2266 or by email to lyoungner@fedattorney.com. Thank you.

Very respectfully,



Larry D. Youngner, Colonel, USAF (Ret.)*
Of Counsel

4 Attachments:

1. Power of Attorney, dated 29 Nov 2019
2. Privacy Act Release Form
3. Authorization to Release Information
4. Letter of Admonishment, dated 24 Oct 2018, received 16 Nov 2018

cc:

1. Client
2. Lt Col Van Wagner, Military Defense Counsel
3. Honorable Chris Coons, US Senator, Delaware

*NOT ADMITTED TO THE DISTRICT OF COLUMBIA BAR. DC PRACTICE LIMITED TO PROVIDING LEGAL SERVICES TO MEMBERS OF THE PUBLIC SOLELY BEFORE A SPECIAL COURT, DEPARTMENT, OR AGENCY OF THE UNITED STATES. ADMITTED TO PRACTICE IN GEORGIA AND TO THE SUPREME COURT OF THE UNITED STATES, US COURT OF APPEALS FEDERAL CIRCUIT, SUPREME COURT OF THE STATE OF GEORGIA AND COURT OF APPEALS FOR THE ARMED FORCES (FORMERLY COMA).

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POWER OF ATTORNEY

I,

David Walker

219 East 2nd Street

New Castle, DE 19720

443-254-2502

hereby designate the law firm of **TULLY RINCKEY, PLLC** to serve as my attorneys in all matters relating to and/or arising out of my employment by the federal government of the United States of America. I authorize all branches, agencies, appointees, officials, and employees of the federal government of the United States of America, as well as of the governments of any State, County, or Municipality in the United States, to fully communicate with and release to my herein designated attorneys any and all information related to me and my employment by the federal government as deemed necessary, as a waiver of my rights under the Privacy Act, 5 U.S.C. § 552a. This Power of Attorney will remain in effect until withdrawn by me and/or my designated attorneys.

Date: January 29, 2019

DocuSigned by:
David Walker
Signature

PRIVACY ACT RELEASE FORM

The Privacy Act of 1974 prohibits any department or agency of the Federal Government from releasing any personal information about an individual without that individual's written permission. Therefore, before I may initiate an inquiry on your behalf, it will be necessary for you to print out, complete and sign this form and mail it to me my office address. Since e-mails do not contain valid signatures, they do not fulfill the requirements of the Privacy Act.

Pursuant to the provisions of the Privacy Act, I, David B. Walker, hereby authorize _____ to release all of my records and information including privately identifiable information to Tully Rinckey, PLLC, Attn: Larry Youngner, Esq., 815 Connecticut Ave NW, Suite 720, Washington, DC 20006, my legal representative. I understand that my information may be re-disclosed to other agents of the above-named recipient for purposes of litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above (requester) and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. section 1001 by a fine of not more than \$10,000.00 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.00.

Signature: 

Date: 8 Feb 2019

Address: 219 East 2nd Street, New Castle, DE 19720

Telephone: 443-254-2502 (Home) 202-567-6778 (Work)

E-Mail Address: DWALKER@BHIPLAW.COM

Date of Birth: May 3, 1967

Military Branch and Component: Air Force/Delaware Air National Guard

Military Rank and Grade: Colonel/O-6 (Retired)

Military Technician Title and Grade: N/A

PLEASE PROVIDE APPROPRIATE IDENTIFICATION NUMBER(S):

Social Security Number: 569-73-5105

Explanation of Problem and Assistance Requested: Exculpatory evidence required to respond to letter of admonishment served under authority of AFI 36-2907 by the AF/CV.

_____ (Continue on back, if necessary)

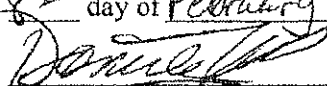
AUTHORIZATION TO RELEASE INFORMATION

I, David B. Walker, hereby authorize the release of a complete and certified copy of any and all pertinent information pertaining to my service with the United States Air Force, to include but not be limited to my official personnel military file and any and all copies of records, correspondence, documents, notes, administrative records, service records, leave records, deployment records, payroll records, financial records, reports, orders, campaigns, expeditions, training, requests, claims, charges, summaries, memorandum, submissions, evaluations, performance appraisals, awards, medical records/reports, applications for the correction of military records, decisions, photographs, films, recordings, findings, advisory opinions, opinions rendered by staff professional personnel, staff briefs and/or memoranda, military and/or civilian investigative reports obtained and/or prepared for use and consideration by any investigating officer or administrative board of inquiry, discharge records, retirement records and/or any such other and further documentation in your possession pertaining to my service with the United States Air Force, to include the Air National Guard, to be released to the attorneys at Tully Rinckey, PLLC, Attn: Larry Youngner, Esq., 815 Connecticut Ave NW, Suite 720, Washington, DC 20006. In addition, this authorization will permit any representative from this law firm to discuss the subject matter on my behalf with the recipient of this signed authorization.

This authorization is for the purposes of obtaining documents with regard to military service and any investigative files and/or reports conducted by the Secretary of the Air Force Inspector General's Office, and it is to my knowledge that this authorization will no longer be valid upon my revocation of same or upon such time as the proceedings have terminated in my favor.



DAVID B. WALKER

Sworn to before me this
8th day of February, 2019


Notary Public My Commission Expires March 01, 2020