

2. The government records which Plaintiff requests are his individual Claims Files maintained by the VA in a system of records for Veterans making claims for Veterans Disability Compensation and/or Survivor Benefits claims pursuant to Title 38 of the United States Code. Please See **Exhibit A**

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, 5 U.S.C. § 552. In addition, this Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(b), under which, “the District Court of the United States, in the district in which the complainant resides ... has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant”, as Plaintiff’s residence is in this district.

PARTIES

4. Plaintiff Cody G. Hitt is a disabled veteran, and a resident of the State of Oregon and resides at 300 Boulder Falls Dr, Apt D316, Lebanon, OR 97355.

5. Defendant United States Department of Veterans Affairs is a federal agency headquartered at 810 Vermont Avenue NW, Washington, DC 20420. which is believed to maintain facilities throughout this District. Defendant has possession, custody, and control over records sought by Plaintiff.

FACTUAL ALLEGATIONS

6. The FOIA requires U.S. government agencies to promptly make public records available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

7. The FOIA requires an agency to issue a final determination on any such information request within twenty (20) business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i).

8. The FOIA allows an agency to extend this determination deadline, however, by ten (10) working days when “unusual circumstances” exist and when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B).

9. In limited circumstances, the FOIA allows an agency to invoke an extension beyond ten (10) days. To invoke a longer extension, the FOIA requires an agency to provide written notification to the requester that (1) offers the requester an opportunity to limit the scope of the request so that it may be processed within that time limit, or (2) offers the requester an opportunity to arrange with the agency an alternative time frame for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii).

10. Plaintiff served the Defendant via certified mail with a FOIA request dated July 9, 2019 seeking production of his Claim File. Please See **Exhibit A**.

11. The Defendant received this FOIA request on July 15, 2019. Please see **Exhibit B**.

12. The Defendant has failed to issue a timely determination and or make the requested records promptly available in response to the FOIA Request.

13. The Defendant provided the Plaintiff with an Email dated September 7, 2019, stating that the VA's general stance is to not to process FOIA requests until after all open claims have been completed. Stating, "*keep in mind that [FOIA] request is generally processed after open claims ... have been completed to ensure that open claims are not delayed*". Please see **Exhibit E**.

14. Veterans' Claim Files are now digitalized and can be accessed by multiple simultaneous users through the Veterans Benefits Management System (VBMS)¹. Although the Plaintiff is grateful that the VA wishes not to delay open claims, the VA fails to address how processing a FOIA Request in a timely manner would actually delay an open claim.

¹ The VBMS electronic folder, or eFolder, is the electronic equivalent of the VBA paper claims folder. It serves as a digital repository of all documents related to a claim, and it provides for document uploading and viewing by multiple simultaneous users. The eFolder eliminates wait times for physical paper folder transport, reduces incidents of lost or misplaced paper folders, and provides on-demand access to key documentation. **Wading Through Warehouses of Paper: The Challenges of Transitioning Veterans Records to Paperless Technology: Hearing Before the Subcommittee On Disability Assistance and Memorial Affairs of the Committee on Veterans' Affairs U.S. House of Representatives, 112th Cong. 22 (2012) (Testimony of Alan Bozeman)**

15. Plaintiff served a FOIA Appeal to both the Defendant and the VA's Office of General Counsel on October 15, 2019. Please see **Exhibit C; Exhibit D.**

16. The Defendant received the FOIA Appeal on October 21, 2019. Please see **Exhibit D.**

17. The VA's Office of General Counsel received the FOIA Appeal on October 24, 2019. Please See **Exhibit D.**

18. The Defendant and the VA's Office of General Counsel has failed to issue a timely determination and or make requested records promptly available in response to the FOIA Appeal.

FIRST CAUSE OF ACTION

(FOIA Request for Plaintiff's Claims File)

19. Plaintiff incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

20. The Defendant has failed to make the requested records "promptly available" in response to the FOIA Request.

21. The Defendant has failed to provide a final determination on the Plaintiffs FOIA Request within twenty (20) business days.

22. The Defendant has failed to provided notification in reference to an extension, nor has the VA alluded to any "unusual circumstances".

23. The Defendant has failed to provide written notification offering an opportunity to limit the scope of the request, or the opportunity to arrange an alternative time frame for processing the request.

24. The Defendant has admitted it generally does not process FOIA requests when there are open claims that are pending. Please see **Exhibit E**.

25. Based on information and belief, the Defendant has failed to process the FOIA Request because the Plaintiff currently has open claims pending, even though there is no legal basis to do so.

26. Plaintiff has a legal right under FOIA to obtain the agency records requested from Defendant in the FOIA Request, and no legal basis exists for Defendant's failure to make available the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against the Defendant, and that:

- a) Defendant be ordered to promptly provide the Plaintiff with the requested records in their entireties;
- b) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- c) The Court enter a judgment awarding Plaintiff reasonable costs pursuant to 5 U.S.C. §552(a)(4)(E), and/or under any other appropriate federal statute; and

d) The Court award all other such relief to Plaintiff as this Court deems just,
proper and equitable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Cody G. Hitt", is written over a horizontal line.

Cody G. Hitt

300 Boulder Falls Dr, Apt D316

Lebanon, OR 97355

541-228-8537