

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_ -Civ \_\_\_\_\_

KENNETH L. LAVAN,  
*Plaintiff,*

v.

U.S. DEPARTMENT OF VETERANS  
AFFAIRS,

&

ERIC K. SHINSEKI,  
Secretary of the U.S. Department of Veterans  
Affairs,

&

WILL A. GUNN,  
General Counsel of the U.S. Department of  
Veterans Affairs,  
*Defendants.*

**PLAINTIFF'S ORIGINAL COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, Kenneth L. LaVan [hereinafter "Plaintiff"] and files the following complaint, directed to the United States Department of Veterans Affairs (hereinafter, "VA"), its Secretary, and its General Counsel (hereinafter "VA OGC") [hereinafter "Defendants"] and for cause of action would show the Court as follows:

**I. INTRODUCTION**

1. This is an action by Plaintiff pursuant to the Freedom of Information Act (hereinafter, "FOIA"), 5 U.S.C. § 552, as amended, to order the production of agency records maintained by the VA. Plaintiff seeks the documentation set forth below and seeks this Court's

assistance to compel production of documents wrongfully withheld from Plaintiff and to vindicate the statutory right to inspect federal agency documents. Plaintiff asserts that there is a “significant public interest in disclosure” of the records requested by Plaintiff.

2. The government records that Plaintiff requests are the individual claims files, vocational rehabilitation files, and medical records of individual veterans, which were created and maintained by the VA in a system of records for claimants seeking various benefits administered by the VA pursuant to Title 38, U.S. Code.
3. This lawsuit also seeks declarative and injunctive relief to enforce the strict time requirements under the FOIA.

## II. JURISDICTION

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA, as amended, 5 U.S.C. § 552), and 28 U.S.C. § 1331 (Federal Question) as this action arises under the FOIA.
5. The aid of the Court is invoked under 28 U.S.C. §§ 2201 and 2202, authorizing a declaratory judgment.
6. Plaintiff has exhausted his administrative remedies.
7. This action is filed within the six year statute of limitations. 28 U.S.C. § 2401(a).

## III. VENUE

8. Venue is proper in the Southern District of Florida pursuant to 5 U.S.C. § 552(a)(4)(B), because Plaintiff maintains his principal place of business, related to the requests for records at issue in this complaint, in this District.

IV. REMEDY SOUGHT

9. Plaintiff seeks to have the Court enjoin Defendants from withholding records and to order production of records improperly withheld.
10. Plaintiff seeks to have the Court order Defendants to provide him with a copy of all records properly requested under the FOIA.
11. As to the records sought for each individual in the Counts below, enjoin Defendants from withholding records and to order production of records improperly withheld.
12. Plaintiff seeks a permanent injunction requiring Defendants to:
  - a. provide a copy of requested documents within the twenty-business-day limit mandated in 5 U.S.C. § 552(a)(6)(A);
  - b. give proper written notice if an up-to-twenty-business-day extension of time is needed in unusual circumstances as mandated by 5 U.S.C. § 552(a)(6)(B).

V. PARTIES

13. Plaintiff is a licensed attorney accredited by VA to practice before the Agency within the scope of VA benefits law. He maintains his principal place of business within the Southern District of Florida at 7067 West Broward Blvd., Suite D, Plantation, FL 33317.
14. There are three Defendants:
  - a. The U.S. Department of Veterans Affairs, a cabinet-level Agency of the United States of America;
  - b. Eric K. Shinseki, in his official capacity as the Secretary of the U.S. Department of Veterans Affairs; and
  - c. Will A. Gunn, in his official capacity as the General Counsel of the U.S. Department of Veterans Affairs.

VI. SERVICE

15. Defendant, the U.S. Department of Veterans Affairs, may be served by mailing a copy of this complaint and summons by certified mail, return receipt requested, to the following address:  
U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.
16. Defendant, Eric Shinseki, Secretary of the Department of Veterans Affairs, may be served by mailing a copy of this complaint and summons by certified mail, return receipt requested, to the following address: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.
17. Defendant, Will A. Gunn, General Counsel of the Department of Veterans Affairs, may be served by mailing a copy of this complaint and summons by certified mail, return receipt requested, to the following address: U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420.
18. The United States of America may be served by mailing a copy of this complaint and summons by certified mail, return receipt requested, to the U.S. Attorney for the district in which this action is brought at United States Attorney for the Southern District of Florida, 99 NE 4th Street, Miami, Florida 33132, and by serving a copy of this complaint and summons by certified mail, return receipt requested, on the Attorney General of the United States at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

VII. FACTUAL ALLEGATIONS

19. The VA maintains a system of records containing the individual claims files, vocational rehabilitation files, and medical records maintained of individual veterans [hereinafter collectively referred to as "C-Files"] for claimants seeking various benefits administered by the VA pursuant to Title 38, U.S. Code.

20. 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).
21. 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)
22. The FOIA allows an agency to extend this determination deadline by ten (10) business days when “unusual circumstances” exist and when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B).
23. An agency is entitled to only one (1) ten-business-day extension. *Id.* The written notice provided to the requester must specify the specific unusual circumstances justifying the extension and the date on which a final determination is expected to be dispatched. *Id.*
24. In limited circumstances, the FOIA allows an agency to invoke an extension beyond ten (10) business 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).
25. In his capacity as attorney for claimants seeking benefits administered by the VA, Plaintiff will continue to make requests for the C-files of his clients now and in the foreseeable future.
26. The terms “claims file” and “C-file” are well-known terms of art within the VA, and there would be no reasonable confusion by any employee within the VA, who is responsible for

production of documents in response to a FOIA request for a claims file or a C-file, as to what documents should be produced.

27. The following facts are generic as to all Counts except for the dates of the various filings made that underlie each cause. The specific dates as they relate to each request will be set forth below with each Count.
28. Plaintiff filed by facsimile to the VA FOIA office at the VA facility with custody of the requested records proper, complete, and individual requests for production of the c-files for his clients, individually named in the Counts below, as required by 38 C.F.R. § 1.554(a).
29. Plaintiff timely filed by facsimile to the VA OGC separate appeals seeking production of the requested records related to each clients, individually named in the Counts below, as required by 38 C.F.R. § 1.559(b).
30. Plaintiff has a right to the requested records.
31. FOIA mandates the disclosure of the documents that Plaintiff seeks in each FOIA request.
32. As of the date of this filing, neither the VA nor the VA OGC has provided Plaintiff with the requested records, in whole or in part, in response to either the request or the appeal.
33. No FOIA exemptions apply to this request.
34. No exceptional or unusual circumstances preclude a response to the request within twenty (20) business days of the request.
35. No exceptional or unusual circumstances preclude a response to the request within twenty (20) business days of the appeal.
36. Neither the VA nor the VA OGC provided written notification to the Plaintiff necessary to invoke any extensions of time to under 5 U.S.C. § 552(a)(6)(B).
37. Plaintiff has exhausted his administrative remedies.

38. An actual and justiciable controversy exists as to whether the VA has violated the FOIA.
39. This cause of action became ripe notwithstanding the Federal government shutdown, lasting from October 1, 2013 through October 16, 2013, which affected VA's services, including production of documents in response to FOIA requests. Plaintiff has excluded from any time calculations herein that twelve (12) business day period.
40. Defendants' action in withholding the requested information was arbitrary and capricious or otherwise not in accordance with law under 5 U.S.C. § 551 et seq. and 5 U.S.C. § 555(b).
41. Claimants for benefits administered by the VA are entitled to due process of law.
42. Withholding the requested documents from Plaintiff prevents him from adequately reviewing and preparing any necessary documents and development of any missing evidence in connection with the pending claim for benefits on behalf of his clients.

COUNT 1 – ROYAL ELLISON

43. Plaintiff is the attorney representative of veteran ROYAL ELLISON and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit A, page 2.
44. ROYAL ELLISON waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).
45. Plaintiff served, and the VA received, a FOIA request on August 6, 2013 submitted to the Board of Veterans' Appeals—the custodian of the records requested—seeking production of the C-File of veteran ROYAL ELLISON from the VA's system of records. *See* Exhibit A, pages 3 and 4.
46. Plaintiff served a timely FOIA appeal to the VA OGC on September 5, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit A, pages 5 and 6.

47. Withholding of the C-file violates the right of ROYAL ELLISON to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 2 – JOHN DOWLING

48. Plaintiff is the attorney representative of veteran JOHN DOWLING and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit B, page 8.

49. JOHN DOWLING waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

50. Plaintiff served, and the VA received, a FOIA request on July 31, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran JOHN DOWLING from the VA’s system of records. *See* Exhibit B, pages 9 through 11.

51. Plaintiff served a timely FOIA appeal to the VA OGC on August 30, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit B, pages 12 and 13.

52. Withholding of the C-file violates the right of JOHN DOWLING to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 3 – JAMES MCKENNA, JR.

53. Plaintiff is the attorney representative of veteran JAMES MCKENNA, JR. and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit C, page 15.

54. JAMES MCKENNA, JR. waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).



55. Plaintiff served, and the VA received, a FOIA request on July 25, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran JAMES MCKENNA, JR. from the VA's system of records. *See* Exhibit C, pages 16 and 17.

56. Plaintiff served a timely FOIA appeal to the VA OGC on September 5, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit C, pages 18 and 19.

57. Withholding of the C-file violates the right of JAMES MCKENNA, JR. to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 4 – GREGORIO LOPEZ

58. Plaintiff is the attorney representative of veteran GREGORIO LOPEZ and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit D, pages 21 and 22.

59. GREGORIO LOPEZ waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

60. Plaintiff served, and the VA received, a FOIA request on August 9, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran GREGORIO LOPEZ from the VA's system of records. *See* Exhibit D, pages 23 and 24.

61. Plaintiff served a timely FOIA appeal to the VA OGC on September 5, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit D, pages 25 and 26.

62. Withholding of the C-file violates the right of GREGORIO LOPEZ to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 5 – JOSE AMRAM

63. Plaintiff is the attorney representative of veteran JOSE AMRAM and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit E, page 28.
64. JOSE AMRAM waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).
65. Plaintiff served, and the VA received, a FOIA request on July 24, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran JOSE AMRAM from the VA’s system of records. *See* Exhibit E, pages 29 and 30.
66. Plaintiff served a timely FOIA appeal to the VA OGC on September 5, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit E, pages 31 and 32.
67. Withholding of the C-file violates the right of JOSE AMRAM to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 6 – JOHN SPINNEY

68. Plaintiff is the attorney representative of veteran JOHN SPINNEY and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit F, page 34.
69. JOHN SPINNEY waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).
70. Plaintiff served, and the VA received, a FOIA request on July 24, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking

production of the C-File of veteran JOHN SPINNEY from the VA's system of records. *See* Exhibit F, pages 35 and 36.

71. Plaintiff served a timely FOIA appeal to the VA OGC on August 5, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit F, pages 37 and 38.

72. Withholding of the C-file violates the right of JOHN SPINNEY to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

#### COUNT 7 – JOHN ZONA

73. Plaintiff is the attorney representative of veteran JOHN ZONA and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit G, pages 40 and 41.

74. JOHN ZONA waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

75. Plaintiff served, and the VA received, a FOIA request on August 9, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran JOHN ZONA from the VA's system of records. *See* Exhibit G, pages 42 and 43.

76. Plaintiff served a timely FOIA appeal to the VA OGC on September 17, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit G, pages 44 and 45.

77. Withholding of the C-file violates the right of JOHN ZONA to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

#### COUNT 8 – LARRY D. BOYNTON

78. Plaintiff is the attorney representative of veteran LARRY D. BOYNTON and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit H, page 47.

79. LARRY D. BOYNTON waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

80. Plaintiff served, and the VA received, a FOIA request on August 9, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran LARRY D. BOYNTON from the VA's system of records. *See Exhibit H*, pages 48 and 49.

81. Plaintiff served a timely FOIA appeal to the VA OGC on September 17, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See Exhibit H*, pages 50 and 51.

82. Withholding of the C-file violates the right of LARRY D. BOYNTON to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 9 – ORLY KIRSHENBAUM

83. Plaintiff is the attorney representative of veteran ORLY KIRSHENBAUM and possesses the power of attorney to represent the veteran before the VA. *See Exhibit I*, pages 53 and 54.

84. ORLY KIRSHENBAUM waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

85. Plaintiff served, and the VA received, a FOIA request on July 30, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran ORLY KIRSHENBAUM from the VA's system of records. *See Exhibit I*, pages 55 and 56.

86. Plaintiff served a timely FOIA appeal to the VA OGC on September 19, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See Exhibit I*, pages 57 and 58.

87. Withholding of the C-file violates the right of ORLY KIRSHENBAUM to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 10 – CORNELIOUS MILLER

88. Plaintiff is the attorney representative of veteran CORNELIOUS MILLER and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit J, page 60.

89. CORNELIOUS MILLER waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

90. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran CORNELIOUS MILLER from the VA’s system of records. *See* Exhibit J, pages 61 and 62.

91. Plaintiff served a timely FOIA appeal to the VA OGC on September 19, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit J, pages 63 and 64.

92. Withholding of the C-file violates the right of CORNELIOUS MILLER to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 11 – DEXTER WASHINGTON

93. Plaintiff is the attorney representative of veteran DEXTER WASHINGTON and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit K, page 66.

94. DEXTER WASHINGTON waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

95. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran DEXTER WASHINGTON from the VA’s system of records. *See* Exhibit K, pages 67 and 68.

96. Plaintiff served a timely FOIA appeal to the VA OGC on September 19, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit K, pages 69 and 70.

97. Withholding of the C-file violates the right of DEXTER WASHINGTON to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 12 – CLEVELAND JONES

98. Plaintiff is the attorney representative of veteran CLEVELAND JONES and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit L, page 72.

99. CLEVELAND JONES waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

100. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran CLEVELAND JONES from the VA’s system of records. *See* Exhibit L, pages 73 and 74.

101. Plaintiff served a timely FOIA appeal to the VA OGC on September 19, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit L, pages 75 and 76.

102. Withholding of the C-file violates the right of CLEVELAND JONES to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 13 – PATRICK DUFFY

103. Plaintiff is the attorney representative of veteran PATRICK DUFFY and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit M, page 78.
104. PATRICK DUFFY waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).
105. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran PATRICK DUFFY from the VA’s system of records. *See* Exhibit M, pages 79 and 80.
106. Plaintiff served a timely FOIA appeal to the VA OGC on September 19, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit M, pages 81 and 82.
107. Withholding of the C-file violates the right of PATRICK DUFFY to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 14 – RALPH BOVE

108. Plaintiff is the attorney representative of veteran RALPH BOVE and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit N, page 84.
109. RALPH BOVE waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).
110. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking

production of the C-File of veteran RALPH BOVE from the VA's system of records. *See* Exhibit N, pages 85 and 86.

111. Plaintiff served a timely FOIA appeal to the VA OGC on September 19, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit N, pages 87 and 88.

112. Withholding of the C-file violates the right of RALPH BOVE to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

#### COUNT 15 – WILLIE CLARK

113. Plaintiff is the attorney representative of veteran WILLIE CLARK and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit O, page 90.

114. WILLIE CLARK waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

115. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran WILLIE CLARK from the VA's system of records. *See* Exhibit O, pages 91 and 92.

116. Plaintiff served a timely FOIA appeal to the VA OGC on September 23, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit O, pages 93 and 94.

117. Withholding of the C-file violates the right of WILLIE CLARK to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

#### COUNT 16 – ANTHONY SCOTT

118. Plaintiff is the attorney representative of veteran ANTHONY SCOTT and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit P, page 96.



119. ANTHONY SCOTT waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

120. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran ANTHONY SCOTT from the VA’s system of records. *See Exhibit P, pages 97 and 98.*

121. Plaintiff served a timely FOIA appeal to the VA OGC on September 20, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See Exhibit P, pages 99 and 100.*

122. Withholding of the C-file violates the right of ANTHONY SCOTT to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 17 – JAMES R. SHORT

123. Plaintiff is the attorney representative of veteran JAMES R. SHORT and possesses the power of attorney to represent the veteran before the VA. *See Exhibit Q, page 102.*

124. JAMES R. SHORT waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

125. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran JAMES R. SHORT from the VA’s system of records. *See Exhibit Q, pages 103 and 104.*

126. Plaintiff served a timely FOIA appeal to the VA OGC on September 20, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See Exhibit Q, pages 105 and 106.*

127. Withholding of the C-file violates the right of JAMES R. SHORT to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 18 – JAMES E. DELL

128. Plaintiff is the attorney representative of veteran JAMES E. DELL and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit R, page 108.

129. JAMES E. DELL waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

130. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran JAMES E. DELL from the VA’s system of records. *See* Exhibit R, pages 109 and 110.

131. Plaintiff served a timely FOIA appeal to the VA OGC on September 20, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit R, pages 111 and 112.

132. Withholding of the C-file violates the right of JAMES E. DELL to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 19 – CARLOS ORTEGA

133. Plaintiff is the attorney representative of veteran CARLOS ORTEGA and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit S, page 114.

134. CARLOS ORTEGA waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

135. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran CARLOS ORTEGA from the VA’s system of records. *See* Exhibit S, pages 115 and 116.

136. Plaintiff served a timely FOIA appeal to the VA OGC on September 20, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit S, pages 117 and 118.

137. Withholding of the C-file violates the right of CARLOS ORTEGA to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 20 – TERRY CARTER

138. Plaintiff is the attorney representative of veteran TERRY CARTER and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit T, page 120.

139. TERRY CARTER waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

140. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran TERRY CARTER from the VA’s system of records. *See* Exhibit T, pages 121 and 122.

141. Plaintiff served a timely FOIA appeal to the VA OGC on September 20, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit T, pages 123 and 124.

142. Withholding of the C-file violates the right of TERRY CARTER to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 21 – STACY THOMPSON

143. Plaintiff is the attorney representative of veteran STACY THOMPSON and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit U, page 126.

144. STACY THOMPSON waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

145. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran STACY THOMPSON from the VA’s system of records. *See* Exhibit U, pages 127 and 128.

146. Plaintiff served a timely FOIA appeal to the VA OGC on September 24, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit U, pages 129 and 130.

147. Withholding of the C-file violates the right of STACY THOMPSON to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 22 – DEON WASHINGTON

148. Plaintiff is the attorney representative of veteran DEON WASHINGTON and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit V, page 132.

149. DEON WASHINGTON waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

150. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking

production of the C-File of veteran DEON WASHINGTON from the VA's system of records.

*See* Exhibit V, pages 133 and 134.

151. Plaintiff served a timely FOIA appeal to the VA OGC on September 24, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit V, pages 135 and 136.

152. Withholding of the C-file violates the right of DEON WASHINGTON to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 23 – CLARENCE WIDEMAN

153. Plaintiff is the attorney representative of veteran CLARENCE WIDEMAN and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit W, pages 138 and 139.

154. CLARENCE WIDEMAN waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

155. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran CLARENCE WIDEMAN from the VA's system of records. *See* Exhibit W, pages 140 and 141.

156. Plaintiff served a timely FOIA appeal to the VA OGC on September 24, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit W, pages 142 and 143.

157. Withholding of the C-file violates the right of CLARENCE WIDEMAN to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 24 – IAN DOZIER

158. Plaintiff is the attorney representative of veteran IAN DOZIER and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit X, page 145.

159. IAN DOZIER waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

160. Plaintiff served, and the VA received, a FOIA request on July 29, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking production of the C-File of veteran IAN DOZIER from the VA’s system of records. *See* Exhibit X, pages 146 and 147.

161. Plaintiff served a timely FOIA appeal to the VA OGC on September 24, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit X, pages 148 and 149.

162. Withholding of the C-file violates the right of IAN DOZIER to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 25 – SAMUEL LIPS

163. Plaintiff is the attorney representative of veteran SAMUEL LIPS and possesses the power of attorney to represent the veteran before the VA. *See* Exhibit Y, page 151.

164. SAMUEL LIPS waived the protections afforded by the Privacy Act, 5 U.S.C. § 552a and authorized Plaintiff access to the requested records. *See id.* (Conditions of Appointment box).

165. Plaintiff served, and the VA received, a FOIA request on July 25, 2013 submitted to the St. Petersburg, Florida VA regional office—the custodian of the records requested—seeking

production of the C-File of veteran SAMUEL LIPS from the VA's system of records. *See* Exhibit Y, pages 152 and 153.

166. Plaintiff served a timely FOIA appeal to the VA OGC on September 5, 2013, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii). *See* Exhibit Y, pages 154 and 155.

167. Withholding of the C-file violates the right of SAMUEL LIPS to due process of law by preventing meaningful participation in the adjudication of claims before the VA.

COUNT 26 – VA PATTERN OR PRACTICE OF VIOLATING  
THE FOIA IN C-FILE REQUESTS

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

169. Plaintiff alleges that Defendants have a pattern or practice of failing to comply with the time requirements set forth in 5 U.S.C. § 552(a)(6)(A), (B), and (C).

170. Plaintiff frequently files FOIA requests for veterans' C-Files in order to competently and fully represent claimants for benefits administered by the U.S. Department of Veterans Affairs in their claims for benefits under Title 38, U.S. Code.

171. It is imperative that an attorney who is representing a claimant review of the C-File to be able to provide full and informed legal advice to those seeking VA benefits.

172. A veteran's C-File is a routine document or set of documents, and a FOIA request for such documents is routine.

173. In Plaintiff's practice, he has seen the VA habitually exceeds the twenty (20) day limit under FOIA for producing C-Files. The VA's delays in responding to FOIA requests can exceed months and, in some cases, it does not respond to FOIA requests.

174. In Plaintiff's practice, he has seen the VA OGC routinely exceeds the twenty (20) day limit under FOIA for responding to FOIA appeals. The VA OGC's delay in responding to

FOIA appeals can easily exceed months and, in some cases, it fails to respond to or issue decisions on FOIA appeals.

175. Neither the VA nor the VA OGC has provided Plaintiff with any indication of any unusual circumstances which would preclude timely production of C-Files in response to FOIA requests and/or FOIA appeals.

176. Neither the VA nor the VA OGC provided any indication of their respective efforts to cease violating the strict timing requirements of 5 U.S.C. § 552(a)(6)(A), (B), and (C).

177. The effect on the public disclosure is substantial, as the information in a veteran's C-File is not available to attorneys seeking to have an informed discussion with a veteran, about the veteran's disability claim. Disclosure of such documents helps to ensure the proper, complete, and efficient adjudication of a claimant's claim for VA-administered benefits.

178. Plaintiff, as the attorney for numerous veterans and other claimants seeking benefits from the VA and who frequently makes FOIA requests on behalf of his clients, has suffered an injury-in-fact by failure of the VA and the VA OGC to comply with the timing requirements of 5 U.S.C. § 552(a)(6)(A), (B), and (C).

179. Plaintiff submits declarations from himself and from another licensed attorney accredited to practice before the Agency, attesting to facts supporting a finding of VA engaging in a pattern or practice of untimely responses to FOIA requests, or its failure to respond to such requests, for veterans' C-files. *See* Exhibit Z, pages 156 through 165.

180. The VA's longstanding practice and pattern of untimely responses to FOIA requests, or its failure to respond to such requests, for veterans' C-Files prejudices all veterans' attorneys the ability to fairly and promptly provide informed legal advice to veterans.



181. The VA's longstanding practice and pattern of untimely responses to FOIA requests, or its failure to respond to such requests, prejudices veterans seeking informed legal advice about their VA disability claims, often depriving them of timely receipt of benefits that their honorable and valiant military service has entitled them to.

182. There is no reason to believe that the VA will change its longstanding pattern or practice of failing to properly respond to such requests and appeals.

183. The VA's continuation of the pattern or practice of unlawfully delay, denying, or ignoring requests and appeals will continue to prejudice claimants and their representatives in their efforts to obtain the benefits sought.

184. Unless enjoined and made subject to a declaration of Plaintiffs legal rights by this Court, the VA will continue to violate the rights of Plaintiff and others similarly situated by maintaining its pattern or practice of unlawfully delaying and/or denying and/or ignoring responses to FOIA requests and appeals.

185. The VA's repeated failures to comply with the timing provisions of the FOIA are tantamount to failing to act in good faith.

#### VIII. DEMAND FOR JURY TRIAL

186. Plaintiff respectfully prays for trial by jury, where not prohibited by law.

#### IX. PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff requests this Court to grant the following relief:

- 1) Assume jurisdiction of this cause and find proper venue;
- 2) Expedite this proceeding as provided for in 28 U.S.C. § 1657 and 5 U.S.C. § 552(a)(4)(C);
- 3) Enter an order against the Defendants directing them to immediately fulfill their statutory duty to Plaintiff as follows:

- a. As to Count 1, ROYAL ELLISON, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- b. As to Count 2, JOHN DOWLING, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- c. As to Count 3, JAMES MCKENNA, JR., to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- d. As to Count 4, GREGORIO LOPEZ, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- e. As to Count 5, JOSE AMRAM, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- f. As to Count 6, JOHN SPINNEY, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- g. As to Count 7, JOHN ZONA, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- h. As to Count 8, LARRY D. BOYNTON, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- i. As to Count 9, ORLY KIRSHEBAUM, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- j. As to Count 10, CORNELIOUS MILLER, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- k. As to Count 11, DEXTER WASHINGTON, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- l. As to Count 12, CLEVELAND JONES , to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- m. As to Count 13, PATRICK DUFFY, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- n. As to Count 14, RALPH BOVE, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- o. As to Count 15, WILLIE CLARK, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- p. As to Count 16, ANTHONY SCOTT, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and  
Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.
- q. As to Count 17, JAMES R. SHORT, to do the following:  
Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- r. As to Count 18, JAMES E. DELL, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- s. As to Count 19, CARLOS ORTEGA, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- t. As to Count 20, TERRY CARTER, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- u. As to Count 21, STACY THOMPSON, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

- v. As to Count 22, DEON WASHINGTON, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

w. As to Count 23, CLARENCE WIDEMAN, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

x. As to Count 24, IAN DOZIER, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

y. As to Count 25, SAMUEL LIPS, to do the following:

Enter an Order declaring that Plaintiff is entitled to the records sought; and

Enter an Order immediately enjoining Defendants from failing to provide true copies of all requested documents without further delay or obfuscation.

z. As to Count 26, to enter an Order

i. declaring that Plaintiff is entitled to the records sought in future requests substantially similar to those at issue in this complaint; and

ii. permanently enjoining Defendants from failing to timely provide true copies of all properly requested and non-exempted documents as required by 5 U.S.C. § 552(a)(6)(A), (B), and (C) and, if necessary, proper notification of the need for an extension of time as permitted by 5 U.S.C. § 552(a)(6).

4) Grant such other and further relief in law and equity as the Court, in its wisdom, may deem just and proper.

5) Award Plaintiff costs and reasonable attorney fees in this action as provided in 5 U.S.C. § 551(a)(4)(E) and/or under any other appropriate Federal statute.

Respectfully submitted,

Dated: December 17, 2013

By: /s/ Adam S. Neidenberg  
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ATTORNEY FOR THE PLAINTIFF

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