

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Veterans Benefits Administration (VBA)
Frances Hudzik
810 Vermont Avenue, NW
(20M33) VACO
Washington, DC 20420
(202) 275-5947 (FAX)

October 15, 2010

Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

To Whom It May Concern:

This letter constitutes a request (“Request”), pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records in the possession of the Veterans Administration (“VA”). The Request is submitted on behalf of the Service Women’s Action Network (“SWAN”), the American Civil Liberties Union Women’s Rights Project (“ACLU WRP”) and the ACLU of Connecticut (“ACLU-CT”), referred to collectively as the “Requesters”.

I. Requested Records

Requesters seek the release of records¹ containing the following information:

- 1) The number of benefit claims filed, approved, and rejected for Post-Traumatic Stress Disorder (“PTSD”) in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 2) The distribution of disability ratings for PTSD claims in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 3) The distribution of disability ratings for PTSD claims awarded in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 4) The number of benefit claims filed for PTSD that list military sexual trauma (“MST”) as a causal factor in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 5) The number of benefit claims approved and rejected for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 6) The number of benefit claims rejected for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010 based on lack of direct service connection.
- 7) The number of benefit claims approved for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the veteran’s service record and/or those where the evidence of direct service connection consisted of the veteran’s service record and corroborating evidence from outside the service record.
- 8) The number of benefit claims rejected for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the

¹ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondences, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

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- veteran's service record and/or those where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
- 9) For FY2006, FY2007, FY2008, FY2009, and/or FY2010, the number of benefit claims based on MST-related PTSD for which the VA advised the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes may constitute credible supporting evidence of the stressor, and the number of benefit claims based on MST-related PTSD for which the VA allowed the claimant the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence.
 - 10) The distribution of disability ratings for benefit claims awarded for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
 - 11) The number of benefit claims filed for non-PTSD conditions that list MST as a causal factor in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
 - 12) The number of benefit claims approved and rejected for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
 - 13) The number of benefit claims rejected for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010 based on lack of direct service connection.
 - 14) The number of benefit claims approved for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the veteran's service record, and/or where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
 - 15) The number of benefit claims rejected for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the veteran's service record, and/or where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
 - 16) The distribution of disability ratings for benefit claims awarded for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
 - 17) The number of benefit claims approved and rejected for each type of non-MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
 - 18) A breakdown by gender and/or race of any information that falls within the scope of requests 1 through 17.

If the VA believes that it would be in the interest of all parties to discuss possible ways to narrow the scope of this request that would allow the department to respond to the request more expeditiously, please contact undersigned counsel. We request that any records that exist in electronic form be provided in electronic format on a compact disc. If any of the requested records or information is not kept in a succinct format, we request the opportunity to view the documents in your offices.

II. Application for Waiver or Limitation of Fees

We agree to pay search, duplication, and review fees up to \$100.00. If the fees will amount to more than \$100.00, we request a fee waiver on the grounds that disclosure of the requested records is in

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the public interest. The disclosure of the records is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a); C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.28(d); 32 C.F.R. § 1900.13(b)(2).

The disclosure of the records requested is in the public interest because the records will inform Requesters and the public about the prevalence of MST, PTSD, and other serious disabilities in the armed forces. The records will also highlight any disparities that exist in how benefits are distributed among disabilities, and reveal whether evidentiary regulations may be contributing to some of these disparities.

Additionally, disclosure of the information requested is not in Requesters' commercial interest. Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act . . .").

We also request a waiver of search and review fees on the grounds that each Requester qualifies as a "representative of the news media." 28 C.F.R. § 16.11 (c)(1)-(2), (d)(1). Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 32 C.F.R. § 286.28(e)(7); *see also* 28 C.F.R. § 16.11(c)(3), (d) (search and review fees shall not be charged to "representatives of the news media").

SWAN, the ACLU WRP, and the ACLU-CT meet the statutory and regulatory definitions of a "representative of the news media" because each is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"); *Elec. Privacy Info Ctr. V. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).

SWAN's mission is to "educat[e] and inform policy makers, the media and the public" about issues relating to service women in the armed services. Service Women's Action Network: Mission, <http://www.servicewomen.org/SwanPage.asp?PLink=1019&Hding>About>. In furtherance of this mission, SWAN publishes an array of fact sheets, newsletters, and other documents for public consumption, on topics ranging from military sexual trauma to homelessness among female veterans. *See, e.g.*, Brittany Stalsburg, Service Women's Action Network, Military Sexual Trauma: The Facts, <http://www.servicewomen.org/userfiles/file/MST%20fact%20sheet.pdf>; Homeless Women Veterans: The Facts, <http://www.servicewomen.org/userfiles/File/HomelessWomenVeterans.pdf>.

The ACLU WRP and ACLU-CT regularly gathers information on issues of public significance (including information gathered through FOIA requests), and use their editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials. It distributes these materials to the general public through various

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channels, such as its heavily subscribed Web site (www.aclu.org), a newsletter sent to its more than 400,000 members, and an electronic newsletter, which is distributed to subscribers by e-mail. Because of these activities, fees associated with responding to FOIA requests are regularly waived for the ACLU.²

Finally, pursuant to the applicable regulations and statute, Requesters expect the determination of this request for documents within 20 days. *See* 5 U.S.C. §552(a)(6)(A)(i) (2002).

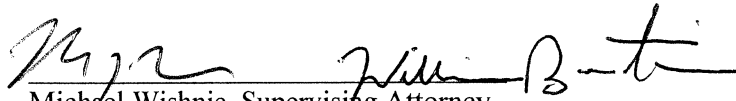
If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

Please furnish all applicable records to:

Michael Wishnie
Jerome N. Frank Legal Services Organization
P.O. Box 209090
New Haven, CT 06520

Thank you for your prompt attention to this matter.

Sincerely,


Michael Wishnie, Supervising Attorney
Taylor Asen, Law Student Intern
William Bornstein, Law Student Intern

Sandra S. Park, Staff Attorney
Lenora M. Lapidus, Director
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² For example, the Department of Housing and Urban Development granted a fee waiver to the ACLU for a FOIA request filed in April 2008. The ACLU subsequently posted the response to this FOIA on its website at <http://www.aclu.org/files/pdfs/womensrights/aclufoiarequestandhudresponseregardingimplementationofvawa.pdf>. The Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in 2006. The Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.

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(On behalf of ACLU of Connecticut)