UNITED VETERAN'S DISABILITY, LLC

Wesley A. McCauley

Admitted to the United States Court of Appeal for Veterans Claims

Putting veterans and their families in charge ®

2025-December-17

VIA E-MAIL: OGCFOIAAPPEALS@VA.GOV
U.S Department of Veterans' Affairs
Office of General Counsel (024)
c/o FOIA Appeals
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Re: FOIA Request 26-01020-F

Dear Sir/Madame:

Please accept this letter as an appeal of VA's complete denial, dated December 17, 2025, concerning my Freedom of Information Act ("FOIA") request from November 3, 2025.

I respectfully request that the VA:

1. Reverse the withholdings under Exemption 5,
2. Disclose all non-exempt portions of responsive records,

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3. Provide a sufficiently detailed Vaughn index, and
4. Make a new determination consistent with FOIA's foreseeable harm standard and segregability requirements.

If the VA continues to withhold records, I request referral to the Office of Government Information Services ("OGIS") for mediation.

In summary, it is well-established law that exemption (b)(5) of the FOIA does not permit an agency to avoid disclosure of records that may paint the agency in a bad light, records that reveal problems, or records that may contain embarrassing information as such records are designed to be disclosed under the FOIA. I am not seeking any deliberative documents that would be protected by exemption (b)(5), I am seeking the end product, the result(s) of the deliberative process, specifically the Secretary's memo directing employees to act once the Secretary made up his mind.

As I am sure you are aware, FOIA favors disclosure and requires agencies to release records unless a statutory exemption applies, and to reasonably segregate and release non-exempt information. Exemption 5 incorporates privileges such as the deliberative process, attorney-client, and attorney work-product privileges. The agency must also demonstrate foreseeable harm from disclosure and cannot withhold merely because an exemption could technically apply. *See* 5 U.S.C. § 552(a)(8)(A)(i). The deliberative process privilege protects **only predecisional**, deliberative communications; it does not shield working law, final decisions, explanations of policy, or segregable factual material. *See* 5 U.S.C. § 552(b)(5). The VA bears

the burden of justifying withholdings and must provide detailed explanations enabling meaningful review.

The determination does not identify the specific decision-making processes, the decisions at issue, or the roles of the authors/recipients. Without identifying (i) the policy deliberation, (ii) the stage of that deliberation, and (iii) how each record reveals deliberative content, the agency has not justified Exemption 5. To the extent the records reflect statements of policy, interpretations adopted by the agency, or rationales for decisions communicated to the public or used as guidance to staff, they constitute the VA's effective "working law" and are not protected by the deliberative process privilege. **Any records expressly adopted or incorporated by reference into a final decision must be disclosed.**

Furthermore, communications created after the relevant decision was finalized are not predecisional. The agency has not specified the decision dates to substantiate predecisional status. Purely factual portions that can be reasonably segregated must be released, including factual compilations, data, and non-evaluative summaries. The VA's conclusory segregability statement is insufficient; it must show that factual material is inextricably intertwined with deliberation. Communications involving non-federal third parties (who are not functional equivalents of agency staff or formal consultants in privileged roles) generally fall outside Exemption 5. The VA should disclose records reflecting external stakeholder input unless another exemption applies.

Regarding the *Vaughn* index, the VA's descriptions are too vague to permit meaningful review (e.g., "email about policy" or "draft memo"), lacking dates, authors, recipients, subject matters, decision contexts, and specific privilege rationales. A revised *Vaughn* index is required, correlating each withholding to a particular privilege, decision process, and harm.

Further, FOIA requires a specific, non-speculative showing of how disclosure would foreseeably harm an interest protected by Exemption 5. *See* 5 U.S.C. § 552(a)(8)(A)(i). Any assertion by VA of harm are generalized and do not articulate concrete, context-specific harms tied to particular records (e.g., chilling specific types of internal debate on a pending decision). For any material reflecting decisions already made, working law, or routine factual compilations, the agency has not shown how disclosure would cause foreseeable harm to deliberative processes. The VA has not (a) identified a specific decision, (b) shown the documents predate that decision, and (c) explained how disclosure would expose the agency's deliberations. Draft status alone is insufficient; drafts containing factual material or final rationales used in practice must be released with appropriate redactions.

FOIA also mandates release of all reasonably segregable non-exempt portions. The VA must conduct and describe a line-by-line review and explain why withheld material cannot be segregated. The current determination lacks the detailed justification required. At minimum, the VA should release headings, factual statements, dates, participants, conclusions adopted, and attachments containing factual data.

The requested records concern matters of significant public interest: In particular, the documents sought will inform the public what decisions the VA has made concerning male breast cancer and presumptive service-connection, and how the agency views the implications of the PACT Act, whose sole purpose is to care for Veterans exposed to harmful toxins.

Disclosure will enhance public understanding of government operations by illuminating the VA's decision to remove male breast cancer as a presumptive condition, as well as identify any scientific date VA relied upon in reaching this conclusion that presumptive service-connection is not warranted.

The public interest in transparency outweighs any marginal impact on deliberative processes here, **especially where decisions are finalized**, the information informs public compliance, or the records reflect working law or guidance applied to the public.

Furthermore, information already in the public domain should not be withheld. Yet, a copy of the memorandum in question is publicly available. *See* https://unitedforvets.us/spectator/malebreastcancer (last accessed December 17, 2025).

For these reasons, it is requested that VA:

1. Reverse the withholdings under Exemption 5 and release all non-exempt material.
2. Provide a revised, itemized Vaughn index with for each record:
    a. Author(s), recipient(s), dates, subject, record type;

b. Specific decision and stage of deliberation;
c. Specific privilege asserted (deliberative process, attorney-client, work-product) and rationale;
d. A tailored foreseeable-harm explanation;
e. Segregability analysis and portions released.

3. Conduct a new search if the prior search omitted locations likely to contain final policies, working law, or factual attachments separate from deliberative text.
4. If any withholdings are sustained, provide line-by-line redactions and release all reasonably segregable portions.
5. If issues remain, refer the matter to OGIS for mediation.

Please preserve all potentially responsive records, including emails, chats, texts, and drafts stored on personal or non-agency systems used for agency business. This appeal exhausts administrative remedies for the issues presented. If the agency does not provide a timely, lawful response, I may seek judicial review.

For the reasons above, the Exemption 5 withholdings are not justified, the foreseeable harm standard is unmet, and the public interest in disclosure is compelling. Please grant this appeal and provide the requested records promptly.

Godspeed,



Wesley A. McCauley
Chief Executive Officer
POA I9A; Accreditation Number 50884

"The veterans benefit system is designed to award 'entitlements to a special class of citizens, those who risked harm to serve and defend their country'. This entire scheme is imbued with special beneficence from a grateful sovereign", Barrett v. Principi 363 F.3d 1316, 1320 (Fed. Cir. 2004).