

# EMPOWER OVERSIGHT

*Whistleblowers & Research*



EMPOWR.us

February 3, 2022

VIA ELECTRONIC TRANSMISSION: [VAOIGFOIA-PA@VA.GOV](mailto:VAOIGFOIA-PA@VA.GOV)

Office of Inspector General  
Department of Veterans Affairs  
Release of Information Office (50CI)  
810 Vermont Avenue, NW  
Washington, DC 20420

**RE: Request for Processing Notes Relating to FOIA Request Number 21-00357-FOIA**

Dear FOIA Officer:

## INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

## BACKGROUND

### 1. Empower Oversight’s FOIA Request

On August 6, 2021, Empower Oversight submitted to the Department of Veterans Affairs (“VA”) a FOIA request that is designed to shed light on the VA’s compliance with Congressional oversight requests for information concerning important issues of public integrity surrounding the VA’s administration of veterans’ educational benefits. Specifically, Empower Oversight’s FOIA request seeks “All Records Relating to the Following”:

1. The Department of Veteran Affairs’ receipt of, discussions related to, processing of, and response to Senator Grassley’s April 2, 2021 letter to Secretary McDonough and/or his July 20, 2021 letter to Secretary McDonough.
2. Communications between the Department of Veterans Affairs OIG (“VA OIG”) and Department employees relating to the VA OIG’s “administrative investigation to evaluate the allegations that Ms. Charmain Bogue, Executive Director of VBA’s Education Service,

may have violated applicable conflict of interest laws or regulations concerning her official duties and her spouse's business interests.”

3. Internal communications within the Department (other than [with the] VA OIG), as well as communications between Department employees and any other persons, relating to the VA OIG's investigation referenced above.

4. Any ethics opinion or recusal involving Ms. Bogue, including any related to VES, SVA, and any other entities with which her husband had a financial relationship.

5. Calendar entries and notes of any meetings between Ms. Bogue and VES/SVA representatives, including Barrett Bogue.

6. The alleged proposal to suspend Thomas Murphy for 10 days, including:

a. the February 25, 2019 proposal by Principal [Deputy] Under Secretary for Benefits Margarita Devlin;

b. the March 18, 2019 decision memo by Under Secretary for Benefits Paul Lawrence upholding the proposed suspension;

c. the April 30, 2019 decision memo summary for Secretary Wilkie from Assistant Secretary Sitterly, relative to the proposed suspension;

d. all communications relating to Assistant Secretary Sitterly's April 30, 2019 decision memo summary, including the May 7, 2019 approval thereof; and

e. any resulting letter(s) of admonishment.

7. Communications between Department employees and any Congressional staff, member of the House of Representatives, or Senators, regarding the issues described above.

## 2. VA's Response(s) to Empower Oversight's FOIA Request

By email dated August 16, 2021, the VA's Office of Information and Technology ("VA-OI&T"):

- Acknowledged receipt of Empower Oversight's FOIA request;
- Assigned it tracking number 21-08250-F; and
- Advised that the information that Empower Oversight seeks "falls under the purview of" the Veterans Benefits Administration, the Office of Assistant Secretary for Congressional & Legislative Affairs, and the VA OIG; and that VA-OI&T had thus referred Empower Oversight's FOIA request to those offices for processing and response.

On August 23, 2021, the VA-OI&T submitted to Empower Oversight a letter that "updated" its August 16<sup>th</sup> acknowledgment email. The VA-OI&T's August 23<sup>rd</sup> letter advised that

the VA received Empower Oversight's FOIA request on August 8, 2021; that VA-OI&T was revising the request's tracking number to 21-08490-F; and that the records that Empower Oversight requested are in the possession of VA's Office of the Executive Secretary and VA OIG, and thus the VA-OI&T is "redirecting" the request to those offices "for a file search and a direct response."

Also on August 23, 2021, the VA OIG acknowledged receipt of Empower Oversight's August 6<sup>th</sup> FOIA request, assigned it tracking number 21-00357-FOIA, and advised that it had received the request on August 16, 2021. Later, by letter dated September 13, 2021, the VA OIG notified Empower Oversight that, as a consequence of the existence of "unusual circumstances" as defined by Subsection a(6)(B)(i) of the FOIA, it was invoking its authority to extend the deadline for rendering a determination under the FOIA by an additional 10 days.

By letter dated September 29, 2021, the VA OIG advised that it was providing redacted copies of records responsive to the first and second items of Empower Oversight's request, *i.e.*:

1. The Department of Veterans Affairs' receipt of, discussions related to, processing of, and response to Senator Grassley's April 2, 2021 letter to Secretary McDonough and/or his July 20, 2021 letter to Secretary McDonough.
2. Communications between the Department of Veterans Affairs OIG ("VA OIG") and Department employees relating to the VA OIG's "administrative investigation to evaluate the allegation that Ms. Charmain Bogue, Executive Director of VBA's Education Service, may have violated applicable conflict of interest laws or regulations concerning her official duties and her spouse's business interests."

The VA OIG went on to explain that the 16 pages of records that it was producing had been redacted pursuant to FOIA Exemptions b(5) and b(6). Further, the VA OIG expressly clarified that the grounds for its purported FOIA Exemption b(5) redactions was the deliberative process privilege.

### 3. Empower Oversight's FOIA Appeal

On December 16, 2021, Empower Oversight appealed the initial determination of the VA OIG FOIA Staff. Among other things, Empower Oversight asserted that based upon the circumstances, it appeared that the VA OIG FOIA Staff either misinterpreted the scope of Empower Oversight's request for records, failed to conduct a search that was reasonably calculated to uncover all relevant documents, or somehow failed to produce all of the responsive, non-exempt records that they located during their records search. For example, despite the broad scope of the two items of Empower Oversight's request that VA OIG responded to, it claimed to have located only 16 pages of records. Those records relate exclusively to the first half of the first item of Empower Oversight's request. However, other assertions by the VA OIG (*e.g.*, assertions about an investigation of Ms. Bogue included in a May 26, 2021, letter to Senator Grassley) strongly suggest the existence of other records that are responsive to the first two items of the request. Accordingly, Empower Oversight respectfully requested that VA OIG review the search performed by the VA OIG FOIA Staff and the correct any deficiencies.

The VA OIG denied Empower Oversight's appeal on December 29, 2021. In denying the FOIA appeal, VA OIG Attorney Christopher Conner claimed that he had "reviewed the FOIA file for the search conducted by the VA OIG FOIA staff, as well as the records produced in response

to” Empower Oversight’s request; noted that the FOIA staff had intentionally bypassed searching the working files of a related investigation; and that he determined “that the FOIA staff conducted a reasonable search, including a search of OIG email.”

## **RECORDS REQUEST**

Pursuant to the FOIA, 5 U.S.C. § 552, Empower Oversight hereby requests all records relating to communications about Empower Oversight’s August 6, 2021 FOIA requests, which the VA OIG designated as FOIA Request Number 21-00357-FOIA, including processing notes, and all records relating to communications about Supervisory Government Information Specialist Ruthlee G. Bellamy’s September 29, 2021, response to Empower Oversight.

## **DEFINITIONS**

“PROCESSING NOTES” means all records created by the VA OIG’s Supervisory Government Information Specialist and other personnel that reflects the record systems and information platforms that were searched, and the search terms used, to respond to Empower Oversight’s August 6<sup>th</sup> FOIA request.

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining,

mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

## **INSTRUCTIONS**

The time period of the requested records is August 6, 2021, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at [bsaddler@empowr.us](mailto:bsaddler@empowr.us).

## **FEE WAIVER REQUEST**

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media”<sup>1</sup> and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the VA OIG’s compliance with its obligations under the FOIA.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

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<sup>1</sup> On September 23, 2021, in connection with a FOIA appeal arising from Empower Oversight’s August 12<sup>th</sup> FOIA request, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a “media requestor” in seeking ethics records of senior officials,” Empower Oversight Press Release (Sep 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

[/Jason Foster/](#)

Jason Foster  
Founder & President