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DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

April 16, 2012

In Reply Refer To:

Re: FOIA Request: VHA 12-04770-F

Paul A. Bailey
(11 Joy Road Bath)
P.O. Box 262
Woodsville, N.H. 03785

Dear Mr. Bailey:

This letter acknowledges receipt of your March 26, 2012 request under the Freedom of Information Act (FOIA) 5 U.S.C. § 552, to the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) FOIA Office. Specifically, you have requested information regarding the March 8, 2012 conference hosted by Brooks Tucker of Senator Burr's staff, and attended by Mr. Carter Moore, James Sampsel, Dr. Michael Peterson, Dr. Wendi Dick, Dr. Terra Irons, and others.

Requested are the following items:

- a. A list of non-VA participants and their contact information.
- b. A complete list of VA participants in that conference, all materials gathered in preparation of that conference: all memos, interoffice correspondence, marginal notations, diaries, support materials, preparation materials, summations, and other.
- c. All materials including notes, generated by Dr. Terra Irons regarding C-123 aircraft dioxin (TCDD) contamination in preparation for her teleconference of October 27, 2011.
- d. Instructions to Dr. Irons from her supervisors and correspondence with supervisors or peers regarding her preparation of VA
- e. Summation of Dr. Irons notes regarding each scientific reference consulted and its relevance to C-123 aircraft contamination and crew exposure.
- f. Include a complete release of all materials generated by Dr. Irons in preparation for and in summation of her participation in the March 8, 2012 conference with Senator Burr's office.
- g. Documentation regarding Dr. Irons' qualifications to address issues of TCDD contamination, including any of her work done between the date of her hire by VA and the March 8, 2012 conference.

- h. A complete release of materials presented to or prepared by Dr. Terry Walters, VA Office of Public Health, in preparation for and in summation of her participation in the March 8, 2012 conference
- i. All materials prepared by Dr. Walters on the subjects of dioxin, Agent Orange, TCDD, the M35A2 truck, and the C-123 aircraft.

The VHA FOIA Office received your FOIA request on April 10, 2012. We assigned your FOIA request tracking number 12-04770-F. Please include this tracking number in all future communications concerning this FOIA request. In addition, we have placed your request in the complex processing category.

We will search for records responsive to your FOIA request that were gathered or created by the VHA on or before April 10, 2012. When we have completed our search for records responsive to your request your FOIA request, we will send you another letter telling you the results of that search and our next step in processing your request.

In addition to request items above, you have also requested information from the Veterans Benefits Administration (VBA). Specifically prepared materials for rating guidance in whatever manner it was released. Please be advised I have notified Ms. Gwendolyn Smith, FOIA Officer, VBA Central Office of your request. Ms. Smith has advised me that your request number for VBA is 12-04787-F. You will receive an acknowledgement letter from VBA which will provide you the contact information of the FOIA Officer responsible for processing your request.

VHA Decision to Deny Request for Fee Waiver

You have requested a "Fee Waiver", however the justification you have provided in your letter does not support your request, therefore; I have classified you as an "all other" FOIA requester. As an all other requester and in accordance with VA's FOIA implementing regulations found at 38 C.F.R § (c)(4) an all other requester must be charged for the full responsible direct cost for search and reproducing records that are responsive to the request except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Moreover, the all other requester will be charged the cost of searching even if there is ultimately no disclosure of records. In your letter you have stated that you request all cost associated with the FOIA be waived, but that you are willing to pay \$250.00 if required, and will consider other cost in necessary and to advise you before rejecting any request due to fees.

Please be advised, FOIA fees can be waived or reduced in response to a request for a fee waiver or reduction when it is determined that furnishing the requested record(s) is in the public interest because disclosure is likely to contribute significantly to public understanding of the operations and activities of the government; and, the request is not primarily in the commercial interest of the requestor. The requestor must be in a position to disseminate the information requested to members of the general public, those eligible for fee waivers and reductions are primarily limited to representatives of the news media. Some requestors may be considered even though

they are not news organizations based up on their ability to disseminate information to news sources (i.e. government watch groups

VHA Decision to Deny Request for Expedited Processing

Within your FOIA request you have asked for expedited processing due to the fact that you are ill and have an application now before the VA directly related to the information requested which you believe impacts your health. I have considered your request for expedited processing and based upon the information contained within your request, your request for expedited processing is denied.

The FOIA provides that an Agency shall process a FOIA request on an expedited basis if the individual making the FOIA request demonstrates a compelling need for the information requested or the agency otherwise determines that the expedited processing request should be granted 5 U.S.C. § 552(a)(6)(E)(I).

The FOIA states that a "compelling need" may exist in either of two situations. First a compelling need exists when a FOIA requester's failure to obtain records on an expedited basis "could responsibly be expected to pose an imminent threat to the life or physical safety of an individual," 5 U.S.C 552(a)(6)(E)(v)(i). Under this test, the FOIA requester must demonstrate how failure to receive the requested records, on an expedited bases, places an individual at immediate risk of death or physical harm. In other words, the FOIA requester must identify whose death or physical injury will be prevented or avoided by expedited release of the records. The individual alleged to be at risk need not be specifically named, particularly where to name the individual would place the individual at risk; however, the individual must be identified with sufficient particularity that the Agency may evaluate the risk to the individual from not releasing the records on an expedited basis. A simple assertion of a threat of death or injury to an individual without supporting information is not sufficient to maintain a claim for expedited processing on the basis that failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

I have determined that you have not established that failure to obtain the requested records on an expedited basis poses an imminent threat to life or physical safety to yourself. Consequently, your request for expedited processing of your FOIA request on that basis is denied.

Second, a compelling need may exist where, "with respect to a request made by a person primarily engaged in disseminating information, [there is] urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). Your FOIA request does not qualify for expedited processing under this second test.

You may appeal the decisions I have rendered "denying your requests for fee waiver and expediting processing" within sixty (60) days to:

General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you choose to file an appeal, please include a copy of this letter with your appeal and clearly state why you disagree with my determination.

If you have any further questions, please feel free to contact me at (717) 450-4662.

Sincerely,
Deana Marakowski

Deana Marakowski
VHA FOIA Officer