



DEPARTMENT OF VETERANS AFFAIRS
Office of the General Counsel
Washington DC 20420

MAR 11 2013

In Reply Refer To: 024N
Case No. 25524

Mr. Wesley Carter
2349 Nut Tree Lane
McMinnville, OR 97128

Dear Mr. Carter:

This letter is the final administrative decision under the Freedom of Information Act (FOIA) 5 U.S.C. § 552 on your October 2011 appeal of the decision of the Department of Veterans Affairs (VA) Veterans Benefits Administration (VBA) in Washington, DC. In response to your request for information associated with the issue of Agent Orange contamination of C-123K aircraft. VBA was unable to find records responsive to your request.

We have reviewed your submission under the provisions of the FOIA, which states that federal agencies must disclose records requested unless they may be withheld in accordance with one or more of nine statutory exemptions. 5 U.S.C. § 552(b). After a thorough review, we must deny your appeal for the reasons set forth below.

Subsequent to your appeal, we contacted VBA personnel and learned that they conducted an appropriate search for responsive records and found none. We also contacted the Office of the Secretary and learned that no one individual maintains records responsive to your request. Please note that VA's Office of Public Health maintains information regarding this subject on its public website, which you can access online at www.publichealth.va.gov.

This is the final decision of the VA in this matter. Should you disagree, you have the right to file a civil action in the appropriate United States District Court.

In addition, please note that as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

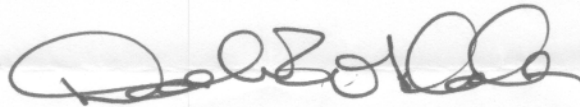
Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

2.

Mr. Wesley Carter

E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely yours,

A handwritten signature in black ink, appearing to read "Deborah K. McCallum". The signature is fluid and cursive, with a large initial "D" and "M".

Deborah K. McCallum
Assistant General Counsel

THE C-123 VETERANS ASSOCIATION

2349 NUT TREE LANE McMinnville Oregon 97128
971 241-9322 www.c123agentorange.com



December 24, 2012

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001

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MAJ Gail Harrington, Nurse Corps
LTCOL Bob Karpinski, Medical Service Corps
Mrs Joan Carter, MA, MS, Family Liaison
Mrs Audrey McElwain, Administration
Vietnam Veterans of America – DC Liaison

MISSION STATEMENT:

VA RECOGNITION OF C-123 VETERANS' AGENT
ORANGE ILLNESSES

Dear Sir or Madam,

We respectfully ask that fees be waived for Lieutenant Colonel Paul Bailey's request submitted to the Department of Veterans Affairs regarding the C-123 Agent Orange contamination FOIA, identified as 024J NOV 16 2012OGC # 27765.

His request, and subsequent appeal, were improperly denied as was his request for expedited response. Approval was certainly within the reasonable discretion of the VA officials involved. We seek your assistance in the matter. In our situation the VA's proposed FOIA fee of over \$4000 for research is unreasonable and cost-prohibitive, constituting a denial of access to information about us that we are entitled to have.

FOIAs are approved for non-commercial requesters, news outlets, for scientific investigations, and to promote the public understanding of government. We meet all these criteria. We have respected the suggestion by the Office of General Council to tightly focus on the materials needed to reduce the amount.

Colonel Bailey, as an officer of the C-123 Veterans Association, a national non-profit veterans service organization, was tasked with locating via FOIA VA documents and other materials related to our duties aboard the C-123 aircraft which we all flew between the years 1972-1982. Most of the materials requested were gathered by the VA in preparation for two meetings chaired by Senator Burr's office, meetings in which we participated in defense of our exposure claims. At the heart of the matter is our concern that the Department of Veterans Affairs approached our request for Agent Orange benefits with a preconceived perspective and an improper and unscientific

determination to prevent our claims being honored. The materials requested of the VA are at heart of the matter.

Recently, the USAF honored a similar request from us for the same reasons we will submit here as we seek both a fee waiver and an expedited response. In justice, *we need to see their cards* to have any hope of defending our position against their conclusions against us.

-We defend our request for waiving fees and claim we have *absolutely* no commercial interest. We are only are concerned about the health of our veterans relative to their exposure aboard our airplanes and the relevance of requested materials to that and access to VA medical care.

- The materials are directly needed by the public to understand the function of government, especially regarding the several agencies involved

-We have a legitimate journalistic presence acknowledged as such by a major journalism staff, plus as chairperson I have 20-year career in traditional print publishing. Our research and publishing have been described as “remarkable” and a service to the country by the Deputy Director of the CDC/ATSDR, Dr. Tom Sinks

- We (in a very modest manner) are conducting scientific research and need the VA’s materials to better inform ourselves, the public and those interested in the toxicology of TCDD, the toxin in Agent Orange. All C-123 aircraft have been destroyed, thus all specific scientific research consists of gathering documents relating to those airplanes and providing a retrospective analysis of dioxin contamination

We submit the following fee waiver justifications:

I. *We have a legitimate journalistic presence*, operating for two years the principal [web sites](#) and [blog](#) addressing C-123 aviation issues and the veterans who flew the airplanes between the end of the Vietnam War and 1982, when the aircraft were retired.

A. We published and provided without charge a 300-page report to the US Senate, the JSRRC, VA OPH, US House of Representatives, Harvard Medical School, University of Texas Medical School, CDC, EPA, USAF School of Aerospace Medicine, and other concerned agencies.

B. Our Association publishes the only materials regarding C-123 Agent Orange contamination and fills a critical need for scientists examining the issue and veterans concerned about their health.

C. We have published [newsletters](#) in print as well as on-line. We are constantly cited by other outlets addressing veterans affairs, aviation and Agent Orange.

D. [Google immediately posts](#) all our materials, as seen with a simple search for “[C-123 Agent Orange](#)”. We provide materials for other news outlets concerned with veterans issues, such as Army and Air Force Times, Mr. Bill Kurtis of CBS News, NPR and others. The public is

obviously concerned about whether veterans are being dealt with properly, which is why New England regional papers have provided coverage to the issue based on our materials uncovered via FOIA as well as their own investigations.

II. We have a legislative effort, working with the Senate Veterans Affairs Committee, principally the Ranking Member, Senator Burr. Using our materials, Senator Burr's staff has helped find some limited common ground between the veterans and the VA, and has also used the materials we received via FOIA to challenge glaring scientific errors made by VA scientists. Without the materials released thus far under FOIA from the General Services Administration, the US Air Force and the VA, veterans and the public would have a completely incorrect understanding of the contamination of our airplanes. We are seeking via this FOIA request the materials upon which the VA based its recent refusal to allow our veterans access to medical care, and the manner in which internal procedures may or may not have improperly guided their efforts.

III. We have an investigative effort also. Our effort here has served the veterans and the public, which is concerned both about veterans affairs and environmental matters. The entire issue of C-123 dioxin contamination was officially suppressed by the [USAF Office of Environmental Law](#) when in 1996 JAG officers directed all information "be kept in official channels only" - until our 2010 FOIA requests, thanks to fee-waived results, led the USAF to release most materials. These revealed that test after test confirmed dioxin contamination until, worried about proposed \$3.4 billion in EPA fines, the AF opted to destroy the (as they were consistently identified) "the *Agent Orange airplanes*" in 2010.

IV. Regarding the public's interest in understanding how the government functions:

A. Until our efforts led to release, all tests, all correspondence describing the toxic airplanes, all information about accidental sale of two contaminated aircraft to Walt Disney Films, was kept contained. Facing the potential publicity which would surround destroying so many aircraft, the USAF AFMC and a consultant from the Office of Secretary of Defense crafted a press release – not to be released without inquiry – carefully removing toxic words such as Agent Orange, contamination, toxins, poison, and meekly stating that some old airplanes were destroyed to release storage space. This was a journalistic deception of the public not set right until our inquiry.

B. Some of the information was created by VA personnel who also submitted [non-juried publications released through the Society of Toxicology](#), and who published unscientific and [misleading internet bulletins](#) incorrectly advising C-123 veterans that no threats to their health existed from flying the contaminated aircraft – [a position](#)

[intensely disputed by independent expert scientists](#) when ten scientists and five physicians challenged the VA's poor science. We are concerned about the expense of VA staff attending the SOT conference to present an inaccurate, unscientific document and the damage it has done to the VA reputation among toxicologists and other scientists.

C. A fundamental justification for fee-free and expedited release of all materials is that the USAF and Department of Veterans Affairs have for years deceptively restricted information about the C-123 fleet contamination and any impact on our health. The CDC concluded our veterans had served in environments subjecting us to an over-200 fold greater cancer risk, and we deserve to know all that the VA has uncovered about such risks to our health.

D. In addition to the 1996 USAF Office of Environmental Law information suppression, in 2009 the USAF Air Material Command and the OSD consultant emphasized the need to destroy the toxic aircraft to prevent veterans from learning about earlier exposures, which could then to veterans seeking VA medical care (as we have done, now that some information is available.) However, it manifestly is not the function of the USAF to do *anything* to prevent veterans from learning about previous exposures. All 1560 C-123 veterans who flew contaminated aircraft between 1972-1982 have the right to know of these threats to our health, yet nothing would have surfaced without our Association's actions, supported with documents released via FOIA. We believe these earlier bad acts on the part of various officials further support the need to guarantee that all available materials, and the manner in which the issues were dealt with, become public knowledge. This is what we have done with GSA, EPA, and USAF documents, now posted prominently on our web site and available to our veterans to support claims.

E. The actions of the VA, we believe, are manifestly improper and not in accordance with law or regulation as they obstruct C-123 veterans claims. When we first approached VA in May 2010 to inquire about any potential exposure from our C-123 service (and before any VA analysis of the details of the issue) veterans were immediately told that the aircraft were somehow not contaminated, that earlier VA and Board of Veterans Appeals actions had denied veterans benefits on the basis that the aircraft were known not to be contaminated, and that no applications would ever be approved. In the months since, faced with our release of USAF tests confirming contamination, DOD civilian employee complaints about contamination, EPA challenges, Senate inquiries, CDC confirmation of both aircraft contamination and aircrew exposure, and broad confirmation from many universities and independent scientists, VA continues to insist that no C-123 veterans will be provided Agent Orange medical care.

F. *Regarding the public's interest in understanding how the government functions:* VA is obliged to inquire of the Joint Services Records Research Center details of a veteran's claim to service aboard a vessel

or aircraft. In 2010 members of our Association were referred to JSRRC by the USAF for historical evidence of the contamination issue. JSRRC responded that they had no such information. Our association then provided the director of JSRRC a 300-page binder containing all known documents, aircraft tail numbers, flight orders, and other official USAF documentation so that JSRRC could more properly respond to VA inquiries. JSRRC, however, continues to respond that they have no such information, despite it now being readily available on the internet as well as the USAF, GSA and other sources. The effect is that a negative response from JSRRC concerning a veteran's claim for service aboard an aircraft or vessel means the veteran's claim is placed in doubt by the VA, without evidence to support it. The FOIA now in question seeks to more clearly reveal the mechanism by which these two agencies address historical information vital to every veteran's claim

G. The public needs to understand the conflict which has arisen here between various agencies, including GSA, VA, USAF and CDC, DOD, OSD, regarding C-123 aircrew exposure. Dr. Tom Sinks, Deputy Director of the CDC/Agency for Toxic Substances and Disease Registry, wrote me that "aircrews operating in this, and similar, environments were exposed." It is unbelievable that the federal agency responsible for identifying toxic substances makes this definite conclusion and yet the VA maintains (solely for reasons of budget) that somehow no toxin exposure occurred at all. The materials sought will help veterans, legislators and the public understand how such a conflict can exist when veterans' health is at stake.

V. The materials requested deal with veterans' health, Agent Orange, VA budget, public acts by the VA, publication of materials by the VA which argue against veterans' claims. [The 2010 destruction of all remaining C-123 airplanes as toxic waste](#) disappointed the many civilian buyers offering over a quarter of a million dollars is of concern to the public because of the dollars involved. The quarantine of the toxic airplanes at a cost of over \$150,000 is of concern to the public, as is the decontamination of one which cost over \$50,000.

The public is intensely concerned with all these important issues. Evidence the [front-page coverage by the Springfield Republican](#), the major newspaper closest to our base, which was subsequently carried by NPR. [Air Force Times and Army Times](#) and Gannett news has also covered us because all servicemembers and veterans are intensely concerned about Agent Orange issues. Mr. Bill Kurtis of CBS News is constructing a special. Clearly, the public is concerned about us and revelation of the materials requested responds to that as well as to the public's understanding of how the VA, as the federal agency responsible for veterans' health, operates. Despite the November appeal denial by Attorney McCallum, the public remains intensely concerned as are we and our families. With the aircraft and affected personnel stationed in Springfield, MA, Pittsburgh, PA and Kansas City KS, the issue is of more than regional interest.

VI. *Regarding educational use of the materials requested:* The materials shall be shared with the USAF School of Aerospace Medicine, which is continuing its research into C-123 dioxin contamination. Materials will also be shared with the committee of scientists and physicians who recently approached the VA to challenge the science and logic of their publications and denial of veterans benefits. Several universities, including Boston University and Columbia University, are continuing their investigation of C-123 Agent Orange contamination and the VA materials relate directly to their research, which is in return shared with the USAF as well as the VA.

The Agent Orange Committee of the Vietnam Veterans of America, the American Legion and other veterans organizations have passed national resolutions supporting our veterans' claims for Agent Orange exposure, and the materials requested will better inform these principal veterans organizations as to the scope of their support of us. Our press releases are carried by most national veterans organizations as well as Agent Orange-focused publication. Many physicians demand more comprehensive information to consider medical opinions in support of veterans' claims, and the requested materials will aid in that.

VII. *Release of the materials is justified for scientific research:* In a very real manner, members of our Board (nurses, lawyers, physicians, Medical Service Corps officers) have become *de facto* experts in the science of dioxin contamination, able to explain the details of TDDD contamination, materials decontamination, routes of exposure, historical perspectives of Agent Orange use, engineering modifications necessary for aerial spray operations, and other highly technical issues especially as they relate to the C-123 transport. We have used our aviation expertise and recently-acquired dioxin scientific background to advise members of the Senate as well as scientists in the field of toxicology.

Recently VA's Compensation Service recommended denial of a C-123 veteran's Agent Orange claim on the basis that "In summary, there is no conclusive evidence that TCDD exposure causes any adverse health effects." This statement differs wildly with other VA conclusions, as well as with the entire field of toxicology. It even differs from the VA's own "Facts About Herbicides" which states "TCDD is the most toxic of the dioxins, and is classified as a human carcinogen by the Environmental Protection Agency." *Question:* Is TCDD harmless only in the instance of C-123 veterans' claims? The requested materials address this discrepancy.

Materials requested will be posted on our web site for other researchers' use, and provided to the many universities and independent medical and scientific experts investigating this airplane's contamination. Obviously, we need to know what information the VA has uncovered and how they interpreted it in order to present and defend our claims for exposure.

While we understand that an FOIA requestor's inability to pay for a response is not justification for waiving fees, we do point out that we are dues-free, do not raise money, ask each member performing duties for the Association to bear their own expenses, and have absolutely no commercial interest in the materials requested. The materials requested will aid our veterans in seeking earned benefits, and in understanding hazards to which our service subjected us. With our health and rights to veterans benefits at stake, we and our legislators, and other veterans organizations which endorse our cause, have the right to complete access to VA materials so as to understand their argument against us and how it was constructed, whether the scientific conclusions reached by VA toxicologists were formed from a neutral perspective and without budgetary concerns, and on what basis the input from other federal agencies and so many independent scientific experts was accepted or dismissed. The fees requested are very high, making impossible for us as disabled veterans to pay. As retired officers, we have a continuing obligation to our service and the country to address these issues but need the VA materials to do so properly.

Finally, and fundamentally, the information requested is all about us and the service we performed for a decade aboard these airplanes. It is about the way in which we have been treated by the VA and the manner in which we hope to be treated in the future. Members of our organization have died since we first became aware of our dioxin exposure, including Master Sergeant George Gadbois, Major General Jim Czekanski, Lieutenant [Colonel Aaron Olmsted](#), Master Sergeant Bob Boyd – all with denied VA claims which would have been perfected or at least greatly strengthened with the materials requested of the VA.

Like Colonel Bailey and so many of our Association, I have cancer which my doctors say is associated with Agent Orange exposure. The VA disagrees but will not provide the information upon which they reach their opinion. The VA has denied each C-123 veteran's claim for medical coverage for heart disease, cancer and the whole host of typical Agent Orange-presumptive illnesses. We have the right to complete access to the means by which the VA constructed their improper position opposing our claims. We are willing to pay copying and duplication costs if required but request electronic media if possible, including DC or email to rustysilverwings@gmail.com.

Wesley T. Carter
Chair, The C-123 Veterans Association

Attached: source documents, original FOIA, Association publications, VA publications, USAF Office of Environmental Law order re: C-123 contamination “official use only”

FOIA Request, original and revised

Lieutenant Colonel Bailey's Original Request:

1. All memos, interoffice correspondence, marginal notations, diaries, support materials, preparation materials, summations and other information regarding the March 8 2012 conference hosted by Brooks Tucker of Senator Burr's staff.
2. A list of non-VA participants and their contact information.
3. A list of VA participants in that conference, and all materials gathered for preparation of that conference, notes taken, and subsequent correspondence, summations and other materials related to the meeting,
4. All materials including notes generated by Dr Ter regarding C-123 aircraft dioxin (TCDD) contamination in preparation for her teleconference of October 27, 2011.
5. Instructions to Dr. Iro from her supervisors and correspondence with supervisors or peers regarding her preparation of VA positions
6. A summation of her notes regarding each scientific reference consulted and its relevance to C-123 aircraft contamination and crew exposure.
7. All materials generated by Dr. Iro in preparation for and in summation of her participation in the March 8, 2012 conference with Senator Burr's staff.
8. Any documentation regarding Dr Ir qualifications to address issues of TCDD contamination, including any of her work done between the date of her hire by the VA and March 8, 2012 conference.
9. Materials presented to or prepared by Dr. Te s in preparation for and in summation of her participation the March 8, 2012 conference.
10. All Materials prepared by Dr. Wa s on the subjects of dioxin, Agent Orange, TCDD, the M35A2 truck, and the C-123 aircraft.
11. Veterans Benefits Agency or OPH-prepared materials for regional office rating guidance.

Lieutenant Colonel Bailey's Amended Request:

(In all cases the request is for a comprehensive and inclusive response of emails, draft copies, correspondence, notes, marginal notations, electronic or digital recordings, including input by persons outside VA be provided regarding the 27 October 2011 teleconference and the 8 March 2012 conference, both hosted by Senator Richard Burr's staff, and the development of the VA perspective about post-Vietnam C-123 Agent Orange veterans issues. In all cases "C-123 veterans" refers to post-Vietnam C-123 veterans who flew that series aircraft between 1972-1982)

1. VBA and OPH materials, instructions or guidance released to all levels of VA regarding C-123 Agent Orange exposure claims between January 2007 and the date of this FOIA approval
2. Materials prepared by Dr. Wendy Dick, Dr. Michael Peterson, Dr. Terry Walters, and Dr. Terra Irons in advance of, during, and in summation or follow-up of these conferences, and subsequently in preparation for all C-123 posters or bulletins (such as Public Health's *Military Exposures/Agent Orange*) and other public information releases, including editing cycles, approvals and post-publication comments from within the VA
3. Instructions provided each participant before the two conferences, however those instructions may have been given
4. All information in whatever form containing instructions or suggestions from VA executives at the Deputy Secretary of Under Secretary levels regarding C-123 veterans claims
5. Any characterization made by VA participants or other executives within the Department before or after these conferences of any C-123 veteran, or of C-123 veterans in general, or of the legitimacy of their Agent Orange exposure claim, or of the independent scientific experts involved such as but not limited to Dr. Jeanne Stellman, and Dr. Tom Sinks of the CDC/ATSDR
6. All information regarding the decision to cancel the promised Institute of Medicine C-123 special contract promised by VA at the 8 March 2012 conference
7. All information sought from and provided to the VA from the Joint Services Records Research Center, relative to the C-123 in the years 1972-1982, and how that information was utilized by VA
8. The basis of the 25 Sept 2012 conclusion reached by VA Compensation Service (Mr. Thomas Murphy) in denying a C-123 veteran's claim, stating "In summary, there is no conclusive evidence that TCDD exposure causes any adverse health effects."

From: Paul Bailey <a208773@rocketmail.com>

To: wes c <rustysilverwings@aol.com>; john harris <faajohn@aol.com>; Arch Battista <abattista@charter.net>

Subject: Fw: VHA's Fee Estimate for FOIA Request 12-04470-F

Date: Sun, May 6, 2012 10:36 am

Wes, John, Arch

FYI: I just sent this reply to the VA appealing the decision to deny expedited processing and the fees. Hopefully it will get results.

(Wes, Thanks for your draft, it was very helpful)

Paul A Bailey

----- Forwarded Message -----

From: Paul Bailey <a208773@rocketmail.com>

To: "Marakowski, Deana M" <Deana.Marakowski@va.gov>

Sent: Sunday, May 6, 2012 12:32 PM

Subject: Re: VHA's Fee Estimate for FOIA Request 12-04470-F

Good morning Ms Marakowski.

Thank you for the acknowledgement in a timely manner for my freedom of information request regarding the meeting held on March 8th, 2012 to which you have subsequently had a number assigned as FOIA, VHA 12-04770-F.

I respectfully appeal the decision to refuse expedited response to our FOIA, VHA 12-04770-F, and the denial of our request for a waiver of fees.

Subject matter of this meeting concerned veterans who were assigned crew duties to a limited number of specific C-123k aircraft that had been previously assigned to chemical spray duties during the Vietnam conflict. It is our contention that these aircraft were contaminated by those chemicals during the time they were in Vietnam, during the time after Vietnam that we veterans continued to perform crew duties aboard the aircraft and continued to be contaminated after they were decommissioned. We further contend that we were exposed to those chemicals and that as likely as not our illnesses were caused by that exposure.

My appeal to you is based on two separate issues, one personal and one as a member of a small but select group of veterans who are affected by this issue. I had filed a FOIA request for information from your office for information from an earlier conference call referencing the same subject that was held on October 27, 2011 and have recently received the requested information on a compact disc. That information was provided to me at no charge. Please reference FOIA request VBHA-12-01400-F and provided by Mr. Jeffrey Parrillo, VHA FOIA Officer. As this is a follow on request for information based on a follow up meeting for the October 27th, teleconference I do not understand why a fee would be required for this information request.

I believe this request clearly qualifies for a fee-waiver and expedited processing. First, I am an officer of the C-123 Veterans Association, a national non-profit group of veterans who've been exposed to Agent Orange while assigned to fly the aircraft, and nearly all of our association are suffering from Agent Orange-presumptive illnesses. I, myself, have prostate cancer that has spread to the lymph nodes and am currently

unable to access VA medical care for treatment (my case has been pending for over one year) I have had a radical prostatectomy and follow on radiation treatment in addition to hormone and chemotherapy treatments at considerable personal expense. Many members of our association has, or had multiple Agent Orange illnesses. Many have died in the past year. Thus far, lacking essential information such as requested in this FOIA to present to establish service connection, none of our veterans has been accepted for VA medical care unless otherwise eligible, no appeals have been granted, and none of our veterans' survivors has qualified for needed benefits.

All the materials requested dealt directly with the participation of our organization with representatives of the Department of Veterans Affairs on March 8, 2012, at a meeting hosted by Senator Burr's staff. At issue was our contention that military service aboard this aircraft, already tested as contaminated with dioxin, led to our illnesses and our eligibility for VA medical care. This contention was opposed by the VA at the meeting – responding to the VA with a detailed understanding of their position, research, direction, etc. is essential to our ability to make our case and this understanding is dependent on this FOIA request.

In part, our fee waiver request is justified on the basis of the VA helping these veterans gather necessary information to qualify for service connection. VA's Public Health disagrees with our eligibility and their background materials are necessary for us to better understand, and if possible, argue our position. Further, both a fee waiver and an expedited response clearly are elements here of the VA's duty to assist.

Only the various FOIAs submitted by our organization to the USAF and other agencies have uncovered the fundamental elements of our claim to service connection. Our FOIAs to the Air Force uncovered the initial dioxin test results and subsequent efforts to decontaminate, and to dispose of, the contaminated airplanes. The VA, with which we have worked on this issue for over a year, has never provided a single document to us without FOIA requests and clearly will not provide these essential documents for us to deal with the basis of their development of a "dry dioxin transfer" theory as one which prevents our access to VA medical care... unless via FOIA. Our veterans have had one national teleconference and one Senator-sponsored meeting with the VA and this background is obviously essential for any continued development by us in response to VA positions denying our having been exposed to military herbicides.

VA personnel in the March 8 meeting subsequently presented materials at the Society of Toxicology meeting which dealt with our claims for exposure and service connection. As the subjects of that work we are entitled to source materials leading to conclusions of the publication's' authors.

One particular of our FOIA dealt with the VA's response to the letter of finding by the Agency for Toxic Substances and Disease Registry confirming our dioxin exposure. It is essential that, as the subjects of this ATSDR letter which established our exposure, that we be provided the VA's materials used to refute the ATSDR.

As anyone can learn, this requester's modest military retirement would be inadequate to address the VA's requirement for \$4,800 to provide documents I know to be essential to convince the Department to provide me, and veterans like me, vital care for which we believe ourselves eligible. The requested information is not available elsewhere from the VA and is not part of any reading room, and an FOIA is the only means to bring it to light.

The information sought is to shared with our entire organization via a legitimate journalism effort, our web site at <http://www.c123cancer.org/> and our blog at <http://www.c123kcancer.blogspot.com>. Our earlier FOIA results and other materials are provided journalists who have published articles dealing with our airplane and our exposure to dioxin, in the *Air Force Times*, Military.COM, the Gannett chain of newspapers, the *Sunday*

Springfield Republican, CBS News, New England Public Radio, *Stars and Stripes*, and many military and veterans' web sites and blogs. Our own site has about 24000 hits each month as veterans and their survivors seek detailed information about this issue – information with which to complete their disability applications and to guide their health care. This effort clearly addresses the public need to know, the public's understanding of the Department's undertakings, and how the Department deals with other government agencies involved in the C-123 Agent Orange controversy.

From responses to our other FOIAs, we have provided essential background materials leading to national resolutions on our behalf by the Reserve Officer Association, Vietnam Veterans of America and the American Legion, each resolution seeking support from the Secretary in granting our service connection and detailing the justification for such a decision. Information sought in this FOIA will continue to inform these and other veterans' organizations, as well as the general population.

We are not medical or scientific professionals. Obviously, the VA employees whose materials we seek via FOIA are. They have conducted research, examined professional literature, used government funds to attend professional gatherings at which they published materials, prepared at government expense, addressing our exposure to dioxin and our eligibility for VA medical care. The requested FOIA provides our veterans access to this scientific information about us that we cannot replicate and about which we ourselves are the subjects.

The public good and our own medical problems justify an expedited response – we need this information quickly to continue to address VA concerns about our eligibility for service connection, to supplement applications already in the system, to support NODs and appeals to the BVA.

Delaying our care by denying an expedited response and refusing to waive fees regarding this the FOIA is harmful to our health.

While the Department need not weigh an FOIA applicant's ability to pay in establishing fees or reaching a decision to waive them, clearly here the requested \$4,800 very effectively prevents our access to the information. I certainly am not in a position to pay that amount of money myself at this time.

Note: If any of the requested information from the March 8, 2012 meeting has already been provided to me as a source document under the previous FOIA request (FOIA VHA 12-01400-F referencing the Oct 17, 2011 conference call) it would not be necessary to provide that information again unless it has been modified or amended. It would only be necessary to reference that particular document.

Thank you in advance for your consideration

Paul A Bailey
P.O. Box 262
Woodsville, N.H. 03785

Tel 603-747-3738 e-mail a208773@rocketmail.com

From: "Marakowski, Deana M" <Deana.Marakowski@va.gov>
To: ""A208773@rocketmail.com"" <A208773@rocketmail.com>
Cc: VHA FOIA <vhafoia2@va.gov>

Sent: Friday, April 27, 2012 8:51 AM
Subject: VHA's Fee Estimate for FOIA Request 12-04470-F

Good Morning Mr. Bailey,

Attached please find the Veterans Health Administrations, Freedom of Information Act Office's fee estimate for your FOIA request number 12-04470-F.

This is an advance copy and the original will be placed in the mail today for you.

If you have any questions, please do not hesitate to give me a call.

Thank you,
Deana

Deana Marakowski
VHA FOIA OFFICER
Information Access and Privacy Office
Health Information Governance
Office of Informatics and Analytics
810 Vermont Avenue, NW
Washington, DC 20420
Office (717) 450-4662
Fax: (202) 273-9386

From: Marakowski, Deana M
Sent: Monday, April 16, 2012 12:00 PM
To: 'A208773@rocketmail.com'
Cc: VHA FOIA
Subject: VHA Acknowledgement of FOIA Request 12-04770-F Denial of Fee Waiver and Expediting Processing Request

Good Afternoon Mr. Bailey,

Attached please find the Veterans Health Administration's (VHA) initial agency decision regarding your request for a Fee Waiver and Expediting Processing of your recent Freedom of Information Act (FOIA) request. Also included in this letter is an acknowledgement of your FOIA request.

If you have any questions, please do not hesitate to give me a call at 717-450-4662.

Thank you,
Deana

Deana Marakowski
VHA FOIA OFFICER
Information Access and Privacy Office
Health Information Governance

Office of Informatics and Analytics
810 Vermont Avenue, NW
Washington, DC 20420
Office (717) 450-4662
Fax: (202) 273-9386

On April 16, 2012 I sent you a letter informing you that the justification you had provided within your FOIA letter did not support your request for a fee waiver, and that I had classified you as an "all other" 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 addition, 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. The fees associated with processing your request are estimated to be **\$4,834.88**. For your understanding of the fees associated with this request, enclosed is a copy of our estimated fee invoice.

Please be advised in accordance with 38 C.F.R. §1.561(k)(2), you must pay the estimated fees stated above before we can continue processing your request. Please be advised that the actual FOIA fees could exceed or fall below the estimated amount upon final tabulation. If the actual fees are not **\$4,834.88**, an appropriate adjustment will be made for any difference upon completion of processing your request.

Please send a certified check or money order in the amount above, made payable to "Department of Veterans Affairs", to the address listed below and we will finish processing your request and will disclose all releasable responsive records in our custody. The mailing address to submit your payment is:

Department of Veterans Affairs
Attn: VHA FOIA Office (10P2C)
810 Vermont Avenue, N.W.
Washington, D.C. 20420

If I have not received a response to this letter within 10 calendar days of the date of this letter, or May 9, 2011, then I will conclude that you do not wish for us to proceed with processing your request and we will consider it closed.

If you disagree with the fee estimate provided, you may file an appeal within sixty (60) calendar days of the date of this adverse determination to:

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

It is highly recommended that a copy of this determination letter accompany your appeal.

If you have any further questions, please feel free to contact me at (717) 450-4862.

Sincerely,


Deana Marakowski
VHA FOIA Officer

Enclosures

FOIA FEE ESTIMATE

FOIA Number: 12-04770-F

Requestor: Paul A. Bailey

Subject: Fee Estimate VHA 12-04770-F

Estimate Search Fees:

<u>Employee Title</u>	<u>Number of Hours</u>	<u>Estimated Fee</u>
Chief Consultant		
Title 38 - 7306 @ \$99.00 per hour + 16% Overhead rate = \$15.84 Total: \$114.84	4 Hours Search Time	\$459.36
Deputy Chief Consultant		
Title 38 - 7401 @ \$122.00 per hour + 16% Overhead rate = \$19.52 Total: \$ 141.52	8- Hours Search Time 6	\$1,132.16 \$849.12
Program Director		
Title 38 - 7401 @ \$97.00 per hour + 16 % Overhead rate = 15.52 Total: \$ 112.52	16 Hours Search Time	\$1800.32
Toxicologist		
GS-14 @ 62.00 per hour + 16% Overhead rate = \$9.92 Total: \$ 71.92	24 Hours Search Time	\$1,726.08
Minus 2 hours fee search time: \$283.04		
Two of free search time was taken from the Deputy Chief Consultants fee estimate		
No Fee is assessed for duplication the agency will make any responsive records available electronically unless the requester requires the records in hard copy.		
	Total Fee Estimate	\$4,834.88



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



DEPARTMENT OF VETERANS AFFAIRS
Office of the General Counsel
Washington DC 20420

NOV 16 2012

In Reply Refer To: 024J
OGC # 27785

Mr. Paul A. Bailey
P.O. Box 262
Woodsville, NH 03785

Dear Mr. Bailey:

This letter is in response to your appeal under the Freedom of Information Act (FOIA, 5 U.S.C. § 552), received on May 22, 2012. You appealed the April 27, 2012, decision of the Department of Veterans Affairs (VA) Health Administration's FOIA Officer. Your letter indicates that you are appealing both the denial of the request for expedited processing and the denial of the requested waiver of fees.

By way of background, your initial request was for the following information:

1. "All memos, interoffice correspondence, marginal notations, diaries, support materials, preparation materials, summations and other information regarding the March 8 2012 conference hosted by Brooks Tucker of Senator Burr's staff.
2. A list of non-VA participants and their contact information.
3. A list of VA participants in that conference, and all materials gathered for preparation of that conference, notes taken, and subsequent correspondence, summations and other materials related to the meeting.
4. 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.
5. Instructions to Dr Irons from her supervisors and correspondence with supervisors or peers regarding her preparation of VA.
6. A summation of her notes regarding each scientific reference consulted and its relevance to C-123 aircraft contamination and crew exposure.
7. All materials generated by Dr. Irons in preparation for and in summation of her participation in the March 8, 2012 conference with Se. Burr's staff.

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Mr. Paul A. Bailey

8. Any documentation regarding Dr Ir qualifications to address issues of TCDD contamination, including any of her work done between the date of her hire by the VA and March 8, 2012 conference.
9. Materials presented to or prepared by Dr. Terry Walters i n preparation for and in summ-;tion of her participation the March 8, 2012 conference.
10. All Materials prepared by Dr. Walters on the subjects of dioxin, Agent Orange, TCDD, the M35A2 truck, and the C-123 aircraft.
11. Veterans Benefits Agency or OPH-prepared materials for rating guidance.

In response to your request, on April 27, 2012, Ms. Deana Marakowski, VHA FOIA Officer, provided you with her initial agency decision, denying both your request for a fee waiver and your request for expedited processing. In response to Ms. Marakowski's letter, you emailed her and provided her the rationale behind your FOIA request. You cited your belief that you qualify for both a fee waiver and expedited processing because you are an officer of a national non-profit group of Veterans. You pointed to some of your medical history and allege that the information you seek is needed to establish service connection and is encompassed in VA's duty to assist. You indicated that your military retirement pension is inadequate to pay the estimated FOIA fees, and you indicated your intent to share the responsive information via your web site and an unspecified blog. You asserted that your efforts will increase the public's understanding of VA's undertakings. You indicated that you need this information quickly based upon shared medical problems and indicate that denying your request is harmful to your health. Finally, you alleged that the estimated fee "effectively prevents" access to the information requested.

In response to your letter, on May 17, 2012, Ms. Marakowski again wrote to you, indicating that your request was administratively closed because the estimated fees had not been paid. With respect to the requested information and its relationship, if any, to your previous FOIA request, Ms. Marakowski conferred with her colleague, Mr. Jeffrey Parillo, another VHA FOIA Officer, and together they determined that the documents disclosed to you in your prior FOIA request processed by Mr. Parillo were not duplicative of the information which you now seek.

Under the FOIA, records may be processed expeditiously and out of sequence if the requester establishes "a compelling need" for the documents, by demonstrating that failure to obtain the requested material promptly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity" (5 U.S.C. § 552(a)(6)(E)(i), (v)).

3.

Mr. Paul A. Bailey

Your appeal to this Office contains the same beliefs and allegations as are summarized above in your earlier email to Ms. Marakowski. Your letter does not contain any assertion that the failure to obtain the requested records expeditiously could reasonably be expected to pose an imminent threat to your safety or that of other individuals. Under the circumstances, we find no "compelling need" in this regard.

Further, while you note that your organization seeks to share the responsive information "via a legitimate journalism effort [at your] web site and on an unspecified blog, thus inferring that you are "primarily engaged in disseminating information," you have provided no basis upon which we can find that there is an urgency to inform the public about actual or alleged Federal Government activity. In fact, your letter contains no indication of the urgency required to prevail on a request for expedited processing. Accordingly, we affirm the denial to process your request on an expedited basis.

With respect to your request for a fee waiver, your appeal cites the fact that a previous, related FOIA request was provided to you at no charge. Since each FOIA request is considered separately, no precedent is set from one FOIA request to another. Nevertheless, we consulted with VHA's VACO FOIA Officers regarding your earlier request and learned that that request involved coordination between the Department of Defense and VA, a process which was quite time-consuming and exceeded the statutory time period in which VA could charge search fees. Accordingly, the search fees were not assessed, and the responsive information was disclosed to you. That is not the situation with your current request.

We have thoroughly reviewed your appeal regarding the requested fee waiver under the provisions of the FOIA (5 U.S.C. §552) which provides that federal agencies may charge fees for the processing of FOIA requests (5 U.S.C. § 552(a)(4)(A)(i) (2006), amended by the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524). The implementing VA regulations regarding fees for FOIA requests are contained in Title 38 of the Code of Federal Regulations (CFR), Sections 1.500-1.562 (effective 9/19/11). Pursuant to those regulations, VA will charge for the direct costs of processing requests (38 C.F.R. § 1.561). Direct costs are those expenditures which VA actually incurs in searching for, reviewing, and duplicating responsive documents, e.g. the salary of the employee performing the search and/or review as well as the costs of duplication (38 C.F.R. § 1.561(b)(3)). Because Ms. Marakowski characterized you as an "all other requester," her fee estimate did not include any review fees. Additionally, as is reflected in Ms. Marakowski's fee estimate, you are entitled to two hours of search time at no cost to you. Finally, we note that Ms. Marakowski did not estimate any duplication costs, noting that the responsive information would be provided to you electronically, at no cost to you. We find the estimated fees to be appropriate and reasonable.

Mr. Paul A. Bailey

When it is determined that fees are likely to exceed twenty-five dollars the requester is notified and given an opportunity to provide written assurance of the payment of all fees (38 C.F.R. § 1.561(h)). Additionally, when a FOIA Officer estimates that the fees will be more than \$250.00, the FOIA Officer may require the requester to make an advance payment of the entire anticipated fee before beginning to process the request (38 C.F.R. 1.561(K)(2)).

After thoroughly reviewing your appeal, the facts and circumstances behind the requested waiver, and applicable law, we have determined that the request to waive the fees must be denied for the reasons set forth below.

The first issue we must consider is whether waiving the fees is in the public interest (5 U.S.C. 552(a)(4)(A)), the following four factors are pertinent. That determination must initially focus upon:

- (i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;
- (ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;
- (iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities (38 C.F.R. 1.561(n)(2)(i)).

Additionally, the following two factors are pertinent in determining whether disclosure of the information "is not primarily in the commercial interest of the requester:

- (v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure, and, if so;
- (vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester" (38 C.F.R. 1.561(n)(2)(ii)).

With respect to the first four factors, while the records requested may reveal some information about VA operations or activities, you have not demonstrated that they are likely to contribute significantly to an understanding of those issues by the public. There is no indication that the materials you requested are appreciably informative for the public at large and would significantly increase the

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Mr. Paul A. Bailey

public's understanding of an issue (NARA v. Favish, 541 U.S. 157, 124 S. Ct. 1570, 1581 (2004)). Moreover, you have provided no information regarding the links between furnishing the requested information and benefitting the general public; the law requires that such links must be more than tenuous (NTEU v. Griffin, 811 F.2d 844 (D.C. Cir. 1987)).

The substance of the underlying request for information relates to both VA and non-VA personnel who attended a conference; information used by or provided to experts in preparation for the conference especially as it may relate to Dr. Irons and Dr. Walters; and all materials prepared by either of those two individuals. If and when such information were to be disclosed, it appears unlikely that that information would enhance the public's understanding of VA operations or activities to a considerable extent as compared to the level of understanding before the disclosure (38 C.F.R. § 1.561(n)(3)).

Should you remain interested in having VA disclose the requested documents to you, we suggest that you write to FOIA Officer Deana Marakowski, Health Information Governance, Office of Informatics and Analytics, 810 Vermont Av NW, Washington, DC 2-420 to renew your request and enclose a certified check or money order for \$4,834.88. Alternatively, you may wish to work with Ms. Marakowski to narrow your request to reduce the search time necessary to find responsive information. Finally, we note that a significant amount of information regarding these matters is published at <http://www.publichealth.va.gov/exposures/agentorange/residue-c123-aircraft.asp>.

This letter concludes the administrative processing of your appeal referred to above and constitutes the final decision of the Department of Veterans Affairs regarding your appeal. With respect to any information denied to you by this final agency decision, the FOIA requires us to advise you that if you believe the Department erred in this decision, you have the right to file a complaint in an appropriate United States District Court.

As an alternative to litigation and as part of the 2007 FOIA amendments the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001