



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

APR - 4 2011

In Reply Refer To **024F**
Case No. 22690

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

Dear Mr. Wishnie:

This letter is the final agency administrative decision by the Department of Veterans Affairs (VA) in response to your appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. In your FOIA appeal letter, dated February 15, 2011, you disputed a partial "no records" response by the Veterans Benefits Administration ("VBA") to your initial FOIA request. The substance of your initial FOIA request concerned data with regard to post-traumatic stress disorder (PTSD). Your initial FOIA request sought various statistical information with regard to PTSD claims based on military sexual trauma (MST). After carefully considering your appeal, we have determined that your appeal should be granted in part and denied in part.

Before we address the substance of your appeal, we will begin by briefly explaining VBA's record keeping procedure. VBA maintains an electronic "corporate database", accessed and maintained through the suite of applications known as the Veterans Service Network ("VETSNET"), wherein it tracks certain information regarding benefit claims. In addition, VBA maintains a physical case file for each benefit claimant. VBA's physical case files are located in VBA's various VA facilities throughout the country.

Turning now to your appeal, we will first address the portions that we are denying. Regarding your requests for fact-specific information (Request Nos. 6-9 and 13-15), your requests for an itemization of each type of "non-MST-related PTSD" appeal filed, approved and/or rejected (Request No. 17), and your request for a race-based breakdown of data (Request No. 18), VETSNET does not contain any fact- or race-specific data entry fields and, except as noted below, also does not itemize different types of PTSD claims. Further, regarding your requests related to MST occurring outside the context of a PTSD claim (Request Nos. 11, 12 and 16), VBA only collects data within VETSNET for "Sexual Assault/Harassment" claimed in connection with a PTSD claim. Although additional tracking capability was added to VETSNET for claims processed beginning in fiscal year 2011, VETSNET did not track claimants who claim "Sexual Assault/Harassment" outside the context of a PTSD claim during the timeframe encompassed by your FOIA request. Thus, VBA

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does not maintain data from which it could generate statistics that would respond to your requests insofar as they seek statistical information related to specific case facts, types of PTSD, "non-PTSD, MST related conditions", or race. As noted above, VBA does maintain physical files. Thus, in order for VBA to determine statistical information specific to race, type of PTSD, "non-PTSD MST related condition", or fact pattern, its representatives would have to physically search through each of the hundreds of thousands of claimant files that VBA maintains at VA installations throughout the United States. Each such file is potentially voluminous, in that each contains, by way of example, relevant portions of each claimant's medical records, together with benefit records, for a number of years. Thus, VBA would likely have to search through millions of pages of information to attempt to respond to the aforementioned requests. Such action would necessarily be overly burdensome and unnecessary therefore. See Sephton v. FBI, 365 F. Supp. 2d 91, 101 (D. Mass. 2005) (explaining that FOIA does not require review of "every single file that might conceivably contain responsive information"); Garcia v. DOJ, 181 F. Supp. 2d 356, 368 (S.D.N.Y. 2002) ("The agency is not expected to take extraordinary measures to find the requested records."); Schrecker v. DOJ, 217 F. Supp. 2d 29, 35 (D.D.C. 2002) (finding "that to require an agency to hand search through millions of documents is not reasonable and therefore not necessary"); Blackman v. DOJ, No. 00-3004, slip op. at 5 (D.D.C. July 5, 2001) (declaring request that would require a manual search through 37 million pages to be "unreasonable in light of the resources needed" to process it); O'Harvey v. Office of Workers' Comp. Programs, No. 95-0187, slip op. at 3 (E.D. Wash. Dec. 29, 1997) (finding request to be unreasonably burdensome because search would require agency "to review all of the case files maintained by the agency" and "would entail review of millions of pages of hard copies"), aff'd sum nom. O'Harvey v. Comp. Programs Workers, 188 F.3d 514 (9th Cir. 1999) (unpublished table decision).

A search through VBA files for responsive information is also not required by FOIA because it would compel VBA to "become an ad hoc investigator[] for requesters whose requests are not compatible with [VBA's] own information retrieval systems." See Blakey v. DOJ, 549 F. Supp. 362, 366-67 (D.D.C. 1982), aff'd, 720 F.2d 215 (D.C. Cir. 1983) (unpublished table decision); see also Frank v. DOJ, 941 F. Supp. 4, 5 (D.D.C. 1996) (stating that agency is not required to "dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff's questions"); Trenerry v. Dep't of the Treasury, No. 92-5053, 1993 WL 26813, at *3 (10th Cir. Feb. 5, 1993) (holding that agency not required to provide personal services such as legal research); Satterlee v. IRS, No. 05-3181, 2006 WL 3160963, at *3 (W.D. Mo. Oct. 30, 2006) (finding that request was improper where it would require agency to "conduct legal research" and answer questions "disguised as . . . FOIA request"). Thus, we uphold VBA's decision to deny your request insofar as it seeks fact-specific, race-specific, and/or itemized non-MST related PTSD information.

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We now turn to the portions of your appeal that are granted in part. There is no data entry field in VETSNET for "military sexual trauma." As noted above, however, beginning in FY2008, VBA did add functionality within VETSNET to allow decision-makers to record "Sexual Assault/Harassment" as a sub-type of PTSD that could be tracked. Prior to February, 2008, however, VBA did not collect information regarding "Sexual Assault/Harassment" as a classification of PTSD decisions. Thus, VETSNET contains no data prior to February 2008 for "Sexual Assault/Harassment" related PTSD. Further, both the "PTSD" and "Sexual Assault/Harassment" classifications are voluntarily chosen by the decision-maker from a menu selection. Thus, VETSNET may not reflect the total number of decisions made involving PTSD based on "Sexual Assault/Harassment." Additionally, "Sexual Assault/Harassment" may not correspond completely with your definition of "military sexual trauma." As noted above with regard to obtaining fact-specific data, in order for VBA to obtain "Sexual Assault/Harassment" data as it pertains to PTSD for any period prior to February 2008, or to obtain more complete information regarding the same after February 2008, VBA would have to search through each of its physical files. Again, such a request would be unreasonable and unduly burdensome.

We are, however, to the extent of our capability, releasing responsive statistical data regarding "Sexual Assault/Harassment" as a classification of PTSD determinations from February 2008 to FY2010. The document marked "Exhibit A" responds, to the best VBA's ability based on the caveat noted above, to your Request Nos. 4, 5 and 10. Additionally, we are producing the document marked "Exhibit B" in an attempt to respond fully to Request Nos. 1-3, which seeks information on claims filed, approved and rejected for each of FY2006-2010, together with disability distributions for those periods, for all types of PTSD cases. Unfortunately, VBA does not believe it has captured all the data. Please note that VETSNET is a suite of applications working within a complex database system. Generating the data reflected on Exhibit B required creating data matching protocols to unify various components of information located throughout the database. VBA devoted roughly ninety hours of employee programming time in order to generate Exhibits A and B. With additional data matching protocols and given an additional two weeks, VBA can derive a more accurate Exhibit B covering FY2006 – 2010.

Lastly, in an effort to cooperate as fully as possible, we are producing a set of documents marked as "Exhibit C," which consist of reports generated in the course of business over the last five years that pertain to PTSD. While the reports we have generated in the course of business are not fully responsive to your FOIA requests, we are producing them as Exhibit C in the hope that you will find that these reports aid your underlying purpose.

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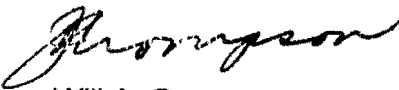
The FOIA requires us to advise you that if you believe the VA erred in this decision, you have the right to file a complaint in an appropriate United States District Court. We regret that we could not be more helpful.

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

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

Sincerely yours,


for Will A. Gunn
General Counsel

Enclosures

Sexual Assault/Harassment PTSD Claims, FY08-10

Sexual Trauma/Harassment

		FY08				FY09				FY10			
		Grant	Denial	Total		Grant	Denial	Total		Grant	Denial	Total	
A. Grant/Denial Summary	Male	186	651	837		242	740	982		350	943	1293	
	Female	601	1149	1750		787	1339	2126		919	1613	2532	
	Unknown	8	16	24		5	26	31		12	32	44	
B. Grant Detail	% Eval	Male	Female	Unknown	Total	Male	Female	Unknown	Total	Male	Female	Unknown	Total
	0	1	6		7	1	9		10		9		9
	10	13	53		66	5	48		53	21	50		71
	20				0	1	1		2		1		1
	30	49	221	4	274	69	263	2	334	80	306	4	390
	40				0	1			1		2		2
	50	51	177	2	230	63	242	1	306	107	298	5	410
	60				0				0				0
	70	40	102	2	144	72	157	1	230	94	175	1	270
	80				0				0				0
	90				0				0				0
	100	32	42	1	75	30	67	1	98	48	78	2	128

Exhibit A