

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

SERVICE WOMEN’S ACTION NETWORK, )  
AMERICAN CIVIL LIBERTIES UNION, )  
and AMERICAN CIVIL LIBERTIES )  
UNION OF CONNECTICUT, )

Civil Action No. \_\_\_\_\_

Plaintiffs, )

v. )

U.S. DEPARTMENT OF DEFENSE and )  
U.S. DEPARTMENT OF VETERANS AFFAIRS, )

December 13, 2010

Defendants. )  
\_\_\_\_\_ )

**INTRODUCTION**

Hundreds of thousands of women serve in the United States military, voluntarily putting themselves in harm’s way in order to protect the country. Unfortunately, the United States government is failing to protect these women from rape, sexual assault, and sexual harassment by their peers and superiors. When these violent and threatening acts occur in the course of the victim’s military service, the Department of Veterans Affairs calls these experiences military sexual trauma (“MST”). These acts occur nearly twice as often within military ranks as they do within civil society.

MST harms its victims in ways that are both immediate and long-lasting. It is the primary cause of post-traumatic stress disorder (“PTSD”) among female service members, and the cause of a wide range of other physical and psychological harms. When MST survivors leave the service, they struggle to find housing, get jobs, and reclaim the healthy, productive, civilian lives they once led.

The Service Women’s Action Network, the American Civil Liberties Union, and many other advocates have been warning the government about this problem for years. Yet, the government has not taken the steps necessary to end the MST crisis. Service members still are not adequately protected from MST while they serve, and victims are still not adequately cared for after they leave. The government has resisted releasing information that might show the true scope of the problem or highlight its own negligence – information that must be known for the problem to be solved.

### **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory relief that the United States Department of Defense (“DOD”) and the United States Department of Veterans Affairs (“VA”) have failed to comply with FOIA by improperly withholding documents, and for injunctive relief to compel the production of agency records improperly withheld from Plaintiffs by Defendants DOD and VA.

2. Plaintiffs seek to obtain the release of records on a matter of public concern, namely, the prevalence of MST within the armed services, the policies of DOD and VA regarding MST and other related disabilities, and the nature of each agency’s response to MST.

### **JURISDICTION AND VENUE**

3. This court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361.

4. Venue lies in this district under 5 U.S.C. § 552 (a)(4)(B) and 28 U.S.C. §§ 1391(e)(3) as complainant ACLU of Connecticut resides and has their primary place of business in the District of Connecticut, and no real property is involved in the action.

## PARTIES

5. Plaintiff Service Women's Action Network ("SWAN") is a nonpartisan, nonprofit organization that supports, defends, and empowers current service women and female veterans through advocacy initiatives and community programs. SWAN seeks to transform military culture by securing equal opportunity and the freedom to serve in uniform without the threats of harassment, discrimination, intimidation, and assault. SWAN resides and has its principal place of business in New York City, New York.

6. Plaintiff American Civil Liberties Union ("ACLU") is a national, nonpartisan public interest organization of more than 500,000 members, dedicated to protecting the constitutional and civil rights of individuals. Through its Women's Rights Project, ACLU has long been a leader in legal battles to ensure women's full equality. In recent years, the ACLU Women's Rights Project has taken a primary role at the local, state, and national levels to ensure governmental accountability for violence against women and girls through litigation, policy advocacy, and public education. ACLU resides and has its principal place of business in New York City, New York.

7. Plaintiff ACLU of Connecticut ("ACLU-CT") is a non-profit, non-partisan membership organization dedicated to protecting individual civil rights and the principles of individual liberty embodied in the United States and Connecticut Constitutions. The ACLU Foundation of Connecticut, the litigation arm of ACLU-CT, engages in litigation in state and federal courts. ACLU-CT has approximately 6,000 members in the State of Connecticut and it resides and has its principal place of business in Hartford, Connecticut.

8. Defendant United States Department of Defense ("DOD") is the federal agency responsible for coordinating and supervising government activity relating directly to national

security and the United States armed forces. DOD is an agency within the meaning of 5 U.S.C. § 552(f).

9. Defendant United States Department of Veterans Affairs (“VA”) is the federal agency responsible for helping veterans by providing certain benefits and services. VA is an agency within the meaning of 5 U.S.C. § 552(f).

### **STATEMENT OF FACTS**

#### **Members of the United States Military Experience Military Sexual Trauma at an Alarming High Rate**

10. Thousands of members of the United States military experience sexual harassment, sexual assault, or rape at some point during their service. These unwanted or threatening sexual acts often cause psychological trauma and are referred to as MST.

11. Sexual assault pervades the ranks of the American military. In the last decade, tens of thousands of service members, both female and male, have reported experiencing some form of sexual assault, harassment, or trauma.

12. Female service members are especially likely to experience MST. When women leave civilian life for the military, their risk of being sexually assaulted doubles. Surveys show that nearly one in three women report being sexually assaulted during their time of service. Other surveys show that over 70 percent of women and 40 percent of men report experiencing some form of sexual harassment during their service.

13. Surveys and studies indicate that between 6 and 23 percent of women experience at least one attempted or completed rape during their service period, depending on the decade. And the story gets worse: 37 percent of military rape victims experience multiple rapes, and 14 percent experience gang rape.

14. Due to underreporting, the prevalence of MST is likely far greater than current reports suggest. Fear, uncertainty, military dynamics, and military structure prevent victims from reporting approximately 80 percent of the unwanted or threatening sexual acts that they experience.

15. The MST crisis appears to be growing. DOD reports show that the number of reported sexual assaults increased 73 percent between 2004 and 2006. More recent DOD reports confirm this trend, showing that the number of assaults rose 11 percent between 2008 and 2009.

### **Military Sexual Trauma Severely Harms its Victims**

16. MST harms its victims in many ways. Service members who experience MST often develop Post-Traumatic Stress Disorder (“PTSD”) as a result. In fact, MST is the primary causal factor of PTSD for women in the military. Studies show that between 40 and 60 percent of women who are victims of MST develop PTSD. In one recent study, 71 percent of female veterans seeking VA disability benefits for PTSD reported being sexually assaulted during their military service. Female service members have twice the levels of PTSD and depression as their male counterparts.

17. To make matters worse, aspects of the military environment such as foreign settings, war zone exposure, multiple deployments, and military culture raise the risk of developing PTSD after experiencing MST. The impact of the military environment on MST victims explains why women who experience MST in the military are more likely than civilian women to develop PTSD.

18. MST continues to affect survivors after they leave the service. Victims of MST consistently report poorer psychological well-being, increased physical problems, greater depression and anxiety, and lower satisfaction with their health and work than non-victims.

19. Survivors also struggle to adjust back to civilian life. They are less likely than non-victims to have a job, more likely to fail to find work due to mental health problems, and more likely to engage in substance abuse.

20. Homelessness among female victims is particularly problematic. Although the number of homeless veterans has been declining over the last decade, the number of homeless female veterans has nearly doubled. Female veterans are now between two to four times more likely than civilians to end up homeless. The link between homelessness and MST is strong: one recent study showed that 40 percent of homeless female veterans have been sexually assaulted.

21. Overall, the harms of MST are severe, complex, long-lasting, and destructive to the victims and to the military units in which they serve.

**Advocates Have Alerted the Government to the Severity of the MST Crisis, but the Government Has Not Responded Adequately**

22. SWAN and other advocacy groups have made it their mission to draw the government's attention to the prevalence of MST. In the course of a year, SWAN testified five times before the House Committee on Veterans on the MST crisis and the lack of gender-specific resources for women. SWAN was also instrumental in the drafting of the Defense Sexual Trauma Response Oversight and Good Governance Act ("Defense STRONG Act"), which would require DOD to improve the sexual assault reporting procedures and sexual assault training within the military.

23. The government has a number of tools at its disposal to prevent MST and to treat the physical and psychological harms that MST imposes on service members. On the prevention side, the government can and should prosecute and discipline offenders to demonstrate that it takes the problem seriously and deter sexual assault and sexual harassment.

24. Moreover, the government can and should implement meaningful reforms that make it easier and safer for victims to report sexual misconduct.

25. On the treatment side, the government can and should pay for treatment of MST and the disabilities that stem from MST.

26. By all accounts, despite both the advocacy of organizations like SWAN and the range of tools the government has at its disposal, the government is still not protecting its service members from MST.

27. Even though MST is rampant in the military, the government only prosecutes 8 percent of military sex offenders. By contrast, domestic authorities prosecute 40 percent of all civilian sex offenders. This disparity is especially striking given the fact that the sexual assault of women occurs twice as frequently in the military as it does in civil society. The dearth of prosecutions casts doubt on the government's claim that it is serious about reducing and preventing MST within the military.

28. Furthermore, the government has not reformed its internal processes in ways that would allow victims to report unwanted or threatening sexual misconduct anonymously, without facing retribution and isolation. The DOD recently introduced a "restricted" reporting option that allows victims to confidentially access medical treatment for assault, without notifying command authorities and military criminal investigative organizations that would initiate legal action against their perpetrators. This change has not removed many of the barriers that prevent victims from being able to pursue and substantiate their claims in an effective way.

29. Military culture also has not condemned sexual violence. Victims who report perpetrators to superiors often face social isolation, retribution, and counter accusations. When victims are intimidated from reporting acts of sexual assault or harassment, or when corrective action is not

taken by superiors, victims are forced to continue living, working, and serving alongside their attackers.

30. The government also routinely refuses to pay for PTSD treatment for thousands of MST survivors. Veterans who file MST-related claims are consistently denied for failing to prove an “initial stressor” – an incident of sexual harassment, assault, or rape. These claims are denied even when victims have been diagnosed with PTSD by VA psychiatrists, psychologists, and counselors.

31. Many more survivors suffer from PTSD silently, having been intimidated from reporting the instance in the first place. If the government reformed reporting procedures and compensation requirements, it would have to confront the actual prevalence of MST and pay the actual cost that MST imposes on service members.

32. The government also has failed to budget sufficient resources to treat the MST survivors whom it deems deserving of care. For example, in 2006, the VA budgeted \$13 million to provide MST-related mental healthcare for recently separated Reserve and National Guard members after a VA report estimated that the annual cost to treat known cases of MST within that population would be \$20 million.

**The Government Has Refused to Release Information About the Magnitude of the Crisis or the Nature and Extent of Its Own Response**

33. The public has a strong interest in the DOD and VA releasing information that reveals the extent to which MST pervades the military’s ranks, the cost associated with treating MST, and the efforts these agencies are taking to combat the problem.

34. Despite this, the government has been reluctant to share information that reveals the true extent and cost of MST. For example, over a decade ago, the government commissioned a report on the problem of sexual assault in the military. The report was due in 2001. The government



refused to release the report for years after its due date. The report eventually became public in 2005 when U.S. Representative Lane Evans obtained a copy of it. The report showed MST to be far more prevalent within military ranks than previously thought.

35. By maintaining a system that discourages sexual assault reporting, denying MST-related PTSD claims, allocating less money than known problems demand, and responding slowly to advocates' demands, the government has hidden the true cost of MST and has forced victims to silently bear it.

36. Much of the information about the extent and cost of the MST problem, along with the government's reluctance to prosecute offenders and treat victims, is not in the public sphere. The public has a compelling interest in knowing this information, given the potential enormity of the problem, the emotional and financial cost that it imposes on military service members, and the increasing number of women serving in Afghanistan and Iraq.

37. The public's interest is all the more compelling because taxpayers are financially responsible for the treatment of the MST survivors who successfully navigate the processes of applying for service-connected benefits for PTSD and related illnesses.

38. What is known about MST in the military suggests that there is a reasonable probability that a more extensive release of information will generate negative publicity for the DOD and VA. The information might show that the prevalence of MST is even higher than surveys and studies show, and that more must be done to prevent and treat it.

39. Just as the government has been slow to respond to the advocacy groups and politicians who have attempted to shed light on the MST crisis, it has refused to comply with its duty to produce MST-related documents under FOIA.

### **Plaintiffs' FOIA Request to DOD**

40. By letter dated October 15, 2010, Plaintiffs submitted FOIA requests to six different offices within the DOD for records relating to the incidence of MST, equal opportunity complaints, and sexual harassment complaints in the armed services. The FOIA request also asked for documents relating to DOD's prosecution of sexual assault cases in the armed services. Plaintiffs submitted identical letters to the Department of the Navy, the Office of the Inspector General, the Department of the Air Force, the Department of the Army, the Commandant of the Marine Corps, and the Office of Freedom of Information. A copy of the letter sent to the Department of the Navy is attached to this complaint as Exhibit A.

41. DOD received the letters on October 15, 2010.

42. To date, Plaintiffs have received denials of fee waivers from the Office of Freedom of Information and the Office of the Inspector General, letters from the Office of Freedom of Information and the Office of the Inspector General claiming they could find no requested records, and a letter from the Army Crime Records Center refusing to search for the requested records. These are the only substantive correspondences received by Plaintiffs from the DOD. Plaintiffs are appealing these responses administratively, and the Office of Freedom of Information, the Office of the Inspector General, and the Army Records Crime Center are therefore excluded from the claims put forth in this complaint.

43. Plaintiffs have not received substantive responses from the Department of the Navy, the Department of the Air Force, the Department of the Army (aside from the correspondence for a subunit, as mentioned above), and the Commandant of the Marine Corps. The complaint pertains to these units only.

44. To date, DOD has not provided the records requested by Plaintiffs in this FOIA request, notwithstanding FOIA's requirement of an agency response within twenty (20) working days.

45. Plaintiffs have exhausted the administrative remedies available for their FOIA requests to DOD.

46. DOD has wrongfully withheld requested records from Plaintiffs.

### **Plaintiffs' FOIA Request to VA**

47. By letter dated October 15, 2010, Plaintiffs submitted FOIA requests to five different offices within the VA for records relating to the amount of benefits VA has awarded to veterans suffering from MST as compared to the amount of benefits VA has awarded to veterans suffering from other illnesses. Plaintiffs submitted identical letters to the Veterans Benefits Administration, the Board of Veterans Appeals, the Office of the General Counsel, the Office of Inspector General, and the Veterans Health Administration. A copy of the letter to the Veterans Benefits Administration is attached to this complaint as Exhibit B.

48. VA received the letters on October 15, 2010.

49. To date, Plaintiffs have received a response from the Board of Veterans Appeals providing partial records in response to some requests and claiming it cannot respond to others, along with responses from the Office of Inspector General and the Office of the General Counsel claiming that they do not possess any requested records. These are the only substantive correspondences received by Plaintiffs from the VA. Plaintiffs are appealing these responses administratively, and the Board of Veterans Appeals, the Office of Inspector General, and the Office of the General Counsel are therefore excluded from claims put forth in this complaint.

50. Plaintiffs have not received substantive responses from the Veterans Benefits Administration and the Veterans Health Administration. The complaint pertains to these units only.

51. To date, aside from the small number of records provided by the Board of Veterans Appeals, VA has not provided the records requested by Plaintiffs in this FOIA request, notwithstanding FOIA's requirement of an agency response within twenty (20) working days.

52. Plaintiffs have exhausted the administrative remedies available for their FOIA requests to VA.

53. VA has wrongfully withheld requested records from Plaintiff.

**FIRST CLAIM FOR RELIEF:  
Defendants DOD and VA Failed to Promptly Release Records  
Responsive to Plaintiff's Request**

54. Plaintiffs repeat and incorporate every allegation contained in paragraphs 1-53 as if set forth in full.

55. DOD and VA's failure to release responsive records violated Plaintiffs' right to those records under 5 U.S.C. § 552(a)(3)(A).

**SECOND CLAIM FOR RELIEF:  
Defendants DOD and VA Failed to Make a Reasonable Effort  
to Search for Records**

56. Plaintiffs repeat and incorporate every allegation contained in paragraphs 1-53 as if set forth in full.

57. DOD and VA's failure to make a reasonable effort to search for responsive records violated Plaintiffs' rights under 5 U.S.C. § 552(a)(3)(C).

### Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Order Defendants to disclose and release the requested records in their entireties and to make copies available to Plaintiffs.
- 2) Provide for expeditious proceedings in this action.
- 3) Award Plaintiffs costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(1)-(2); and
- 4) Grant any other relief the Court deems appropriate.

Dated: December 13, 2010  
New Haven, CT

Respectfully submitted,

By: \_\_\_\_\_

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William Bornstein, Law Student Intern  
Taylor Asen, Law Student Intern  
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# EXHIBIT A

# The Jerome N. Frank Legal Services Organization

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Department of the Navy  
Chief of Naval Operations (DNS-36)  
2000 Navy Pentagon  
Washington, DC 20350  
Fax: 202-685-6580

October 15, 2010

## Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

To Whom It May Concern:

This letter constitutes a request ("Request"), pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records in the possession of the Department of Defense ("DoD"). The Request is submitted on behalf of the Service Women's Action Network ("SWAN"), the American Civil Liberties Union Women's Rights Project ("ACLU WRP") and the ACLU of Connecticut ("ACLU-CT"), referred to collectively as the "Requesters".

### I. Requested Records

Requesters seek the release of records<sup>1</sup> containing the following:

- 1) Information pertaining to where and how the DoD stores military-related reports and investigations about military sexual trauma ("MST") complaints, equal opportunity ("EO") complaints, sexual harassment ("SH") complaints, and/or domestic violence ("DV") complaints.
- 2) Information concerning how service members can request or obtain from DoD military-related reports and investigations about MST, EO, SH, and/or DV complaints.
- 3) The number of requests by service members for the release of records relating to MST, EO, SH, and DV complaints, in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 4) The number of reports relating to MST, EO, SH, and/or DV complaints released to service members or the public in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 5) The number of military-related incidents of SH, EO, DV, and/or MST reported by service members in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 6) The number of sexual-assault-related courts-martial in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 7) The number of charges sworn in all sexual-assault-related courts-martial in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 8) The number of sexual-assault-related courts-martial that resulted in acquittal in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 9) The number of sexual assault related courts-martial that resulted in convictions in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 10) The crimes for which convictions in sexual assault-related courts-martial were secured, and/or the sentences awarded for those convictions in FY2006, FY2007, FY2008, FY2009, and/or FY2010.

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondences, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

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- 11) All records related to the non-judicial or administrative resolution of sexual assault-related complaints that did not result in court martial in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 12) A breakdown by gender and/or race of any information that falls within the scope of requests 1 through 11.

If the DoD believes that it would be in the interest of all parties to discuss possible ways to narrow the scope of this request that would allow the department to respond to the request more expeditiously, please contact undersigned counsel. We request that any records that exist in electronic form be provided in electronic format on a compact disc. If any of the requested records or information is not kept in a succinct format, we request the opportunity to view the documents in your offices.

## II. Application for Waiver or Limitation of Fees

We agree to pay search, duplication, and review fees up to \$100.00. If the fees will amount to more than \$100.00, we request a fee waiver on the grounds that disclosure of the requested records is in the public interest. The disclosure of the records is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a); C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.28(d); 32 C.F.R. § 1900.13(b)(2).

The disclosure will inform Requesters and the public of the prevalence of MST, EO, and SH complaints in the military, as well as of DoD's policies concerning these issues. It is in the public's interest to know how DoD is responding to harassment and discrimination complaints related to sex and gender, whether the DoD responds differently to different types of complaints, and how effective these response efforts have been.

Additionally, disclosure of the information requested is not in Requesters' commercial interest. Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act . . .").

We also request a waiver of search and review fees on the grounds that each Requester qualifies as a "representative of the news media." 28 C.F.R. § 16.11 (c)(1)-(2), (d)(1). Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 32 C.F.R. § 286.28(e)(7); *see also* 28 C.F.R. § 16.11(c)(3), (d) (search and review fees shall not be charged to "representatives of the news media").

SWAN, the ACLU WRP and the ACLU-CT meet the statutory and regulatory definitions of a "representative of the news media" because each is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"); *Elec. Privacy Info Ctr. V. Dep't of Def.*, 241 F.



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Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

SWAN’s mission is to “educat[e] and inform policy makers, the media and the public” about issues relating to service women in the armed services. Service Women’s Action Network: Mission, <http://www.servicewomen.org/SwanPage.asp?PLink=1019&Hding>About>. In furtherance of this mission, SWAN publishes an array of fact sheets, newsletters, and other documents for public consumption, on topics ranging from military sexual trauma to homelessness among female veterans. *See, e.g.*, Brittany Stalsburg, Service Women’s Action Network, Military Sexual Trauma: The Facts, <http://www.servicewomen.org/userfiles/file/MST%20fact%20sheet.pdf>; Homeless Women Veterans: The Facts, <http://www.servicewomen.org/userfiles/File/HomelessWomenVeterans.pdf>.

The ACLU WRP and the ACLU-CT regularly gather information on issues of public significance (including information gathered through FOIA requests), and use their editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials. The ACLU distributes these materials to the general public through various channels, such as its heavily subscribed Web site ([www.aclu.org](http://www.aclu.org)), a newsletter sent to its more than 400,000 members, and an electronic newsletter, which is distributed to subscribers by e-mail. Because of these activities, fees associated with responding to FOIA requests are regularly waived for the ACLU.<sup>2</sup>

Finally, pursuant to the applicable regulations and statute, Requesters expect the determination of this request for documents within 20 days. *See* 5 U.S.C. §552(a)(6)(A)(i) (2002).

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

Please furnish all applicable records to:

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

Thank you for your prompt attention to this matter.

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<sup>2</sup> For example, the Department of Housing and Urban Development granted a fee waiver to the ACLU for a FOIA request filed in April 2008. The ACLU subsequently posted the response to this FOIA on its website at <http://www.aclu.org/files/pdfs/womensrights/aclufoiarequestandhudresponseregardingimplementationofvawa.pdf>. The Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in 2006. The Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.

# The Jerome N. Frank Legal Services Organization

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Sincerely,



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# EXHIBIT B

# The Jerome N. Frank Legal Services Organization

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Veterans Benefits Administration (VBA)  
Frances Hudzik  
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(20M33) VACO  
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(202) 275-5947 (FAX)

October 15, 2010

## Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

To Whom It May Concern:

This letter constitutes a request ("Request"), pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records in the possession of the Veterans Administration ("VA"). The Request is submitted on behalf of the Service Women's Action Network ("SWAN"), the American Civil Liberties Union Women's Rights Project ("ACLU WRP") and the ACLU of Connecticut ("ACLU-CT"), referred to collectively as the "Requesters".

### I. Requested Records

Requesters seek the release of records<sup>1</sup> containing the following information:

- 1) The number of benefit claims filed, approved, and rejected for Post-Traumatic Stress Disorder ("PTSD") in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 2) The distribution of disability ratings for PTSD claims in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 3) The distribution of disability ratings for PTSD claims awarded in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 4) The number of benefit claims filed for PTSD that list military sexual trauma ("MST") as a causal factor in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 5) The number of benefit claims approved and rejected for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 6) The number of benefit claims rejected for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010 based on lack of direct service connection.
- 7) The number of benefit claims approved for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the veteran's service record and/or those where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
- 8) The number of benefit claims rejected for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondences, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

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- veteran's service record and/or those where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
- 9) For FY2006, FY2007, FY2008, FY2009, and/or FY2010, the number of benefit claims based on MST-related PTSD for which the VA advised the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes may constitute credible supporting evidence of the stressor, and the number of benefit claims based on MST-related PTSD for which the VA allowed the claimant the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence.
  - 10) The distribution of disability ratings for benefit claims awarded for MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
  - 11) The number of benefit claims filed for non-PTSD conditions that list MST as a causal factor in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
  - 12) The number of benefit claims approved and rejected for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
  - 13) The number of benefit claims rejected for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010 based on lack of direct service connection.
  - 14) The number of benefit claims approved for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the veteran's service record, and/or where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
  - 15) The number of benefit claims rejected for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010 where the evidence of direct service connection consisted solely of the veteran's service record, and/or where the evidence of direct service connection consisted of the veteran's service record and corroborating evidence from outside the service record.
  - 16) The distribution of disability ratings for benefit claims awarded for non-PTSD, MST-related conditions in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
  - 17) The number of benefit claims approved and rejected for each type of non-MST-related PTSD in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
  - 18) A breakdown by gender and/or race of any information that falls within the scope of requests 1 through 17.

If the VA believes that it would be in the interest of all parties to discuss possible ways to narrow the scope of this request that would allow the department to respond to the request more expeditiously, please contact undersigned counsel. We request that any records that exist in electronic form be provided in electronic format on a compact disc. If any of the requested records or information is not kept in a succinct format, we request the opportunity to view the documents in your offices.

## II. Application for Waiver or Limitation of Fees

We agree to pay search, duplication, and review fees up to \$100.00. If the fees will amount to more than \$100.00, we request a fee waiver on the grounds that disclosure of the requested records is in

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the public interest. The disclosure of the records is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a); C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.28(d); 32 C.F.R. § 1900.13(b)(2).

The disclosure of the records requested is in the public interest because the records will inform Requesters and the public about the prevalence of MST, PTSD, and other serious disabilities in the armed forces. The records will also highlight any disparities that exist in how benefits are distributed among disabilities, and reveal whether evidentiary regulations may be contributing to some of these disparities.

Additionally, disclosure of the information requested is not in Requesters' commercial interest. Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act . . .").

We also request a waiver of search and review fees on the grounds that each Requester qualifies as a "representative of the news media." 28 C.F.R. § 16.11 (c)(1)-(2), (d)(1). Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 32 C.F.R. § 286.28(e)(7); *see also* 28 C.F.R. § 16.11(c)(3), (d) (search and review fees shall not be charged to "representatives of the news media").

SWAN, the ACLU WRP, and the ACLU-CT meet the statutory and regulatory definitions of a "representative of the news media" because each is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"); *Elec. Privacy Info Ctr. V. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).

SWAN's mission is to "educat[e] and inform policy makers, the media and the public" about issues relating to service women in the armed services. Service Women's Action Network: Mission, <http://www.servicewomen.org/SwanPage.asp?PLink=1019&Hding>About>. In furtherance of this mission, SWAN publishes an array of fact sheets, newsletters, and other documents for public consumption, on topics ranging from military sexual trauma to homelessness among female veterans. *See, e.g.*, Brittany Stalsburg, Service Women's Action Network, Military Sexual Trauma: The Facts, <http://www.servicewomen.org/userfiles/file/MST%20fact%20sheet.pdf>; Homeless Women Veterans: The Facts, <http://www.servicewomen.org/userfiles/File/HomelessWomenVeterans.pdf>.

The ACLU WRP and ACLU-CT regularly gathers information on issues of public significance (including information gathered through FOIA requests), and use their editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials. It distributes these materials to the general public through various

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channels, such as its heavily subscribed Web site ([www.aclu.org](http://www.aclu.org)), a newsletter sent to its more than 400,000 members, and an electronic newsletter, which is distributed to subscribers by e-mail. Because of these activities, fees associated with responding to FOIA requests are regularly waived for the ACLU.<sup>2</sup>

Finally, pursuant to the applicable regulations and statute, Requesters expect the determination of this request for documents within 20 days. *See* 5 U.S.C. §552(a)(6)(A)(i) (2002).

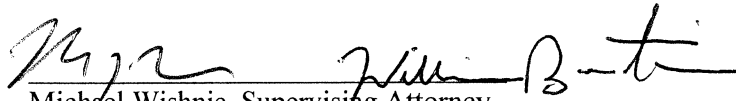
If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

Please furnish all applicable records to:

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

Thank you for your prompt attention to this matter.

Sincerely,

  
Michael Wishnie, Supervising Attorney  
Taylor Asen, Law Student Intern  
William Bornstein, Law Student Intern

Sandra S. Park, Staff Attorney  
Lenora M. Lapidus, Director  
ACLU Women's Rights Project  
125 Broad St., 18<sup>th</sup> Fl., New York, NY 10004  
(212) 519-7871

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<sup>2</sup> For example, the Department of Housing and Urban Development granted a fee waiver to the ACLU for a FOIA request filed in April 2008. The ACLU subsequently posted the response to this FOIA on its website at <http://www.aclu.org/files/pdfs/womensrights/aclufoiarequestandhudresponseregardingimplementationofvawa.pdf>. The Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in 2006. The Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.

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