

SCOTT A. HODES, ATTORNEY AT LAW

POST OFFICE BOX 42002
WASHINGTON, DC 20015
WWW.INFOPRIVACYLAW.COM

MEMBER DC AND MD BARS

INFOPRIVACYLAW@YAHOO.COM

(301) 404-0502

February 14, 2012

Office of General Counsel (OGC/024)
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Via Email (ogcfoiaappeals@va.gov)

FOIA Appeal – OS&LE letter of January 19, 2012

Dear Appeals Officer:

This is an appeal of the January 19, 2012 response of my Freedom of Information Act (“FOIA”) request made to the Department of Veteran Affairs Office of Security and Law Enforcement (“OS&LE”) and Law Enforcement Training Center on December 5, 2012.

By letter dated December 5, 2012, I submitted a FOIA request to Tanya Al-Khateeb requesting:

[A]ll standards, qualifications and certifications that VA OSLE and LETC Special Agents, Criminal Investigators, Inspectors and/or Instructors must possess to either be appointed to their position or to maintain their position.

I also specifically sought:

- 1.) Position descriptions of personnel designated Special Agent, Criminal Investigators, Inspector, and/or Instructor assigned to the OSLE and LETC;
- 2.) OSLE and LETC organizational charts for FY2009-2011 include functional relationships;
- 3.) All documents within FY2009-2011 submitted to the US Marshal Service (“USMS”) providing justification for OSLE and LETC Special Agents, Criminal Investigators, Inspectors, and/or Instructors to be deputized, including all documentation regarding OSLE and LETC compliance with USMS deputation standards;
- 4.) Applicable regulatory guidance and requirements pertaining to OSLE and LETC qualification, training requirements, medical standards, and

continuation training, and certification and qualification requirements for OSLE and LETC Special Agents, Criminal Investigators, Inspectors and/or Instructors;

- 5.) Annual training plan for OSLE and LETC personnel FY2009-2011;
- 6.) Any records that concern oversight to OSLE and LETC operations and functions assessing or inspecting assigned personnel training records, training compliance, certifications, qualifications, etc... Provide review results FY2006-2011 of any corrective action plans and best practices done in response to this oversight; and
- 7.) FY2009-2011 documentation that OSLE and LETC Special Agents, Criminal Investigators, Inspectors, Instructors have been cleared medically to carry VA weapons and perform law enforcement duties.

By letter dated January 19, 2012, Tanya Al-Khateeb released certain records to me.

I appreciate Ms. Al-Khateeb's efforts. However, as illustrated below, I believe additional records responsive to my request exist. Thus, I appeal the OS&LE and LETC searches for responsive records.

Ms. Al-Khateeb provided me two position descriptions (three if you count the third one which appears to be a duplicate) that is apparently to encompass the entirety of the organizational charts released. However, the organization charts include the position titles for Special Agents of Academic Programs Division Chief, Legal Specialist, Director, VAPS Program Manager, Security Specialists, Motor Vehicle Operator, etc. Additionally, the organizational charts do not reflect the GS series and grades of the positions; the position descriptions are for GS1811-13 and GS1712-13. It is difficult to believe that every position on their organizational charts is just made up of GS13's. Further, the GS1811-13 position description is dated 2007 – which may not be the most current? Thus, there should be additional position descriptions to reflect all of the positions identified on the organizational charts.

Item 3 of my request specifically sought "All documents within FY2009-2011 submitted to the USMS providing justification for OLSE and LETC Special Agents to be deputized, including all documentation regarding OSLE and LETC compliance with USMS deputation standards." However, there were no documents responsive to this item located.

There were no documents validating the compliance with the United States Marshal Service standards. 28 CFR § 0.112 Special deputation (b) identifies that other federal law enforcement officers may be deputized "whenever the law enforcement needs of the U.S. Marshals Service so require" and the USMS Directives Policy 8.14 states D.2. Special deputations by the USMS will be

authorized based upon the needs of the USMS or other agencies that can demonstrate a requirement to enforce federal law or carry a concealed weapon. The Department of Veteran Affairs demonstrated requirement to have OSLE to enforce federal law or carry a concealed weapon beyond what is identified in 38USC902 was not provided even though this information can be found in the application letter the agency submits per the same policy E.1.a. However, this application letter was not provided per the original request. Further, the deputation standard also identified the need to provide current weapons qualification certifications, which were also not located and provided to me

VA Directive 0730 references the GS083 and 085 series' but not the 1712 or 1811 instructor or criminal investigator or any of the other duty titles I requested. However, if it is accepted that the positions identified on the organizational chart abide by this directive, then these positions must adhere to the medical standards identified in VA Handbook 0730 which mandates an annual physical and psychological evaluation. However, no documentation validating OSLE and LETC Special Agents were cleared medically to carry VA weapons and perform law enforcement duties was provided.

Also if OSLE and LETC are mandated to follow this directive, all personnel must attend the VA basic training course and attendance to periodic refresher training courses. The directive identifies how important attending refresher courses are by stating "... Failure to attend such courses when scheduled may result in the withdrawal of an officer's law enforcement and arrest authority." Compliance with the training standards would also be verified/validated by an oversight effort. VA Directive 0730 specifically relates to VA Handbook 0730; the handbook specifically states that officers are required to carry a weapon, pepper spray, and a side handle baton (PR24). Qualification standards and individual certifications related to agency weapons should be readily available.

In reviewing the provided In Service Training Plan, I believe that the identified "OS&LE SOP (October 6, 2012)" should be provided pursuant to item four (4) of my original request. (Please note that the date of this document is obviously a typo.) Also referenced in the OS&LE Training Plan are Training Unit 18 and LETC Materials which were not included.

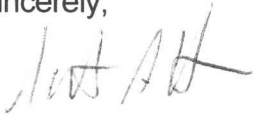
Although an OSLE Continuing in-service training schedule was provided, it does not specify this applies to LETC. Also it appears that the provided GS1811 Criminal Investigator and GS1712 Training Specialist position descriptions and the OSLE continuing in service training form are not mutually supporting; i.e. the GS1712 Training Specialist is required to maintain weapon proficiency per the position description, but a training plan reflecting this and other GS1712 position description responsibilities was not included. The provided OSLE continuing in service training schedule for the GS1811 position description does not seem inclusive of the amount of responsibilities identified by the GS1811 Criminal Investigator position description (I.A. Criminal Investigations, I.B. Security and

Law Enforcement Program Oversight, and I.C. Protection). Thus, the one page in service training form seems deficient based on the responsibilities within the position description.

Thus, I ask that you remand this request to the OS&LE and LETC for further searches and the release of responsive records.

If you have any questions concerning this matter, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Hodes". The signature is written in a cursive style with a long horizontal stroke at the end.

Scott A. Hodes