



U.S. Department  
of Veterans Affairs

Office of the General Counsel  
Washington DC 20420

MAY 20 2014

In Reply Refer To: 024N  
Case No. 30368

Mr. Scott A. Hodes  
Attorney at Law  
P.O. Box 42002  
Washington, DC 20015

Dear Mr. Hodes:

This letter is the final administrative decision under the Freedom of Information Act (FOIA) 5 U.S.C. § 552 on your January 2013 appeal of the decision by the Department of Veterans Affairs (VA) Office of Security and Law Enforcement (OSLE) dated in November 2012. OSLE is an office within the Office of Operations, Security and Preparedness, in Washington, DC. OSLE was responding to your October 2012 request for the following records:

- 1.) "Position descriptions of personnel designated Special Agent, Criminal Investigators, Inspector, and/or Instructor assigned to the OSLE and "LETC" [(i.e., VA Law Enforcement Training Center)];
- 2.) OSLE and LETC organizational charts for FY2012 including functional relationships;
- 3.) All documents within FY2012 submitted to the US Marshal Service ("USMS") (sic) [U.S. Marshals Service] 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.) Any applicable regulatory guidance and requirements other than VHA 0730 or any new guidance, directive, handbook, etc [sic] enacted after September 30, 2011 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 (the positions on their organizational chart);
- 5.) Annual training plan for OSLE and LETC personnel FY2012, specifically but not limited to training plan(s) relating to law enforcement, continuing education/training, investigator, weapon (firearm), use of force, and arrest authority;

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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 FY2012 of any corrective action plans and best practices done in response to this oversight; and

7.) FY2012 documentation that OSLE and LETC Special Agents, Criminal Investigators, Inspectors, Instructors have successfully completed and/or maintained and appropriately recorded all VA requirements to be armed (per VAH0730) or other guidance indicated in paragraph 4 of this request) including medical clearance oversight validation to carry VA weapons and perform law enforcement duties.”

In its November 2012 determination, OSLE provided you responsive records, including some that were released in full, some released in part, and others withheld in full. You appealed OSLE's response by letter dated January 16, 2013 and a follow-up appeal letter dated January 29, 2013. At the outset, we note that your appeal at issue here references Training Unit 18 and a VA memorandum dated October 6, 2011, as if intending to appeal OSLE's processing of those documents. Note that regarding Training Unit 18, OSLE processed that document in a separate, December 2012 determination. You filed a separate appeal to that determination, also in January 2013. Training Unit 18 is addressed in a separate, final agency decision that addresses your other January 2013 appeal. Further, while OSLE denied you a copy of a Memorandum regarding "Department issued weapons" in its November 2012 determination (i.e., the October 6, 2011 Memorandum), it also denied a copy of that document in its December 2012 determination; the document was denied on both occasions. You also appealed the denial of this document in your other January 2013 appeal. We addressed this document in a separate, final agency decision in response to that other January 2013 appeal. Neither the Training Unit 18 nor the October 6, 2011 Memorandum regarding Department Issued Weapons will be addressed here.

We point to the foregoing as a means to illustrate the importance of presenting clear requests and appeals that do not overlap with each other, and thus, are not subject to confusion. Further, in the future, if you wish to appeal a FOIA determination, you must refer to the proper initial agency determination that denied your request, consistent with VA FOIA appeal regulations. See, e.g., 38 C.F.R. 1.559(d). This enables VA offices handling your request/appeals to do so as expeditiously as possible, without trying to sort through duplicative matters, and in turn, allows those offices to proceed to other waiting FOIA requests and appeals as expeditiously as possible. Note that an appeal that is unclear may be deemed not perfected and returned. *Id.*

In order to address your current appeal clearly, we address each item individually as follows:

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1.) "Position descriptions of personnel designated Special Agent, Criminal Investigators, Inspector, and/or Instructor assigned to the OSLE and 'LETC.'" OSLE provided you two position descriptions, redacting portions of the Criminal Investigator description. Upon review of OSLE's response, we have determined that the position description may be revealed in full; an unredacted copy is enclosed.

2.) "OSLE and LETC organizational charts for FY2012 including functional relationships." OSLE provided redacted copies of this material. In its November 2012 determination, OSLE released much of the available organizational chart information. We conclude that further release may be made, namely the organizational charts of OSLE and LETC, each consisting of one page and identifying the positions within the offices; those pages are enclosed. We are also releasing the names of upper management on two separate OSLE organizational charts; we affirm the redactions of employee names withheld on those charts, however, under FOIA Exemptions 6 and 7C. The exemptions are discussed below.

3.) "All documents within FY2012 submitted to the [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." In its November 2012 response, OSLE provided you copies of submissions from the VA Deputy Assistant Secretary for Security and Law Enforcement to the Department of Justice (DOJ) USMS regarding individuals for whom renewal of special deputation was sought; OSLE redacted names and other identifying information of individuals named in the submission in accordance with FOIA exemptions 6 and 7C. We affirm OSLE's determination in this regard for the reasons discussed below. We further conclude that application of Exemption 5 is appropriate, also discussed below.

4.) "Applicable regulatory guidance and requirements other than VHA 0730 or any new guidance, directive, handbook, etc [sic] enacted after September 30, 2011 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 (the positions on their organizational chart)." In its November 2012 determination, OSLE discussed and withheld a VA Memorandum regarding Department-issued weapons. As noted above, this document is discussed in a separate final agency determination and will not be repeated here. In addition, OSLE provided a redacted copy of a Memorandum dated January 6, 2012 regarding Standard Operating Procedures – Physical Exam and Psychological Assessments. We have determined that additional information may be released from this Memorandum; we affirm one redaction in accordance with FOIA Exemptions b6 and b7E. We stress that OSLE confirmed that its office has no additional documents responsive to this request.

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5.) "Annual training plan for OSLE and LETC personnel FY2012, specifically but not limited to training plan(s) relating to law enforcement, continuing education/training, investigator, weapon (firearm), use of force, and arrest authority." In its November 2012 decision, OSLE provided you a spreadsheet that is used for internal training tracking purposes; the names of individual employees were redacted under FOIA Exemptions 6 and 7E and 7F. OSLE also provided blank training plans to provide information regarding internal training activities. Completed training materials regarding individual employees were withheld in their entirety under FOIA Exemptions 6 and 7E and 7F, discussed below. We affirm OSLE's response regarding this portion of your request; further, we conclude that application of Exemption 7C to this material is appropriate.

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 FY2012 of any corrective action plans and best practices done in response to this oversight." OSLE advised you that no records were available in response to this portion of your request. Subsequent to your appeal, we contacted OSLE and confirmed that the office has no responsive records regarding this item.

7.) "FY2012 documentation that OSLE and LETC Special Agents, Criminal Investigators, Inspectors, Instructors have successfully completed and/or maintained and appropriately recorded all VA requirements to be armed (per VAH0730) or other guidance indicated in paragraph 4 of this request) including medical clearance oversight validation to carry VA weapons and perform law enforcement duties." In response to this portion of your request, OSLE noted the following: a) that internal monitoring is conducted through successive levels of management; b) that LETC is accredited by the Federal Law Enforcement Accreditation Board (FLETA); c) that medical and psychological assessments are monitored on an ongoing basis and annotated for internal tracking purposes on spreadsheets and plans, discussed above, and d) that medical clearances are not maintained in OSLE's files. We addressed (a) and (d) in a separate final agency decision of another of your FOIA appeals by referring your request to VA's Office of Human Resources for any responsive records that may be available at that office from employees' Official Personnel Folders. With regard to (c), as discussed above, we affirm OSLE's determine to withhold the spreadsheets. With regard to (d), we refer you to the Internet or to FLETA directly for information regarding its accreditation standards. OSLE has confirmed that no other responsive records in this regard.

We have reviewed your January 2013 appeals 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). Please note that subsequent to your appeals, we contacted OSLE personnel and learned that OSLE provided all available information that it had in its possession. We are satisfied that OSLE conducted an appropriate search for responsive records and processed those that were available.

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As noted above, OSLE determined that a portion of the responsive information was protected from release under FOIA Exemptions 6 and 7C. 5 U.S.C. §§ 552(b)(6) and (b)(7)(C). Exemption 6 protects records the release of which would lead to a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). Similarly, Exemption 7C protects information compiled for law enforcement purposes, where the release could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C). In this case, the responsive documents contain identifying details regarding law enforcement personnel, such as the name of the individual being nominated for deputation. These individuals have a significant privacy interest in this information, both because it involves their identities as law enforcement personnel or staff in a law enforcement office and in some cases, because it reveals a detail regarding their status as law enforcement personnel which, combined with other information, could affect their professional reputations. Further, there is no indication that release of this information would serve an articulable and significant public interest. Any potential general public interest in the agency's conduct of its business is satisfied by the disclosure of VA procedures and the demonstration that VA is following its procedures in this regard. In view of the foregoing, it is appropriate to withhold the personal information of the individuals involved.

The aforementioned deputation information is also protected under FOIA Exemption 5, which protects interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. 5 U.S.C. § 552(b)(5). This exemption permits an agency to withhold material that reflects the thoughts, opinions, and recommendations of agency employees undertaking review of an issue. In this case, the record is a recommendation by a VA official with regard to a VA employee's nomination for a particular status designated by another federal agency. It is deliberative in nature. In view of the foregoing, the nomination form is protected under Exemption 5.

As noted above, information responsive to your request is also protected from release in accordance with FOIA Exemptions 7E and 7F. 5 U.S.C. §§ 552(b)(7)(E), (7)(F). Exemption 7E protects information if disclosure of that information would disclose techniques, guidelines, or procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (Tran v. DOJ, No. 01-0238, 2001 WL 1692570, at \*3 (D.D.C. Nov. 20, 2001)). Exemption 7F protects law enforcement information that could reasonably be expected to endanger the life or physical safety of any individual. The information that OSLE withheld includes that which involves individuals being nominated for deputation, the release of which could reasonably be expected to endanger their physical safety. Further, OSLE withheld material such as a law enforcement manual and a standard operating procedure memorandum under Exemptions 7E and 7F. The information withheld is consistent with the type of information for which these exemptions exist. The information at issue reveals training and qualification details, the level of skill that a law enforcement officer has and that he or she must possess and maintain, and the type of weapons used. Knowledge of specific details regarding the agency's law

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enforcement training program and its operation could reasonably be expected to risk circumvention of the law as it would enable an individual to consider all of these pertinent factors and assessing opposition if planning to inflict harm. Accordingly, we uphold OSLE's determination in this respect.

Finally, we point out that under the FOIA, an agency is not obliged to create records or provide an explanation. The FOIA is a records statute that applies only to agency documents in existence when a request is processed under its provisions. Further, while the agency must conduct a reasonable search for records, that search is generally defined as one that is "reasonably calculated to uncover all relevant documents." See, e.g., Weisberg v. DOJ, 705 F.2d 1344, 1351 (D.C. Cir. 1983); Iturralde v. Comptroller of the Currency, 315 F.3d 311, 315 (D.C. Cir. 2003).

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

Sincerely yours,

A handwritten signature in cursive script that reads "Deborah K. McCallum" with the word "for" written below it.

Deborah K. McCallum  
Assistant General Counsel

cc: Tanya Al-Khateeb (007) OSLE