



U.S. Department
of Veterans Affairs

Office of the General Counsel
Washington DC 20420

JUN 4 ' 2014

In Reply Refer To:

024N
Case Nos. 26513 & 30382

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 February 2012 and January 2013 appeals of the decisions by the Department of Veterans Affairs (VA) Office of Security and Law Enforcement (OSLE) dated in January 2012 and December 2012, respectively. OSLE is an office within the Office of Operations, Security and Preparedness, in Washington, DC. In its January 2012 determination, OSLE provided you responsive records. You appealed OSLE's response in February 2012; in your appeal, you also requested additional records based on information gained in OSLE's response. In a December 2012 determination, OSLE addressed these later requests; in January 2013, you appealed OSLE's December 2012 response. Given the overlapping nature of your requests, your appeals, and OSLE's responses, we will combine and address both your February 2012 and your January 2013 appeals in this response.

We have reviewed your 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). Listed individually below are the items you requested and those processed by OSLE in its January and December 2012 determinations, as follows:

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)]." In response to your specific request, OSLE's January 2012 response provided you with copies of position descriptions. In response to your further request for position descriptions, OSLE provided you additional responsive material in December 2012. We affirm OSLE's decision in this regard for the reasons noted below.

2.) "OSLE and LETC organizational charts for FY2009-2011" including functional relationships. In its January 2012 response, OSLE provided you organizational charts that it had on file. We affirm OSLE's response in this regard. In its December 2012 response, OSLE provided you additional organizational charts;

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OSLE redacted the names of the Director of the VA Law Enforcement Training Center (LETC) and the Director of OSLE. We are releasing these names; with regard to this item, your appeal is granted. Unredacted records are enclosed.

3.) "All documents within FY2009-2011 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 US Marshal Service ("USMS") [(U.S. Marshals Service)] deputation standards." In its January 2012 response, OSLE provided you material related to the USMS deputation and referred you to publicly available information. OSLE also advised you that it would confer with USMS regarding release of USMS forms used for each deputation applicant. In its December 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 7(C). 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 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." In January 2012, OSLE provided you responsive information, i.e., VA Directive 0730, position descriptions, blank in-service forms, a LETC Directive 11-05 and LETC Policy and Procedure Manual 602. In December 2012, response, OSLE provided further information, including a redacted copy of LETC Training Unit 18 regarding firearms; OSLE redacted a portion of the material pursuant to FOIA exemptions (7)(E) and (F). OSLE also withheld in full a VA Memorandum dated October 6, 2011 regarding Standard Operating Procedures (SOP) for Department Issued Weapons; we affirm OSLE's determination in this regard for the reasons discussed below.

5.) "Annual training plan for OSLE and LETC personnel covering FY2009-2011." Review of the file shows that OSLE provided you all available information in response to this portion of your request. Further, OSLE confirmed that all available information on file at that office, such as the in-service training form and policy documents describing training in general (e.g., the VA LETC Policy and Procedure Manual 602), was provided to you. We affirm OSLE's response in this regard for the reasons discussed below.

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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 FY2006-2011 of any corrective action plans and best practices done in response to this oversight." In its January 2012 response, OSLE advised that no records were available. Please note that it is the function of VA's Office of the Inspector General (OIG) to conduct reviews, evaluations, and audits of VA activities. We have referred your request to the OIG FOIA Office (50CI) for its determination regarding the existence of any responsive records in that office.

In addition, please note that LETC received accreditation through the Federal Law Enforcement Training Accreditation (FLETA). While FLETA's accreditation may not equate to the "oversight" records that you seek, you may wish to contact FLETA nonetheless to determine if they have information that is useful to you. FLETA's web site is as follows: www.fleta.gov.

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." In its January 2012 response, OSLE explained that it does not maintain medical clearance documents. We affirm OSLE's determination for the reasons noted below.

With regard to OSLE's conclusion that it had no responsive records regarding a given request, or that it had provided all responsive records in its possession, we emphasize that subsequent to your appeals, we contacted OSLE personnel and learned that OSLE provided all available information that it had in its possession at the time of its January and December 2012 responses to your requests. We have confirmed that with respect these records, OSLE conducted an appropriate search consistent with the FOIA. This office is satisfied that OSLE met its obligation under the FOIA and provided all available records or that, after an appropriate search for such records, found none. Accordingly, we affirm OSLE's action in this respect.

In addition, 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 and reveals a detail regarding their status

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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 must possess and maintain, and the type of weapons used. Knowledge of specific details regarding the agency's law 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

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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). Accordingly, while you may not have received records regarding each item identified in your request, OSLE is under no obligation to create records to reply to your request, and we are satisfied, as noted above, that its search for responsive records was complete.

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

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

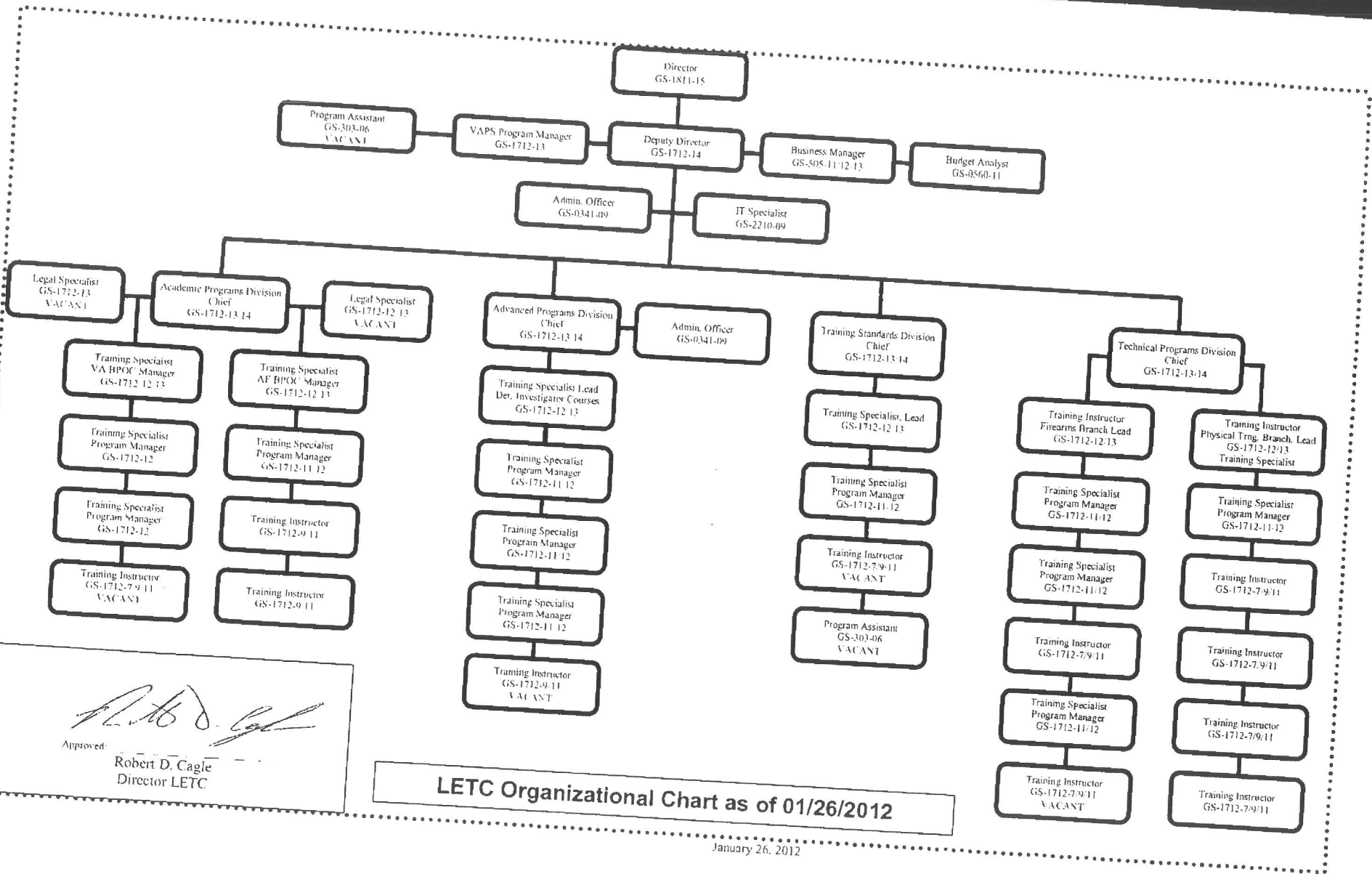
Sincerely yours,




for
Deborah K. McCallum
Assistant General Counsel

Enclosure

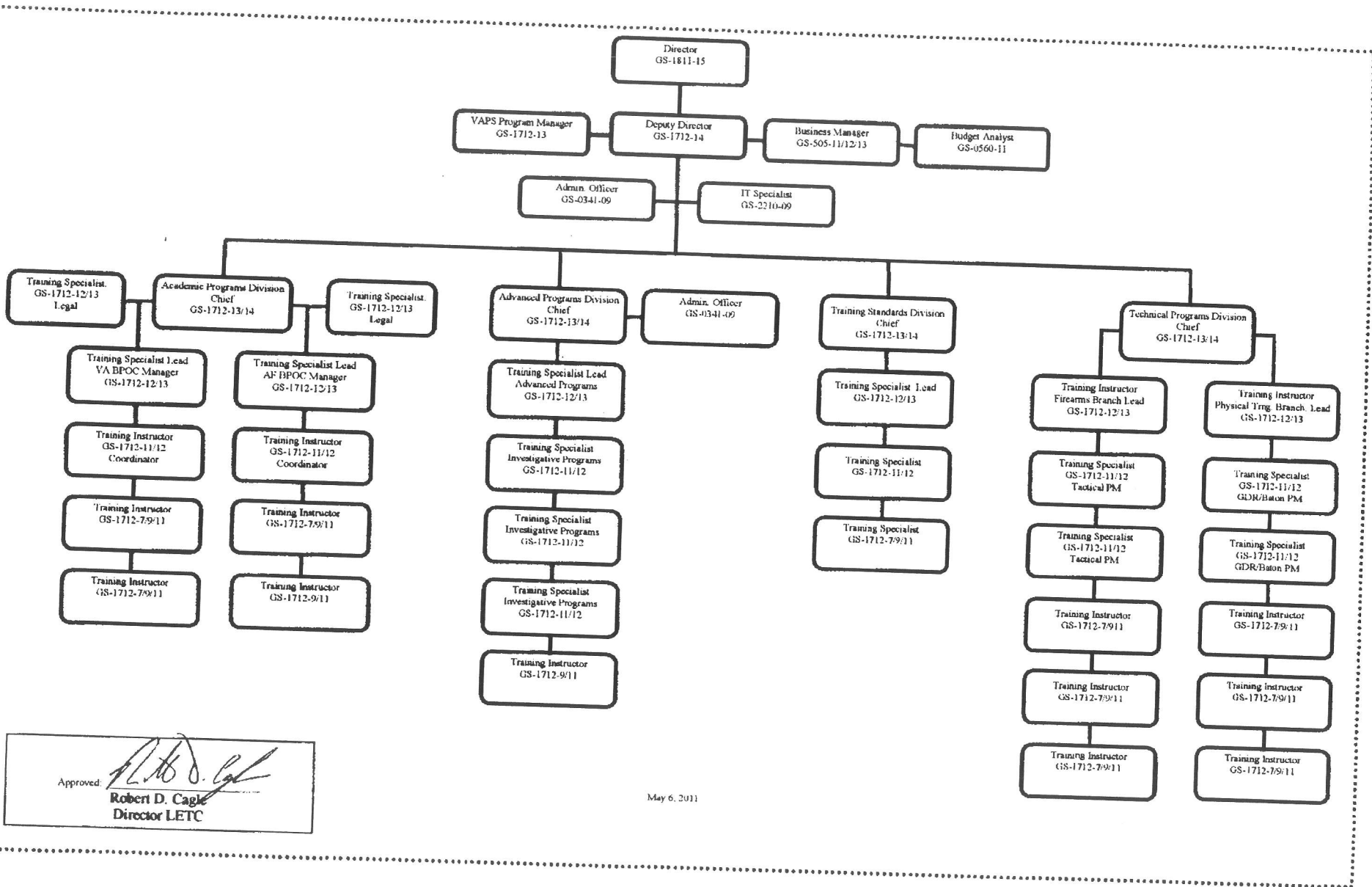
cc: Tanya Al-Khateeb - FOIA Officer, OSP (007)
Darryl Joe – OIG FOIA – (50C1)




 Approved: Robert D. Cagle
 Director LETC

LETC Organizational Chart as of 01/26/2012

January 26, 2012



Approved: *[Signature]*
Robert D. Cagle
 Director LETC

May 6, 2011

A

Director
GS-1811-15
Robert Cagle

Legal Specialist
GS-1712-12/13
VACANT

Legal Specialist
GS-1712-13
James Ward

Deputy Director
GS-1712-14
Russ Elyrich

VAP5 Program Manager
GS-1712-12/13
VACANT

Business Manager
GS-505-11/12/13
Terence Subbiah

Budget Analyst
GS-0560-11
Donna Landrum

Admin. Officer
GS-0341-9
Juanita McClure

Admin. Officer
GS-0341-09
Tonia Stevens

IT Specialist
GS-2210-09
Jay Jenkins

Academic Programs Division
Chief
GS-1712-13/14
VACANT

Training Specialist
VA BPOC Manager
GS-1712-12/13
Trent Fortis

Training Specialist
AF BPOC Manager
GS-1712-12/13
Cheryl Allen

Training Instructor
GS-1712-9/11
Greg Holtzert

Training Instructor
GS-1712-9/11
Melissa Van Winkle

Training Instructor
GS-1712-9/11
Harry Brist

Training Instructor
GS-1712-11
Kristi Cooley

Training Instructor
GS-1712-11
Ken Newton

Advanced Programs Division
Chief
GS-1712-13/14
VACANT

Training Specialist Lead
Det./Investigator Courses
GS-1712-12/13
VACANT

Training Specialist
Tech Surveillance
GS-1712-12
Conrad Hamp

Training Specialist
Crime Scene Invest
GS-1712-12
Tony Allen

Training Specialist
Crime Scene Photo
GS-1712-12
Tina Daugherty

Training Standards Division
Chief
GS-1712-13/14
VACANT

Training Specialist Lead
GS-1712-12/13
VACANT

Training Specialist
GS-1712-12
VACANT FRI FY 2012

Training Specialist
GS-1712-7/9/11
VACANT FRI FY 2012

Technical Programs Division
Chief
GS-1712-13/14
VACANT

Training Instructor
Firearms Branch Lead
GS-1712-12/13
VACANT

Training Instructor
Physical Trng. Branch Lead
GS-1712-12/13
VACANT

Training Specialist
GS-1712-12
Tony Harby

Training Specialist
GS-1712-12
Tom Kellogg

Training Instructor
GS-1712-11
Ray Braslet

Training Instructor
GS-1712-11
Tom Everett

Training Instructor
GS-1712-7/9/11
Pat Ruzsiner

Training Specialist
GS-1712-12
VACANT

Training Instructor
GS-1712-7/9/11
Sara Kim

Training Instructor
GS-1712-7/9/11
Holly Taylor

Training Instructor
GS-1712-7/9/11
Lynnie Sirell

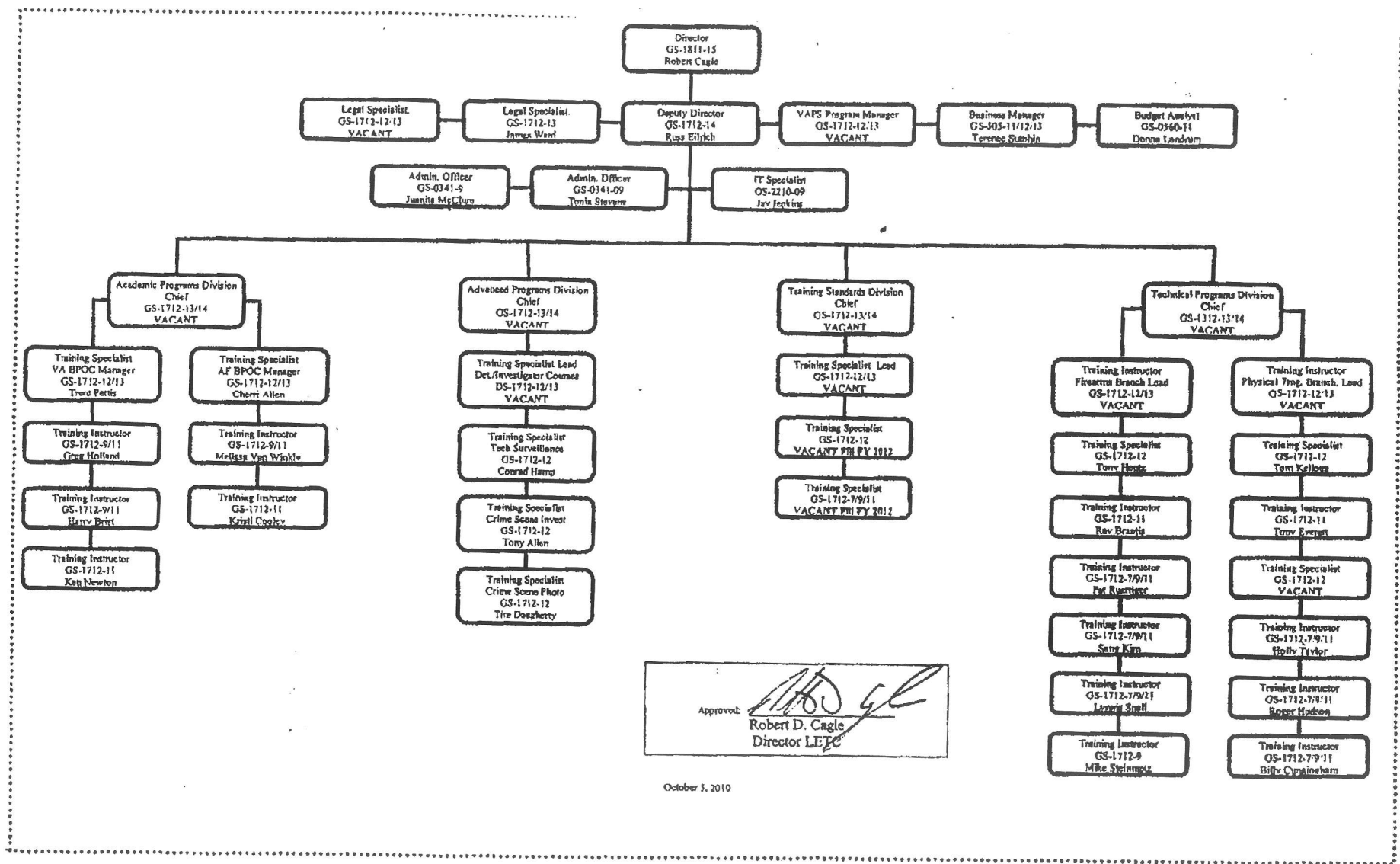
Training Instructor
GS-1712-7/9/11
Roger Kufson

Training Instructor
GS-1712-9
Mike Steinmetz

Training Instructor
GS-1712-7/9/11
Billy Cummings

Approved: 
Robert D. Cagle
Director LETC

October 5, 2010



Approved: 
 Robert D. Cagle
 Director LEO

October 5, 2010