



OFFICE of GOVERNMENT INFORMATION SERVICES

November 9, 2015—Sent via email

[Redacted]

Re: Case No.: 201500820  
NG: CM: AS

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION  
8601 ADELPHI ROAD  
OGIS  
COLLEGE PARK, MD  
20740-6001

Dear [Redacted]:

This responds to your June 8, 2015, request for assistance from the Office of Government Information Services (OGIS). Your request for assistance pertains to your records request ([Redacted]) and subsequent appeal to the U.S. Department of Veterans Affairs Bay Pines Healthcare System (VA) regarding the medical records of [Redacted] and apologize for our delay in handling your request for assistance.

web: [www.ogis.archives.gov](http://www.ogis.archives.gov)  
e-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
phone: 202-741-5770  
toll-free: 1-877-684-6448  
fax: 202-741-5769

Congress created OGIS to complement existing Freedom of Information Act (FOIA) practice and procedure; we strive to work in conjunction with the existing request and appeal process. Our goal is to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

We carefully reviewed the material you submitted, and we appreciate having the opportunity to speak with you about this matter on July 27 and August 10, 2015. According to your submission, you made a request to VA for all of [Redacted] understand <sup>1</sup> you modified your request on [Redacted] to include the [Redacted] and any and all quality assurance records pertaining [Redacted]



VA (Bay Pines VA Healthcare System) replied to your request on [Redacted], releasing [Redacted] but denied your request for a [Redacted] ([Redacted]). The report consisting of 19 pages were withheld pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3). You appealed VA's response and on [Redacted], VA affirmed its decision to withhold the report and citing FOIA Exemptions 5 and 6 in addition to 3, 5 U.S.C. § 552(b)(3), (b)(5) and (b)(6). You dispute this response, and assert that these records should be available to you.

<sup>1</sup> The VA's initial response [Redacted]

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We contacted the VA's FOIA department to discuss your dispute and how the agency processed your request and appeal. VA FOIA Director Timothy Graham reviewed your request and the agency's actions and reaffirmed the agency's final [REDACTED], position on the records you seek. In cases such as this where an agency is firm in response, there is little assistance OGIS can offer beyond providing more information about the agency's actions.

Mr. Graham explained that the only records withheld from you was the [REDACTED] report pursuant to FOIA Exemption 3 (5 U.S.C. § 552(b)(3)). Exemption 3 authorizes the withholding of agency records on subject-matter exempted from disclosure by statute, provided that such a statute "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to the types of material to be withheld." In this case, 38 U.S.C. § 5705 applies. This statute protects Peer Review/Quality Assurance documents, which are part of VA's designated quality assurance program, from disclosure. VA further informed OGIS that these records must be reviewed for release under FOIA; they may not be released under the Privacy Act of 1974, nor through litigation.

Mr. Graham also explained that the primary purpose of the Quality Assurance reviews is to improve the overall quality of health care that is provided to the patients. The reports do not focus on an individual's health care (i.e. [REDACTED]), rather it is a mechanism for the reviewing organization to evaluate actions taken by medical staff, administration, nursing unit and other ancillary services and identify areas that improvements were noted or recommendations were needed for corrective actions. The reports are an effective system of measuring, analyzing and improving the care and services provided throughout the facility. Mr. Graham also explained that the reports are not in a system of records that can be retrieved by a patient's name. For these reasons, there is nothing from these reports that can be disclosed under the Privacy Act.

While I understand that this is not the result which you hoped for, I hope that the additional explanation about the agency's actions is helpful to you. At this time there is no further action for us to take and we will consider this matter closed. Thank you for bringing this matter to OGIS.

Sincerely,

DR. JAMES V.M.L. HOLZER  
Director

cc: VA FOIA Public Liaison, via email  
Congressman [REDACTED], via email