

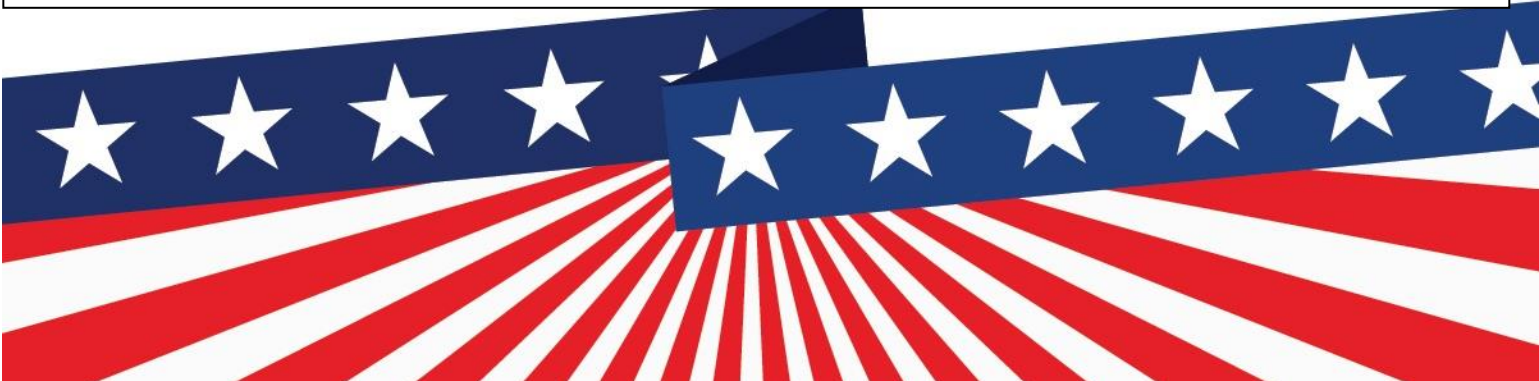


# **DOD Massive False Reporting Part III**

## **July 2022. 5-yr. Late Acknowledgements**

- **Unusual Circumstance + Complex Request Abuse**
- **5 yr. Late Request Acknowledgements to 2017+ FOIA Requests**
  - **Countless since 2013 remain open & unreported; 2,000+ instances of False FOIA reporting & malfeasance potentially coming**
- **False Reporting as to Expedited Processing**
- **No Estimated Completion Dates**
- **No OGIS or FOIA Public Liaison Dispute Rights**
- **Dates of Receipt Improperly Calculated**
- **False/Mismatched Raw Data**
- **Failed to Properly Identify Requests at Issue**
- **Refusal to Release FY 2016 & Complete FY 2017 Raw Data**

**PUBLIC COMMENT**  
**July 22, 2022**  
**by Robert Hammond**  
**[foiacompliance@gmail.com](mailto:foiacompliance@gmail.com)**



## [Context](#)

## [Issues](#)

## [Discussion of Non-Compliance Issues](#)

## [Action Sought](#)

- DOD
- DHA
- Office of Government Information Services (OGIS)
- DOJ Office of Information Policy (DOJ OIP)
- NARA
- DOJ
- FOIA Advisory Committee

## [BACKUP](#)

- [Davidge FOIA Tracking Numbers, JULY 15 AND 21, 2022](#)
- [Sample Davidge July 21, 2022 Email Exactly as Sent](#)
- [Sample Hammond Simple FOIA Request](#)

## CONTEXT

- There are countless DOD FOIA requests and appeals **from 2013** forward that are open and unreported or falsely reported in annual and quarterly FOIA reports. FOIA raw data and DOJ's FOIA.gov data upon which the public and researchers rely is materially inaccurate.
- **2,000+** instances of false FOIA reporting or other malfeasance are potentially pending public disclosure involving DOD, NARA, DOJ.
- By enlarge our military maintains the utmost integrity/honesty with the public, though we have had our lapses (Vietnam, Afghanistan, etc.).
- I served DOD in one capacity or another for over 47 years. At the United States Naval Academy, they taught us not to lie, cheat or steal. They taught us to be honest and to accept responsibility.
- It is with both irritation and sadness that I have come to the point of public disclosure in exposing DOD malfeasance by some in FOIA processing that has tarnished our great military. I attribute this to a lack of accountability and integrity and a failure of leadership who are aware of such matters. See public comments, [DOD Massive False FOIA Reporting. Part1. Letter to SECDEC Complaint to DOJ OIG +v3](#) and [DOD MASSIVE FALSE REPORTING PART II + "Still Interest" Abuse](#) .
- **While I much prefer to address matters directly with DOD** and have been working behind the scenes to do so, I cannot continence new improper actions. Seventy-nine recent emails of July 15, 21 and 22, 2022 by Joseph E. Davidge, Defense Health Agency's FOIA Public Liaison, while a step in the right direction do not meet the ethical standards and accountability that I am seeking. Also, DHA has no idea what they are doing, and their records are materially inaccurate.
- FOIA mediation and compliance oversight fall under OGIS, while DOJ OIP also has FOIA compliance oversight.

- Much needs to be done, as annual FOIA report raw data and DOJ's FOIA.gov data is massively false.
- NARA and DOJ must increase funding.
- DOD must amend past FOIA reports and raw data.

See Hammond Public Comments to the OGIS Annual Open Meeting, the FOIA Advisory Committee and the Chief FOIA Officers Council websites.

Many public comments are also posted in HTML to [Document Cloud](https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20): <https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20> Examples:

1.	All Panelist Chat to June 9, 2022 FOIA Advisory Committee Meeting. OGIS & DOJ Funding + Missing FOIA.gov Data.”
2.	NARA FY 22 FOIA Data Stripped from FOIA.gov?? + NARA False FOIA Reporting?”
3.	Failure - FOIA Compliance Oversight & Funding. Part 2. No Joking Matter
4.	Comments to Unlawful Chief FOIA Officers Meeting of November 17, 2021
5.	Mandatory Right to Dispute Resolution - OGIS Malfeasance??
6.	DOD Massive False FOIA Reporting. Part1. Letter to SECDEF Complaint to DOJ OIG +v3
7.	Sample FOIA Template With Recent Developments to Combat Agency Misconduct
8.	HOT! Semo OGIS. Budget Numbers do not Comport w. NARA Published Budgets!
9.	DOD MASSIVE FALSE REPORTING PART II + “Still Interested” Abuse
10.	NARA, PLEASE FUND OGIS!! (PART 1)
11.	NARA FOIA & Financial Malfeasance \$789,730 + Alteration of Records and Loss of Public Trust?
12.	Archivist of USA & OGIS Posting Policy Does Not Comport with Law
13.	QUESTIONS for June 29, 2022 OGIS Annual FOIA Meeting v2

14.	The Uncommon Man. Response to Hon. David S. Ferriero June 10, 2021 Comments to FOIA Advisory Committee.”
15.	DOD’ Cites Change to CFR 32 CFR Part 286.4 as Unlawful Basis for Omitting OGIS Mediation Rights
16.	Senate Hearing on FOIA. DOJ's Lack of Enforcement + Malfeasance + Open The Government Statement
17.	Senators Unite to Slam FOIA Compliance + POGO
18.	OGIS Negligence Generally & Improper June 29, 2022 FOIA Meeting
19.	FOIAonline - Recommended System Changes
20.	Violations of the ADA in FOIA Redactions, Simple Solution
21.	Hammond Planned Chat Comments to 4.7.2022 FOIA Advisory Committee Meeting
22.	DOD Massive False Reporting. 5 yr. Late Acknowledgements, Unusual Circumstances Abuse

# ISSUES

- **Unusual Circumstance & Complex Request Abuse**
- **5 yr. Late Request Acknowledgements to 2017+ FOIA Requests**
  - **Countless requests and appeals since 2013 remain open and unreported.**
  - **2,000+ instances of False FOIA reporting & malfeasance potentially coming**
- **Expedited Processing False Reporting**
- **No Estimated Completion Dates**
- **No OGIS or FOIA Public Liaison Dispute Rights**
- **Dates of Receipt Improperly Calculated**
- **False/Mismatched Raw Data**
- **Sent Status for Requests of Others**
- **Failed to Properly Identify Requests at Issue**
- **Refusal to Release FY 2016 & Complete FY 2017 Raw Data**

# DISCUSSION OF NON-COMPLIANCE ISSUES

## Unusual Circumstance & Complex Request Abuse.

- Davidge emails state:

“Unfortunately, the DHA has not been able to respond to your request within the FOIA's 20-day statutory time period due to extremely unusual circumstances. The unusual circumstances may include: (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; (c) the need for consultation with one or more agencies which have substantial interest in either the determination or the subject matter of the records; (d) an unusually high volume of FOIA requests and (e) staffing.”

- No such exception for: **d) an unusually high volume of FOIA requests and (e) staffing.** [See 5 U.S.C. § 552(a)(6)(B)(i) (2014).]
- Unusual circumstances cited as a – c generally do not apply, as nearly all records are DHA records located within DHA HQ.
- Also, “remote locations” is meaningless in today’s electronic world. FOIA Advisory Committee should seek a change.
- These are simple requests, seeking for example, “DHA FY 2015 [Section 803] Privacy Processing Log/Tracking or Case Management Record or similar record by any other name.”

## 5 yr. Late Request Acknowledgements to 2017+ FOIA Requests

- On July 17, 2022, DHA’s FOIA Public Liaison, Joseph E. Davidge, sent me forty-six emails relating to forty-five (45) 2017 FOIA requests initial acknowledgements.
- On July 21, 2021, Mr. Davidge sent me thirty emails relating to twenty-nine 2018 and 2019 FOIA requests initial acknowledgements.
- All the while, **I have open, unreported FOIA requests and appeals dating back to 2013**, when Mr. Davidge was Walter Reed National

- Military Medical Center's Privacy Compliance Administrator and Department Chief, HIPAA/Privacy Act/FOIA/Civil Liberties Office.
- Walter Reed reported through Department of Navy in FY 2013 before it was subsumed into the newly established Defense Health Agency as of FY 2014.
- FOIA mandates that FOIA requests be answered within twenty working days or an acknowledgement with individualized FOIA tracking number provided within 10 days, if the request will not be answered within twenty working days.
- Delays in processing my FOIA requests may result in the unlawful destruction of records, whereas my FOIA requests specifically cite preservation requirements.
- **There is no circumstance where the initial acknowledgement may be extended up to five years.**
- **I am prepared to place into the public domain 2,000 or more instances of false FOIA reporting and/or other malfeasance.**

### **Expedited Processing False Reporting**

- A spot check of my FOIA requests shows that some sought expedited processing, whereas Davidge status emails and DHA FY 2021 FOIA raw data do not indicate this (raw data says, "Expedite Not Requested.")
- For example, my FOIA request with my Requester Personal Reference number: FOIA DHA 17-F of August 17, 2017 seeks expedited processing. I submitted this FOIA request via DHA's online FOIA portal and followed up by email of 8/18/2017 at 12:56:04 AM Eastern Standard Time and again by email of October 22, 2017 at 9:52 PM, which included Mr. Davidge.
- This FOIA request (my FOIA DHA 17-F of August 17, 2017) seeks Davidge's records. The subject of the FOIA request and the emails cite Expedited Processing due to eminent loss of due process rights. My follow-up email of October 22, 2017 at 9:52 PM (which included Mr. Davidge) states that I had not received any tracking number



- DOJ requires separate reporting for expedited FOIA requests, such that DHA's raw FOIA data and FOIA.gov data are materially inaccurate. DHA must place such FOIA requests in the expedited queue.

### **No Estimated Completion Dates.**

- The Davidge 5-year late request acknowledgement emails do not provide estimated dates of completion, in violation of the FOIA, DOJ OIP policy and OGIS policy.
- Subsection (a)(7)(B) of the FOIA also requires agencies to establish a phone number or an Internet site that will provide information to the requester "using the assigned tracking number." The information required to be provided to the requester includes: (1) the date the request was received by the agency and (2) an estimated date by which the agency will finish processing the request.
- See *also* Office of Government Information Services Advisory Opinion No. 2020-01: Agencies Must Provide Estimated Dates of Completion Upon Request <https://www.archives.gov/ogis/advisory-opinions/2020-01-agencies-must-provide-edcs>.

### **No OGIS or FOIA Public Liaison Dispute Rights**

- The Davidge 5-year late request acknowledgement emails do not provide the statutorily mandated notices of rights to dispute resolution services by OGIS and/or the agency FOIA Public Liaison.
- See Hammond Public Comment, [Mandatory Right to Dispute Resolution - OGIS Malfeasance??](#)
- The FOIA Improvement Act of 2016 amended the law to require that when notifying a requester of an adverse determination, agencies must include information about dispute resolution services provided by the agency and OGIS. 5 U.S.C. 552 § (a)(6)(A)(i). Agencies must also make information regarding their FOIA Public Liaison (FPL) available, and inform the requester of the right to seek the services of

OGIS when notifying a requester that the agency seeks an extension of response time of more than 10 working days due to “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(ii).

**Dates of Receipt Improperly Calculated**

- A spot check of dates received shows material inaccuracies. The dates of my FOIA requests reflect electronic submission via FOIA portal, email, or both.
- The following representative sample of DHA provided FOIA tracking numbers show improper calculations. Actual receipt dates assume requests were received after working hours; else the actual receipts may be one day earlier. This is the interpretation of DOJ guidance most favorable to the agency. DOJ policy clarification needed

Request #	Request Date	Reported Receipt	Actual Receipt
FOIA-2018-111	12/23/17	1/3/18	12/26/17
FOIA-2018-114	12/26/17	1/3/18	12/27/17
FOIA-2018-120	12/29/17	1/3/18	1/2/18
FOIA-2018-121	12/30/17	1/3/18	1/2/18
FOIA-2018-122	12/31/17	1/3/18	1/2/18
FOIA-2018-123	12/31/17	1/3/18	1/2/18
FOIA-2018-124	1/1/18	1/3/18	1/2/18
FOIA-2018-125	1/1/18	1/3/18	1/2/18

**False/Mismatched Raw Data**

- A spot check of FOIA raw data to Davidge email data shows material inaccuracies.
- For example, for FOIA-2018-023 Davidge’s email shows a request date of 8/17/17 and a request receipt date of 8/18/17 whereas DOD’s FY 21 FOIA raw data shows a request receipt date of 1/11/2017 for request FOIA-2018-023. Also assigning an FY 2018 request number is improper.

### **Sent Status for Requests of Others**

- Davidge sent me status for FOIA-19-00036, which is a request of Ms. Jennifer Ramaekers, and for FOIA-19-00352, which is a request of Mr. Sean Mayo.
- Davidge later claimed “computer errors” were responsible.
- DHA has no idea whatsoever of what they are doing, nor is DHA maintaining accurate records.
- AUDIT NEEDED!!

### **Failed to Properly Identify Requests at Issue**

- The Davidge emails only identify the purported FOIA request dates in providing FOIA tracking numbers; whereas I submitted multiple FOIA request on the same days and I have no faith in the Davidge reported dates.
- My FOIA requests require that the agency return a copy of my FOIA request in any correspondence. My FOIA requests also contain my personal tracking number. At a minimum, DHA must identify the FOIA requests by my personal tracking number and identify the records sought.
- Davidge emails are worthless in identifying which FOIA request corresponds to the tracking number provided.

### **Refusal to Release FY 2016 & Complete FY 2017 Raw Data**

- In clear violation of the FOIA statute and DOJ OIP guidance, DOD has refused to post its FY 2016 FOIA raw data and DOD’s FY 2017 raw data for DHA does not contain any FOIA tracking numbers.
- See <https://open.defense.gov/Transparency/FOIA/DoD-Annual-Reports-to-AG/>

- I have been complaining about this to DOD and DOJ OIP for years and seeking action. DOD could not have produced the annual FOIA reports (although materially inaccurately) without the raw data.
- DOJ states:

The raw statistical data used in the report must be available without charge, in a searchable format, that is downloadable in bulk.

In addition to posting the human-readable and NIEM-XML version of your Annual FOIA Report, the FOIA Improvement Act of 2016 now requires that your agency also post the raw data that made up your Annual FOIA Report. See 5 U.S.C. § 552(e)(3)(A)-(C) (2014), amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538. To meet this requirement, agencies will need to provide the underlying data elements behind each request, administrative appeal, and consultation received and processed that is used to create the Annual FOIA Report at the conclusion of each fiscal year. This data is used to create the aggregated data tables for Sections IV-VIII, X, and XII.A-XII.C of the Annual FOIA Report, and contains such fields as the date the request or appeal was received, the request or appeal disposition, and the date closed. To assist agencies with this new requirement, OIP created a [Raw Data Template](#) which contains all of the raw data fields used in creating an agency Annual FOIA Report.

- Column B of the [Raw Data Template](#) is the “Request Number.”

# ACTIONS SOUGHT

## DOD Generally

- Post FOIA raw data for FY 2016 and re-post FY 2017 raw data for DHA to include individualized tracking numbers.
- Amend past FOIA reports and raw data to accurately reflect known inaccuracies, including past admissions thereof.
- Respond to my FOIA requests seeking DOD FOIA raw data.
- Proactively post DOD FOIA processing logs.

## DHA

- Address the compliance issues identified herein through return correspondence to me.
- Amend FOIA reports and raw data reports to DOD and DOJ's FOIA.gov.
- Provide accurate status and estimated completion dates for all my FOIA requests and appeals dating back to FY 2013 (including Walter Reed).
- In all correspondence to me provide my personal request number and verbatim citation of records sought to accurately identify such FOIA request or appeal. In any FOIA request or appellate determination include a copy of my FOIA request or appeal per the format sought in my requests or appeals.
- Promptly provide expedited processing determinations to my FOIA requests and appeals and place them in the expedited queue.
- Change the categorization of each FOIA request to simple; else provide a detailed explanation as to the complex categorization.
- Provide fee determination letters indicating that DHA is no longer entitled to fees for any of my cited FOIA requests.

- Provide all correspondence via email to [persevdfrance2013@aol.com](mailto:persevdfrance2013@aol.com).
- Include OGIS and FPL rights in all correspondence as required by statute.
- Engage in OGIS mediation regarding the matters cited herein.

## **OGIS**

- Initiate a comprehensive audit of DHA annual FOIA reporting using the data provided herein. Contact me for additional data.
- Report in the Ombuds report materially false reporting and other non-compliance by DOD, Navy, DHA, NARA cited herein and in my other public comments.
- Engage in mediation with DHA regarding the matters cited herein.
- Amend past Ombuds reports to accurately report the number of times OGIS or the agency FPL ENGAGED in alternative dispute resolution (ADR) per statute, *vice* improperly reporting the number of times the requester sought ADR. The numbers are not the same.
- In future Ombuds reports include the number of times OGIS refused formal mediation and the number of times the agency refused mediation. Per statute:

“The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section.”

- Include the name of an accountable person in all OGIS correspondence rather than “The OGIS Staff.”
- Return to posting mediation logs and mediation closure letters.

- Return to including satisfaction surveys to evaluate the quality of OGIS mediation work.
- Modify position descriptions and performance standards to require mediation staff to be certified/accredited mediators and compliance staff to be certified/accredited auditors. Provide needed training on government time and at government expense, allowing sufficient time for current staff to achieve certifications. Reevaluate position descriptions to determine if certifications increase the grade levels.

### **DOJ OIP**

- Require DOD to post its FY 2016 FOIA raw data and FY 2017 raw data with DHA FOIA and appeals tracking numbers.
- Require DOD to amend past errant FOIA reports and raw data and to publicly post same.
- Require DOD to correct FOIA.gov data
- Conduct a comprehensive audit of DOD's annual FOIA reports and raw data, including therein data of my FOIA requests and appeals.
- Conduct compliance inquiries into the matters cited herein, independent of any OGIS actions.
- Clarify the calculation of FOIA request and appeal receipt dates as to calculating the first day received.

### **NARA**

- Initiate a comprehensive audit of OGIS materially underfunding and mission accomplishment or failure thereof. OGIS is underfunded twenty-fold (\$34M).
- Include the name of an accountable person in all NARA correspondence rather than "The FOIA Staff."

- Modify OGIS performance metrics to reward quality of work rather than arbitrary case closure, which diminished quality.

## **DOJ**

- Properly fund DOJ OIP to perform its compliance mission; else seek to transfer the audit function to GAO.

## **FOIA Advisory Committee 2022 - 2024**

- Establish a Compliance subcommittee; else elevate the responsibilities of the Process subcommittee to meaningfully address FOIA compliance.
- “Remote locations” as an unusual circumstance is meaningless in today’s electronic world. FOIA Advisory Committee should seek a change.



# BACKUP

- **DAVIDGE FOIA TRACKING NUMBERS, JULY 15 AND 21, 2022**
- **Sample Davidge July 21, 2022 Emails Exactly as Sent**
- **Sample Hammond Simple FOIA Request.**

# DAVIDGE FOIA TRACKING NUMBERS, JULY 15 AND 21, 2022

<b>DHA FOIA CASE #</b>	<b>Request Date</b>	<b>Request Received</b>
FOIA-2017-196	9/17/17	9/18/17
FOIA-2018-023	8/17/17	8/18/17
FOIA-2018-058	12/8/17	12/8/17
FOIA-2018-060	12/10/17	12/11/17
FOIA-2018-066	12/17/17	12/18/17
FOIA-2018-069	12/18/17	12/18/17
FOIA-2018-072	12/19/17	12/19/17
FOIA-2018-073	12/19/17	12/19/17
FOIA-2018-074	12/19/17	12/19/17
FOIA-2018-075	12/19/17	12/19/17
FOIA-2018-076	12/19/17	12/19/17
FOIA-2018-077	12/19/17	12/19/17
FOIA-2018-078	12/19/17	12/19/17
FOIA-2018-079	12/19/17	12/19/17
FOIA-2018-081	12/19/17	12/19/17
FOIA-2018-082	12/19/17	12/19/17
FOIA-2018-083	12/19/17	12/19/17
FOIA-2018-084	12/19/17	12/19/17
FOIA-2018-085	12/19/17	12/19/17
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FOIA-2018-096	12/19/17	12/19/17
FOIA-2018-097	12/19/17	12/19/17
FOIA-2018-099	12/19/17	12/19/17
FOIA-2018-100	12/19/17	12/19/17
FOIA-2018-101	12/19/17	12/19/17
FOIA-2018-102	12/19/17	12/19/17
FOIA-2018-103	12/19/17	12/19/17
FOIA-2018-104	12/19/17	12/19/17
FOIA-2018-104	12/19/17	12/19/17

# DAVIDGE FOIA TRACKING NUMBERS, JULY 15 AND 21, 2022

FOIA-2018-105	12/19/17	12/19/17
FOIA-2018-106	12/19/17	12/19/17
FOIA-2018-107	12/19/17	12/19/17
FOIA-2018-111	12/23/17	1/3/18
FOIA-2018-114	12/26/17	1/3/18
FOIA-2018-120	12/29/17	1/3/18
FOIA-2018-121	12/30/17	1/3/18
FOIA-2018-122	12/31/17	1/3/18
FOIA-2018-123	12/31/17	1/3/18
FOIA-2018-124	1/1/18	1/3/18
FOIA-2018-125	1/1/18	1/3/18
FOIA-2018-146	1/13/18	1/16/18
FOIA-2018-238	5/3/18	5/3/18
FOIA-2018-244	5/5/18	5/7/18
FOIA-2018-246	5/5/18	5/7/18
FOIA-2018-252	5/5/18	5/7/18
FOIA-2018-274	5/24/18	5/24/18
FOIA-19-00015	10/7/18	10/9/18
FOIA-19-00016	10/7/18	10/9/18
FOIA-19-00017	10/7/18	10/9/18
FOIA-19-00018	10/7/18	10/9/18
FOIA-19-00019	10/7/18	10/9/18
FOIA-19-00022	10/7/18	10/9/18
FOIA-19-00020	10/7/18	10/9/18
FOIA-19-00021	10/7/18	10/9/18
FOIA-19-00023	10/7/18	10/9/18
FOIA-19-0223	6/7/19	6/7/19
2018-345	8/16/18	8/17/18
FOIA-19-00225	6/10/29	6/10/19
FOIA-19-00229	6/10/29	6/10/19
FOIA-19-00240	6/14/19	6/14/19
FOIA-19-00226	6/10/19	6/10/19
FOIA-19-00036	10/15/18	10/15/18
FOIA-19-00352	8/8/19	8/8/19

# SAMPLE DAVIDGE JULY 21, 2022 EMAIL EXACTLY AS SENT

From: Davidge, Joseph E (Joe) JR CIV DHA DHA (USA) <joseph.e.davidge.civ@mail.mil>  
Sent: Thursday, July 21, 2022 2:42 PM  
To: perseverance2013@aol.com  
Subject: Status Update FOIA-19-00023

July 21, 2022

Robert Hammond  
[REDACTED Address]

DHA Initial Case No: FOIA-19-00023

Dear Robert Hammond:

Thank you for the opportunity to serve you regarding your Freedom of Information Act (FOIA) request of October 7, 2018, received by the Defense Health Agency (DHA) on October 9, 2018.

Unfortunately, the DHA has not been able to respond to your request within the FOIA's 20-day statutory time period due to extremely unusual circumstances. The unusual circumstances may include: (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; (c) the need for consultation with one or more agencies which have substantial interest in either the determination or the subject matter of the records; (d) an unusually high volume of FOIA requests and (e) staffing.

We sincerely regret there is a substantial delay in processing requests, and we solicit your patience and understanding as we diligently work to respond to your request as quickly and efficiently as possible.

If you have any questions about the processing of your request under the FOIA, please contact the DHA FOIA Service Center at (703) 275-6017, or email us at [DHA.FOIA@mail.mil](mailto:DHA.FOIA@mail.mil).

Sincerely,

Joe Davidge

# SAMPLE DAVIDGE JULY 21, 2022 EMAIL EXACTLY AS SENT

Defense Health Agency  
Freedom of Information Act Public Liaison  
J1 A&M Enterprise Administration & Systems Integration Division  
Skyline Place Six  
Suite #401 A  
5109 Leesburg Pike  
Falls Church, VA 22041  
Mobile: 571-225-5553  
Email: [joseph.e.davidge.civ@mail.mil](mailto:joseph.e.davidge.civ@mail.mil)

"If there is no peace in situations in your life, then it is not from God."  
Corinthians 14:33

ATTENTION!!!

\*\*\*\*\*

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# SAMPLE HAMMOND SIMPLE FOIA REQUEST

Robert Hammond  
[REDACTED Address]

June 10, 2019

DHA Freedom of Information Service Center  
7700 Arlington Boulevard, Suite 5101  
Falls Church, Virginia 22042-5101  
Phone: (703) 681-7500  
Fax: (703)275-6386

Per DHA web, submitted via E-mail to: [DHA.FOIA@mail.mil](mailto:DHA.FOIA@mail.mil), [FOIARequests@tma.osd.mil](mailto:FOIARequests@tma.osd.mil),  
[dha.ncr.pcl.mbx.foia-requests@mail.mil](mailto:dha.ncr.pcl.mbx.foia-requests@mail.mil), [FOIA.gov](http://FOIA.gov)

Subject: FOIA Request DHA 19-S. HIPAA and Privacy Act Training Course

***\*\*\*This Request will be timely for Judicial Review in twenty working days\*\*\****

**\*\*\* Whistle Blower: FALSE Reporting to DOJ and Congress\*\*\***

Dear FOIA Officer,

I am submitting this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., as amended. *If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply. See “Whistleblower” below.*

*To the extent that your entity deems any portion of this request to be applicable to the Privacy Act, you must process this request under both Acts.*

## **BACKGROUND.**

### **Privacy Act and HIPAA Privacy Training**

The Health Insurance Portability and Accountability Act (HIPAA) and Privacy Act training is required of all Defense Health Agency (DHA) civilian, military, and contractor personnel.

The mandatory HIPAA and Privacy Act training course must be completed within 30 days of on-boarding and annually, thereafter. The course is accessible via [Joint Knowledge Online \(JKO\)](#).

See <https://health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/Privacy-Act-and-HIPAA-Privacy-Training>

## **RECORDS SOUGHT VIA FOIA.**

I am respectfully seeking:

FOIA Request DHA 19-S. HIPAA and Privacy Act Training Course

1. The training course described on the DHA website as, “The mandatory HIPAA and Privacy Act training course must be completed within 30 days of on-boarding and annually, thereafter. The course is accessible via [Joint Knowledge Online \(JKO\)](https://health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/Privacy-Act-and-HIPAA-Privacy-Training). See <https://health.mil/Military-Health-Topics/Privacy-and-Civil-Liberties/Privacy-Act-and-HIPAA-Privacy-Training>. Records may be in native format (unlocked) CBT or PDF.
2. The Agency copy of this FOIA Request This FOIA request itself is an agency record, “*received by an agency of the United States Government under Federal law or in connection with the transaction of public business*” 44 U.S.C. § 3301 (emphasis supplied). Any FOIA requester may seek this record, which may also be on a public website.

NOTE: To the extent that you contend that any records are exempt, you must identify the specific records and release all segregable portions. I may seek an in-camera inspection in any court proceeding.

## **REQUESTED FORMAT.**

I am requesting that documents provided in electronic format by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) The Agency copy of this request. I seek records via email in PDF/electronic format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency’s letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done.

Further, I request that these documents be sent in any digital formats in which they exist (such as PDF, Excel, Outlook). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request. In the event that records contain information protected under the Privacy Act or are too voluminous for email, please use AMRDEC Safe Access File Exchange Delivery.

Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

## **PRESERVE RECORDS AND SEARCHES FOR JUDICIAL REVIEW.**

Please search for, locate and preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later.

Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved.

In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In as much as applicable staff and leadership have knowledge of my subject request, the Agency must search for, locate and preserve all responsive or potentially responsive records and records of searches in their FOIA case file, and leadership must ensure that this is done. Failing to do so and allowing records to be deleted IAW any other records management schedule may be a violation of law.

**AGREEMENT TO PAY FEES.** I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues."

**PUBLIC INTEREST.** The accuracy and integrity of FOIA process and FOIA reporting are in the public interest. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest. See **"Whistle Blower: FALSE Reporting to DOJ AND Congress"**

**DOD POLICY – PUBLIC TRUST.**



Reference (c) states, “DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.”

## **WHISTLEBLOWER – FALSE REPORTING TO DOJ AN CONGRESS (9.10.2018)**

### **1. False Reporting to Attorney General and Congress.**

DOD’s Chief Management Officer (CMO) (formerly Deputy Chief Management Officer (DCMO)) consolidates DOD reports and submits DOD’s official reports to DOJ and to Congress.

There has been incontrovertible, long standing, massive, false FOIA reporting to the Attorney General (DOJ) and Congress for many years. More to follow on Privacy Act reporting.

DHA’s reports have been inaccurate since its inception.

Despite considerable correspondence with DHA and CMO (including multiple requests for an independent compliance audit and DOD IG audit), Office of Government Information Service, DODIG, and an ongoing DOJ investigation, DHA again submitted a grossly inaccurate FY 2017 FOIA report.

By email, I had advised Mr. Tillotson, the then Acting Deputy Chief Management Officer, of incontrovertible discrepancies and provided documentation of same.

Feb 25, 2017 9:18 AM and September 7, 2017 7:06 AM, Subject FOIA Non-Compliance by Walter Reed (requests submitted 6... (“tip of a very large iceberg.”  
“I will very soon be referring this matter to the Department of Justice.”)

February 19, 2018 7:20 AM, Subject: Inaccurate FY 2017 DOD CIO Report to DOJ (“The number of aged, still open requests, appeals and consultations dating back to 2013 is staggering.”)

Several entities amended their FY 2017 Annual FOIA Report submissions, stating at pages 25 and 26:

“After reviewing their databases, AF, ARMY, DHA, DLA, NAVY, NSA, and OSD/JS updated the number of appeals pending as of the start of the Fiscal Year.”

“After reviewing their databases, AF, ARMY, CENTCOM, DIA, DLA, DSS, DTRA, EUCOM, NAVY, NGA, NGB, NRO, NSA, OSD/JS, and TRANSCOM updated the number of pending requests as of the start of the Fiscal Year.” See <https://open.defense.gov/Transparency/FOIA.aspx>.

However, DHA did not come clean.

DHA made a minimal, partial admission. See DOD's FY 2017 CIO report at 26 wrt DHA, "...DHA closed their entire ten oldest [appeals]," and DOD's FY 2016 Annual FOIA Report (oldest appeal 327 days *contra* FY 2017 Annual FOIA Report at 31 (revised subsequent to DOJ inquiry - oldest appeal 726 days, tenth oldest appeal 596 days). See <https://open.defense.gov/Transparency/FOIA.aspx> .

DHA was compelled to make another subsequent, partial admission:

"DHA continues to experience complications from multiple reorganizations and due to an oversight, failed to report appeals older than previously reported on the ten oldest and so cannot demonstrate what would have been progress against this metric during this reporting period." See Department of Defense Chief Freedom of Information Act Officer Report to the Department of Justice For 2018 at 22. <https://open.defense.gov/Transparency/FOIA.aspx> .

"An oversight" did not cause false reporting. I sent multiple correspondences to all relevant DHA persons in 2015 and thereafter (including DHA's appellate official, Paul Thomas Cygnarowicz, MD Bar 12- 9212150146). DHA admitted to OGIS that they had not been reporting the aged administrative appeals. Countless aged FOIA requests and appeals remain unreported.

Also, DHA subsumed Walter Reed as a subordinate reporting entity from Navy/Navy BUMED on October 1, 2013 - five years ago (while such activity was ostensibly ongoing).

DHA's appellate official, Paul T. Cygnarowicz, now states, "Regarding your complaints of incorrect annual FOIA reporting, the DHA will provide a list of corrections to the DOD chain of command contemporaneous with filing the annual FY 18 FOIA report." This says nothing of the mandatory interim quarterly reports.

Another year of promises and interim inaccurate reporting should be unacceptable to leadership.

DHA has also incontrovertibly overridden date-and-time-stamped electronic records of on-line FOIA submissions to falsely shorten the processing time on both ends.

Alteration and/or destruction of records in anticipation of judicial review may be a factor, including refusing to search for records in obvious, known locations and thereby allowing/encouraging them to be destroyed under the guise of records retention. Some in positions of authority with knowledge of outstanding FOIA requests may have encourage such destruction. All FOIA case/processing records and correspondence are retained for 6 years.

I note that MuckRock.com (who services media originations and others), completely independent of me, has also taken an interest in FOIA report records, e.g. Freedom of

Information Request: [FOIA logs 2016-2017: Military \(Defense Health Agency\)](#), [FOIA logs 2016-2017: Military \(US Navy Judge Advocate General\)](#), and various other FOIA Logs from 2010 – 2016.

Similarly, MuckRock.com also seeks FOIA processing records, e.g. [Processing Notes for Control Number 2016-007 \(FOIA\)](#) , [Processing notes for DON FOIA 2014F-0380, DON 2014F-0383, and DON 2014F-0387 \(US Navy\)](#) .

“**MuckRock** is a collaborative news site that gives you the tools to hold the government accountable.”

## **2. Leadership**

I believe that performance standard rating elements and ratings should be reviewed. The integrity of the processes and the accuracy of FOIA/PA reporting to DOJ and Congress and malfeasance, if any, are extremely serious matters, worthy of DOD leadership attention.

I believe that senior DOD leadership has been poorly served, without evident consequences.

DHA leadership as of September 10, 2018:

Honorable Thomas McCaffery, Principal DASD for Health Affairs  
Vice Admiral R. C. Bono, Director, DHA  
Guy T. Kiyokowa, Deputy Director, DHA  
Captain Mark A. Kobelja, Director Walter Reed

### **PERJURY**

Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 U.S. C. § 1621 - Perjury generally (June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88–619, §1, Oct. 3, 1964, 78 Stat. 995 ; Pub. L. 94–550, §2, Oct. 18, 1976, 90 Stat. 2534 ; Pub. L. 103–322, title XXXIII, §330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

### **ALTERATION/DESTRUCTION OF RECORDS**

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.)

### **IMPROPERLY WITHHOLDING RECORDS**

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

### **SUBORDINATION OF PERJURY**

The term *subornation of perjury* further describes the circumstance wherein an [attorney at law](#) causes a client to lie under oath or allows another party to lie under oath

Title [18 U.S.C. § 1622](#) provides:

Whoever procures another to commit any perjury is guilty of subornation of perjury and shall be fined under this title or imprisoned not more than five years, or both.

### **LEGAL FRAMEWORK OF FOIA**

1. The definition of “records” includes:

“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made *or received* by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.” 44 U.S.C. § 3301 (emphasis supplied).

2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).

3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).

4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).

5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See also* 5 U.S.C. § 552(a)(6)(C).

7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).

10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, *Handbook for Agency Annual Freedom of Information Act Reports*, “Disposition of FOIA Requests,” (available at [http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department\\_of\\_justice\\_handbook\\_for\\_agency\\_annual\\_freedom\\_of\\_information\\_act\\_reports.pdf](http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf)) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:

“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert Hammond

Enclosures

1: Hammond email of May 3, 2018; RE: DOD Alternative Dispute Resolution (ADR) #2. Appeal of FOIA Request DHA 16-C. DHA FY 2015 Annual FOIA Report Supporting Records

2. Hammond March 29, 2018 Request for ADR; RE: DOD Alternative Dispute Resolution (ADR) #2. Appeal of FOIA Request DHA 16-C. DHA FY 2015 Annual FOIA Report Supporting Records

References: (a) The Freedom of Information Act (FOIA)

(b) The Privacy Act

(c) CFR 164.526

- (d) DoD 5700.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (e) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (f) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011: “Your Right to Federal Records” (see <http://publications.usa.gov/USAPubs.php?PubID=6080>)
- (g) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (h) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>
- (i) [FOIA Improvement Act of 2016 \(Public Law No. 114-185\)](#)