



U.S. Department
of Veterans Affairs

Veterans Health Administration
VHA FOIA Office (105HIG)
810 Vermont Avenue NW
Washington, DC 20420

In Reply Refer To: **FOIA Request 21-05085-F**

07/06/2021

Sean Dunagan
Judicial Watch, Inc.
400 Scott Avenue
Fort Collins, CO, 80521

Dear Sean Dunagan:

This letter is the initial agency decision to your April 14, 2021, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) Central Office FOIA Office requesting the following records:

1. Any and all reports regarding, concerning, or related to any adverse reaction to any COVID-19 vaccine administered at any Department of Veterans Affairs medical facility. This request includes, but is not limited to, any such reports transmitted to the Vaccine Adverse Events Reporting System (VAERS).
2. Any and all policies, regulations, or other guidance documents regarding, concerning, or related to the reporting and/or tracking of adverse reactions to COVID-19 vaccines.

(Date Range for Record Search: From 1/1/2021 To 4/19/2021).

Referral:

As indicated in their April 15, 2021 letter, the VA FOIA Service referred your request to VHA Central Office FOIA Office for further processing and direct response to you under the FOIA tracking number of 21-05085-F. As stating in our April 16, 2021 letter acknowledging receipt, VHA FOIA Central Office FOIA received your request on April 15, 2021 under the above mentioned FOIA tracking number.

Fee Waiver:

On your April 15, 2021 request you had requested a fee waiver for search and duplication fees. 38 C.F.R. § 1.561(b)(7) indicates that News Media request is not subject to search fees or review fees. News Media requests are subject to duplication fees after the first 100 pages. There are no duplication fees as this request is being sent electronically. Therefore, there are no fees assessed for this request. Please be advised, we reserve the right to assess fees as appropriate under the FOIA on any and all future FOIA requests.

Clarification:

Per my email to you on April 19, 2021; you were advised that clarification/further information was needed in order to be able to process your request. Specifically, a date range of when you are seeking the records was needed. On the same day, you responded to the request for clarification (date range needed) advising you are seeking the records January 01, 2021 to present (April 19, 2021).

Search:

Pharmacy Benefit Management (PBM) conducted a search for documents responsive to your request. The search was conducted by utilizing the search criteria of VA Adverse Drug Events Reporting System (VA-ADERS), COVID Vaccine guidance in Pharmacy Benefit Management databases and the VAERS database for the time period of January 01, 2021 to April 19, 2021.

Determination:

With respect to the portion of your request for: **“any such reports transmitted to the Vaccine Adverse Events Reporting System (VAERS),”** a search for this data has concluded. However, upon review, I have concluded the requested dataset must be withheld in its entirety under the disclosure protections of FOIA exemption 3, 5 U.S.C. § 552(b)(3) and FOIA exemption 6, 5 U.S.C.552(b)(6) as patient level data. Reports to the VA-ADERS are single entry/single patient reports.

FOIA Exemption 3, 5 U.S.C. § 552 (b)(3) specifically exempts from disclosure all information that another Federal statute protects from disclosure under FOIA. The applicable statute is 38 U.S.C. § 5701 which prohibits the disclosure of all files, reports, records, and other documents and papers that pertain to any claim filed under any laws administered by VA, as well as the names and home addresses of present or former members of the Armed Forces and their dependents (which includes VA beneficiaries and applicants for VA benefits). The requested patient-level data falls under the protections of 38 U.S.C. § 5701. Consequently, I am denying your request for this information under FOIA Exemption 3, 5 U.S.C. § 552 (b)(3).

Additionally, FOIA Exemption 6 permits VA to withhold a document or information within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. Stated another way, VA may withhold information under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government.

As patient-level statistical data, the individual to whom the data pertains has a significant privacy interest in its disclosure. We are unable to de-identify the patient-level statistical data you are requesting to a level that would prevent the re-identification of the individual to whom it pertains and to whose identity I am protecting under FOIA exemption 6.

Please note, Pharmacy Benefit Management (PBM) advised that VA adverse drug reporting to include all COVID-19 vaccine reactions are reported to the Food and Drug Administration (FDA) and the Center for Disease Control (CDC) via their FDA/CDC VAERS database. PBM advised that VAERS Data is available publicly on the Health and Human Services website at: [VAERS - Data \(hhs.gov\)](https://vaers.hhs.gov).

For the remaining portions of your request, specifically:

- “Any and all policies, regulations, or other guidance documents regarding, concerning, or related to the reporting and/or tracking of adverse reactions to COVID-19 vaccines” and
- “Any and all policies, regulations, or other guidance documents regarding, concerning, or related to the reporting and/or tracking of adverse reactions to COVID-19 vaccines.”

three (3) documents, totaling seventy-five pages, were determined to be responsive to your request.

My review of these documents revealed that they contained information that falls within the disclosure protections of FOIA Exemption 6, 5 U.S.C. § 552(b)(6). FOIA Exemption 6 permits VA to withhold a document or information contained within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. Stated another way, VA may withhold information under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government.

Specifically, the information I am withholding, as indicated on the enclosed documents, under FOIA Exemption 6 consists of: images of employee signature(s) and email address(es) as the individuals associated with this information have a personal privacy interest in it.

In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), we must determine if a privacy interest is involved, and determine if disclosure of the requested information would serve the public interest, and balance the personal privacy interest against the public interest. In evaluating the public interest in a given case, we must focus on the nature of the requested document and its relationship to the public interest generally. We must consider whether disclosure of the requested document, or portions thereof that have been withheld, would “open agency action to the light of public scrutiny” rather than focus on the particular purpose for which the document is being requested. See *Reporters Committee*, 489, U.S. at 772.

FOIA Exemption 6 "broadly exempts disclosure of all information that 'applies to a particular individual.'" *Schoenman v. FBI*, 575 F. Supp. 2d 136, 159 (D.D.C. 2008) (quoting *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602, 102 S. Ct. 1957 (1982)). As shown in *Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989); *Bibles v. Or. Natural Desert Ass'n*, 519 U.S. 355, 355-56, 117 S. Ct. 795, 136 L. Ed. 2d 825 (1997) "Identifying relevant public interest as extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to." Releasing email addresses does not "open the agency action to the light of public scrutiny" or add to the public's understanding of agency operations (*Reporter's Committee*, 489 U.S. at 772.) Instead, the release of this information can lead to unwanted contact.

Regarding the withholding of signature/images of signatures, employees also have a personal privacy interest in their signature. Release of this information, especially in a public forum, could lead to fraudulent use/copying of their signature. See *Wilson v. U.S. Air Force*, No. 08-324, 2009 WL 4782120, at *4 (E.D. Ky. Dec. 9, 2009) finding: "signatures, personal phone numbers, personal email addresses, and government email addresses were properly redacted."

The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the materials provided, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest in this case. The individuals associated with this information have a personal privacy interest in information that outweighs any public interest served by disclosure of their identities under FOIA. Consequently, I am denying your request for this information under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6).

If you disagree with my determination to withhold the information under FOIA Exemption 3 and 6, please be advised you may appeal to:

Office of the General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Email: ogcfoiaappeals@va.gov

If you should choose to file an appeal, your appeal must be postmarked or electronically transmitted no later than ninety (90) calendar days from the date of this

letter. Please include a copy of this letter with your written appeal and clearly state why you disagree with the determinations set forth in this response.

You may also seek assistance and/or dispute resolution services for any other aspect of your FOIA request, excluding the release determination, from VHA's FOIA Public Liaison and or Office of Government Information Services (OGIS) as provided below:

VHA FOIA Public Liaison:
Email Address: vhafioa2@va.gov
Phone Number: (877) 461-5038

Office of Government Information Services (OGIS)
Email: ogis@nara.gov
Fax: (202) 741-5769
Mailing address:
Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Thank you for your interest in VA. If you have any further questions, please feel free to contact me at (785) 230-8430 or via email at stacy.ekis@va.gov.

Sincerely,



Stacy Ekis
VHA FOIA Officer

Enclosure: