

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 1

Harris, Mark A (Tampa)

From: Villa, Laurie E.
Sent: Wednesday, March 10, 2021 1:01 PM
To: Harris, Mark A (Tampa)
Subject: RE: New FOIA request
Attachments: Book1 (version 1).xlsb

Attached

From: Harris, Mark A (Tampa) B6 >
Sent: Wednesday, March 10, 2021 12:57 PM
To: Villa, Laurie E. B6 >
Subject: RE: New FOIA request

Thank you Laurie. Please send the reports as well, I need to provide the documents

Mark Harris
Privacy Office

From: Villa, Laurie E. B6 >
Sent: Wednesday, March 10, 2021 12:44 PM
To: Harris, Mark A (Tampa) B6 >
Subject: RE: New FOIA request

Mark,

Here are the answers to this inquiry. Data sources: VSSC AccessCubes_Appointments and VSSC Consults Cube (I have saved the underlying reports if needed).

Let me know if there are any questions.

Thanks –
Laurie

From: Harris, Mark A (Tampa) B6 >
Sent: Monday, March 8, 2021 7:31 AM
To: Villa, Laurie E. B6
Subject: RE: New FOIA request

I am looking for wait time and Community Care data for the James Haley network of facilities.

Can you provide:

Total appointments scheduled from Jan. 1 2020 to January 31, 2021? 768,089
Appointments during that time, scheduled 20 days or under from the patients' "date of request?" 713,577
(92.9%)

Appointments during that time, scheduled 28 days or under from the patients' "date of request?" 733,618
(95.5%)

Number of patients offered Community Care during that time period. We do not have an accurate way to measure this. Based on wait times, 34,664 VA appointments completed during this period were eligible for CC, but the

completion of the VA appointment indicates that the patients did not choose CC. Notably, 31% (10,689) of these appointments contain specific comments in the record opting out of CC when offered.

Number of patients who chose Community Care during that time period. 1,705 Community Care consults were placed based on Wait Time eligibility, for 1,422 unique patients

Mark Harris
Privacy Office

From: Villa, Laurie E. B6 >
Sent: Monday, March 8, 2021 7:10 AM
To: Harris, Mark A (Tampa) B6 >
Subject: RE: New FOIA request

Good morning, Mark;

I do have a few clarifying questions about this request.

1. Assuming by the term "scheduled" he means "completed". As in, not a cancellation or a no-show. Let me know if this is not the case.
2. When he says "appointments scheduled from Jan. 1 2020....," does he mean *care* scheduled for that date, or *put into our system* on that date for a future date of care? It's a matter of "appointment date" vs "create date" of the appointment record in our system.
3. "...date of request": We have 2 measures for wait times, the first being the "create date" of the appointment record, the second being the "Patient Indicated Date", aka the patient's preferred date. Patients who are new to a particular clinic are usually measured by the "create date" metric because it's inferred that if they are being sent to a particular specialty by their PCP (or other), that they need the care from that specialist as soon as possible. Patients who have been established in a clinic are usually measured by the Patient Indicated Date. The reason for this is that sometimes they schedule follow up appointments that are months or even a year out into the future, which would artificially inflate wait times if measured by the "create date" of the appointment. Let me know which measure you think he is trying to ascertain.
4. Would he like the 20-day and 28-day wait times broken out by specialty? Reason being, Primary Care and Mental Health appointments are held to the 20-day standard, while Specialty care are held to the 28-day standard (per MISSION Act).

Thanks.

Kind Regards,
Laurie Villa
Laurie Villa, MHA
Program Specialist, Data Acquisition and Analytics Service (DAAS)



From: Dillon, Scott A. B6 >
Sent: Monday, March 1, 2021 9:55 AM
To: Harris, Mark A (Tampa) B6 >
Cc: Villa, Laurie E. B6 >; Park, Colleen M. B6 >
Subject: FW: New FOIA request

Laurie Villa has been assigned this request and she will reach out to you if she has any questions.

Thanks!

From: Harris, Mark A (Tampa) [REDACTED] >
Sent: Thursday, February 25, 2021 10:32 AM
To: Dillon, Scott A. [REDACTED] >
Subject: RE: New FOIA request

Thanks,

Requester added a couple of items on the attached request. Please use this one.

Mark Harris
Privacy Office

From: Dillon, Scott A. [REDACTED] >
Sent: Thursday, February 25, 2021 9:30 AM
To: Harris, Mark A (Tampa) [REDACTED] >; VHATAM DAAS Service <VHATAMDAASService@va.gov>
Subject: RE: New FOIA request

We have received your request and will review at our next team huddle.

From: Harris, Mark A (Tampa) [REDACTED] >
Sent: Thursday, February 25, 2021 9:29 AM
To: VHATAM DAAS Service <VHATAMDAASService@va.gov>
Subject: New FOIA request

I have a request for the following information:

Total appointments scheduled since Jan. 1 2020 to January 31, 2021?

Appointments during that time, schedule 20 days or under from the patients' "date of request?"

Appointments during that time, scheduled 28 days or under from the patients' "date of request?"

Please let me know if you have any questions. Also, please provide a response NLT March 11, 2021.

Mark Harris
Privacy Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 2

From: Powers, Pamela
Sent: Sat, 21 Mar 2020 16:48:09 +0000
To: (b)(6)@omb.eop.gov; (b)(6)
EOP/OMB
Cc: (b)(6) EOP/WHO;Cashour, Curtis;Tucker, Brooks;Miller, Katie R.
EOP/OVP
Subject: Fwd: Memorandum: Guidance on Access Standards in response to Coronavirus (COVID-19)

(b)(6)

FYI, we will be instituting a temporary strategic pause to the MISSION Act Standards

In light of the COVID-19 Pandemic, VA must take action to enhance Veteran safety. That is our first priority. Sending Veterans into an environment with uncertain capacity and protections, especially when the majority of the population served by VA is of the age known to be most at risk with COVID-19, appears contrary to the intent of the MISSION Act. In addition, many of our civilian partners are rejecting veteran appointments for the same reasons we have modified our internal system.

Referral to the community for emergent or urgent clinical needs will continue when necessary.

- For non-emergent care, VA has enhanced telehealth capabilities and will be caring for Veterans with routine needs as clinically appropriate to limit Veteran risk for COVID-19.
- Scheduling of non-emergent care with community providers will be reviewed on a case-by-case basis, regardless of wait time or drive time eligibility, until such time as VA determines that it will restart routine care and with exceptions for clinical reasons.
- Veterans with care currently scheduled in the community should continue with this care as clinically appropriate and if available.

From: Powers, Pamela <(b)(6)@va.gov>
Sent: Friday, March 20, 2020 7:32 PM
To: Matthews, Kameron <(b)(6)@va.gov>; (b)(6)
(b)(6)@va.gov
Cc: (b)(6)@va.gov; (b)(6)@va.gov
Subject: Re: Memorandum: Guidance on Access Standards in response to Coronavirus (COVID-19)

Do you have a few lines you can send me that I can include in our talk Force update? High level policy changes and why? Thanks.

Get [Outlook for iOS](#)

From: Matthews, Kameron <(b)(6)@va.gov>
Sent: Friday, March 20, 2020 6:24:39 PM

To: (b)(6) <(b)(6)@va.gov>; Powers, Pamela <(b)(6)@va.gov>
Cc: (b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>
Subject: Re: Memorandum: Guidance on Access Standards in response to Coronavirus (COVID-19)

Let me know if you need me to walk you through these at all.

Sent from Mobile

From: (b)(6) <(b)(6)@va.gov>
Sent: Friday, March 20, 2020 6:12:47 PM
To: Powers, Pamela <(b)(6)@va.gov>
Cc: (b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>;
Matthews, Kameron <(b)(6)@va.gov>
Subject: FW: Memorandum: Guidance on Access Standards in response to Coronavirus (COVID-19)

Hi Chief – Here is the memo the DUSHOM sent out with the relaxation of the access standards as well as the procedural guidance OCC sent out.

(b)(6) PMP
Executive Officer to the Deputy Under Secretary for Health
for Community Care

(b)(6) <(b)(6)@va.gov>

O – 202-382-(b)(6)

C – 202-420-(b)(6)

From: Office of the DUSHOM Communications <(b)(6)@va.gov>
Sent: Friday, March 20, 2020 1:04 PM
To: VHA VISN Directors <(b)(6)@va.gov>
Cc: Matthews, Kameron <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; VHA 10D
Action <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>;
(b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; (OGC) <(b)(6)@va.gov>; Kim, Paul D., MD
<(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; Mole, Larry A.
<(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>; (b)(6) <(b)(6)@va.gov>;
VHA 10A1 Action Team <(b)(6)@va.gov>; VHA 10NC Action <(b)(6)@va.gov>;
VHA CO 10N Support Staff <(b)(6)@va.gov>; VHA COVID Comms <(b)(6)@va.gov>;
VHA HOC Action <(b)(6)@va.gov>; VHA OEM EMCC Command Staff
<(b)(6)@va.gov>; VHA VISN Admin Reps <(b)(6)@va.gov>; VHA VISN Chief
Medical Officers <(b)(6)@mail.va.gov>; VHA VISN DNDs <(b)(6)@va.gov>;
VHA VISN QMOs <(b)(6)@va.gov>
Subject: Memorandum: Guidance on Access Standards in response to Coronavirus (COVID-19)

Good Afternoon Network Directors

Please find attached memorandum titled, “Guidance on Access Standards in response to Coronavirus (COVID-19).”

1. Veterans Health Administration (VHA) must take action to ensure the safety of our Veterans and staff. The purpose of this memorandum is to provide guidance on the Relief from Access Standards. VHA requested a temporary pause from the Mission Act access standards.

2. For further questions about guidance on Access Standards, please contact Dr. Kameron Matthews, Deputy Under Secretary for Health for Community Care at (b)(6)@va.gov or Dr. Susan Kirsh, National Clinical Director Practice Management at (b)(6)@va.gov .

Renee Oshinski

Attachment

**IN THE UNITED STATES DISTRICT COURT
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AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

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810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 3

**Department of
Veterans Affairs**

Memorandum

Date: 08/05/2016
From: Director, VHA FOIA Office
Subj: Release of FOIA Information
To: Network Directors (VISN 1-23)

1. On November 5, 2013, and subsequently on May 20, 2014, the Veterans Health Administration (VHA) Freedom of Information Act (FOIA) Office issued guidance on release of FOIA information. This memorandum supersedes the November 5, 2013 and the May 20, 2014 guidance.

2. As memorandum reminder, all VHA program and field office component FOIA Officers must notify the VHA FOIA Office upon receipt of Substantial Interest FOIA Requests.

3. The definition of a Substantial Interest FOIA Request is a request for information in which there has been or is likely to generate substantial public interest. This would include but is not limited to the following types of requests, regardless of the requester: (1) those related to a threat to the public health; (2) high profile local or national incidents or situations involving VA beneficiaries, employees or officials; and (3) incidents involving an alleged breach of the public trust (ex. waste, fraud or abuse).

4. Upon receipt of a FOIA request, the VHA program or field office component FOIA Officer will review and make a determination if the request meets the definition of a Substantial Interest FOIA Request. If the request meets the definition, the FOIA Officer must notify the VHA FOIA Office of the request following the designated procedures in Attachment A. This notification must be sent on the same business day as receipt of the FOIA request. Under no circumstance will a VHA program or field office component FOIA Officer release records responsive to a Substantial Interest FOIA Request without following the procedure set forth in Attachment A.

5. Effective immediately and until further notice, all VHA program and field office component FOIA Officers are also required to notify the VHA FOIA Office of any FOIA request submitted by a member of the news media or a member of Congress regardless of whether it meets the definition of Substantial Interest FOIA Request. The notification email must follow the format outlined in paragraph 4 of Attachment A. The notification must be submitted the same business day as receipt of the FOIA request. The VHA

FOIA Office will provide further direction to the FOIA Officer upon review of the request.

6. Under no circumstances should a VHA facility or program office deviate from the requirements outlined in this memorandum.

7. For additional information or any questions, please contact Timothy Graham, Director, VHA FOIA Office, at 215-823-4146 or via email at Timothy.Graham @va.gov.

(b) (6)

Timothy H. Graham

**IN THE UNITED STATES DISTRICT COURT
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1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

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810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 4

Harris, Mark A (Tampa)

From: Heim, Amber
Sent: Friday, February 26, 2021 9:28 AM
To: Harris, Mark A (Tampa)
Subject: SI FOIA Notification, [Facility Name, FOIAxpress Tracking Number]

Good morning Mark,

Yes, this would fall under Substantial Interest. Can you do me a favor? The SI Notification Letter, can you put that in an email? We don't need the letter, just the information in the body of an email and attach the incoming request. Once this is done, please send to VHA FOIA SI Review email.

Substantial Interest (SI) Notification Template:

To: VHA FOIA SI Review
Subject: SI FOIA Notification, [Facility Name, FOIAxpress Tracking Number]
Body of the email:
Attached to this email is a FOIA Request received by [VHA Facility Name] from [Requester name and affiliation] on [date request was received]. The details pertaining to this request are outlined below:
Who: [insert name of FOIA Requester]
Affiliation: [insert organization such as ABC News]
What: Requesting the following:
[Transcribe exactly what the requester is seeking]
Assigned VHA FOIA Officer: [insert your name]
Estimated Closure Date: [insert best estimate]
Attachment: Attach a scanned dated copy of the request

Please let me know if you have any questions. Thank you,

Amber Heim, CIPP/US, CIPP/G
VHA FOIA Officer | Information Access and Privacy Office
Office of Health Informatics (105HIG)
810 Vermont Avenue, N.W. | Washington, D.C. 20420
Tel. (319) 530-7694 | Fax (202) 273-9387

From: Harris, Mark A (Tampa) [REDACTED] >
Sent: Thursday, February 25, 2021 1:01 PM
To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Subject: Possible SI request

Please review the attached request to determine if you feel it is of Substantial Interest or not.

Mark Harris
Privacy Office

**IN THE UNITED STATES DISTRICT COURT
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AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
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Plaintiff,

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810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 5

Harris, Mark A (Tampa)

From: Ekis, Stacy
Sent: Thursday, March 18, 2021 9:21 AM
To: Harris, Mark A (Tampa)
Cc: VHA FOIA SI Review
Subject: RE: SI Review response 21-03824-F

Hi Mark,

Thank you for the email. We received the final review late last night, you may proceed with the release as appropriate.

Thank you,

Stacy Ekis
VHA FOIA Officer
Office of Health Informatics (105HIG)
Veterans Health Administration
Tel. 785-230-8430
Fax. 202-273-9387

From: Harris, Mark A (Tampa) **B6**
Sent: Wednesday, March 17, 2021 11:03 AM
To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Subject: RE: SI Review response

Just checking on status of this review.

Mark Harris
Privacy Office

From: Harris, Mark A (Tampa)
Sent: Thursday, March 11, 2021 9:27 AM
To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Subject: SI Review response

Body of the email:

Attached is the IAD for this request and the documents to be provided to the requester for your review as requested.

Who: Walt Buteau – Investigative Report

Affiliation: Channel 8 News WFLA (local)

What: Requesting the following:

Total appointments scheduled from Jan. 1 2020 to January 31, 2021?

Appointments during that time, scheduled 20 days or under from the patients' "date of request?"

Appointments during that time, scheduled 28 days or under from the patients' "date of request?"

Number of patients offered Community Care during that time period.

Number of patients who chose Community Care during that time period.

Assigned VHA FOIA Officer: Mark Harris

Estimated Closure Date: 25 March, 2021

Mark Harris
Privacy Office

Mark Harris
Privacy Office

From: Heim, Amber B6 >
Sent: Monday, March 1, 2021 7:35 AM
To: Harris, Mark A (Tampa) B6 >; VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Subject: RE: SI Review

Good morning Mark,

The VHA FOIA Office will require review of this response. Thank you,

Amber Heim, CIPP/US, CIPP/G
VHA FOIA Officer | Information Access and Privacy Office
Office of Health Informatics (105HIG)
810 Vermont Avenue, N.W. | Washington, D.C. 20420
Tel. (319) 530-7694 | Fax (202) 273-9387

From: Harris, Mark A (Tampa) B6 >
Sent: Monday, March 1, 2021 6:25 AM
To: VHA FOIA SI Review B6 >
Subject: SI Review

To: VHA FOIA SI Review

Subject: SI FOIA Notification: James A. Haley (Tampa), FOIAxpress Number 21-03824-F

Body of the email:

Attached to this email is a FOIA Request received by James A. Haley FOIA Office from Walt Buteau of Channel 8 News on 25 February, 2021. The details pertaining to this request are outlined below:

Who: Walt Buteau – Investigative Report

Affiliation: Channel 8 News WFLA (local)

What: Requesting the following:

Total appointments scheduled from Jan. 1 2020 to January 31, 2021?

Appointments during that time, scheduled 20 days or under from the patients' **"date of request?"**

Appointments during that time, scheduled 28 days or under from the patients' **"date of request?"**

Number of patients offered Community Care during that time period.

Number of patients who chose Community Care during that time period.

Assigned VHA FOIA Officer: Mark Harris

Estimated Closure Date: 25 March, 2021

Mark Harris
Privacy Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
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Plaintiff,

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U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 6

From: (b)(6)
To:
Cc: VHABAY Privacy Office
Subject: RE: FOIA 21-04325-F search for responsive records
Date: Monday, March 22, 2021 9:34:30 AM
Attachments: image001.png

Thank you.

From: (b)(6)@va.gov>
Sent: Monday, March 22, 2021 9:30 AM
To: (b)(6)@va.gov>
Cc: VHABAY Privacy Office <VHABAYPrivacyOffice@med.va.gov>
Subject: RE: FOIA 21-04325-F search for responsive records

Thank you (b)(6) we appreciate your assistance. Yes, this one will be routed for clearance through VHA FOIA Office.

From: (b)(6)@va.gov>
Sent: Monday, March 22, 2021 9:27 AM
To: (b)(6)@va.gov>
Cc: VHABAY Privacy Office <VHABAYPrivacyOffice@med.va.gov>
Subject: RE: FOIA 21-04325-F search for responsive records

Please see attached. I was advised by VISN PAO that this would be sent up to VACO for review. Not sure if this is your normal process but wanted to mention that to you in case it is not.

From: (b)(6)@va.gov>
Sent: Tuesday, March 16, 2021 4:06 PM
To: (b)(6)@va.gov>
Cc: VHABAY Privacy Office <VHABAYPrivacyOffice@med.va.gov>
Subject: FOIA 21-04325-F search for responsive records

Good afternoon, our office received and is processing the attached FOIA request from Mr. Walt Buteau for the following;

I am looking for wait time and Community Care data for the Bay Pines network of VA facilities.

Can you provide:

1. Total appointments scheduled from Jan. 1 2020 to January 31, 2021?
2. Appointments during that time, scheduled 20 days or under from the patients' "date of request?"
3. Appointments during that time, scheduled 28 days or under from the patients' "date of request?"
4. Number of patients offered Community Care during that time period.
5. Number of patients who chose Community Care during that time period.:

--If it is believed that search efforts will take more than 2 hours, please provide the estimated search time and the GS level of the employee that will conduct the search. Our office will proceed with providing

the requester a fee estimate. No further work is required until fees have been addressed between the requester and our office.

--If it is believed that search efforts will take 2 hours or less, we request a search be conducted for records responsive to the scope of this request. If further information is needed to conduct a thorough search, inform us of the search criteria and we will contact the requester for clarification. ***If you are aware of other individuals or program offices that may have responsive records, please advise.***

Please provide responsive records or a "no records" reply by **COB 3/23/21** with the name of the system of records search and search terms used. If this timeframe is unfeasible, provide the circumstances for the delay and the requester will be notified accordingly. Thank you.

Respectfully,

(b)(6) RHIA, CHPS

BPVAHCS Privacy/FOIA Officer

PRIVACY

BUILDS

TRUST

From: (b)(6)@va.gov>

Sent: Tuesday, March 16, 2021 3:50 PM

To: VHABAY Public Affairs <VHABAYPublicAffairs@va.gov>; (b)(6) (Bay Pines VA)

(b)(6)@va.gov>

Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>; (b)(6)@va.gov>;

(b)(6)@va.gov>

Subject: FW: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Good afternoon, our office received and is processing the attached substantial interest FOIA request from Mr. Buteau.

Respectfully,

(b)(6) RHIA, CHPS

BPVAHCS Privacy/FOIA Officer

PRIVACY

BUILDS

TRUST

From: (b)(6)@va.gov>

Sent: Tuesday, March 16, 2021 3:34 PM

To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>

Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>

Subject: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Attached to this email is a FOIA request received by the Bay Pines VA Healthcare System from Walt Buteau, News Channel 8 - WFLA on March 16, 2021. The details pertaining to this request are outlined below:

Who: Walt Buteau, Investigative Reporter

Affiliation: News Channel 8 - WFLA

What:

I am looking for wait time and Community Care data for the Bay Pines network of VA facilities.

Can you provide:

Total appointments scheduled from Jan. 1 2020 to January 31, 2021?

Appointments during that time, scheduled 20 days or under from the patients' "date of request?"

Appointments during that time, scheduled 28 days or under from the patients' "date of request?"

Number of patients offered Community Care during that time period.

Number of patients who chose Community Care during that time period.:

Assigned VHA FOIA Officer: (b)(6)

Estimated Closure Date: April 13, 2021

Attachment: Scanned dated copy of the request

Respectfully,

(b)(6) RHIA, CHPS

BPVAHCS Privacy/FOIA Officer

(b)(6)

vhabayprivacyoffice@va.gov

PRIVACY

BUILDS

TRUST

**IN THE UNITED STATES DISTRICT COURT
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AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
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Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 7

From: (b)(6)
To:
Cc: VHABAY FOIA Office; VHA FOIA SI Review
Subject: RE: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F
Date: Tuesday, March 16, 2021 4:55:29 PM
Attachments: image001.png

Received, thank you. Please send the draft IAD and redacted responsive documents when they are available.

Thank you,

(b)(6)
VHA FOIA Officer
Office of Health Informatics (105HIG)
Veterans Health Administration
(b)(6)

From: (b)(6)@va.gov>
Sent: Tuesday, March 16, 2021 2:34 PM
To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>
Subject: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Attached to this email is a FOIA request received by the Bay Pines VA Healthcare System from Walt Buteau, News Channel 8 - WFLA on March 16, 2021. The details pertaining to this request are outlined below:

Who: Walt Buteau, Investigative Reporter

Affiliation: News Channel 8 - WFLA

What:

I am looking for wait time and Community Care data for the Bay Pines network of VA facilities.

Can you provide:

Total appointments scheduled from Jan. 1 2020 to January 31, 2021?

Appointments during that time, scheduled 20 days or under from the patients' "date of request?"

Appointments during that time, scheduled 28 days or under from the patients' "date of request?"

Number of patients offered Community Care during that time period.

Number of patients who chose Community Care during that time period.:

Assigned VHA FOIA Officer: (b)(6)

Estimated Closure Date: April 13, 2021

Attachment: Scanned dated copy of the request

Respectfully,

(b)(6) RHIA, CHPS

BPVAHCS Privacy/FOIA Officer

(b)(6)

vhabayprivacyoffice@va.gov



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
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Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 8

From: (b)(6)
To: (b)(6)
Cc: VHABAY FOIA Office
Subject: RE: VHA FOIA Office Review: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F
Date: Friday, March 26, 2021 10:00:48 AM

Thank you

From: (b)(6)@va.gov>
Sent: Friday, March 26, 2021 9:57 AM
To: (b)(6) (Bay Pines VA) (b)(6)@va.gov>; (b)(6)@va.gov>; (b)(6)@va.gov>; (b)(6)@va.gov>; (b)(6)@va.gov>
Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>
Subject: FW: VHA FOIA Office Review: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Good morning,

Please be advised, the attached documents have been cleared for release to Mr. Buteau, Investigative Reporter for News Channel 8 – WFLA. As requested, I will include (b)(6) on the email to him to address any questions or concerns.
 Thank you.

(b)(6) CIPP/G
 Privacy/FOIA Officer

From: (b)(6)@va.gov>
Sent: Friday, March 26, 2021 9:25 AM
To: (b)(6)@va.gov>; VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>
Subject: RE: VHA FOIA Office Review: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Good morning (b)(6)

Your request was reviewed. Please proceed with release. Thank you,

(b)(6) CIPP/US, CIPP/G
 VHA FOIA Officer | Information Access and Privacy Office
 Office of Health Informatics (105HIG)
 810 Vermont Avenue, N.W. | Washington, D.C. 20420
 (b)(6)

From: (b)(6)@va.gov>
Sent: Thursday, March 25, 2021 2:07 PM
To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>
Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>

Subject: RE: VHA FOIA Office Review: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Good afternoon, will you please provide a status update on this one? Thank you, (b)(6)

From: (b)(6)

Sent: Monday, March 22, 2021 11:58 AM

To: VHA FOIA SI Review <VHAFOIASIReview2@va.gov>

Cc: VHABAY FOIA Office <VHABAYFOIAOffice@va.gov>

Subject: VHA FOIA Office Review: Substantial Interest FOIA Request Notification: Bay Pines VA Healthcare System 21-04325-F

Attached to this email is a FOIA request received by the Bay Pines VA Healthcare System from Walt Buteau, News Channel 8 - WFLA on March 16, 2021. The details pertaining to this request are outlined below:

Who: Walt Buteau, Investigative Reporter

Affiliation: News Channel 8 - WFLA

What:

I am looking for wait time and Community Care data for the Bay Pines network of VA facilities.

Can you provide:

Total appointments scheduled from Jan. 1 2020 to January 31, 2021?

Appointments during that time, scheduled 20 days or under from the patients' "date of request?"

Appointments during that time, scheduled 28 days or under from the patients' "date of request?"

Number of patients offered Community Care during that time period.

Number of patients who chose Community Care during that time period.

Assigned VHA FOIA Officer: (b)(6)

Number of days remaining: 16

Attachments:

- a. A copy of the initial FOIA Request;
- b. The proposed Initial Agency Decision (IAD) Letter;
- c. Copy of responsive records as intended for release to the requester; and
- d. Vaughn index.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 9

Ryan Mulvey

From: Kishketon, Gregorio E. <Gregorio.Kishketon2@va.gov>
Sent: Thursday, July 1, 2021 9:12 AM
To: Ryan Mulvey
Cc: Kishketon, Gregorio E.
Subject: RE: Update

Importance: High

Mr. Mulvey,

Yes I am handling 21-06268-F, I am having a meeting with all of the VISN officers and facilities officers, that are responsible for responsive records. We are holding off on the meeting and that came from my superiors. I will be going over both Cases and the email you sent me. I am hoping that by now you have received all of your acknowledgement letters, if not you will after today.

Regards,

Gregorio E. O. Kishketon

Gregorio E. O. Kishketon A.A.S., A.S., B.S., COR II

Office of the Assistant Deputy Undersecretary for Health and Health Informatics

VHA FOIA Officer|FOIA Litigations |Information Access and Privacy Office

Office of Health Informatics and Analytics

Health Information Governance (HIG) (105HIG)(365A)

810 Vermont Avenue, 3rd Floor, N.W. | Washington, D.C. 20420

Tel. (202)461-0854 | Fax (202) 273-9387/86

Cell. (202)352-6654

Gregorio.kishketon2@va.gov



U.S. Department of Veterans Affairs

Veterans Health Administration

This message may contain information that is confidential and/or protected by Public Law 104-191, 45 CFR Parts 160 and 164 and 5 USC §552a, 38 CFR Sections 1.575-1.584. If it has been sent to you in error, please reply immediately to advise the sender of the error and then destroy this message, any copies of this message and any printout of this message. If you are not the intended recipient of the message, any unauthorized dissemination, distribution or copying of the material in this message, and any attachments to the message is strictly forbidden.

From: Ryan Mulvey <rmulvey@afphq.org>
Sent: Friday, June 25, 2021 1:17 PM
To: Kishketon, Gregorio E. <Gregorio.Kishketon2@va.gov>
Cc: Sarich, Michael B. <Michael.Sarich@va.gov>
Subject: [EXTERNAL] RE: Meeting

Greg,

Thank you for your email and for speaking on the phone earlier today.

I am available on Monday in the afternoon between 1-5pm. On Tuesday, anytime after 12:30 should work.

With respect to the FOIA requests that AFPF submitted to the VA, you requested the following information:

- The five-item request, dated 5/27, was sent to VACO.
 - I received an acknowledgement from VHA for this request on 5/28 from Jane DeSpiegelaere (on behalf of Mike). The letter indicated the request had been assigned tracking number **21-06306-F**.
 - I also understand that you've assigned the request tracking number **21-06268-F**, at least according to the (second?) acknowledgment letter sent this morning.
 - Could you please (1) confirm that the second tracking number is correct and (2) clarify what the first tracking number from VHA refers to?
- The ten-item request, dated 5/28, was sent to fourteen VA centers. As I mentioned on the phone, these requests are distinct from the one sent to VACO/central VHA.
 - Phoenix VA Health Care System (Phoenix) – **No acknowledgement**
 - Northern Arizona VA Health Care System (Prescott) – **No acknowledgement**
 - Southern Arizona VA Health Care System (Tucson) – **21-06346-F**
 - C.W. Bill Young VA Medical Center (Bay Pines) – **21-06280-F**
 - Miami VA Health Care System (Miami) – **21-06276-F**
 - North Florida/South Georgia Veterans Health System (Gainesville) – **21-06322-F**
 - Orlando VA Medical Center (Orlando) – **No acknowledgement**
 - James A. Haley Veterans Hospital (Tampa) – **21-06343-F**
 - West Palm Beach VA Medical Center (West Palm Beach) – **No acknowledgement**
 - VA Montana Health Care System (Fort Harrison) – **No acknowledgement**
 - Beckley VA Medical Center (Beckley) – **No acknowledgement**
 - Hershel Williams VA Medical Center (Huntington) – **No acknowledgement**
 - Louis A. Johnson VA Medical Center (Clarksburg) – **21-06281-F**
 - Martinsburg VA Medical Center (Martinsburg) – **No acknowledgement**

Finally, to memorialize our conversation, you indicated on the phone that AFPF's FOIA requests had been flagged as having "Substantial Interest," and that processing would be centralized/overseen by the main VHA FOIA office. I just wanted to make sure that I understood that correctly.

Thank you and have a good weekend.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Kishketon, Gregorio E. <Gregorio.Kishketon2@va.gov>
Sent: Friday, June 25, 2021 9:23 AM
To: Ryan Mulvey <rmulvey@afphq.org>
Cc: Kishketon, Gregorio E. <Gregorio.Kishketon2@va.gov>; Sarich, Michael B. <Michael.Sarich@va.gov>

Subject: Re: Meeting

Importance: High

Mr. Mulvey,

Good-morning, at the request of my Director- Mr. Michael Sarich, we are requesting a meeting with you on Monday or Tuesday of next week. I did not hear back from you yesterday, could get back to me with a day and time, that works for you.

Thank you,

Gregorio E. O. Kishketon

Gregorio E. O. Kishketon A.A.S., A.S., B.S., COR II

Office of the Assistant Deputy Undersecretary for Health and Health Informatics

VHA FOIA Officer|FOIA Litigations |Information Access and Privacy Office

Office of Health Informatics and Analytics

Health Information Governance (HIG) (105HIG)(365A)

810 Vermont Avenue, 3rd Floor, N.W. | Washington, D.C. 20420

Tel. (202)461-0854 | Fax (202) 273-9387/86

Cell. (202)352-6654

Gregorio.kishketon2@va.gov

VA



U.S. Department of Veterans Affairs

Veterans Health Administration

This message may contain information that is confidential and/or protected by Public Law 104-191, 45 CFR Parts 160 and 164 and 5 USC §552a, 38 CFR Sections 1.575-1.584. If it has been sent to you in error, please reply immediately to advise the sender of the error and then destroy this message, any copies of this message and any printout of this message. If you are not the intended recipient of the message, any unauthorized dissemination, distribution or copying of the material in this message, and any attachments to the message is strictly forbidden.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 10



May 27, 2021

VIA ELECTRONIC MAIL

U.S. Department of Veterans Affairs
810 Vermont Avenue NW
(005R1C) VACO
Washington, DC 20420
E-mail: vacofoiaservice@va.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.¹ AFPF is examining how the Department of Veterans Affairs (“VA”) is implementing the VA MISSION Act of 2018 and the Veterans Community Care Program (“VCCP”). To that end, AFPF seeks to understand how changes introduced by the VCCP’s designated access standards are reflected in current appointment and wait-time data at various medical centers across the country.² Transparency into such data is vital to ensure optimal delivery of health care to veterans.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPF hereby requests access to the following categories of records.³ Unless otherwise noted, the time period for all items of this request is January 1, 2020 to the present.⁴

1. Records reflecting aggregate totals and percentages for pending and completed appointment wait times and related data, as previously disclosed in summary form at the Veterans Health Administration (“VHA”) “Patient Access Data” portal, <https://www.va.gov/health/access-audit.asp>.⁵ The time period for this item is March 1, 2021 to the present. Please provide

¹ See AMS. FOR PROSPERITY FOUND., www.americansforprosperityfoundation.org (last visited May 27, 2021).

² See 38 C.F.R. § 17.4040; see also Veterans Community Care Program, 84 Fed. Reg. 26,278, 26,310 (June 5, 2019).

³ For purposes of this request, the term “record” means any medium of information storage in the form and format maintained by the agency at the time of the request. If any portion of a “record,” so defined, is responsive to AFPF’s request, then the agency should process and disclose the record in its entirety. If the agency considers a medium of information storage to contain multiple records that it believes can be segmented on the basis of the subject-matter or scope of AFPF’s request, AFPF explicitly seeks access to those separate “records” as well. They should not be treated as “non-responsive.”

⁴ For the purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

⁵ For purposes of this request, the term “appointment” should be understood according to the definition provided at 38 C.F.R. § 17.4005. Further, for all items of the request, AFPF does not intend to seek disclosure of Personally Identifying Information or other sensitive health information that can be directly associated with an individual patient.

VA FOIA Request

May 27, 2021

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records that reflect the requested data on a *monthly basis* (e.g., total number of scheduled appointments for each month of the requested time period) or per reporting period. If month-by-month or period-by-period data is unavailable, please provide the requested data in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.

2. All records concerning the VHA's decision to eliminate proactive disclosure of patient access in nation-wide summary form, as previously available at the "Patient Access Data" portal, <https://www.va.gov/health/access-audit.asp>. The time period for this item of the request is January 1, 2021 to the present.
3. All guidance documents, legal opinions, administrative orders, directives, or policy statements issued by the VA concerning any of the following topics:
 - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on administration of the VCCP.
4. All records reflecting communications between or amongst any of the following entities, offices, or components concerning any of the topics listed in Item Three: (a) VHA, (b) VA Office of the Secretary, (c) VA Office of General Counsel, (d) White House Office of Management and Budget, (e) White House Domestic Policy Council, or (f) Office of the White House Counsel.
5. All records concerning congressional requests or inquiries pertaining to any of the topics listed in Item Three. This item includes, but is not limited to, records originating with any Member or entity of Congress, formal agency responses thereto, and internal VA communications regarding the congressional request or inquiry. Searches should be conducted, at a minimum, within the VHA, VA Office of the Secretary, VA Office of General Counsel, and VA Office of Public and Intergovernmental Affairs.

Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and relevant regulations provide that the VA shall furnish requested records without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public

AFPF reserves the right, however, to challenge any determination by the VA that responsive records are exempt from disclosure on grounds that they contain such patient information.

VA FOIA Request

May 27, 2021

Page 3

understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”⁶

In this case, the requested records will unquestionably shed light on the “operations or activities of the government,” namely, the VA’s implementation of the MISSION Act, its collection and maintenance of reliable wait-time data, and its compliance with the VCCP designated access standards. There is strong public interest in ensuring that veterans receive optimal services, and the requested records have the potential to significantly contribute to public understanding of the VA’s operations. There have long been scandals surrounding wait times at the VA’s medical centers.⁷ A 2019 Government Accountability Office (“GAO”) report, for example, revealed the VA had a long way to go in improving the reliability of its appointment and data reporting.⁸ More recently, a VA Office of Inspector General report highlighted that the agency continues to mismanage the scheduling of medical appointment.⁹ Various sources have raised concerns about the disturbing lack of transparency into current wait-time metrics and referrals under the VCCP, especially during the ongoing COVID-19 pandemic.¹⁰ And the GAO continues to recommend that the VA not only improve its mechanisms for measuring and reporting on wait-time data, but that it address troubling ambiguity in its interpretation of the VCCP designated access standards.¹¹ The records sought by AFPF will not only shed light on available wait-time data, but should provide important context for understanding how the VA is implementing the VCCP. This will contribute to public understanding of the issues already being discussed in the press and within the federal government. Finally, disclosure of the requested records is likely to contribute significantly to public understanding because, to date, the records have not been made publicly available or the underlying data is no longer proactively disclosed by the VA.¹²

AFPF intends to educate the public with the results of this request. It has the intent and ability to make those results available to a reasonably broad public audience through various media. Its staff has significant experience and relevant expertise; AFPF professionals will analyze responsive records, use their editorial skills to turn raw materials into distinct works, and share the resulting

⁶ 5 U.S.C. § 552(a)(4)(A)(iii); see 38 C.F.R. § 1.561(n)(2); *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015).

⁷ *Timeline: The story behind the VA scandal*, USA TODAY (May 21, 2014), <https://bit.ly/3hLvRUD>; Scott Bronstein & Drew Griffin, *A fatal wait: Veterans languish and die on a VA hospital’s secret list*, CNN (Apr. 23, 2014), <https://cnn.it/3u5XDhg>.

⁸ Nikki Wentling, *Five years after Phoenix scandal, VA still doesn’t keep reliable wait-time data*, STARS & STRIPES (July 24, 2019), <https://bit.ly/2SeloGp>; see generally U.S. GOV’T ACCOUNTABILITY OFFICE: VETERANS HEALTH CARE: OPPORTUNITIES REMAIN TO IMPROVE APPOINTMENT SCHEDULING WITHIN VA AND THROUGH COMMUNITY CARE, No. GAO-19-687T (July 2019), available at <https://bit.ly/3f7eMTA>.

⁹ DEP’T OF VETERANS AFFAIRS OFFICE OF INSPECTOR GEN., REVIEW OF VETERANS HEALTH ADMINISTRATION’S EMERGENCY DEPARTMENT AND URGENT CARE CENTER OPERATIONS DURING THE COVID-19 PANDEMIC, No. 20-01106-40 (Dec. 2020), available at <https://bit.ly/2QF1sfl>.

¹⁰ Darin Selnick, *Veterans shouldn’t have to wait for quality care*, THE HILL (Apr. 7, 2021), <https://bit.ly/3ypkZBH>; *By the Numbers: The Impact of Canceled Appointments at the VA*, CONCERNED VETERANS FOR AM. (Mar. 31, 2021), <https://bit.ly/3va844D>; Darin Selnick, *A new VA wait-time scandal is brewing and we have no way to know how big it is*, USA TODAY (Mar. 7, 2021), <https://bit.ly/344uk3U>; Nicole Ogrysko, *Without clear standards, veterans are in the dark on community care wait times*, FED. NEWS NETWORK (Oct. 1, 2020), <https://bit.ly/3v7Ydwj>.

¹¹ Letter from Gene L. Dodaro, Comptroller Gen., Gov’t Accountability Office, to Denis McDonough, Sec’y of Veterans Affairs (May 10, 2021), available at <https://bit.ly/342welC>.

¹² The VA has explained that, “[a]s of March 25, 2021, VA is no longer updating” patient access data in an aggregated online format. See *Patient Access Data*, Dep’t of Veterans Affairs, <https://bit.ly/33YAbYJ> (last visited May 20, 2021).

VA FOIA Request

May 27, 2021

Page 4

analysis with the public. AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, and it has no commercial interest in making this request.

Request to Be Classified as a Representative of the News Media

In addition to a public interest fee waiver, AFPF requests that it be classified as a “representative of the news media” for fee purposes.¹³ As the D.C. Circuit has explained, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.¹⁴ AFPF satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although not required, AFPF gathers the news it publishes from a variety of sources. It does not merely make raw information available to the public, but distributes distinct work product, including press releases, blog posts, reports, and other informative materials.¹⁵ These distinct works are distributed to the public through various online outlets, such as websites, Twitter, and Facebook. The statutory definition of a “representative of the news media” contemplates that organizations such as AFPF, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”¹⁶

Record Preservation Requirement

AFPF requests that the disclosure officer responsible for the processing of this request immediately issue a preservation hold on all records responsive, or potentially responsive, to this request so as to prevent their disposal until such time as the VA issues a final determination and AFPF has exhausted all administrative remedies, including appeal. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁷

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain number of responsive records can be produced more readily, AFPF requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

¹³ 38 C.F.R. § 1.561(b)(7).

¹⁴ See *Cause of Action*, 799 F.3d at 1121.

¹⁵ See, e.g., *Government documents reveal Export-Import Bank fails to protect taxpayers ... again*, AMS. FOR PROSPERITY (Oct. 30, 2020), available at <https://bit.ly/3hD09Jn>; *NEW REPORT: Public Records Show Kansas Government Arbitrarily Chose Which Businesses Could Stay Open Amid Pandemic*, AMS. FOR PROSPERITY (July 21, 2020), available at <https://bit.ly/3tOM5Pn>; AMS. FOR PROSPERITY FOUND., *GONE IN AN INSTANT: HOW INSTANT MESSAGING THREATENS THE FREEDOM OF INFORMATION ACT* (Mar. 16, 2020), available at <https://bit.ly/2zQOEKI>.

¹⁶ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁷ See 38 C.F.R. § 1.560; 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

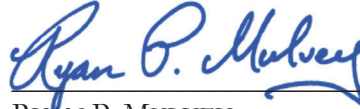
VA FOIA Request

May 27, 2021

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If you have any questions about this request, please contact me by telephone at (571) 444-2841 or by e-mail at rmulvey@afphq.org. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, reading "Ryan P. Mulvey", is positioned above a horizontal line.

RYAN P. MULVEY
POLICY COUNSEL

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 11



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 21-06306-F**

05/28/2021

Ryan Mulvey
Americans For Prosperity Foundation
1310 N. Courthouse Rd
Arlington, VA 22201
rmulvey@afphq.org

Dear Ryan Mulvey:

This letter acknowledges receipt of your 05/28/2021 request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) Central Office FOIA Office requesting the following records:

Request scheduling records that were completed and cancelled as well as records showing community care under the VCCP, who elected and declined community care under VCCP. (Date Range for Record Search: From 1/1/2020 To 5/28/2021).

Your FOIA request was received in my office on 05/28/2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, the VHA FOIA Office processes requests using multi-track processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records. We have placed your request in the simple processing category. Please refer to the attached infographic for more details regarding VHA's processing of FOIA requests.

VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the VHA Central Office on and before the date your request is sent out for record search.

Your request has been assigned to Elizabeth Despiegelaere of my staff. If you have any questions about your request, you may contact Elizabeth Despiegelaere at (928) 445-4860 ext.

4802. We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,

Jane DeSpiegelaere
Privacy/FOIA Officer
Michael B. Sarich, JD

THE FREEDOM OF INFORMATION ACT



The Freedom of Information Act, known as the FOIA, is a law that gives any person the right to request federal agency records. The FOIA also requires federal agencies to make certain types of information available to the public without the need to submit a request.

WHY?

"The basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." - *NI RB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)

WHO?

Anyone can make a FOIA request, regardless of citizenship, including:

- Individuals
- Partnerships
- Corporations
- Organizations



WHAT?

Any agency records can be requested, including:

- Paper documents
- Emails
- Audio and video recordings
- Other electronic records



WHEN?

Generally, an agency has 20 working days to respond to a request, unless there are unusual circumstances. VHA FOIA processes requests made on a first-in, first-out basis.

HOW?

Step 1: A request is submitted to VHA for records VHA FOIA vhafoia2@va.gov or by mail (VHA FOIA Office 10A7, Dept. of VA, 810 Vermont Ave., N.W., Washington, D.C. 20240) or by Fax (202-273-9387)

Step 2: VHA FOIA staff identifies the appropriate VA FOIA Office to process the request. Referrals/Transfers are completed to other VA FOIA entities, if applicable

Step 3: VHA FOIA staff may request clarification from the requester, if the request does not reasonably describe the records sought.

Step 4: Fees are assessed based on the requester category, if applicable

Step 5: If VHA maintains the records, we submit a search for responsive records to the appropriate VHA program office(s).

Step 6: Records are reviewed and redactions applied (if applicable), for disclosure

Step 7: VHA FOIA staff responds to requester and releases the disclosable information

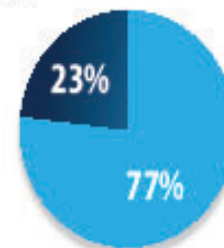
FOIA at the Department of Veterans Affairs (VA)

VA has a decentralized FOIA processing structure meaning that each administration (VHA, VBA, NCA) and numerous management offices have their own designated FOIA Officer to process records they create or maintain. This creates a challenge in determining what FOIA requesters are asking for and knowing where to route the request for successful processing. Identifying what information or agency records are being requested and a time frame is key. Help us help you by knowing what records you are requesting.

VA FOIA Offices: www.oprm.va.gov/foia/foia_contacts.aspx

VHA FOIA by the Numbers

Over 10 years, VHA has processed 77% of the VA's FOIA workload



"A democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull certain secrets around decisions which can be revealed without injury to the public interest."

President Lyndon B. Johnson on signing the FOIA, July 4, 1966

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 12



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 21-06268-F**

06/25/2021

Ryan Mulvey
Americans For Prosperity Foundation
1310 N. Courthouse Rd
Arlington, VA, 22201
rmulvey@afphq.org

Dear Ryan Mulvey:

This letter acknowledges receipt of your 05/28/2021 request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) Central Office FOIA Office requesting the following records:

Records reflecting aggregate totals and percentages for pending and completed appointment wait times and related data, as previously disclosed in summary form at the Veterans Health

Administration ("VHA") "Patient Access Data" portal,
[https://www.va.gov/health/accessaudit.](https://www.va.gov/health/accessaudit.asp)

asp.5 The time period for this item is March 1, 2021 to the present .records that reflect the requested data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period) or per reporting period. If month-by-month or period-by-period data is unavailable, please provide the requested data

in the form otherwise maintained by the agency. If responsive records are kept in a CSV or

Excel format, please produce the records in their native format.

2. All records concerning the VHA's decision to eliminate proactive disclosure of patient access in nation-wide summary form, as previously available at the "Patient Access Data"

portal, <https://www.va.gov/health/access-audit.asp>. The time period for this item of the request is January 1, 2021 to the present.

3. All guidance documents, legal opinions, administrative orders, directives, or policy statements issued by the VA concerning any of the following topics:

- a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
- b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
- c. Limiting or dissuading veterans from using community care; and

- d. The impact of the COVID-19 pandemic on administration of the VCCP.
4. All records reflecting communications between or amongst any of the following entities, offices, or components concerning any of the topics listed in Item Three: (a) VHA, (b) VA Office of the Secretary, (c) VA Office of General Counsel, (d) White House Office of Management and Budget, (e) White House Domestic Policy Council, or (f) Office of the White House Counsel.
5. All records concerning congressional requests or inquiries pertaining to any of the topics listed in Item Three. This item includes, but is not limited to, records originating with any Member or entity of Congress, formal agency responses thereto, and internal VA communications regarding the congressional request or inquiry. Searches should be conducted, at a minimum, within the VHA, VA Office of the Secretary, VA Office of General Counsel, and VA Office of Public and Intergovernmental Affairs.

Your FOIA request was received in my office on 06/03/2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, the VHA FOIA Central Office FOIA Office processes requests using the multitrack processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records. We have placed your request in the complex processing category. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact the FOIA Officer assigned to this request. The FOIA Officers' contact information is listed below.

VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the VHA Central Office on and before the date your request is sent out for record search. Please refer to the attached infographic for more details regarding VHA's processing of FOIA requests.

Your request has been assigned to Gregorio Kishketon of my staff. If you have any questions about your request, you may contact Gregorio Kishketon at . We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,

A handwritten signature in black ink that reads "Michael B. Sarich". The signature is written in a cursive style with a large, stylized "M" and "S".

Michael B. Sarich, JD
Director, VHA FOIA Office

THE FREEDOM OF INFORMATION ACT



The Freedom of Information Act, known as the FOIA, is a law that gives any person the right to request federal agency records. The FOIA also requires federal agencies to make certain types of information available to the public without the need to submit a request.

WHY?

"The basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." - *NI RB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)

WHO?

Anyone can make a FOIA request, regardless of citizenship, including:

- Individuals
- Partnerships
- Corporations
- Organizations



WHAT?

Any agency records can be requested, including:

- Paper documents
- Emails
- Audio and video recordings
- Other electronic records



WHEN?

Generally, an agency has 20 working days to respond to a request, unless there are unusual circumstances. VHA FOIA processes requests made on a first-in-first-out basis.

HOW?

Step 1: A request is submitted to VHA for records VHA FOIA vhafoia2@va.gov or by mail (VHA FOIA Office 10A7, Dept. of VA, 810 Vermont Ave., N.W., Washington, D.C. 20240) or by fax (202-273-9387)

Step 2: VHA FOIA staff identifies the appropriate VA FOIA Office to process the request. Referrals/Transfers are completed to other VA FOIA entities, if applicable

Step 3: VHA FOIA staff may request clarification from the requester, if the request does not reasonably describe the records sought.

Step 4: Fees are assessed based on the requester category, if applicable

Step 5: If VHA maintains the records, we submit a search for responsive records to the appropriate VHA program office(s).

Step 6: Records are reviewed and redactions applied (if applicable), for disclosure

Step 7: VHA FOIA staff responds to requester and releases the disclosable information

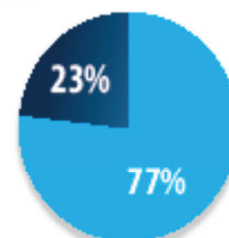
FOIA at the Department of Veterans Affairs (VA)

VA has a decentralized FOIA processing structure meaning that each administration (VHA, VBA, NCA) and numerous management offices have their own designated FOIA Officer to process records they create or maintain. This creates a challenge in determining what FOIA requesters are asking for and knowing where to route the request for successful processing. Identifying what information or agency records are being requested and a time frame is key. Help us help you by knowing what records you are requesting.

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Over 10 years, VHA has processed 77% of the VA's FOIA workload



"A democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull certain secrets away from decisions which can be revealed without injury to the public interest."

President Lyndon B. Johnson on signing the FOIA, July 4, 1966

**IN THE UNITED STATES DISTRICT COURT
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1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 13



May 28, 2021

VIA ELECTRONIC MAIL

U.S. Department of Veterans Affairs
Phoenix VA Health Care System
650 East Indian School Road
Phoenix, AZ 85012
E-mail: vhaphofoia@va.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.¹ AFPF is examining how the Department of Veterans Affairs (“VA”) is implementing the VA MISSION Act of 2018 and the Veterans Community Care Program (“VCCP”). To that end, AFPF seeks to understand how changes introduced by the VCCP’s designated access standards are reflected in current appointment and wait-time data at various medical centers across the country.² Transparency into such data is vital to ensure optimal delivery of health care to veterans.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPF hereby requests access to the following categories of records concerning operation of the Phoenix VA Health Care System.³ The time period for all items of this request is January 1, 2020 to the present.⁴ Please note: to the extent an item of this request seeks data (*i.e.*, Items 1–7 and 9), please provide records reflecting that data on a *monthly basis* (*e.g.*, total number of scheduled appointments for each month of the requested time period). If month-by-month data is unavailable, please provide the requested data in the aggregate or in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.

¹ See AMS. FOR PROSPERITY FOUND., www.americansforprosperityfoundation.org (last visited May 28, 2021).

² See 38 C.F.R. § 17.4040; *see also* Veterans Community Care Program, 84 Fed. Reg. 26,278, 26,310 (June 5, 2019).

³ For purposes of this request, the term “record” means any medium of information storage in the form and format maintained by the agency at the time of the request. If any portion of a “record,” so defined, is responsive to AFPF’s request, then the agency should process and disclose the record in its entirety. If the agency considers a medium of information storage to contain multiple records that it believes can be segmented on the basis of the subject-matter or scope of AFPF’s request, AFPF explicitly seeks access to those separate “records” as well. They should not be treated as “non-responsive.”

⁴ For the purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

Phoenix VA FOIA Request

May 28, 2021

Page 2

1. Records reflecting the total number of appointments scheduled.⁵
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
 - a. Eligible for community care under the VCCP;
 - b. Who have elected to receive community care under the VCCP; and

⁵ For purposes of this request, the term "appointment" should be understood according to the definition provided at 38 C.F.R. § 17.4005. Further, for all items of the request, AFPF does not intend to seek disclosure of Personally Identifying Information or other sensitive health information that can be directly associated with an individual patient. AFPF reserves the right, however, to challenge any determination by the VA that responsive records are exempt from disclosure on grounds that they contain such patient information.

Phoenix VA FOIA Request

May 28, 2021

Page 3

- c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the Phoenix VA Health Care System and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
- a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (*e.g.*, discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on administration of the VCCP.

Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and relevant regulations provide that the VA shall furnish requested records without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."⁶

In this case, the requested records will unquestionably shed light on the "operations or activities of the government," namely, the VA's implementation of the MISSION Act, its collection and maintenance of reliable wait-time data, and its compliance with the VCCP designated access standards. There is strong public interest in ensuring that veterans receive optimal services, and the requested records have the potential to significantly contribute to public understanding of the VA's operations. There have long been scandals surrounding wait times at the VA's medical centers.⁷ A 2019 Government Accountability Office ("GAO") report, for example, revealed the VA had a long way to go in improving the reliability of its appointment and data reporting.⁸ More recently, a VA Office of Inspector General report highlighted that the agency continues to mismanage the

⁶ 5 U.S.C. § 552(a)(4)(A)(iii); *see* 38 C.F.R. § 1.561(n)(2); *Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015).

⁷ *Timeline: The story behind the VA scandal*, USA TODAY (May 21, 2014), <https://bit.ly/3hLvRUD>; Scott Bronstein & Drew Griffin, *A fatal wait: Veterans languish and die on a VA hospital's secret list*, CNN (Apr. 23, 2014), <https://cnn.it/3u5XDhg>.

⁸ Nikki Wentling, *Five years after Phoenix scandal, VA still doesn't keep reliable wait-time data*, STARS & STRIPES (July 24, 2019), <https://bit.ly/2SeloGp>; *see generally* U.S. GOV'T ACCOUNTABILITY OFFICE: VETERANS HEALTH CARE: OPPORTUNITIES REMAIN TO IMPROVE APPOINTMENT SCHEDULING WITHIN VA AND THROUGH COMMUNITY CARE, NO. GAO-19-687T (July 2019), *available at* <https://bit.ly/3f7eMTA>.

Phoenix VA FOIA Request

May 28, 2021

Page 4

scheduling of medical appointment.⁹ Various sources have raised concerns about the disturbing lack of transparency into current wait-time metrics and referrals under the VCCP, especially during the ongoing COVID-19 pandemic.¹⁰ And the GAO continues to recommend that the VA not only improve its mechanisms for measuring and reporting on wait-time data, but that it address troubling ambiguity in its interpretation of the VCCP designated access standards.¹¹ The records sought by AFPF will not only shed light on available wait-time data, but should provide important context for understanding how the VA is implementing the VCCP. This will contribute to public understanding of the issues already being discussed in the press and within the federal government. Finally, disclosure of the requested records is likely to contribute significantly to public understanding because, to date, the records have not been made publicly available or the underlying data is no longer proactively disclosed by the VA.¹²

AFPF intends to educate the public with the results of this request. It has the intent and ability to make those results available to a reasonably broad public audience through various media. Its staff has significant experience and relevant expertise; AFPF professionals will analyze responsive records, use their editorial skills to turn raw materials into distinct works, and share the resulting analysis with the public. AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, and it has no commercial interest in making this request.

Request to Be Classified as a Representative of the News Media

In addition to a public interest fee waiver, AFPF requests that it be classified as a “representative of the news media” for fee purposes.¹³ As the D.C. Circuit has explained, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.¹⁴ AFPF satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although not required, AFPF gathers the news it publishes from a variety of sources. It does not merely make raw information available to the public, but distributes distinct work product, including press releases, blog posts, reports, and other informative materials.¹⁵ These distinct works are distributed to the public through various online outlets, such as

⁹ DEP’T OF VETERANS AFFAIRS OFFICE OF INSPECTOR GEN., REVIEW OF VETERANS HEALTH ADMINISTRATION’S EMERGENCY DEPARTMENT AND URGENT CARE CENTER OPERATIONS DURING THE COVID-19 PANDEMIC, NO. 20-01106-40 (Dec. 2020), available at <https://bit.ly/2QF1sfl>.

¹⁰ Darin Selnick, *Veterans shouldn’t have to wait for quality care*, THE HILL (Apr. 7, 2021), <https://bit.ly/3ypkZBH>; *By the Numbers: The Impact of Canceled Appointments at the VA*, CONCERNED VETERANS FOR AM. (Mar. 31, 2021), <https://bit.ly/3va844D>; Darin Selnick, *A new VA wait-time scandal is brewing and we have no way to know how big it is*, USA TODAY (Mar. 7, 2021), <https://bit.ly/344uk3U>; Nicole Ogrysko, *Without clear standards, veterans are in the dark on community care wait times*, FED. NEWS NETWORK (Oct. 1, 2020), <https://bit.ly/3v7Ydwj>.

¹¹ Letter from Gene L. Dodaro, Comptroller Gen., Gov’t Accountability Office, to Denis McDonough, Sec’y of Veterans Affairs (May 10, 2021), available at <https://bit.ly/342welC>.

¹² The VA has explained that, “[a]s of March 25, 2021, VA is no longer updating” patient access data in an aggregated online format. See *Patient Access Data*, Dep’t of Veterans Affairs, <https://bit.ly/33YAbYJ> (last visited May 20, 2021).

¹³ 38 C.F.R. § 1.561(b)(7).

¹⁴ See *Cause of Action*, 799 F.3d at 1121.

¹⁵ See, e.g., *Government documents reveal Export-Import Bank fails to protect taxpayers ... again*, AMS. FOR PROSPERITY (Oct. 30, 2020), available at <https://bit.ly/3hD09Jn>; *NEW REPORT: Public Records Show Kansas Government Arbitrarily Chose Which Businesses Could Stay Open Amid Pandemic*, AMS. FOR PROSPERITY (July 21, 2020), available at <https://bit.ly/3tOM5Pn>; AMS.

Phoenix VA FOIA Request

May 28, 2021

Page 5

websites, Twitter, and Facebook. The statutory definition of a “representative of the news media” contemplates that organizations such as AFPF, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”¹⁶

Record Preservation Requirement

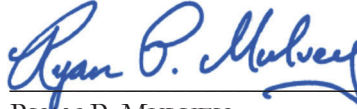
AFPF requests that the disclosure officer responsible for the processing of this request immediately issue a preservation hold on all records responsive, or potentially responsive, to this request so as to prevent their disposal until such time as the VA issues a final determination and AFPF has exhausted all administrative remedies, including appeal. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁷

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain number of responsive records can be produced more readily, AFPF requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (571) 444-2841 or by e-mail at rmulvey@afphq.org. Thank you for your attention to this matter.

Sincerely,



RYAN P. MULVEY
POLICY COUNSEL

FOR PROSPERITY FOUND., GONE IN AN INSTANT: HOW INSTANT MESSAGING THREATENS THE FREEDOM OF INFORMATION ACT (Mar. 16, 2020), *available at* <https://bit.ly/2zQOEKI>.

¹⁶ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁷ See 38 C.F.R. § 1.560; 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 14

Ryan Mulvey

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:09 AM
To: vhaphofoia@va.gov
Subject: Freedom of Information Act Request
Attachments: 2021.05.28 AFPP FOIA Request - Phoenix VA.pdf

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

Admitted to the practice of law in New York State, the District of Columbia, and the Commonwealth of Virginia.



Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 15

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, July 14, 2021 12:08 PM
To: 'vhaphofoia@va.gov'
Subject: RE: Freedom of Information Act Request

Dear FOIA Officer:

I have not yet received an acknowledgment of the FOIA request submitted by Americans for Prosperity Foundation ("AFPF") on May 28, 2021. Please provide me with a tracking number, an estimated date of completion, and an update on the processing of the request and the disposition of AFPF's fee-related requests. Thank you for your assistance.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:09 AM
To: vhaphofoia@va.gov
Subject: Freedom of Information Act Request

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

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AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 16

Ryan Mulvey

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:11 AM
To: '649FOIA@va.gov'
Subject: Freedom of Information Act Request
Attachments: 2021.05.28 AFPP FOIA Request - Prescott VA.pdf

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

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FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 17

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, June 2, 2021 5:52 PM
To: Despiegelaere, Elizabeth J.
Subject: RE: Freedom of Information Act Request

Ms Despiegelaere:

Thank you for your email. The information available at the website link you provided is not as detailed as the information sought by AFPP's FOIA request. Moreover, there are items of the AFPP request do not seek wait-time data. I would appreciate if you could please process the request as worded.

Thank you!

Kind regards,

Ryan

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Despiegelaere, Elizabeth J. <Elizabeth.Despiegelaere@va.gov>
Sent: Friday, May 28, 2021 2:09 PM
To: Ryan Mulvey <rmulvey@afphq.org>
Subject: RE: Freedom of Information Act Request

Good Afternoon Mr. Mulvey

I am the Privacy FOIA officer for Northern Arizona VHA and I received your request today. I have left you a voice mail as well regarding your request. I wanted to point out a national website that you can obtain information regarding every VA nationally on scheduling and wait times. The website is <https://www.accesstocare.va.gov/PWT/SearchWaitTimes>. You are able to search by new patients and return patients. Please let me know if this will suffice for your FOIA request or is there more specific information you would like from our facility,

Than you in advance
Jane Despiegelaere, RHIA
Privacy/FOIA Officer
Northern AZ VHA Healthcare
Prescott, AZ 86313

From: Ryan Mulvey <rmulvey@afphq.org>
Sent: Friday, May 28, 2021 7:11 AM
To: 649FOIA <649FOIA@va.gov>
Subject: [EXTERNAL] Freedom of Information Act Request

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

Admitted to the practice of law in New York State, the District of Columbia, and the Commonwealth of Virginia.



Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 18

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, July 14, 2021 12:16 PM
To: '649FOIA@va.gov'
Cc: 'Despiegelaere, Elizabeth J.'
Subject: RE: Freedom of Information Act Request

Dear FOIA Officer:

I have not yet received an acknowledgment of the FOIA request submitted by Americans for Prosperity Foundation ("AFPF") on May 28, 2021. Please provide me with a tracking number, an estimated date of completion, and an update on the processing of the request and the disposition of AFPF's fee-related requests.

Please note that I contacted the responsible government information specialist on June 2, 2021, to clarify the scope of this request. I was not provided a tracking number at that time.

Thank you for your assistance.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:11 AM
To: 649FOIA@va.gov
Subject: Freedom of Information Act Request

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 19



Southern Arizona VA Health Care System
3601 S. 6th Avenue Tucson, Arizona 85723

RE: 21-06346-F

06/08/2021

Ryan Mulvey
Americans For Prosperity Foundation
1310 N. Courthouse Rd
Arlington, VA 22201
rmulvey@afphq.org

Dear Ryan Mulvey:

This letter acknowledges receipt of your 05/28/2021 request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the VHA 678 - Southern Arizona VA Health Care System requesting the following records:

“Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPF hereby requests access to the following categories of records concerning operation of the Southern Arizona VA Health Care System.³ The time period for all items of this request is January 1, 2020 to the present.⁴ Please note: to the extent an item of this request seeks data (*i.e.*, Items 1–7 and 9), please provide records reflecting that data on a *monthly basis* (*e.g.*, total number of scheduled appointments for each month of the requested time period). If month-by-month data is unavailable, please provide the requested data in the aggregate or in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.

1. Records reflecting the total number of appointments scheduled.⁵
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient’s date of request; and
 - b. Over 20 days of a patient’s date of request.
5. Records reflecting the total number and percentage of appointments for specialty care

scheduled:

- a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
 - a. Eligible for community care under the VCCP;
 - b. Who have elected to receive community care under the VCCP; and
 - c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the Southern Arizona VA Health Care System and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
 - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (*e.g.*, discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on administration of the VCCP."

Your FOIA request was received by the VHA 678 - Southern Arizona VA Health Care System FOIA Office on 06/01/2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, the VA processes requests using the multitrack processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

I have placed your request in complex processing category. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact me. My contact information is listed below.

To VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, the VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to the VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the VHA 678 - Southern Arizona VA Health Care System on and before the date your request is sent out for record search.

If you have any questions about your request, you may contact me at (520) 792-1450 Ext.14347 or via email at TucsonVAMCFOIA@va.gov. We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Stephens".

Michelle Stephens
Privacy/FOIA Officer
Southern Arizona VA
Health Care System

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 20

Ryan Mulvey

From: Stephens, Michelle E. (TUC) <Michelle.Stephens1@va.gov>
Sent: Tuesday, June 8, 2021 1:04 PM
To: Ryan Mulvey
Cc: Tucson VAMC FOIA
Subject: FOIA - Request: 21-06346-F
Attachments: 21-06346-F_Acknowledgement Letter.pdf; Date Stamped_AFPF FOIA Request - Tucson VA.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Ryan Mulvey:

Thank you for your interest in VA. Attached is your acknowledgement letter for your FOIA request and your date stamped request. This request is classified with you being a representative of the News Media. We estimate the completion of this request on or before 6/29/2021. The tracking number for your FOIA request is 21-06346-F. Please be sure to reference this number in correspondence pertaining to your request. Should you have further questions or concerns, please feel free to contact me by email or telephone.

Respectfully,

.....
Michelle Stephens
Privacy/FOIA Officer
Southern Arizona VA Health Care System
3601 S 6th Avenue Tucson, Arizona 85723
P: (520) 792-1450 ext. 14347
F:(520) 629-4688
FOIA Email: TucsonVAMCFOIA@va.gov



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 21



DEPARTMENT OF VETERANS AFFAIRS
Bay Pines VA Healthcare System
Post Office Box 5005
Bay Pines, Florida 33744

June 1, 2021

Mr. Ryan Mulvey
Americans For Prosperity Foundation
rmulvey@afphq.org

In Reply Refer To:
516/001PV
FOIA 21-06280-F

Dear Mr. Mulvey:

Thank you for your inquiry to the Bay Pines VA Healthcare System (BPVAHCS). This letter acknowledges receipt of your May 28, 2021 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to BPVAHCS FOIA Office for the following Community Care Program records concerning operations of C.W. Bill Young VA Medical Center (CWYVAMC) for the time period of January 1, 2020 to present:

1. Records reflecting the total number appointments scheduled from January 1, 2020 to May 28, 2021.
2. Records reflecting the total number appointments completed from January 1, 2020 to May 28, 2021.
3. Records reflecting the total number appointments cancelled from January 1, 2020 to May 28, 2021.
 - a. By a VA Healthcare provider
 - b. By a patient
4. Records reflecting the total number and percentage of appointments scheduled from January 1, 2020 to May 28, 2021.
 - a. Primary Care
 - i. Within 20 days of a patient's date of request
 - ii. Over 20 days of a patient's date of request
 - b. Mental Health care
 - i. Within 20 days of a patient's date of request
 - ii. Over 20 days of a patient's date of request
 - c. Non-institutional extended care services
 - i. Within 20 days of a patient's date of request
 - ii. Over 20 days of a patient's date of request

Page 2.

Mr. Ryan Mulvey

5. Records reflecting the total number and percentage of appointments for specialty care scheduled from January 1, 2020 to May 28, 2021.
 - a. Within 28 days of a patient's date of request
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA Healthcare provider, agree to schedule an appointment outside the 20/28 day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20/28 days period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20/28 day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
 - a. Eligible for community care under the VCCP
 - b. Who have elected to receive community care under the VCCP
 - c. Who have declined to receive community care under the VCCP
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the CWBYVAMC and the Veterans Health Administration, VA office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
 - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date")
 - b. The process by which VA obtains consent to schedule an appointment outside the 20/28 period established by the VCCP designated access standards.
 - c. Limiting or dissuading Veterans from using community care.
 - d. The impact of the COVID-19 pandemic on admission of the VCCP.

Your request was received in my office on May 28, 2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include this tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, VA processes requests using multi-track processing which

Page 3.

Mr. Ryan Mulvey

allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records. I have placed your request in the complex processing category. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact me. My contact information is listed below.

We will search for records responsive to your FOIA request that were gathered or created by the BPVAHCS on or before the date your request is sent out for record search.

If you have any further questions about your request, you may contact me at (727) 398-6661, extension 21216 or via email at VHABAYFOIAOffice@va.gov.

Sincerely,

Wendy Hillman
Privacy/FOIA Officer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 22



Miami VA Medical Center
1201 NW 16th St. Miami, FL, 33125

RE: 21-06276-F

05/28/2021

Ryan Mulvey
Americans For Prosperity Foundation
rmulvey@afphq.org

Dear Ryan Mulvey:

This letter acknowledges receipt of your 05/28/2021 request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the VHA 546 - Miami VA Healthcare System requesting the following records:

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment

outside the 20-/28-day period established by the VCCP designated access standards.

8. All records reflecting the policies and practices for documenting whether a patient agrees or

refuses to schedule an appointment outside the 20-/28-day period established by the VCCP

designated access standards. This item would include, for example, any blank, standardized

form(s) for memorializing such patient consent.

9. Records reflecting the total number and percentage of patients:

a. Eligible for community care under the VCCP;

b. Who have elected to receive community care under the VCCP; and

c. Who have declined to receive community care under the VCCP.

10. All guidance documents, legal opinions, administrative orders, directives, policy statements,

or communications exchanged between the Miami VA Health Care System and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:

a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");

b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;

c. Limiting or dissuading veterans from using community care; and

d. The impact of the COVID-19 pandemic on administration of the VCCP.

Your FOIA request was received by the VHA 546 - Miami VA Healthcare System FOIA Office on 05/28/2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, the VA processes requests using the multitrack processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

I have placed your request in complex processing category. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact me. My contact information is listed below.


To VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, the VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to the VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the VHA 546 - Miami VA Healthcare System on and before the date your request is sent out for record search.

If you have any questions about your request, you may contact me at (305) 757-7000 ext. 16098 or via email at 546FOIA@va.gov. We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,



Ricardo Velez Gonzalez
FOIA Officer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 23



DEPARTMENT OF VETERANS AFFAIRS
North Florida/South Georgia Veterans Health System
Malcom Randall VA Medical Center
1601 SW Archer Road
Gainesville, FL 32608-1135

June 1, 2021

Ryan Mulvey
Americans For Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201

Dear Mr. Mulvey:

This letter acknowledges receipt of your May 28, 2021 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the North Florida/South Georgia Veterans Health System (NF/SGVHS).

AFPF hereby requests access to the following categories of records concerning operation of the North Florida/South Georgia Veterans Health System. The time period for all items of this request is January 1, 2020 to the present. Please note: to the extent an item of this request seeks data (*i.e.*, Items 1–7 and 9), please provide records reflecting that data on a *monthly basis* (*e.g.*, total number of scheduled appointments for each month of the requested time period). If month-by-month data is unavailable, please provide the requested data in the aggregate or in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.

7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
 - a. Eligible for community care under the VCCP;
 - b. Who have elected to receive community care under the VCCP; and
 - Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the North Florida/South Georgia Veterans Health System and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
 - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (*e.g.*, discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on administration of the VCCP.

Your FOIA request was received in my office on June 1, 2021. Your FOIA request was assigned the tracking number 21-06322-F. Please include this tracking number in all future communications concerning this FOIA request. In addition, we have placed your request in the complex processing track. VA uses two processing tracks in addressing a request for records: simple and complex. This classification is based on the amount of work and/or time required to process a request. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact me. My contact information is listed below.

We will search for records responsive to your FOIA request that were gathered or created by the NF/SGVHS on or before May 28, 2021. When we have completed our search for records responsive to your FOIA request, we will send you another letter telling you the results of that search and our next step in processing your request.



DEPARTMENT OF VETERANS AFFAIRS
North Florida/South Georgia Veterans Health System
Malcom Randall VA Medical Center
1601 SW Archer Road
Gainesville, FL 32608-1135

Should you have any further questions concerning this matter, using reference 21-06322-F, you may contact Michael Bond, Assistant FOIA Officer, (352) 548-7059 or Patrick Cheek, FOIA Officer, (352) 548-7174.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Cheek".

Patrick Cheek
FOIA Officer
Director's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 24

Ryan Mulvey

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:28 AM
To: 'orlandovafoia@va.gov'
Subject: Freedom of Information Act Request
Attachments: 2021.05.28 AFPP FOIA Request - Orlando VA.pdf

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

Admitted to the practice of law in New York State, the District of Columbia, and the Commonwealth of Virginia.



Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 25

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, July 14, 2021 12:23 PM
To: 'orlandovafoia@va.gov'
Subject: RE: Freedom of Information Act Request

Dear FOIA Officer:

I have not yet received an acknowledgment of the FOIA request submitted by Americans for Prosperity Foundation ("AFPF") on May 28, 2021. Please provide me with a tracking number, an estimated date of completion, and an update on the processing of the request and the disposition of AFPF's fee-related requests. Thank you for your assistance.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:28 AM
To: orlandovafoia@va.gov
Subject: Freedom of Information Act Request

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

Admitted to the practice of law in New York State, the District of Columbia, and the Commonwealth of Virginia.



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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 26



**Department of Veterans Affairs
James A. Haley Veterans' Hospital and Clinics
13000 Bruce B. Downs Boulevard
Tampa, FL 33612**

RE: 21-06343-F

06/01/2021

Ryan Mulvey
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
RMulvey@afphq.org

Dear Mr. Mulvey:

This letter acknowledges receipt of your 05/28/2021 request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the VHA 673-James A. Haley Veterans' Hospital requesting the following records:

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment

outside the 20-/28-day period established by the VCCP designated access standards.

8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.

9. Records reflecting the total number and percentage of patients:

- a. Eligible for community care under the VCCP;
- b. Who have elected to receive community care under the VCCP; and
- c. Who have declined to receive community care under the VCCP.

10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the James A. Haley Veterans Hospital and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:

- a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (*e.g.*, discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
- b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
- c. Limiting or dissuading veterans from using community care; and
- d. The impact of the COVID-19 pandemic on administration of the VCCP.

I have requested the above information from our DAAS office.

Your FOIA request was received by the VHA 673-James A. Haley Veterans' Hospital FOIA Office on 06/01/2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, the VA processes requests using the multitrack processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

I have placed your request in complex processing category.

To VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, the VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to the VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the VHA 673 - James A. Haley Veterans' Hospital on and before the date your request is sent out for record search.

If you have any questions about your request, you may contact me at (813) 972-2000, ext. 4831 or via email at VHATAMFOIAOFFICE@va.gov. We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,

Mark Harris

Mark Harris
VHA 673-James A. Haley Veterans'
Hospital FOIA Officer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 27

Ryan Mulvey

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:29 AM
To: 'vhawpbfoiareq@va.gov'
Subject: Freedom of Information Act Request
Attachments: 2021.05.28 AFPP FOIA Request - West Palm Beach VA.pdf

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 28

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, July 14, 2021 12:25 PM
To: vhawpbfoiareq@va.gov
Subject: RE: Freedom of Information Act Request

Dear FOIA Officer:

I have not yet received an acknowledgment of the FOIA request submitted by Americans for Prosperity Foundation ("AFPF") on May 28, 2021. Please provide me with a tracking number, an estimated date of completion, and an update on the processing of the request and the disposition of AFPF's fee-related requests. Thank you for your assistance.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:29 AM
To: 'vhawpbfoiareq@va.gov' <vhawpbfoiareq@va.gov>
Subject: Freedom of Information Act Request

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 29



Rocky Mountain Network 19 | Montana VA Health Care System (436)

3687 Veterans Drive | P.O. Box 1500

Fort Harrison, MT 59636-1500

1.877.468.8387 | 406.442.6410

www.montana.va.gov

June 28, 2021

FOIA Request No.: **21-06305-F**

Ryan Mulvey
Americans for Prosperity Foundation
1310 N. Courthouse Rd
Arlington, VA 22201

Dear Ryan Mulvey:

Please be advised that a delay has occurred in processing your Freedom of Information Act request. You will not receive a response by June 28, 2021 for your request:

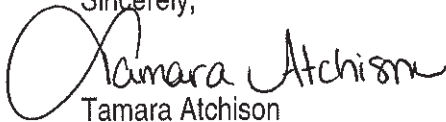
1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside of the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside of the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside of the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
 - a. Eligible for community care under the VCCP;

- b. Who have elected to receive community care under the VCCP; and
 - c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the VA Montana Health Care System and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
- a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," and "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on the administration of the VCCP. (Date Range for Record Search: From 1/1/2020 To 5/28/2021)

I anticipate providing you with a response within the next ten (10) business days.

If you have any questions about your request, you may contact me at 406-447-7670 or by email at FHMFOIA@va.gov.

Sincerely,


Tamara Atchison
FOIA Officer-TCF Intern

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 30

Ryan Mulvey

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:17 AM
To: vhabecfoia@va.gov
Subject: Freedom of Information Act Request
Attachments: 2021.05.28 AFPP FOIA Request - Beckley VA.pdf

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 31

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, July 14, 2021 12:34 PM
To: vhabecfoia@va.gov
Subject: RE: Freedom of Information Act Request

Dear FOIA Officer:

I have not yet received an acknowledgment of the FOIA request submitted by Americans for Prosperity Foundation ("AFPF") on May 28, 2021. Please provide me with a tracking number, an estimated date of completion, and an update on the processing of the request and the disposition of AFPF's fee-related requests. Thank you for your assistance.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:17 AM
To: vhabecfoia@va.gov
Subject: Freedom of Information Act Request

Dear FOIA Officer:

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Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
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Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 32

Ryan Mulvey

From: Postmaster@va.gov
To: vhabecfoia@va.gov
Sent: Wednesday, July 14, 2021 12:34 PM
Subject: Undeliverable: [EXTERNAL] RE: Freedom of Information Act Request

Delivery has failed to these recipients or groups:

vhabecfoia@va.gov

Your message is too large to send. To send it, make the message smaller, for example, by removing attachments.

Diagnostic information for administrators:

Generating server: VAPNNMSG624.vha.med.va.gov

vhabecfoia@va.gov

Remote Server returned '554 5.2.3 < #5.2.3 smtp;550 5.2.3 RESOLVER.RST.RecipSizeLimit; message too large for this recipient>'

Original message headers:

Received: from VAPNNMSG623.vha.med.va.gov (10.229.33.133) by
 VAPNNMSG624.vha.med.va.gov (10.229.33.134) with Microsoft SMTP Server
 (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_128_GCM_SHA256) id
 15.1.2242.10; Wed, 14 Jul 2021 11:33:41 -0500
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 X-VA-IPSS: gwnma02-mta.tic.va.gov
 X-VA-IPSS-MID: 93755314
 Received: from gwnmta-ipv6-vip.tic.va.gov (HELO ipss1-host172.isle1.is.centurylink.net)
 ([10.237.10.30])
 by gwnma02-mta.va.gov with ESMTP; 14 Jul 2021 16:33:41 +0000
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 by ipss1-host172.isle1.is.centurylink.net (Postfix) with ESMTP id 9A5EA180000309
 for <vhabecfoia@va.gov>; Wed, 14 Jul 2021 16:33:40 +0000 (UTC)
 Authentication-Results: gwema05-mta.va.gov; spf=Pass smtp.mailfrom=rmulvey@afphq.org;
 spf=Pass smtp.helo=postmaster@NAM12-MW2-obe.outbound.protection.outlook.com
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 rmulvey@afphq.org designates 40.107.244.60 as permitted
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 envelope-from="rmulvey@afphq.org";
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client-ip=40.107.244.60; receiver=gwema05-mta.va.gov;
envelope-from="rmulvey@afphq.org";
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X-MID: 23589252
Subject: [EXTERNAL] RE: Freedom of Information Act Request
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X-Amp-Original-Verdict: FILE UNKNOWN
X-Amp-File-Uploaded: False
X-VA-EXT: gwema05-mta.tic.va.gov
X-VA-EXT-MID: 23589252
Received: from mail-mw2nam12on2060.outbound.protection.outlook.com (HELO NAM12-MW2-
obe.outbound.protection.outlook.com) ([40.107.244.60])
by gwema05-mta.va.gov with ESMTP/TLS/ECDHE-RSA-AES256-GCM-SHA384; 14 Jul 2021 16:33:38
+0000
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From: Ryan Mulvey <rmulvey@afphq.org>
 To: "vhabecfoia@va.gov" <vhabecfoia@va.gov>
 Thread-Topic: Freedom of Information Act Request
 Thread-Index: AddTzBSpjx+GkuruSGyJwM/KvP5sag1AeEcw
 Date: Wed, 14 Jul 2021 16:33:35 +0000

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 33

Ryan Mulvey

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:19 AM
To: vhahuntingtonfoia@va.gov
Subject: Freedom of Information Act Request
Attachments: 2021.05.28 AFPP FOIA Request - Huntington VA.pdf

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

Admitted to the practice of law in New York State, the District of Columbia, and the Commonwealth of Virginia.



Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 34

Ryan Mulvey

From: Ryan Mulvey
Sent: Wednesday, July 14, 2021 12:46 PM
To: vhahuntingtonfoia@va.gov
Subject: RE: Freedom of Information Act Request

Dear FOIA Officer:

I have not yet received an acknowledgment of the FOIA request submitted by Americans for Prosperity Foundation ("AFPF") on May 28, 2021. Please provide me with a tracking number, an estimated date of completion, and an update on the processing of the request and the disposition of AFPF's fee-related requests. Thank you for your assistance.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

From: Ryan Mulvey
Sent: Friday, May 28, 2021 10:19 AM
To: vhahuntingtonfoia@va.gov
Subject: Freedom of Information Act Request

Dear FOIA Officer:

Please find attached a FOIA request from Americans for Prosperity Foundation. I appreciate your assistance in processing the request, and I look forward to receiving an acknowledgment and determination.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Policy Counsel
Americans for Prosperity Foundation
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(o) (571) 444-2841 / (c) (571) 775-0126
RMulvey@afphq.org

Admitted to the practice of law in New York State, the District of Columbia, and the Commonwealth of Virginia.



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notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 35



DEPARTMENT OF VETERANS AFFAIRS
Louis A. Johnson VA Medical Center
1 Medical Center Drive
Clarksburg, WV 26301-4199

In Reply Refer To: 540/001C/FOIA

May 28, 2021

FOIA Request: 21-06281-F

Ryan Mulvey
rmulvey@afphq.org

Dear Mr. Mulvey:

This letter acknowledges receipt of your May 28, 2021 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the Louis A. Johnson VA Medical Center for a copy of:

Records pertaining to the Veteran Community Care Program (VCCP) from January 1, 2020 to present to include:

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:

- a. Eligible for community care under the VCCP;
 - b. Who have elected to receive community care under the VCCP; and
 - c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the Louis A. Johnson VA Medical Center and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
- a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on administration of the VCCP.

Your FOIA request was received in my office on May 28, 2021. Your FOIA request was assigned the tracking number listed at the top of this letter. Please include this tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, VA processes requests using multi-track processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

I have placed your request in complex processing category. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact me. My contact information is listed below.

Please be advised that your request for Fee Waiver has been granted, therefore, no fees will be assessed for the processing of this request.

VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, the VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to the VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the Louis A. Johnson VA Medical Center on or before the date your request is sent out for record search.

If you have any questions about your request, you may contact me by telephone at 304-623-3461 extension 3292. We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,

A handwritten signature in cursive script that reads "Tonya Facemire".

Tonya Facemire
FOIA Officer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION
1310 North Courthouse Road, Suite 700
Arlington, VA 22201,

Plaintiff,

v.

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, N.W.
Washington, D.C. 20420,

Defendant.

COMPLAINT EXHIBIT 36



U.S. Department of Veterans Affairs
Veterans Health Administration
Martinsburg VA Medical Center

510 Butler Avenue
Martinsburg, WV 25405
www.martinsburg.va.gov

In Reply Refer To: V05-613-001-PO
Request: 21-06331-F

June 1, 2021

Bryan Mulvey
Americans for Prosperity Foundation
1310 N. Courthouse Road
Arlington, VA 22201
RMMulvey@afphq.org

Dear Bryan Mulvey:

This letter acknowledges receipt of your 05/28/2021 request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the VHA 613 – Martinsburg VA Medical Center requesting the following records:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), AFPF hereby requests access to the following categories of records concerning operation of the Martinsburg VA Medical Center. The time period for all items of this request is January 1, 2020 to the present (May 28, 2021).

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
 - a. By a VA health care provider; and
 - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
 - a. Within 20 days of a patient's date of request; and
 - b. Over 20 days of a patient's date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
 - a. Within 28 days of a patient's date of request; and
 - b. Over 28 days of a patient's date of request.

Acknowledgement Letter
June 1, 2021
FOIA Request: 21-06331-F

6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
 - a. Eligible for community care under the VCCP;
 - b. Who have elected to receive community care under the VCCP; and
 - c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the Martinsburg VA Medical Center and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
 - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
 - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
 - c. Limiting or dissuading veterans from using community care; and
 - d. The impact of the COVID-19 pandemic on administration of the VCCP.

Request for a Public Interest Fee Waiver: ACPF requests a waiver of any and all applicable fees.

Request to Be Classified as a Representative of the News Media: In addition to a public interest fee waiver, ACPF requests that it be classified as a "representative of the news media" for fee purposes. **(Date Range for Record Search: From 1/1/2020 To 5/28/2021).**

Acknowledgement Letter
June 1, 2021
FOIA Request: 21-06331-F

Your FOIA request was received by the VHA 613 - Martinsburg VA Medical Center FOIA Office on 06/01/2021. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. As expressly authorized under the FOIA, the VA processes requests using the multitrack processing which allows us to process requests on a first-in, first-out basis in either a simple or complex processing track. This allows us to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

I have placed your request in complex processing category. The complex processing track is the slower of the two tracks. If you wish to discuss modifying the scope of your request in order to qualify for the faster processing track, please feel free to contact me. My contact information is listed below.

To VHA exists to provide health care to our nations Veterans. Our mission is to: "Honor America's Veterans by providing exceptional health care that improves their health and well-being." To accomplish this, VHA is the largest integrated health care system in the United States, providing care at 1,255 health care facilities, including 170 VA Medical Centers and 1,074 outpatient sites of care of varying complexity (VHA outpatient clinics) to over 9 million Veterans enrolled in the VA health care program. Today, the VHA is leading the fight against the Novel Coronavirus (COVID 19) at these centers and at research sites nationwide.

While we will work to process your request in accordance with 5 U.S.C. 552, delivery delays can be expected due to the VHA's mission related to the global pandemic of COVID-19. During this time, we will work with you to scope your request so that we can get you exactly what you need as quickly as possible. You can also track updates related to COVID 19 and the VHA at: <https://www.publichealth.va.gov/n-coronavirus/index.asp>.

We will search for records responsive to your FOIA request that were gathered or created by the VHA 613 - Martinsburg VA Medical Center on and before the date your request is sent out for record search.

If you have any questions about your request, you may contact me at 304-263-0811 Ext. 3024 or Martinsburgvamc.FOIAmailbox@va.gov. We ask for your patience as we sail through uncharted waters and look forward to working with you on your request.

Sincerely,

Alice F. Walton
Privacy/FOIA Officer
VHA 613-Martinsburg VA Medical Center
Office of the Associate Medical Center Director