

Department of  
Veterans Affairs

# Memorandum

**Date:** October 6, 2017  
**From:** Office of Accountability and Whistleblower Protection Investigation Team  
**Subj:** Executive Summary: Philadelphia, PA-2017-1955  
**To:** Acting Director, Investigations Division, Office of Accountability and Whistleblower Protection

1. The Office of Accountability and Whistleblower Protection (OAWP) team has completed its investigation as directed by your charge memorandum dated August 8, 2017. The allegations were referred to OAWP by (b)(6) Philadelphia Regional Benefit Office (PRBO); (b)(6) and, (b)(6) Northeast Area North District Counsel Office (NAN DCO). As detailed below, NO allegations were substantiated. As a result of the findings, we are NOT recommending corrective action.

2. The following allegations were not substantiated.

- a. Allegation I: Whether Diana Rubens, Director, PRBO; Robert McKenrick, former Director, PRBO; or other PRBO senior leaders, past and present, abused their authority by taking inappropriate or illegal personnel actions against PRBO employees resulting in unnecessary settlement agreements or appellate reversals between 2013 and present.

(b)(5)

<sup>1</sup> (b)(5)

(Exs. 005 and 006).

(b)(5)

(b)(5)

- b. Allegation II: Whether Ms. Rubens and/or other PRBO senior leaders<sup>4</sup>  
created a hostile work environment toward (b)(6)  
PRBO.

(b)(5)

(b)(5)

(b)(5)

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<sup>2</sup> (b)(5)

<sup>3</sup> (b)(5)

<sup>4</sup> (b)(5)

(b)(5) [Redacted]

(b)(5) [Redacted]

(b)(5) [Redacted]

(b)(5) [Redacted]

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<sup>5</sup> (b)(5) [Redacted]

(b)(5)



- c. Allegation III: Whether Ms. Rubens failed to adequately oversee or hold accountable the PRBO Human Resources Department regarding disciplinary actions and (b)(6) program.

(b)(5)



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<sup>6</sup> (b)(5)



<sup>7</sup> ASPEN stands for Automated Standardized Performance Elements Nationwide. This is a system that VBA Veterans Service Representatives and management officials use to track and monitor workload. Entries are made to show which employee is handling a Veteran's claim and what work the employee has performed on the claim. The system is also used to track employee performance on a credit-based system.

(b)(5) [Redacted]

(b)(5) [Redacted]

(b)(5) [Redacted]

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<sup>8</sup> (b)(5) [Redacted]

<sup>9</sup> (b)(5) [Redacted]

(b)(5)

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As such, the evidence shows that Ms. Rubens took reasonable and appropriate steps to hold the PRBO Human Resources Department accountable by ordering an external review and implemented their recommendations, even though it did not include disciplinary action or PIPs. Therefore, this allegation was not substantiated.

(b)(6)

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October 6, 2017

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Date

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October 6, 2017

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Date



**DEPARTMENT OF VETERANS AFFAIRS  
Washington DC 20420**

November 30, 2017

FOIA Request: 18-01356-F

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Dear Mr. Krause:

This letter serves as the Office of Accountability and Whistleblower Protection's (OAWP) response to your November 3, 2017 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which consisted of:

"Re: FOIA Request – Investigation Report, Philadelphia, PA-2017-1955...

I seek the above referenced report involving Diana Rubens, Kimberly Graves, and Secretary Bob McDonald.."

Your FOIA request was received in the Office of Accountability and Whistleblower Protection (OAWP) on November 3, 2017, and was assigned the request number indicated above. Please include this request number in all future communications concerning this FOIA request.

OAWP has concluded a comprehensive search for the document you requested. Our search effort resulted in six (6) pages of records responsive to your request.

Upon review of the responsive records, we have determined some of the requested records contain information which is protected under FOIA Exemptions [5 [5 U.S.C. § 552(b)(5)]] and [6 [5 U.S.C. § 552(b)(6)]].

I am withholding portions of these records to protect information pertaining to the decision-making process related to the investigation. In addition, I am withholding portions of other records to protect information pertaining to the personal privacy of the VA employees involved in the investigation – if appropriate.

Exemption 5 permits the Government to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege. This privilege protects the decision-making processes of Government agencies, and protects advisory opinions, recommendations, and deliberations.

Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and supervisors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reason and rationales that were not in fact ultimately the ground for an agency action.

The Deliberative Process Privilege of Exemption 5 is invoked as it is determined that the release of the pre-decisional document to the public would negatively impact frank discussion on matters of policy between subordinates and supervisors.

See Sears, 421 U.S. at 150; see also Missouri ex rel. Shorr v. U.S. Army Corps of Eng'rs, 147 F.3d 708, 710 (8<sup>th</sup> Cir. 1998). Consequently, VA denies your request for this information under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

Also, FOIA Exemption 6 protects against the disclosure of information that, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy, without contributing significantly to the public's understanding of the activities of the Federal government.

An analysis regarding disclosure of information under FOIA Exemption 6 includes consideration of whether disclosure would serve the public interest. As noted Reporter's Committee, 489 U.S. at 772, we must then balance the personal privacy interest against the public interest. In evaluating the public interest in a given case, we must focus on the nature of the requested document and its relationship to the public interest generally. We must consider whether disclosure of the requested document, or portions thereof that have been withheld, would "open agency action to the light of public scrutiny" rather than focus on the particular purpose for which the document is being requested.

Based on the information provided in your letter we have classified you as a "representative of the news media" FOIA requester. As a news media requester, VA FOIA implementing regulations found at 38 C.F.R. § 1.561 state that the first 100 pages of duplication will be furnished without charge. There are no charges for duplication related to this request. Search fees do not apply to representatives of the news media. Therefore, no fees are assessed. However, please be advised that we reserve the right to assess fees if appropriate under the FOIA on any and all future FOIA requests

Please be advised that you may appeal the determination made in this response to:

Office of General Counsel (024)  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420  
Email: [ogcfoiarequests@va.gov](mailto:ogcfoiarequests@va.gov)

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response.



Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

As an alternative to submitting an appeal, you may contact the VA FOIA Public Liaison, which was created to offer mediation services to resolve disputes between FOIA requesters and federal agencies. Using the VA FOIA Public Liaison does not affect your right to appeal.

**Department of Veterans Affairs**  
VA FOIA Public Liaison (005R1C)  
810 Vermont Avenue, NW  
Washington, DC 20420  
**Email:** [VACOFOIAService@va.gov](mailto:VACOFOIAService@va.gov)  
**Phone:** (877) 750-3642  
**Fax:** (202) 632-7581

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

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

If you are dissatisfied with any appeal results, judicial review will thereafter be available to you in the United States District Court of your residence, principal place of business, or the District of Columbia where the records you seek are located.

This concludes OAWP's response to your request. If you have any further questions feel free to contact me by phone at (202) 590-1540, or by email at [oawpfoiarequests@va.gov](mailto:oawpfoiarequests@va.gov).

Sincerely,



Mikio Manuel  
OAWP FOIA Officer