

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
NATIONAL VETERANS LEGAL)	
SERVICES PROGRAM,)	
1600 K Street, NW, Suite 500)	
Washington, DC 20006)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 16-cv-125
)	
U.S. DEPARTMENT OF VETERANS' AFFAIRS,)	
810 Vermont Ave. NW)	
Washington, DC 20420)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the National Veterans Legal Services Program (“Plaintiff” or “NVLSP”), by and through its undersigned attorneys, submits the following Complaint, and alleges as follows:

INTRODUCTION

1. This is an action brought under the Freedom of Information Act (“FOIA”) that seeks an order directing the U.S. Department of Veterans’ Affairs (“VA”) to produce records, documents, and information withheld in violation of FOIA, 5 U.S.C. § 552, concerning the health care services that the VA’s Veterans’ Health Administration (“VHA”) provides to our nation’s female veterans. As described herein, more than 17 months after the VA received NVLSP’s FOIA request concerning the inadequate health services that female veterans receive, the VA has failed to acknowledge or respond to NVLSP’s FOIA request and, accordingly, has withheld the requested documents in violation of federal law.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. 552(a)(4)(B), and pursuant to 28 U.S.C. § 1331, as this action arises under a law of the United States.

3. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B), as NVLSP resides in this District and some or all of the agency's records are situated in this District.

THE PARTIES

4. Plaintiff, the National Veterans Legal Services Program, is an independent, non-profit veterans service organization that has served active duty military personnel and veterans since 1980. NVLSP strives to ensure that our nation honors its commitment to its 22 million veterans and active duty personnel by ensuring they receive the federal benefits they have earned through their service to our country. NVSLP offers training for attorneys and other advocates, connects veterans and active duty personnel with pro bono legal help when seeking disability benefits, publishes the nation's definitive guide on veteran benefits, and represents and litigates for veterans and their families before the VA, military discharge review agencies and federal courts. The NVLSP resides in the District of Columbia at 1600 K Street, NW, Suite 500, Washington, DC 20006.

5. Defendant, the U.S. Department of Veterans' Affairs ("Defendant" or "VA"), a federal agency located at 810 Vermont Ave., NW, Washington, DC 20420.

FACTUAL ALLEGATIONS

6. On August 4, 2014, NVLSP Joint Executive Director Barton F. Stichman caused to be made written requests pursuant to FOIA to the VA's Timothy Graham, Director, VHA Central Office, Veterans Health Administration, and Kellie Robinson, FOIA Officer, VHA Central Office, Veterans Health Administration ("NVLSP's FOIA request").

7. NVLSP subsequently received confirmation from the U.S. Postal Service that NVLSP's FOIA request was delivered to the VA's Washington, DC headquarters on August 8, 2014 via First Class Certified Mail.

8. NVLSP's FOIA request sought records, documents, and information concerning the Veterans Health Administration's treatment of female veterans, including:

- (A) communications about a study that the Veterans Health Administration had commissioned on "Counseling of Female Veterans About Risks of Medication-Induced Birth Defects," and reactions to the study by VA officials;
- (B) reports on increases in the number of female veterans who use the VHA's services;
- (C) communications or reports regarding the VA's failure to satisfy any aspect of VA Handbook 1330.01, "Health Care Services for Women Veterans," which "defines the scope of health care services" to be provided to female veterans; and
- (D) communications with an Associated Press reporter, Garance Burke, who authored a June 22, 2014 investigative report on the VHA's failure to provide adequate and equal services to female veterans, "Veterans Affairs Falls Short

on Commitment to Women’s Medical Issues,” and any document or information provided to Ms. Burke in response to a FOIA request by Ms. Burke.

9. The information NVLSP requested in its FOIA request is important to the veteran community and, in particular, to the large number of female veterans who currently rely on the VHA’s health services. According to the VA, there are more than 2 million female veterans—a number that has increased steadily in recent years. In addition, according to a recent VA study, more than 74 percent of Post-9/11 female veterans are under the age of 44, and therefore are of child-bearing age. This figure is significant, as the VA study on “Counseling of Female Veterans About Risks of Medication-Induced Birth Defects,” concluded that female veterans of child bearing age “may not receive appropriate counseling when medications that can cause birth defects are prescribed,” and found that a much higher percentage of female veterans were prescribed prescription drugs that can cause birth defects (compared to the non-veteran population) and half of female veterans did not report the use of contraception.

10. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the VA was required to determine within 20 days whether to comply with NVLSP’s FOIA request and to immediately notify NVLSP of the VA’s determination and the reasons for its determination, and the right of NVLSP to appeal the determination to the head of the agency.

11. The VA failed to comply with the most basic requirements of the FOIA. More than 17 months have now transpired since the VA received NVLSP’s FOIA request, and the VA has not yet responded to or acknowledged NVLSP’s FOIA request.

12. Pursuant to 5 U.S.C. § 552(a)(6)(C), NVLSP is deemed to have exhausted its administrative remedies with respect to its request, as the VA has failed to comply with the applicable time limits set forth in 5 U.S.C. § 552(a)(6).

13. NVLSP is entitled to the records requested pursuant to 5 U.S.C. § 552(a)(3), as NVLSP reasonably described the records it sought in its FOIA request, and made its FOIA request in accordance with the rules published by the VA for making a FOIA request.

CAUSE OF ACTION

Freedom of Information Act **5 U.S.C. § 552**

14. NVLSP adopts and incorporates each and every allegation in this Complaint as if set forth fully herein.

15. On August 8, 2014, NVLSP caused to be delivered to the VA a FOIA request that reasonably described the records that NVLSP sought and complied with the VA's rules for making a FOIA request.

16. The VA violated 5 U.S.C. § 552(a)(6)(A)(i), as more than 17 months after having received NVLSP's FOIA request the VA has not yet determined whether it will comply with NVLSP's FOIA request and has not yet notified NVLSP of the VA's determination or the reasons for its determination.

WHEREFORE, Plaintiff NVLSP prays for the following relief:

- (a) that this Court declare that Defendant U.S. Department of Veterans' Affairs' failure to disclose the records requested under FOIA by Plaintiff NVLSP is unlawful;
- (b) that this Court order Defendant U.S. Department of Veterans' Affairs to make the requested records available to NVLSP;

(c) that this Court award Plaintiff NVLSP costs and attorneys' fees in this action;
and

(d) that this Court grant Plaintiff NVLSP such other, further, and different relief
to which it may be entitled.

January 27, 2016

Respectfully submitted,

/ s / Peter Romer-Friedman

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