

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY)
AND ETHICS IN WASHINGTON)

Plaintiff,)

v.)

DEPARTMENT OF THE ARMY)

Defendant.)

Civil Action No. 1:09-cv-01432

DECLARATION OF MAJOR DEBORAH E. WOOLVERTON

I, Major Deborah E. Woolverton, declare under penalty of perjury, pursuant to Title 28
U.S.C. Section 1746:

1. I am currently assigned as a Litigation Attorney, U.S. Army Litigation
Division, General Litigation Division, 901 N. Stuart St., Arlington, Virginia. I have
performed duty in this office as a Litigation Attorney since May 2008.

2. Pursuant to my official duties in this position, I am familiar with the records
and events described in this declaration. The statements made herein are based on my
own personal knowledge and on information made available to me in the performance of
my official duties.

3. On April 17, 2009 the Plaintiff sent the Freedom of Information Act ("FOIA")
Officer, Freedom of Information Act Office, Department of the Army, 77701 Telegraph
Road, Suite 144, Alexandria, Virginia 22315-3905 a Freedom of Information Act request
via electronic mail asking for records concerning the diagnosis of post traumatic stress

disorder (PTSD) in the U.S. Army. See Exhibit A (April 17, 2009 FOIA request) attached hereto.

4. On April 23, 2009, the Department of the Army FOIA office (DA FOIA) notified the Plaintiff that the FOIA request had been referred to the Joint Services Records Research Center, ATTN: JDRP-RDC, FOIA Officer, Kingman Building Room 2C-08, 7701 Telegraph Road Alexandria, Virginia 22315-3828 for action and direct response to the requester. See Exhibit B (April 23, 2009 referral letter) attached hereto.

5. On April 28, 2009, the Joint Service Records Research Center responded to the Plaintiff and notified the Plaintiff that their office did not have documents responsive to the request. See Exhibit C (April 28, 2009 letter to the Plaintiff) attached hereto.

6. On May 6, 2009, Mr. Daniel Alcorn, Counsel for Plaintiff sent an email to United States Army Medical Command (MEDCOM) FOIA office. Mr. Alcorn attached a copy of Plaintiff's April 17, 2009 FOIA request that was sent to DA FOIA and informed the MEDCOM FOIA office that he believed that office was the appropriate office to respond to Plaintiff's FOIA request. See Exhibit D (May 6, 2009 email) attached hereto.

7. Upon receipt of the email, the MEDCOM FOIA office forwarded the request to the United States Army Center for Health Promotion and Preventive Medicine (USACHPPM) the Office of the Surgeon General (OTSG)/MEDCOM Behavior Health Office for processing. See Defense Exhibit 2, Declaration of John P. Peterson (*hereinafter* "Peterson Decl.") at ¶ 5.

8. On September 11, 2009, Mr. Alcorn, Mr. John Peterson, Chief, Freedom of Information/Privacy Act Office, Headquarters, U.S. Army Medical Command, Kathryn Donnelly, Special Assistant United States Attorney, and I joined on a telephonic conference call to discuss this litigation and the April 17, 2009 FOIA request. Mr.

Peterson asked Mr. Alcorn for clarification of the scope of Plaintiff's request. In response to the conference call, Ms. Donnelly received a letter from Mr. Alcorn on September 29, 2009, dated September 14, 2009, which attempted to clarify Plaintiff's request. See Exhibit E (September 14, 2009 letter) attached hereto.

9. The letter narrowing Plaintiff's request was sent to the FOIA officer at Medical Command (MEDCOM). The FOIA officer at MEDCOM, John Peterson, is currently assigned as the Chief, Freedom of Information and Privacy Act Office, Headquarters, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, Texas 78234-6000.

10. Mr. Peterson located four responsive documents responsive to the request: (1) an executive summary of a Fort Carson Evans Army Community Hospital Army Regulation 15-6 Investigation; (2) the Fort Carson Evans Army Community Hospital 15-6 Investigation itself; (3) an information paper titled "Mental Health Provides Changing Diagnosis," dated March 19, 2009; and (4) a Memorandum dated 15 December 2008 from the U.S. Physical Disability Agency Subject: Requirement to Validate Post-Traumatic Stress Disorder (PTSD). See Peterson Decl. at ¶ 10.

11. On October 29, 2009 Ms. Donnelly sent Mr. Alcorn an email with two attachments, (1) an executive summary of a Fort Carson Army Regulation 15-6 Investigation and (2) an information paper titled "Mental Health Provides Changing Diagnosis," dated March 19, 2009. Both documents were released to Plaintiff in their entirety. These documents were responsive to the April 17, 2009 FOIA request and September 11, 2009 conference call. See Exhibit F (October 29, 2009 email) attached hereto.

12. On the same day, Mr. Alcorn was also referred to the website of the Physical Disability Agency, <https://www.hrc.army.mil/site/active/TAGD/Pda/pdapage.htm>, where its current policy guidance is posted and available to the public. Mr. Alcorn was also referred to the United States Army Medical Department, Army Behavior Health website, <http://www.behavioralhealth.army.mil/ptsd/index.html> for additional information. See Exhibit G (October 29, 2009 email) attached hereto.

13. The letter narrowing Plaintiff's request (Exhibit E) was sent to Mr. Dennis Brower, Agency Legal Advisor, U.S. Army Physical Disability Agency on December 2, 2009 via email by Ms. Donnelly. On the same day, Mr. Brower provided Ms. Donnelly with 27 pages of responsive documents including Initial MEB Evaluation of Posttraumatic Stress Disorder (PTSD) and Other Psychiatric Disorders (Other than Eating Disorders), dated March 17, 2009, Memorandum for Physical Evaluation Board Presidents, dated December 15, 2008, Memorandum for Commander, United States Medical Command, dated October 12, 2007, Memorandum for Commander Office of the Surgeon General, dated January 11, 2006, Executive Summary, dated January 11, 2006, and Guidance for Preparing Psychiatric Reports on Soldiers Going Through The Physical Evaluation Board Process. See Exhibit H (December 2, 2009 email chain) attached hereto.

14. On December 2, 2009 Ms. Donnelly released the 27 pages of documents provided by Mr. Brower described in paragraph 13 above. Mr. Alcorn acknowledged receiving the documents on December 17, 2009. See Exhibit I (Fed Ex US Airbill and December 17, 2009 email chain) attached hereto.

15. On December 22, 2009, Mr. Alcorn, Mr. Brower, and Ms. Donnelly spoke on a conference call. As a result of that call, the parties agreed to allow the Government to

focus its search for responsive documents among the records of Colonel Elspeth Richie from the Office of the Surgeon General, and Dr. Audrey Tomlinson and Colonel Dan Cassidy from Physical Disability Agency. See Exhibit J (December 29, 2009 email) attached hereto.

16. On January 4, 2010, Mr. Dennis Brower sent an email to Dr. Audrey Tomlinson and Colonel Daniel Cassidy instructing them to search all of their electronic (to include e-mail and word document files) and hard document files for any documents relating to four memoranda: a March 17, 2009 PDA guidance, a December 15, 2008 memorandum signed by Colonel Cassidy, an October 12, 2007 memorandum signed by Brigadier General Jones, and a January 11, 2006 memorandum signed by Colonel Garvey as well as any other documents that discussed possible Department of the Army PDA guidance regarding the processing or identifying of PTSD cases. Both individuals were instructed to send the documents that were responsive to this search to Mr. Brower. See Exhibit K (January 4, 2010 email) attached hereto.

17. In response to that email, Dr. Tomlinson and COL Cassidy located seventeen (17) documents; thirteen (13) emails, Policy/Guidance Memorandum #7, dated February 28, 2005, Memorandum For The Adjutant General; Subject: Documentation of Traumatic Events for Pending Physical Evaluation Boards, dated June 26, 2007, Memorandum for Presidents, U.S. Army Physical Evaluation Boards; Subject: Posttraumatic Stress Disorder: Stressor "Validation," dated December 8, 2009, and Issues in Adjudication of Cases Involving Posttraumatic Stress Disorder. These documents were sent to Ms. Donnelly on January 7, 2010. Mr. Brower indicated that his office had conducted a good faith search of PDA's documents related to the Plaintiff's

FOIA request and had forwarded all of them to Ms. Donnelly. See Exhibit L (January 7, 2010 email to DOJ) attached hereto.

18. Between January 12, 2010 and January 21, 2010, COL Richie searched all of her electronic (including e-mail and word documents) and hard document files for documents responsive to Plaintiff's April 17, 2009 FOIA request. Colonel Richie searched for documents related to four memoranda on an email Ms. Donnelly sent to her. In addition, she searched under the terms "Physical Disability Agency" and "Post Traumatic Stress Disorder. Colonel Ritchie found two documents responsive to the request. Both documents were the same six page document titled "General Rating Formula for Mental Disorders." See Exhibit M (Email traffic dated January 21, 2010) attached hereto.

19. In March 2010, I coordinated with Major Kelly L. McGovern, Litigation Attorney, Military Personnel Branch, U.S. Army Litigation Division and obtained a disc containing twenty-eight (28) documents which the Army provided to the United States Court of Federal Claims in the case of *Sabo et al. v. United States*, Civil Action No. 08-0089. The documents included Statutes, Army Regulations, Department of Defense Directives, a Secretary of the Navy Instruction, an Air Force Instruction, Memoranda from the Under Secretary of Defense, a Memorandum from the United States Army Physical Disability Agency, and the Veterans Affairs (VA) Schedule of Ratings Disabilities (VASRD) Provisions and VA Implementation Guidance.

20. On April 7, 2010, Ms Donnelly sent a CD containing 2,656 bates stamped pages of documents for release to the Plaintiff. Included on that CD were all the documents previously released on October 29, 2009, and December 2, 2009 as well as the Army Regulation 15-6 concerning Evans Army Hospital, 27 documents provided to the

United States Court of Federal Claims in the case of *Sabo et al. v. United States*, Civil Action No. 08-0089, the two duplicative six-page documents provided by COL Ritchie on January 21, 2010, the seventeen (17) documents and emails provided by Dr. Tomlinson and COL Cassidy to Mr. Brower, and a Memorandum dated 15 December 2008 from the U.S. Physical Disability Agency Subject: Requirement to Validate Post-Traumatic Stress Disorder (PTSD). See Exhibit N (April 2, 2010 letter and FEDEX receipt) attached hereto.

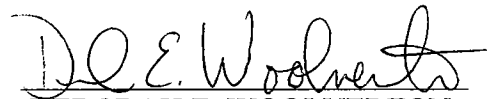
21. Only three documents contained any redactions. The recommendation portion of the Executive Summary, dated July 28, 2009 and released on October 29, 2009 was redacted in accordance with FOIA exemption (b)(5) as deliberative; the first two and a half lines of paragraph d. of the information paper, Mental Health Providers Changing Diagnosis, dated March 19, 2009, and released October 29, 2009 was redacted in accordance with FOIA exemption (b)(5) as deliberative, and deliberative and privacy information was redacted from the AR 15-6 investigation dated July 7, 2008 and released April 7, 2010 was redacted in accordance with FOIA exemptions (b)(5) and (b)(6). The remaining documents were released in their entirety. See Peterson Decl. at ¶¶ 10-15.

22. On May 18, 2010, after realizing that one of the documents, a copy of 38 C.F.R. 4.129 with mark ups, provided to the to the United States Court of Federal Claims in the case of *Sabo et al. v. United States*, Civil Action No. 08-0089, had inadvertently been left off the disk provided to Mr. Alcorn on April 7, 2010, I provided Mr. Alcorn with a copy of the document via email and regular mail. Mr. Alcorn acknowledged receiving the document. See Exhibit O (May 18, 2010 email with attached letter) attached hereto.

23. A Vaughn index describing the documents provided to Plaintiff is attached.
See Exhibit P attached hereto.

24. The Plaintiff was not charged any fees or costs in conjunction with the search or release of any of the documents provided by the United States Army to the Plaintiff on October 29, 2009, December 2, 2009 or April 7, 2010.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 19th day of May 2010.


DEBORAH E. WOOLVERTON