DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

5720
Ser DNS-36JP/18U104801
July 26, 2018

Sent via email to: (b) (6) [redacted].com

Mr. Robert Hammond
(b) (6) [redacted]

Dear Mr. Hammond:

This is in reference to your Freedom of Information Act (FOIA) request dated December 27, 2017. Your request was forwarded to our office on the same day and assigned FOIA case number DON-NAVY-2018-002663.

We conducted a search for responsive records within the DON FOIA/PA office files, and requested that the Office of the Judge Advocate General, General Litigation (OJAG Code 14) and the DON FOIA Public Liaison conduct searches of their files accordingly. In total, we identified 281 pages of documents that are responsive to your request.

Please be advised, it has been determined that in order to remain as transparent as possible, these records will be released in their redacted form for public consumption via FOIAonline.

Upon review of these documents, we have determined that they contain instances of deliberative process privileged material, are predecisional in nature, and/or contain working versions of documents, and are thus exempt from disclosure under 5 U.S.C. § 552(b)(5). These records contain frank and open discussion on predecisional matters. Due to the sensitive nature of such discussions, disclosure could discourage such forthright discussion on future reviews, impairing the decisionmaking process. Additionally, insofar as the records contain communications between OJAG Code 14 and another office or internal OJAG Code 14 deliberations in anticipation of possible litigation, those records are subject to the Attorney-Client privilege and Attorney-Work Product privilege. Therefore, those portions are exempt from disclosure.

We have also determined that these records contain instances of personally identifiable information (PII), such as

the names, email addresses, and telephone numbers of individuals. These instances of PII are exempt from disclosure under 5 U.S.C. § 552(b)(6), since release of this information would result in a clearly unwarranted invasion of their personal privacy. In order to protect your privacy, your private information is also withheld under (b)(6). In order to determine whether the information is at issue, this office applied the Reporters Committee Balancing Test.

1. Determine whether there is a personnel, medical, or "similar" file.
2. Determine whether there is a significant privacy interest in the requested information; (In the post-9/11 environment and associated heightened security posture, DoD employees (military, federal, contractor) generally have a greater than de minimis privacy interest in the nondisclosure of personal information simply due to the virtue of their association with DoD (and the release of DoD records which implicitly disclose this association).
3. Evaluate the requester's asserted FOIA public interest in disclosure;
4. If there is a significant privacy interest in non-disclosure and a FOIA public interest in disclosure, balance those competing interests to determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy." DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 763 (1989).

The remainder of the documents is released to you.

Because your request is partially denied, you are advised of your right to appeal this determination by writing to:

Office of the Judge Advocate General
1322 Patterson Ave SE Ste 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be postmarked within ninety calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

Please be advised, however, that these documents may include redacted records previously released to you. As we are providing you with the records as released, you cannot appeal these previous withholdings.

In this instance, the fees associated with processing this request were below the minimum threshold and have not been assessed. Please be advised, however, that fees, fee categories, and fee waivers are determined on a case-by-case basis, and a previous determination has no influence on future determinations.

For this determination, you have the right to seek dispute resolution services from either the DoD Navy Component FOIA Public Liaison, Mr. Chris Julka, at: Christopher.a.julka@navy.mil, via phone: (703) 697-0031; or by contacting the Office of Government Information Services at:(https://ogis.archives.gov/), (202) 741-5770, ogis@nara.gov.

Questions regarding the action this office has taken to process your request may be directed to our FOIA Service Center at (202) 685-0412.

Sincerely,

R. Patterson
HEAD, DON FOIA/PA Program Office

Enclosures: 1. Responsive Records (281 Pages)
2. Initial Request