



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

FILED

SERVICE WOMEN'S ACTION NETWORK,  
AMERICAN CIVIL LIBERTIES UNION,  
and AMERICAN CIVIL LIBERTIES  
UNION OF CONNECTICUT,

Plaintiffs,

v.

U.S. DEPARTMENT OF DEFENSE and  
U.S. DEPARTMENT OF VETERANS AFFAIRS,

Defendants.

2011 OCT -6 P 2:55

Civil Action 11-cv-  
U.S. DISTRICT COURT  
NEW HAVEN, CT

COMPLAINT

October 6, 2011

INTRODUCTION

Hundreds of thousands of women serve in the United States military, voluntarily putting themselves in harm's way in order to protect the country. Unfortunately, the United States government fails to protect these women from rape, sexual assault, and sexual harassment by their peers and superiors. These violent and threatening acts, labeled military sexual trauma ("MST") by the Department of Veterans Affairs, occur nearly twice as often within military ranks as in civil society.

MST harms its victims in ways that are both immediate and long-lasting. It is the primary cause of post-traumatic stress disorder among female service members, and serves as the source of a wide range of other physical and psychological harms. When MST survivors leave the service, they often struggle to find housing and employment, and have difficulty reclaiming the civilian lives they once led. The Department of Defense does not adequately protect service members from MST while they serve, and the Department of Veterans Affairs does not adequately care for MST victims after they leave.

The MST crisis within the United States military is a matter of grave public importance. Yet it remains unresolved in large part because it remains hidden from view. Having long warned the government about the problem alongside other advocates, the Service Women's Action Network and the American Civil Liberties Union now seek to ensure that the American public is informed of its government's inadequate response. In this case and the related case of *SWAN v. DoD*, No. 3:10-cv-019530-MRK, SWAN and the ACLU have requested records regarding MST and MST claims from the Department of Defense and the Department of Veterans Affairs, pursuant to the Freedom of Information Act (FOIA). The purpose of FOIA is to ensure an informed citizenry that can hold the government accountable. Contrary to this purpose, the government has failed to release all relevant agency records that might illuminate the problem and point the way toward a solution.

### **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for declaratory relief that the United States Department of Defense ("DOD") and the United States Department of Veterans Affairs ("VA") have failed to comply with FOIA by improperly withholding records and denying Plaintiffs' fee waiver requests, and for injunctive relief to compel Defendants DOD and VA to grant fee waivers to Plaintiffs and produce agency records improperly withheld from Plaintiffs.

2. Plaintiffs seek to obtain the release of records on a matter of public concern, namely, the prevalence of MST within the armed services, the policies of DOD and VA regarding MST, and other related disabilities, and the nature of each agency's response to MST.

### **JURISDICTION AND VENUE**

3. This court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361.

4. Venue lies in this district under 5 U.S.C. § 552 (a)(4)(B) and 28 U.S.C. §§ 1391(e)(3), as complainant ACLU of Connecticut resides and has its primary place of business in the District of Connecticut, and no real property is involved in the action.

### **PARTIES**

5. Plaintiff Service Women's Action Network ("SWAN") is a nonpartisan, nonprofit organization that supports, defends, and empowers current service women and female veterans through advocacy initiatives and community programs. SWAN seeks to transform military culture by securing equal opportunity and the freedom to serve in uniform without the threats of harassment, discrimination, intimidation, and assault. Through media and public outreach, SWAN works to educate Americans about the unique challenges facing service women and female veterans. SWAN's work on behalf of service women was recently documented in a September 12, 2011 New York Times editorial entitled *Justice for Women Veterans*. SWAN resides and has its principal place of business in New York City, New York.

6. Plaintiff American Civil Liberties Union ("ACLU") is a national, nonpartisan public interest organization of more than 500,000 members, dedicated to protecting the constitutional and civil rights of individuals. ACLU produces and widely distributes original reports and multimedia to educate its membership and the general public. Through its Women's Rights Project, ACLU has long been a leader in legal battles to ensure women's full equality. In recent years, the ACLU Women's Rights Project has taken a primary role at the local, state, and national levels to ensure governmental accountability for violence against women and girls

through litigation, policy advocacy, and public education. ACLU resides and has its principal place of business in New York City, New York.

7. Plaintiff ACLU of Connecticut (“ACLU-CT”) is a non-profit, non-partisan membership organization dedicated to protecting individual civil rights and the principles of individual liberty embodied in the United States and Connecticut Constitutions. The ACLU Foundation of Connecticut, the litigation arm of ACLU-CT, engages in litigation in state and federal courts. Through original reports, newsletters, and published print media, ACLU-CT informs citizens of Connecticut about matters of public concern. ACLU-CT has approximately 6,000 members in the State of Connecticut. It resides and has its principal place of business in Hartford, Connecticut.

8. Defendant United States Department of Defense (“DOD”) is the federal agency responsible for coordinating and supervising government activity relating directly to national security and the United States armed forces. DOD is an agency within the meaning of 5 U.S.C. § 552(f).

9. Defendant United States Department of Veterans Affairs (“VA”) is the federal agency responsible for helping veterans by providing certain benefits and services. VA is an agency within the meaning of 5 U.S.C. § 552(f).

### **STATEMENT OF FACTS**

#### **Members of the United States Military Experience Military Sexual Trauma at an Alarmingly High Rate**

10. Thousands of members of the United States military experience sexual harassment, sexual assault, or rape at some point during their service. These unwanted or threatening sexual acts often cause psychological trauma and are referred to as MST.

11. Sexual assault pervades the ranks of the American military. In the last decade, tens of thousands of service members, both female and male, have reported experiencing some form of sexual assault, harassment, or trauma.

12. Female service members are especially likely to experience MST. When women leave civilian life for the military, their risk of being sexually assaulted doubles. Surveys show that nearly one in three women report being sexually assaulted during their time of military service. Other surveys show that over 70 percent of women and 40 percent of men report experiencing some form of sexual harassment during their service.

13. Surveys and studies conducted by the DOD and the VA indicate that between 6 and 23 percent of women experience at least one attempted or completed rape during their service period, depending on the decade. Of these victims, 37 percent experience multiple rapes, and 14 percent experience gang rape.

14. Due to underreporting, the prevalence of MST is likely far greater than current reports suggest. Fear, uncertainty, military dynamics, and military structure prevent victims from reporting approximately 80 percent of the unwanted or threatening sexual acts that they experience.

15. The MST crisis appears to be growing. The DOD Sexual Assault Prevention and Response Office's (SAPRO) annual reports show that the number of reported sexual assaults increased 73 percent between 2004 and 2006. More recent SAPRO reports confirm this trend, showing that the number of assaults rose 11 percent between 2008 and 2009.

### **Military Sexual Trauma Severely Harms its Victims**

16. MST harms its victims in many ways. Service members who experience MST often develop Post-Traumatic Stress Disorder ("PTSD") as a result. In fact, MST is the primary causal

factor of PTSD for women in the military. Studies show that between 40 and 60 percent of women who are victims of MST develop PTSD. In one recent study, 71 percent of female veterans seeking VA disability benefits for PTSD reported being sexually assaulted during their military service. Female service members have twice the levels of PTSD and depression as their male counterparts.

17. The risk of developing PTSD after experiencing MST increases due to aspects of the military environment such as foreign settings, war zone exposure, multiple deployments, and military culture. The impact of the military environment on MST victims explains why women who experience MST in the military are more likely than civilian women who experience MST to develop PTSD.

18. MST continues to affect survivors after they leave the service. Victims of MST consistently report poorer psychological well-being, increased physical problems, greater depression and anxiety, and lower satisfaction with their health and work than non-victims.

19. Survivors also often struggle to adjust back to civilian life. They are less likely than non-victims to have a job, more likely to fail to find work due to mental health problems, and more likely to engage in substance abuse.

20. Homelessness among female victims is particularly problematic. Although the number of homeless veterans has been declining over the last decade, the number of homeless female veterans has nearly doubled. Female veterans are now between two to four times more likely than civilians to end up homeless. The link between homelessness and MST is strong: one recent study showed that 40 percent of homeless female veterans have been sexually assaulted.

21. Overall, the harms of MST are severe, complex, long-lasting, and destructive to the victims and to the military units in which they serve.

### **Defendants Have Downplayed and Ignored the MST Crisis**

22. SWAN, the ACLU, and other advocacy groups have committed significant resources to draw the government's attention to the prevalence of MST. In 2010, SWAN testified five times before the House Committee on Veterans on the MST crisis and the lack of gender-specific resources for women. SWAN was also instrumental in the drafting of the Defense Sexual Trauma Response Oversight and Good Governance Act ("Defense STRONG Act," H.R.5197), which would require DOD to improve the sexual assault reporting procedures and sexual assault training within the military.

23. The United Nations Special Rapporteur on Violence Against Women, in her June 2011 report, found that sexual harassment and assault of women in the military is a pervasive form of violence against women in the U.S. and made several recommendations to the U.S. government to address the violence.

24. The government has a number of tools at its disposal to prevent MST and to treat the physical and psychological harms that MST imposes on service members.

25. Nevertheless, the Defendants have failed in prevention efforts by not adequately prosecuting and disciplining offenders to demonstrate that they take the problem seriously and deter sexual assault and sexual harassment.

26. Moreover, the government has failed in the implementation of meaningful reforms that make it easier and safer for victims to report sexual misconduct.

27. On the treatment side, the government has failed to adequately pay for treatment of MST and the disabilities that stem from MST.

28. By all accounts, despite both the advocacy of organizations like SWAN and the range of tools the government has at its disposal, the government is still not protecting its service members from MST.

29. Even though MST is rampant in the military, the government prosecutes only 8 percent of military sex offenders. By contrast, domestic authorities prosecute an estimated 40 percent of all civilian sex offenders. This disparity is especially striking given that sexual assault of women occurs twice as frequently in the military as it does in civil society. The dearth of prosecutions casts doubt on the government's claim that it is serious about reducing and preventing MST within the military.

30. Furthermore, the government has not reformed its internal processes in ways that would allow victims to report unwanted or threatening sexual misconduct anonymously, without facing retribution and isolation. The DOD recently introduced a "restricted" reporting option that allows victims confidentially to access medical treatment for assault, without notifying command authorities and military criminal investigative organizations that would initiate legal action against their perpetrators. This change has not removed many of the barriers that prevent victims from being able to pursue and substantiate their claims in an effective way.

31. Military culture also has not condemned sexual violence. Victims who report perpetrators to superiors often face social isolation, retribution, and counter accusations. When victims are intimidated from reporting acts of sexual assault or harassment, or when corrective action is not taken by superiors, victims are forced to continue living, working, and serving alongside their attackers.

32. The government also routinely refuses to pay for PTSD treatment for thousands of MST survivors. Veterans who file MST-related claims are consistently denied for failing to prove an

“initial stressor” – an incident of sexual harassment, assault, or rape. These claims are denied even when victims have been diagnosed with PTSD by VA psychiatrists, psychologists, and counselors.

33. Many more survivors suffer from PTSD silently, having been intimidated from reporting the instance in the first place. If the government reformed reporting procedures and compensation requirements, it would have to confront the actual prevalence of MST and pay the actual cost that MST imposes on service members.

34. The government also has failed to budget sufficient resources to treat the MST survivors whom it deems deserving of care. For example, in 2006, the VA budgeted \$13 million to provide MST-related mental healthcare for recently separated Reserve and National Guard members after a VA report estimated that the annual cost to treat known cases of MST within that population would be \$20 million.

#### **The Government Has Refused to Release Information About the Magnitude of the Crisis or the Nature and Extent of Its Own Response**

35. The public has a strong interest in the DOD and VA releasing information that reveals the extent to which MST pervades the military’s ranks, the cost associated with treating MST, and the efforts these agencies are taking to combat the problem.

36. Despite this, the government has been reluctant to share information that reveals the true extent and cost of MST. For example, over a decade ago, the government commissioned a report on the problem of sexual assault in the military. The report was due in 2001. The government refused to release the report for years after its due date. The report eventually became public in 2005 when U.S. Representative Lane Evans obtained a copy of it. The report uncovered the prevalence of MST within military ranks, confirming suspicions that the problems of MST were widespread.

37. By maintaining a system that discourages sexual assault reporting, denying MST-related PTSD claims, allocating less money than known problems demand, and responding slowly to advocates' demands, the government has hidden the true cost of MST and has forced victims to silently bear the costs instead.

38. Much of the information about the extent and cost of the MST problem, along with the government's reluctance to prosecute offenders and treat victims, is not in the public sphere. The public has a compelling interest in knowing this information, given the potential enormity of the problem, the emotional and financial cost that it imposes on military service members, and the increasing number of women serving in Afghanistan and Iraq.

39. The public's interest is all the more compelling because taxpayers are financially responsible for the treatment of the MST survivors who successfully navigate the processes of applying for service-connected benefits for PTSD and related illnesses.

40. The current information on MST, while sparse, suggests a reasonable probability that a more extensive release of information will generate negative publicity for the DOD and VA. The information might show that the prevalence of MST is even higher than surveys and studies show, and that more must be done to prevent and treat it.

41. Just as Defendants have been slow to respond to the advocacy groups and politicians who have attempted to shed light on the MST crisis, they have refused to comply with their statutory obligation to disclose responsive, non-exempt MST-related records under FOIA.

#### **Plaintiffs' FOIA Request to DOD**

42. By letter dated June 24, 2011, Plaintiffs submitted FOIA requests to five different offices within the DOD for records relating to the incidence of MST, equal opportunity complaints, and

sexual harassment complaints in the armed services. The FOIA request also asked for records relating to DOD's prosecution of sexual assault cases in the armed services.

43. The Plaintiffs submitted identical letters to the Department of the Navy, the Office of the Inspector General, the Department of the Air Force, the Department of the Army, and the Commandant of the Marine Corps. A copy of the letter sent to the Department of the Navy is attached to this complaint as Exhibit A.

44. Plaintiffs' FOIA requests of June 24, 2011 followed a previous series of FOIA requests by Plaintiffs to the same offices within DOD. The previous series of requests is the subject of pending litigation in *SWAN v. DoD*, No. 3:10-cv-01953 (MRK) (D. Conn.) While maintaining that the records sought by the second requests of June 24, 2011 clearly fell within the scope of the previous requests, Plaintiffs nonetheless filed the second requests in an effort to avoid unnecessary litigation.

45. By July 26, 2011, Plaintiffs received denials of fee waivers regarding their June 24, 2011 FOIA requests from each DOD office. Each denial concluded that Plaintiffs were not representatives of the news media, and that they had not shown they could disseminate the requested information to the general public. Each office denied Plaintiffs a fee waiver for their second FOIA request even though most had not denied Plaintiffs a fee waiver for their first FOIA request.

46. By letters dated August 16, 2011, Plaintiffs administratively appealed the decisions of all five offices to deny fee waivers.

47. By September 26, 2011, Plaintiffs had received denials of their appeals from each of the five offices.

48. Plaintiffs have exhausted the administrative remedies available for their FOIA requests to DOD. Therefore, the five DOD units to which Plaintiffs sent second FOIA requests are the subject of this complaint.

49. After having granted fee waivers to Plaintiffs for their first request, DOD has wrongfully denied fee waivers to Plaintiffs for their second request.

50. By wrongfully denying fee waivers to Plaintiffs, DOD has made access to agency records prohibitively expensive for Plaintiffs. Thus, DOD has improperly withheld records that it is required to produce at nominal cost to Plaintiffs.

#### **Plaintiffs' FOIA Request to VA**

51. By letter dated June 24, 2011, Plaintiffs submitted identical letters to the Veterans Benefits Administration and the Board of Veterans Appeals requesting various benefits claims files. A copy of the letter sent to the Veterans Benefits Administration is attached to this complaint as Exhibit B.

52. Plaintiffs' FOIA requests of June 24, 2011, followed a previous series of FOIA requests by Plaintiffs to the same offices within VA. The previous series of requests is the subject of pending litigation in *SWAN v. DoD*, No. 3:10-cv-01953 (MRK) (D.Conn.) While maintaining that the records sought by the second requests of June 24, 2011, clearly fell within the scope of the previous requests, Plaintiffs nonetheless filed the second requests in an effort to avoid unnecessary litigation.

53. On July 25, 2011, Plaintiffs received denials of fee waivers from both units.

54. By letter dated August 16, 2011, Plaintiffs administratively appealed the decisions of the Veterans Benefit Administration and the Board of Veterans Appeals.

55. On September 15, 2011, Plaintiffs received denials of their appeals regarding their requests to both units.

56. Plaintiffs have exhausted the administrative remedies available for all of their FOIA requests to VA. Therefore, the two VA units to which Plaintiffs sent second FOIA requests are included in this complaint.

57. VA has wrongfully denied fee waivers to Plaintiffs.

58. By wrongfully denying fee waivers to Plaintiffs, VA has made access to agency records prohibitively expensive for Plaintiffs. Thus, VA has improperly withheld records that it is required to produce at nominal cost to Plaintiffs.

#### **FIRST CLAIM FOR RELIEF:**

##### **Defendants DOD and VA Wrongfully Denied Plaintiffs' Requests for Fee Waivers**

59. Plaintiffs repeat and incorporate every allegation contained in paragraphs 1-58 as if set forth in full.

60. DOD and VA's wrongful denial of requests for fee waivers violated Plaintiffs' rights under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(III) and 5 U.S.C. § 552(a)(4)(A)(iii).

#### **SECOND CLAIM FOR RELIEF:**

##### **Defendants DOD and VA Failed to Promptly Release Records Responsive to Plaintiffs' Requests**

61. Plaintiffs repeat and incorporate every allegation contained in paragraphs 1-58 as if set forth in full.

62. DOD and VA's failure to release responsive records violated Plaintiffs' rights to those records under FOIA, 5 U.S.C. § 552(a)(3)(A).

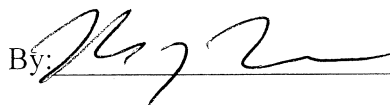
### Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Order Defendants to grant fee waivers to Plaintiffs.
- 2) Order Defendants to disclose and release the requested records in their entireties and to make copies available to Plaintiffs.
- 3) Provide for expeditious proceedings in this action.
- 4) Award Plaintiffs costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(1)-(2); and
- 5) Grant any other relief the Court deems appropriate.

Dated: October 6, 2011  
New Haven, CT

Respectfully submitted,

By:  \_\_\_\_\_

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# **EXHIBIT A**

# The Jerome N. Frank Legal Services Organization

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Chief of Naval Operations (DNS-36)  
Dept. of the Navy  
2000 Navy Pentagon  
Washington, DC 20350  
Fax: (202) 685 6580

June 24, 2011

## Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

To Whom It May Concern:

This letter constitutes a request ("Request"), pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records<sup>1</sup> in the possession of the Department of Defense ("DoD"). The Request is submitted on behalf of the Service Women's Action Network ("SWAN"), the American Civil Liberties Union Women's Rights Project ("ACLU WRP") and the ACLU of Connecticut ("ACLU-CT"), referred to collectively as the "Requesters."

The records sought herein are the subject of FOIA requests already submitted by Requesters, by letters dated October 15, 2010, and are the subject of pending litigation in *SWAN v. Dep't of Def.*, No. 3:10-cv-01953-MRK (D.Conn.). Counsel for Defendants in that suit may be taking the position, however, that the FOIA requests at issue in the litigation do not seek the records listed expressly herein.

Without conceding that the requests at issue in *SWAN v. DoD* fail to cover the records listed herein, and adhering to the position that the prior requests do cover these records, Requesters nevertheless submit this new request to moot out the potential objection of counsel for Defendants in *SWAN v. DoD* and to avoid unnecessary litigation regarding the scope of the prior requests.

All requested records that are responsive may be provided with personally identifying details redacted. FOIA exempts information from disclosure if that disclosure would lead to an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Determination of this exemption requires "a balancing of the public's interest in obtaining the information against any possible invasions of privacy which would result from disclosure." *Burkins v. United States*, 865 F. Supp. 1480, 1502 (D. Colo. 1994). The Supreme Court has held that this balancing act does not preclude the disclosure of military records when names and other private details are redacted. *See, e.g., Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976). Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

### I. Requested Records

Requesters seek the release of all and every underlying record containing the following:

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<sup>1</sup> The term "records" as used herein, includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

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- 1) Requests by service members for the release of records relating to sexual assault ("SA"), equal opportunity ("EO"), sexual harassment ("SH"), and domestic violence ("DV") complaints, in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 2) Any complaint or report of an instance of alleged SA, EO, SH, and/or DV made by any service member in FY2006, FY2007, FY2008, FY2009, and/or FY2010, and the entire investigative or other file related to any such report or record, including but not limited to any records of investigation of such complaint, recommended or final disposition, or appeal or review of such report, investigation, or review.
- 3) Any record of any military-related incident of SH, EO, DV, and/or SA reported by service members in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 4) Any record of any sexual assault-related courts-martial in FY2006, FY2007, FY2008, FY2009, and/or FY2010, including but not limited to charges sworn in all sexual assault-related courts-martial, individual case files, judgments, sentences, and appeals.

If the DoD believes that it would be in the interest of all parties to discuss possible ways to narrow the scope of this request that would allow the department to respond to the request more expeditiously, please contact undersigned counsel. We request that any records that exist in electronic form be provided in electronic format on a compact disc. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

## II. Application for Waiver or Limitation of Fees

Requesters agree to pay search, duplication, and review fees up to \$100.00. If the fees will amount to more than \$100.00, on behalf of the Requesters we request a fee waiver on the grounds that disclosure of the requested records is in the public interest. The disclosure of the records 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. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a); 32 C.F.R. §§ 286.28(d), 1900.13(b)(2).

The disclosure will inform Requesters and the public of the prevalence of SA, EO, and SH complaints in the military, as well as of DoD's policies concerning these issues. It is in the public's interest to know how DoD is responding to harassment and discrimination complaints related to sex and gender, whether the DoD responds differently to different types of complaints, and how effective these response efforts have been.

Additionally, disclosure of the information requested is not in Requesters' commercial interest. Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act . . .").

We also request a waiver of search and review fees on the grounds that each Requester qualifies as a "representative of the news media." 28 C.F.R. §§ 16.11 (c)(1)-(2), (d)(1). Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document

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duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); 32 C.F.R. § 286.28(e)(7); *see also* 28 C.F.R. §§ 16.11(c)(3), (d) (search and review fees shall not be charged to “representatives of the news media”).

SWAN, the ACLU WRP and the ACLU-CT meet the statutory and regulatory definitions of a “representative of the news media” because each is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”); *Elec. Privacy Info Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

SWAN’s mission is to “educat[e] and inform policy makers, the media and the public” about issues relating to service women in the armed services. Service Women’s Action Network: Mission, <http://www.servicewomen.org/SwanPage.asp?PLink=1019&Hding=About>. In furtherance of this mission, SWAN publishes an array of fact sheets, newsletters, and other documents for public consumption, on topics ranging from military sexual trauma to homelessness among female veterans. *See, e.g.,* Brittany Stalsburg, Service Women’s Action Network, Military Sexual Trauma: The Facts, <http://www.servicewomen.org/userfiles/file/MST%20fact%20sheet.pdf>; Homeless Women Veterans: The Facts, <http://www.servicewomen.org/userfiles/File/HomelessWomenVeterans.pdf>.

The ACLU WRP and the ACLU-CT regularly gather information on issues of public significance (including information gathered through FOIA requests), and use their editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials. The ACLU distributes these materials to the general public through various channels, such as its heavily subscribed Web site ([www.aclu.org](http://www.aclu.org)), a newsletter sent to its more than 400,000 members, and an electronic newsletter, which is distributed to subscribers by e-mail. Because of these activities, fees associated with responding to FOIA requests are regularly waived for the ACLU.<sup>2</sup>

Finally, pursuant to the applicable regulations and statute, Requesters expect the determination of this request for documents within 20 days. *See* 5 U.S.C. §552(a)(6)(A)(i).

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

Please furnish all applicable records to:

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<sup>2</sup> For example, the Department of Housing and Urban Development granted a fee waiver to the ACLU for a FOIA request filed in April 2008. The ACLU subsequently posted the response to this FOIA on its website at <http://www.aclu.org/files/pdfs/womensrights/aclufoiarequestandhudresponseregardingimplementationofvawa.pdf>. The Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in 2006. The Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.

# The Jerome N. Frank Legal Services Organization

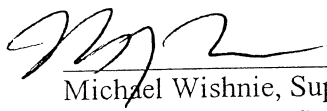
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Michael Wishnie  
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Thank you for your prompt attention to this matter.

Sincerely,



Michael Wishnie, Supervising Attorney  
Taylor Asen, Law Student Intern  
William Bornstein, Law Student Intern  
Sam Lim, Law Student Intern  
Alexander Su, Law Student Intern

Sandra S. Park, Staff Attorney  
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Hartford, Connecticut 06106

cc: Jonathan G. Cooper, Counsel for Defendants (by email)

# **EXHIBIT B**

# The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Veterans Benefits Administration (VBA)  
Frances Hudzik  
810 Vermont Avenue, NW  
(20M33) VACO  
Washington, DC 20420  
(202) 275-5947 (FAX)

June 24, 2011

## Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

To Whom It May Concern:

This letter constitutes a request ("Request"), pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records in the possession of the Veterans Administration ("VA"). The Request is submitted on behalf of the Service Women's Action Network ("SWAN"), the ACLU Women's Rights Project ("ACLU WRP") and the ACLU of Connecticut ("ACLU-CT"), referred to collectively as the "Requesters."

The records sought herein are the subject of FOIA requests already submitted by Requesters, by letters dated October 15, 2010, and are the subject of pending litigation in *SWAN v. Dep't of Veterans Affairs*, No. 3:10-cv-01953-MRK (D.Conn.). Counsel for Defendants in that suit may be taking the position, however, that the FOIA requests at issue in the litigation do not seek the records listed expressly herein.

Without conceding that the requests at issue in *SWAN v. VA* fail to cover the records listed herein, and adhering to the position that the prior requests do cover these records, Requesters nevertheless submit this new request to moot out the potential objection of counsel for Defendants in *SWAN v. VA* and to avoid unnecessary litigation regarding the scope of the prior requests.

All requested records that are responsive may be provided with personally identifying details redacted. FOIA exempts information from disclosure if that disclosure would lead to an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Determination of this exemption requires "a balancing of the public's interest in obtaining the information against any possible invasions of privacy which would result from disclosure." *Burkins v. United States*, 865 F. Supp. 1480, 1502 (D. Colo. 1994). The Supreme Court has held that this balancing act does not preclude the disclosure of military records when names and other private details are redacted. *See, e.g., Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976). Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

### I. Requested Records

Requesters seek the release of all and every underlying record<sup>1</sup> containing the following:

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondences, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines,

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- 1) The entire claims file for each benefit claim filed, approved, rejected, or remanded, in which was included a claim for disability benefits for Post-Traumatic Stress Disorder ("PTSD") in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 2) The entire claims files for benefits claims filed, approved, rejected, or remanded, in which was included a claim for disability benefits for depression and/or Major Depressive Disorder in FY2006, FY2007, FY2008, FY2009, and/or FY2010.
- 3) The entire claims files for benefits claims filed, approved, rejected, or remanded in which was included a claim for disability benefits for anxiety in FY2006, FY2007, FY2008, FY2009, and/or FY2010.

If the VA believes that it would be in the interest of all parties to discuss possible ways to narrow the scope of this request that would allow the department to respond to the request more expeditiously, please contact undersigned counsel. We request that any records that exist in electronic form be provided in electronic format on a compact disc. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

## II. Application for Waiver or Limitation of Fees

Requesters agree to pay search, duplication, and review fees up to \$100.00. If the fees will amount to more than \$100.00, on behalf of the Requesters we request a fee waiver on the grounds that disclosure of the requested records is in the public interest. The disclosure of the records 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. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a); 32 C.F.R. §§ 286.28(d), 1900.13(b)(2).

The disclosure will inform Requesters and the public of the prevalence of MST, PTSD, and other serious disabilities in the armed forces. The records will also highlight any disparities that exist in how benefits are distributed among disabilities, and reveal whether evidentiary regulations may be contributing to some of these disparities.

Additionally, disclosure of the information requested is not in Requesters' commercial interest. Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of that Act . . .").

Requesters also seek a waiver of search and review fees on the grounds that each Requester qualifies as a "representative of the news media." 28 C.F.R. §§ 16.11 (c)(1)-(2), (d)(1). Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document

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evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

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duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); 32 C.F.R. § 286.28(e)(7); *see also* 28 C.F.R. §§ 16.11(c)(3), (d) (explaining that search and review fees shall not be charged to “representatives of the news media”).

SWAN, the ACLU WRP, and the ACLU-CT meet the statutory and regulatory definitions of a “representative of the news media” because each is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”); *Elec. Privacy Info Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

SWAN’s mission is to “educat[e] and inform policy makers, the media and the public” about issues relating to service women in the armed services. Service Women’s Action Network: Mission, <http://www.servicewomen.org/SwanPage.asp?PLink=1019&Hding>About>. In furtherance of this mission, SWAN publishes an array of fact sheets, newsletters, and other documents for public consumption, on topics ranging from military sexual trauma to homelessness among female veterans. *See, e.g.,* Brittany Stalsburg, Service Women’s Action Network, Military Sexual Trauma: The Facts, <http://www.servicewomen.org/userfiles/file/MST%20fact%20sheet.pdf>; Homeless Women Veterans: The Facts, <http://www.servicewomen.org/userfiles/File/HomelessWomenVeterans.pdf>.

The ACLU WRP and ACLU-CT regularly gathers information on issues of public significance (including information gathered through FOIA requests), and use their editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials. It distributes these materials to the general public through various channels, such as its heavily subscribed Web site ([www.aclu.org](http://www.aclu.org)), a newsletter sent to its more than 400,000 members, and an electronic newsletter, which is distributed to subscribers by e-mail. Because of these activities, fees associated with responding to FOIA requests are regularly waived for the ACLU.<sup>2</sup>

Finally, pursuant to the applicable regulations and statute, Requesters expect the determination of this request for documents within 20 days. *See* 5 U.S.C. §552(a)(6)(A)(i). If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to respond without any information or to deny a waiver of fees.

Please furnish all applicable records to:

Michael Wishnie  
Jerome N. Frank Legal Services Organization

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<sup>2</sup> For example, the Department of Housing and Urban Development granted a fee waiver to the ACLU for a FOIA request filed in April 2008. The ACLU subsequently posted the response to this FOIA on its website at <http://www.aclu.org/files/pdfs/womensrights/aclufoiarequestandhudresponseregardingimplementationofvawa.pdf>. The Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in 2006. The Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003.

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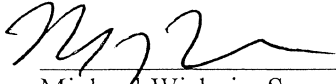
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Yale Law School  
127 Wall Street  
New Haven, CT 06511

Thank you for your prompt attention to this matter.

Sincerely,



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Michael Wishnie, Supervising Attorney  
Taylor Asen, Law Student Intern  
William Bornstein, Law Student Intern  
Sam Lim, Law Student Intern  
Alexander Su, Law Student Intern

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cc: Jonathan G. Cooper, Counsel for Defendants (by email)