



DEPARTMENT OF VETERANS AFFAIRS  
Veterans Health Administration  
Washington DC 20420

April 24, 2014

In Reply Refer To:

FOIA Request No: **VHA-14-01372-F**

Benjamin Krause  
284 String Street, Unit 203  
Saint Paul, MN 55102

**RECEIVED** APR 28 2014

Dear Mr. Krause:

This letter is a partial initial agency decision on your November 27, 2013, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 submitted to the Department of Veterans Affairs, Veterans Health Administration (VHA), VHA FOIA Office. Within your request you state that you are a journalist and attorney conducting research on Traumatic Brain Injury (TBI) policies and procedures that are current (2012-2013) and that were in place from 2009-2010. Your request is concerning VHA Directive 1603 and any directives similar to it in nature regarding training and certifying medical professionals who evaluate Veterans for disability relating to TBI. You have specifically requested information from the Employee Education Systems (EES) Office and the Office of Disability Medical Assessment (DMA) to include the offices that were formerly titled something else where materials might be stored or evaluated:

**2009-2010 TBI Training Module**

- 1) In PDF format: A print out containing all screen images of the training module medical professionals were required to complete prior to assessing TBI Disability.
- 2) In PDF format: A copy of all PowerPoints and/or training materials associated with the training module.
- 3) In Excel format: The list of all certified clinicians sent to each field facility and an aggregate list.
- 4) In Excel format: The list of contractors associated with the development of the TBI Training Module.
- 5) In PDF format: The total cost of the TBI Training Module.
- 6) In PDF format: Any and all contracts associated with the development, maintenance, or updating of the TBI Training Module.

7) In PDF format: All correspondence/communication and meeting notes amongst VA employees and/or contractors about the TBI Training Module's development and maintenance.

8) In PDF format: Any communications and policies impacting Disability Examination Management Contracts including assessments and associated materials.

### **2012-2013 TBI Training Module and Post-Test**

1) In PDF format: A print out containing all screen images of the training module medical professionals were required to complete prior to assessing TBI Disability.

2) In PDF format: A copy of all PowerPoints and/or training materials associated with the training module, including the post-test.

3) In Excel format: The list of all certified clinicians sent to each field facility and an aggregate list.

4) In Excel format: The list of contractors associated with the development of the TBI Training Module.

5) In PDF format: The total cost of the TBI Training Module.

6) In PDF format: Any and all contracts associated with the development, maintenance, or updating of the TBI Training Module and Post-Test.

7) In PDF format: All correspondence/communication and meeting notes amongst VA employees and/or contractors about the TBI Training Module's development and maintenance.

8) In PDF format: Any communications and policies impacting Disability Examination Management Contracts including assessments and associated materials, contracts, and payment information.

Your request was received in the VHA FOIA Office on November 27, 2013 and received FOIA tracking number 14-01372-F.

### **Clarification of Request**

On December 5, 2014 we spoke regarding our email communication in which I was seeking clarification to your request. I then sent you an email documenting the clarification you had provided during the telephone call. Specifically, you agreed to limit your search for responsive records to those documents pertaining to "TBI" only. In addition you have added the following search criteria to your request:

1) In regard to line item three (3) for both 2009-2010 and the 2012-2013 - list of all certified clinicians sent to each field facility and an aggregate list; you requested that a search be added for a list of clinicians that have had TBI Certification by the location of the VHA facility of where the clinician is currently practicing regardless of when and where they initially completed their TBI certification.

2) Request a listing of clinicians that are not TBI certified and are performing TBI exams.

3) Request listing of all Disability Management Contracts. This list is to contain the name of the vendor the contract was awarded to, the contract number and the total amount of the award.

### **Partial Initial Agency Decision**

At this time, the VHA has retrieved a portion of the documents responsive to request. For ease of reference I have applied Bates numbering to the documents and will begin the response with line items listed under:

#### **2009-2010 TBI Training Module.**

**Item 1:** In PDF format: A print out containing all screen images of the training module medical professionals were required to complete prior to assessing TBI Disability.

**Response:** Per our discussion on December 5, 2013 I explained to you that the records you seek are available in electronic format and that screen shots images would not be necessary. You agreed that screen shots would not be necessary, therefore; this line item will be answered in line item number 2.

**Item 2:** In PDF format: A copy of all PowerPoints and/or training materials associated with the training module, including the post-test.

**Response:** Provided in DVD format is a copy of the 2009 video course: CPEP Traumatic Brain Injury (TBI) Examination. Provided in their entirety are ninety-nine (99) pages of response records to include the 2009 TBI module post test, the 2010 TBI training module, and 2010 TBI training module post test. It is noted that the module created in 2010 remains current today.

**Item 3:** In Excel format: The list of all certified clinicians sent to each field facility and an aggregate list.

**Response:** Provided in its entirety is an Excel spreadsheet containing the information you have requested. It is noted that this spreadsheet provides data for the time period of 2009-2013.

**Item 4:** In Excel format: The list of contractors associated with the development of the TBI Training Module.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter.

**Item 5:** In PDF format: The total cost of the TBI Training Module.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter.

**Item 6:** In PDF format: Any and all contracts associated with the development, maintenance, or updating of the TBI Training Module.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter

**Item 7:** All correspondence/communication and meeting notes amongst VA employees and/or contractors about the TBI Training Module's development and maintenance.

**Response:** Information has been gathered and is in the review process.

**Item 8:** In PDF format: Any communications and policies impacting Disability Examination Management Contracts including assessments and associated materials.

**Response:** A search for responsive records did not produce records responsive to your request for this line item; as a result, I am providing you a "no records" response.

#### **2012-2013 TBI Training Module and Post-Test**

**Item 1:** In PDF format: A print out containing all screen images of the training module medical professionals were required to complete prior to assessing TBI Disability.

**Response:** Per our discussion on December 5, 2013, I explained to you that the records you seek are available in electronic format and that screen shots images would not be necessary. The last module was created in 2010 and remains current; therefore the response to this item is covered by line item number 2 above.

**Item 2:** In PDF format: A copy of all PowerPoints and/or training materials associated with the training module, including the post-test.

**Response:** The latest module was created in 2010 and remains current, therefore; I am issuing you a "no records" response for a TBI Training Module and Post-Test for the time period of 2012-2013..

**Item 3:** In Excel format: The list of all certified clinicians sent to each field facility and an aggregate list.

**Response:** It is noted that this spreadsheet provides data for the time period of 2009-2013.

**Item 4:** In Excel format: The list of contractors associated with the development of the TBI Training Module.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter.

**Item 5:** In PDF format: The total cost of the TBI Training Module.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter.

**Item 6:** In PDF format: Any and all contracts associated with the development, maintenance, or updating of the TBI Training Module and Post-Test.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter.

**Item 7:** In PDF format: All correspondence/communication and meeting notes amongst VA employees and/or contractors about the TBI Training Module's development and maintenance.

**Response:** Information has been gathered and is in the review process.

**Item 8:** In PDF format: Any communications and policies impacting Disability Examination Management Contracts including assessments and associated materials, contracts, and payment information.

**Response:** Provided are two (2) documents totaling eight (8) pages. These documents are VA Directive 1603 dated April 22, 2013 and Office of Disability and Medical Assessment (DMA), dated July 19, 2012. Traumatic Brain Injury (TBI) Fact Sheet DMA-12-003 Frequently Asked Questions – Revised.

### **Clarification Items**

In regard to the additional line items that resulted in the clarification on December 5, 2014:

**Item 1:** 2009-2010 and the 2012-2013 - list of all TBI certified clinicians by the location of the VHA facility of where the clinician is currently practicing regardless of when and where they initially completed their TBI certification.

**Response:** A search for responsive records has resulted in a no records response. The program office has advised that the information you seek is not collected by the agency. Please be advised, the FOIA does not require the VHA to create a record. See Poll v. U.S. Office of Special Counsel, No. 99-4021, 2000 WL 14422, at \*5 n.2 (10<sup>th</sup> Cir Jan. 10, 2000) (recognizing that FOIA does not require agency "to create documents or opinions in response to an individual's request for information" (quoting Hudgins v. IRS, 620 F Supp. 19, 21 (D.D.C. 1985)). The FOIA only requires the agency to provide agency records that exist at the time the request is made and where such records are not prevented from disclosure by a FOIA exemption.

**Item 2:** Request a listing of clinicians that are not TBI certified and are performing TBI exams.

**Response:** A search for responsive records has resulted in a no records response. The program office has advised under the provisions of VHA DIRECTIVE 1603, *Certification of Clinicians Performing VA Disability Evaluations*, dated April 22, 2013; it is VHA policy that all clinicians designated to conduct VA disability evaluations must complete the required training modules and post-tests and become certified by the office of Disability and Medical Assessment (DMA); new clinicians must be certified prior to being allowed to perform any VA disability evaluation. Any clinician who performs Traumatic Brain Injury (TBI) evaluations must complete the Veterans Administration's



Talent Management System (TMS) training module titled "*DEMO: Traumatic Brain Injury (TBI) Examination*" and successfully complete its post-test. The *DEMO: Traumatic Brain Injury (TBI) Examination* is provided to you as discussed under 2012-2013 TBI Training Module and Post-Test line item 2.

Per VHA Office of Disability and Medical Assessment (DMA) Revised Fact Sheet 12-003, *TBI Disability Examination Providers*, dated February 2, 2012 (attached) ; a diagnosis of TBI must be made by a physiatrist, psychiatrist, neurosurgeon or neurologist. A generalist who meets all other requirements to perform TBI disability evaluations can complete residual TBI evaluations only after a diagnosis of TBI is made by a board certified or board eligible physiatrist, psychiatrist, neurosurgeon or neurologist. (Note: Prior to February 2, 2012, Generalist clinicians who successfully completed the TBI disability examination training module were permitted to perform TBI initial and review disability examinations.)

The attached Excel spreadsheet presents a list of active VHA and fee basis clinicians certified to conduct TBI examinations. Data was received from VHA's Office of Employee Education System. As discussed above, not all clinicians who have completed the TBI certification training can conduct initial TBI examinations which are limited to board certified or board eligible physiatrists, psychiatrists, neurosurgeons and neurologists.

**Item: 3:** Request listing of all Disability Management Contracts. This list is to contain the name of the vendor the contract was awarded to, the contract number and the total amount of the award.

**Response:** This line item is currently out for search. This information will be provided on a separate initial agency decision letter.

Please be advised, if you disagree with my no records response, you may file an appeal within sixty (60) calendar days of the date of this adverse determination to:

General Counsel (024)  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

*Appeals must be postmarked no later than sixty (60) calendar days after the date of the adverse determination.*

If you choose to file an appeal, please include a copy of this letter with your appeal and clearly state why you disagree with my determination. If you have any further questions, please feel free to contact me at (717) 450-4662.

Sincerely,

*Deana Marakowski*

Deana M. Marakowski  
VHA FOIA Officer

Enclosures