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VHA FOIA
VBA FOIA
VA Press Office

Sent via Email

Re: FOIA Request – WSJ Reporter Access To Veteran’s File – HIPAA Breach

Dear VHA FOIA,

REQUEST: I am an investigative reporter for Armo Press, LLC, and publish on DisabledVeterans.org and Military.com on a regular basis. I seek a copy of any document that approved Daniel Huang or Wall Street Journal (WSJ) to have access to a veteran’s mental health file related to a disability compensation claim. If there was no approval, I seek a copy of any complaint to any government official about what would be a data breach and HIPAA violation. I also seek any correspondence with the psychologist and veteran involved whose information was possibly unlawfully relayed to WSJ for this apparent anti-veterans article.

REFERENCE: The article was slanted to paint disabled veterans as unworthy benefactors of an all too fair disability calculator system. The article was titled, “Automated System Often Unjustly Boosts Veterans’ Disability Benefits.” <http://www.wsj.com/articles/automated-system-often-unjustly-boosts-veterans-disability-benefits-1431387826>. Please evaluate the statement below regarding WSJ accessing sensitive records of one veteran seeking disability benefits for a mental health disorder:

“In one claim reviewed by The Wall Street Journal, a veteran admitted to his VA psychologist that he was capable of working, but preferred to “do nothing but watch TV movies or play video games” and “use marijuana all day every day.”

“While these details were described in the examiner’s comments, the computer program—considering only the reported symptoms on the claim—returned a 70% rating for post-traumatic stress disorder. When the rater evaluating the case overrode the program’s recommendation and denied the claim, he received an error call.

“Due to an additional technicality, the veteran ultimately was granted a 100% disability rating. He currently receives more than \$3,100 a month from the VA. The VA declined to comment, citing privacy.”

FORMAT: Please provide copies of all recorded presentations on CD ROM. Please provide screen shots of all online interactive presentations or educational materials. All other documents in electronic format relative to the type of document it is from Microsoft Office.

LEGALITY OF REQUEST: Records containing this information are considered public records that must be provided when requested through a FOIA since none of the exceptions apply to these kinds of public records at Dept. of Veterans Affairs. Judicial Watch, Inc. v. Dep't of Justice, 365 F.3d 1108, 1112 (D.C. Cir. 2004); 27 A.L.R.4th 680 (Originally published in 1984).

PURPOSE: The material is to be synthesized, analyzed and edited into news material for public consumption. Additionally, the material will aid in research we are working on to increase transparency in the administration of such materials. The final work product will be published on disabledveterans.org and military.com and possibly relayed to the House Committee on Veterans Affairs for evaluation. The public, including veterans, has an immediate interest in this information because it involves changes to access of HIPAA protected data. The American public needs to understand how the records were accessed, what VA is doing about the breach, and how the agency will alter access to protected electronic medical records.

EASE OF GATHERING DATA: Much of this information is already in a database you maintain, and it will not be complicated for you to locate and forward to me. Please contact me if you find this request to be ambiguous.

WAIVER: I am an investigative reporter and the material sought is intended for public dissemination after I use my editing skills to make it appropriate for public consumption. For that reason, I request a full waiver of all fees associated with the request.

Please note that this request for documents is being made pursuant to the Privacy Act, 5 U.S.C. § 552, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552a, as well as 38 C.F.R. § 1.550 and 38 C.F.R. § 1.577. Your agency has a duty to respond to this request within TWENTY (20) DAYS of the date of this request pursuant to 5 U.S.C. § 552 (a)(6)(A)(2)(i).

Additionally, although an extension of time to respond may be requested, it may only be granted for “unusual circumstances.” “Predictable agency workload” is not typically considered an unusual circumstance as stated in 5 U.S.C. § 552(a)(6)(C)(ii). Moreover, even to the extent that unusual circumstances could be demonstrated in this instance, the time limit for the extension is limited to “10 working days” pursuant to 38 C.F.R. § 1.553(d).

Please also be aware that your agency’s failure to respond to this request within twenty (20) days may result in the filing of an administrative appeal with the office of the Secretary of the Department of Veterans Affairs pursuant to 38 C.F.R. § 1.557 and 5 U.S.C. § 552(a)(6)(A)(2)(ii), and potentially, the filing of a federal lawsuit to compel the production of the information.

This may subject your agency to contempt of court and a fine, including attorney fees and litigation expenses in compelling the production of this information pursuant to 38 U.S.C. § 552a(g)(1) of the Privacy Act, and 38 U.S.C. § 552(a)(4)(B) of FOIA. Thank you.

This satisfies the criteria of your inquiry. Please provide the data. Contact me with any questions at 888.669.2766. Check disabledveterans.org and military.com for current listing of news media articles I have written by gathering news as an investigative reporter.

Sincerely,

Armo Press, LLC
Benjamin Krause, Esq.