



Jametta Davis <jametta.davis@nara.gov>

CORRECTED. RE: Unauthorized Disposition ICO Navy DON JAG Destruction of Records. Appeal Records of WRNMMC 13-19 etc.

(b) (6) via Unauthorized Disposition UnauthorizedDisposition@nara.gov Wed, May 26, 2021 at 11:13 AM
 Reply-to: (b) (6)
 To: UnauthorizedDisposition@nara.gov
 Cc: (b) (6)

Best viewed as HTML. Earlier msg May 26, 2021 9:36 AM recalled and replaced by corrected copy. See attached.

May 26, 2021

NARA Complaint ICO Navy DOJ JAG Destruction of Records.

Appeal Records of WRNMMC 13 19 etc.

Corrected/Streamlined

I. ALLEGATION.

I am alleging that, **Department of the Navy, Office of the Judge Advocate General (DON JAG)** destroyed or may be about to destroy:

- 1 FOIA Appeal case processing records and notes of my administrative appeal to DON JAG (dated July 27, 2013 but sent by confirmed fax of August 19, 2013 at 4:51) of my June 29, 2013 FOIA/PA Request FOIA Request #13 19 and Department of the Navy Office of the Judge Advocate General (DON JAG) appellate determination letter "ser 14/396; Subject: Freedom of Information Act (FOIA) Appeal 2013 dated 18 Sep 13 "
2. FOIA Appeal case processing records of my subsequent January 18, 2014 administrative appeal to DON JAG and DON JAG's February 4, 2014 final appellate determination thereto (sought under my January 15, 2017 FOIA request **DON 18-AR** to DON On administrative appeal of my **DON 18-AR**, DON JAG affirmed for the second time that DON JAG could not locate case records required to be maintained in its very own office, which must therefore have been destroyed.
- 3 Else records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction.

The "Case records" of my administrative appeal to DON JAG (dated July 27, 2013 but sent by confirmed fax of August 19, 2013 at 4:51) of my June 29, 2013 FOIA/PA Request FOIA Request #13-19 may be in immediate, eminent danger of being destroyed IAW Navy's claimed disposition schedule of 7 years, despite the records being sought in subsequent FOIA requests. The Department of the Navy Office of the Judge Advocate General falsely stated by letter (DON JAG letter 5720 2014Y000054, ser 14/06 dated February 4, 2014) that I had not appealed my June 29, 2013 FOIA/PA Request FOIA Request #13-19 (when I had done

so by confirmed fax), leading the presumption that DON JAG has destroyed records of that appeal or are about to destroy them.

DOJ JAG's February 4, 2014 letter also contains materially false statements. While the matters relating to the alleged improper FOIA requests/appeals processing are not matters for NARA, the impending or actual unauthorized disposition of records is NARA's responsibility.

This complaint specifically and **only** addresses records in the custody of **Department of Navy** not those of any other entity.

II. ACTION SOUGHT.

- 1 Notify Department of Navy within 5 working days
2. Provide me a point of contact by return email to discuss this matter.
- 3 Permit me to discuss the Agency's reply prior to deciding on this complaint to preclude the likely provision of misinformation, as has been done in the past.
- 4 If records have not been destroyed, seek that the Agency provide them to you along with a record count and page number count for each record.

-

III. IDENTIFICATION OF RECORDS

Background.

-

- 1 I appealed my FOIA/Privacy Act request #13 19 (related to a DVD of my medical records) to DON JAG by letter dated July 27, 2013 but sent by confirmed faxes to DON JAG of Aug 19 4:51AM & Aug 19 5 05AM. That Appeal addressed my FOIA requests 13 01 to 13 24, including my FOIA request 13-19.
- 2 Department of the Navy Office of the Judge Advocate General (DON JAG) letter ser 14/396; subject Freedom of Information Act (FOIA) Appeal 2013 dated 18 Sep 13 combined multiple distinctly different appeals, but acknowledged my August 19 Appeal, stating

"This responds to your FOIA appeal dated July 20, 2013, received in our office on July 26, 2013; three separate appeals dated July 22, 2013, also received on July 26, 2013; an appeal dated July 27, 2013, received August 19, 2013; and an appeal dated and received August 19, 2013."

3. I submitted a subsequent appeal on January 18, 2014 to DON JAG.

- 4 DON JAG replied in an appellate determination letter of February 4, 2014, falsely stating that I had not appealed my FOIA request #13-19 (and errantly citing a July 20, 2013 appeal vice the correct appeal dated **July 27, 2013** but sent by confirmed faxes to DON JAG of Aug 19 4 51AM & Aug 19 5:05AM):
- 5 Thereafter on January 15, 2017, I submitted a FOIA request **DON 18 AR** (DON NAVY 2018 003238) to DON JAG seeking records FOIA appeals records related to “Hammond Appeal letter regarding unanswered PA/FOIA requests dated July 27, 2013 but received in your office on August 19, 2013” and “Hammond appeal letter subject FOIA/Privacy Act Request Appeal; Requestor Number # 13 19 Medical Records; Copy of DVD Containing PDF files of records received as of May 14, 2012, dated January 18, 2014.”
- 6 On June 9, 2018 I submitted an administrative appeal (DON NAVY 2018 008414) to my FOIA request **DON 18-AR** identifying (among other things) specific records that had not been released and are now presumed destroyed DON JAG closed that appeal on January 25, 2019 without sending me any appellate determination letter nor posting such appellate determination letter to FOIAonline. Notwithstanding that DON did not send me the appellate determination letter, FOIAonline affirms **that DOJ JAG could not locate records required to be retained in DON JAG’s own office.** The records identified in that closed appeal have not been released and must be presumed **destroyed** Those records are identified in paragraph B below.

Records Alleged Destroyed or in Imminent Danger of Being Destroyed.

A, DON JAG Case Records of my Appeal of FOIA Request #13-19 (dated July 27, 2013 but received by DON JAG via fax on August 19, 2013

B. FOIA DON 18-AR. “FOIA Case Records of Appeal; Original 2012 DVD” (DON-NAVY 2018-003238)^[i]. In closing my administrative appeal of DON 18-AR (under appeal number DON-NAVY-2018-008414), **DON JAG affirmed for the second time that it could not locate records required to be maintained in DON JAG’s very own office.** If DON JAG is to be believed (else false official statements), **DOJ JAG has destroyed those records identified in appeal number DON-NAVY-2018-008414,** which it is required to have maintained:

- a. Records in **DON JAG’s FOIA Appeal case file** (which should contain all records related to my Appeal).
- b. Records of any and all records relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, **“A copy (not the original, though it looked exactly the same) of the DVD was in fact mailed to you on November 19, 2013.”**
- c. Records of any and all record relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, **“While you sent the DVD back to WRNMMC by letter dated November 26, 2013.”**
- d. Records of Lattin’s false **claim that I did not appeal my FOIA Request 13-19** regarding the Original 2012 DVD of my medical records in question in 2013 and

- e. Records of **Department of the Navy Office of the Judge Advocate General (DON JAG) letter 5720 2014Y000054, ser 14/06 dated February 14, 2014** or internal records related to it.
- f. Records of **my letter to Mr. Lattin of February 11, 2014 subject Request for Clarification of your Determination letters of February 4, 2014 and 18 Sep 2013** or for internal records related to it.
- g. Records of **my letter to Mr. Lattin of February 25, 2014, subject Follow up on my letter of February 11, 2014 Requesting Clarification of Your Determination letters of February 4, 2014 and 18 Sep 2013** or internal records related to it.
- h. Records of **Department of the Navy Office of the Judge Advocate General (DON JAG) letter Ser 5800, Ser 14/024 of March 27, 2017** responding to my letter of March 6, 2014 and March 27, 2014 or internal records related to it.
 - i. Records of **forwarding my FOIA Request or Appeals and any responses thereto.**
 - j. Records **correspondence route sheets.**
 - k. Records **internal notes** related to the processing of my appeal.
 - l. Records of **Action Officer notes.**
- m. Records of **how my appeal 13-19 was reported in DON JAG FOIA Reports.**
- n. Records of **how my appeal of January 18, 2014 was reported for FOIA reporting.**

IV. NAVY PRIOR INACCURATE CLAIMS CONTRADICTED.

V. APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	<p>Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: • granting the request in full • granting the request in part • denying the request for any reason including: o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid</p>	<p>Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.</p>	DAA-GRS-2016-0002-0001
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VI. 32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

VII. 36 CFR § 1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the [NARA](#)-approved retention period of a temporary record (other than court-ordered disposal under [§ 1226.14\(d\)](#) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

VIII. 44 U.S. CODE § 3106 - UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS**(a) FEDERAL AGENCY NOTIFICATION.—**

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98–497, title I, § 107(b)(21), title II, § 203(b), Oct. 19, 1984, 98 Stat. 2290, 2294; Pub. L. 113–187, § 4, Nov. 26, 2014, 128 Stat. 2009.)

This is submitted upon information, belief, and records available to me.

With my respect,

/s/

Robert Hammond

Whistleblower

[i] FOIA Request DON 18-AR sought:

1. All records of any kind in the possession of DON JAG, DON FOIA/PA Office or DON Public Liaison Office related to my January 18, 2014 appeal of my June 29, 2013 FOIA/PA Request WRNMC #13-19 to Walter Reed and the DON JAG February 4, 2014 final appellate determination thereto at Enclosure (1), Attachments A (pp. 3 -9), as described in Background above, from the time that my FOIA appeal was submitted on January 18, 2014 to present.

2. Such records would include but not be limited to:

- a. All records in DON JAG's FOIA Appeal case file (which should contain all records related to my Appeal)
- b. Any and all records relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin's determination that, "A copy (not the original, though it looked exactly the same) of the DVD was in fact mailed to you on November 19, 2013."
- c. Any and all records relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin's determination that, "While you sent the DVD back to WRNMMC by letter dated November 26, 2013, it remains that WRNMMC discharged its obligation to you under the original request."

NARA-NGC21-710-00880

d. Any communications by email, fax or in any other format related to my FOIA Request at Enclosure (1) or the appeal thereof between any of the following parties:

1. Walter Reed Privacy Officer, Joseph E. Davidge;
2. Walter Reed's FOIA Officer, Judy Bizzell;
3. OPNAV DNS-36;
4. DON FOA/PA;
5. Robin Patterson (DON FOIA/PA);
6. DON CIO;
7. DON JAG;
8. Julka, Christopher A CIV DON, CIO;
9. DON FOIA Public Liaison;
10. Garcia, Della, BUMED;
11. Partridge, Heather;
12. DONFOIA-PA;
13. BUMED.FOIA@med.navy.mil;
14. Muck, Steve CIV SECNAV, DON;
15. (b) (6);
16. Defense Health Agency;
17. Linda Thomas (DHA);
18. Me (Robert Hammond).

a. Any records of forwarding my FOIA Request or Appeals and any responses thereto.

b. Correspondence route sheets.

c. Internal notes.

d. Action Officer notes.



Corrected. NARA Complaint ICO Navy Destruction of Records. 13-19.docx

35K



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NARA Complaint ICO Navy DON JAG Destruction of Records.

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2. FOIA Appeal case processing records of my subsequent January 18, 2014 administrative appeal to DON JAG and DON JAG's February 4, 2014 final appellate determination thereto (sought under my January 15, 2017 FOIA request **DON 18-AR** to DON JAG and my December 10, 2017 FOIA request **DON 18-V** to DON JAG seeking additional records). On administrative appeal of my **DON 18-AR**, DON JAG affirmed for the second time that DON JAG could not locate case records required to be maintained in its very own office, which must therefore have been destroyed.
3. Else records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction.

The "Case records" of my administrative appeal to DON JAG (dated July 27, 2013 but sent by confirmed fax of August 19, 2013 at 4:51) of my June 29, 2013 FOIA/PA Request FOIA Request #13-19 may be in immediate, eminent danger of being destroyed IAW Navy's claimed disposition schedule of 7 years, despite the records being sought in subsequent FOIA requests. The Department of the Navy Office of the Judge Advocate General falsely stated by letter (DON JAG letter 5720 2014Y000054, ser 14/06 dated February 4, 2014) that I had not appealed my June 29, 2013 FOIA/PA Request FOIA Request #13-19 (when I had done so by confirmed fax), leading the presumption that DON JAG has destroyed records of that appeal or are about to destroy them.

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6. Thereafter on December 10, 2017, I submitted a FOIA request **DON 18-V** to DON JAG seeking additional records related to both my August 19, 2013 and January 18, 2014 appeals and correspondence to that date.

7. On June 9, 2018 I submitted an administrative appeal (DON-NAVY-2018-008414) to my FOIA request **DON 18-AR** identifying (among other things) specific records that had not been released and are now presumed destroyed. DON JAG closed that appeal on January 25, 2019 without sending me any appellate determination letter nor posting such appellate determination letter to FOIAonline. Notwithstanding that DON did not send me the appellate determination letter, FOIAonline affirms **that DOJ JAG could not locate records required to be retained in DON JAG’s own office.** The records identified in that closed appeal have not been released and must be presumed **destroyed.** Those records are identified in paragraph B below.

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- c. Records of any and all record relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, **“While you sent the DVD back to WRNMMC by letter dated November 26, 2013.”**
- d Records of Lattin’s false **claim that I did not appeal my FOIA Request 13 19** regarding the Original 2012 DVD of my medical records in question in 2013 and

- e. Records of **Department of the Navy Office of the Judge Advocate General (DON JAG) letter 5720 2014Y000054, ser 14/06 dated February 14, 2014** or internal records related to it.
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 - i. Records of **forwarding my FOIA Request or Appeals and any responses thereto.**
 - j. Records **correspondence route sheets.**
 - k. Records **internal notes** related to the processing of my appeal.
 - l. Records of **Action Officer notes.**
- m. Records of **how my appeal 13-19 was reported in DON JAG FOIA Reports.**
- n. Records of **how my appeal of January 18, 2014 was reported for FOIA reporting.**

C. FOIA Request DON 18-V – DON JAG Appeals Case Records of Final Determination Letter of February 4, 2014:

1. All records of any kind in DON JAG's possession related to identified in Enclosure (1) [Hammond letter to G.E. Lattin dated February 4, 2014, Subject: Your [DON JAG's] final determination letter regarding my FOIA/Privacy Act Request Appeal; Requestor Number # 13-19 - Medical Records Copy of DVD Containing PDF files of Records Received as of May 14, 2012], all records related to the appeals processing, final determination letter and any subsequent actions to date.
2. Such records would include but not be limited to:
 - a. All records in DON JAG's Appeals Case files for each appeal [Appeal dated July 27, 2013 but received by fax to DON JAG on August 19, 2013 & Appeal of January 18, 2014 to DON JAG], which should contain all records related to my Appeals.
 - b. All records of any communications by email, fax, phone or in any other format between any member of the DON JAG staff and any party at Walter Reed, including but not limited to Walter Reed's FOIA Officer Judy J. Bizzell and/or Walter Reed's Privacy Officer, Joseph e. Davidge. related to my subject FOIA Request from the time of its submission to present.
 - c. All internal notes, route sheets, correspondence control sheets etc.
 - d. All records of correspondence with any party subsequent to the February 4, 2014 determination letter regarding any matter related to the Appeals processing or final determination, including correspondence to and from Hammond.

IV. NAVY PRIOR INACCURATE CLAIMS CONTRADICTED.

V. APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA),	Temporary. Destroy 6 years after final agency NARA-NGC21-710-00885	DAA-GRS-2016-0002-10-00885
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	Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by: • granting the request in full • granting the request in part • denying the request for any reason including: o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid	action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.	0001
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VII. 36 CFR § 1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § 1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

VIII. 44 U.S. CODE § 3106 - UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS

(a) FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98–497, title I, § 107(b)(21), title II, § 203(b), Oct. 19, 1984, 98 Stat. 2290, 2294; Pub. L. 113–187, § 4, Nov. 26, 2014, 128 Stat. 2009.)

This is submitted upon information, belief, and records available to me.

With my respect,

/s/

Robert Hammond

Whistleblower

[i] FOIA Request DON 18-AR sought:

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1. Walter Reed Privacy Officer, Joseph E. Davidge;
2. Walter Reed's FOIA Officer, Judy Bizzell;
3. OPNAV DNS-36;
4. DON FOA/PA;
5. Robin Patterson (DON FOIA/PA);
6. DON CIO;
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15. (b) (6);
16. Defense Health Agency;
17. Linda Thomas (DHA);
18. Me (Robert Hammond).

- a. Any records of forwarding my FOIA Request or Appeals and any responses thereto.
- b. Correspondence route sheets.
- c. Internal notes.
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NARA Complaint ICO Navy Destruction of Records. 13-19.docx

36K



Jametta Davis <jametta.davis@nara.gov>

Recall: Unauthorized Disposition ICO Navy DON JAG Destruction of Records. Appeal Records of WRNMMC 13-19 etc.

(b) (6) via Unauthorized Disposition UnauthorizedDisposition@nara.gov Wed, May 26, 2021 at 11:06 AM
Reply-to: (b) (6)
To: UnauthorizedDisposition@nara.gov
Cc: (b) (6)

(b) (6) would like to recall the message, "Unauthorized Disposition ICO Navy DON JAG Destruction of Records. Appeal Records of WRNMMC 13-19 etc.".

winmail.dat
2K

CORRESPONDENCE -- 2021-06-06_UD-2021-0033_DOD NAVY_Open Letter_1301-1b

3 me age

Jametta Davis <jametta.davis@nara.gov>
To: Evangela Wimbush-Jeffrey <evangela.wimbush-jeffrey@nara.gov>

Thu, Jun 10, 2021 at 10:18 AM

Good Morning Evangela,

Routing list:

1. Evangela Wimbush Jeffrey
2. Don Rosen
3. Laurence Brewer
4. Tina Chase Fomukung
5. Jametta Davis

Please review:

 [2021-06-06_UD-2021-0033_DOD NAVY_Open Letter_13...](#) [2021-05-26-UD-2021-0033_RUD Email CORRECTED.pdf](#)Thank ,
Jametta

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Jametta A Davis, Ph D
Records Management Oversight and Reporting Division (ACO2)
National Archives and Records Administration

Evangela Wimbush-Jeffrey <evangela.wimbush-jeffrey@nara.gov>
To: Donald Rosen <donald.rosen@nara.gov>
Cc: Jametta Davis <jametta.davis@nara.gov>

Thu, Jun 10, 2021 at 11:08 AM

Good morning,

Here is correspondence to open an UD case for the Department of the Navy. Please let me know if you have any questions or concerns. Thanks!

Evangela C Wimbush Jeffrey | Record Management Oversight & Reporting
National Archives and Records Administration | Office of the Chief Records Officer
(301) 837-0730 (Office) | (b) (6) (Cell) | evangela.wimbush-jeffrey@nara.gov

[Quoted text hidden]

Evangela Wimbu h Jeffrey evangela.wimbu_h_jeffrey@nara.gov

Thu, Jul 1, 2021 at 7:29 AM

To: Laurence Brewer <laurence.brewer@nara.gov>, Tina Chase Fomukong <tina.chasefomukong@nara.gov>

Cc: Jametta Davis <jametta.davis@nara.gov>

Good morning,

We have accepted Laurence's edits. The letter is ready to send. Thanks!

Evangela C. Wimbush-Jeffrey | Records Management Oversight & Reporting
National Archives and Records Administration | Office of the Chief Records Officer
(301) 837 0730 (Office) | (b) (6) (Cell) | evangela.wimbu_h_jeffrey@nara.gov

----- Forwarded message -----

From: **Laurence Brewer** laurence.brewer@nara.gov

Date: Wed, Jun 30, 2021 at 1:38 PM

Subject: Re: CORRESPONDENCE -- 2021-06-06_UD-2021-0033_DOD NAVY_Open Letter_1301-1b

To: Evangela Wimbush-Jeffrey <evangela.wimbush-jeffrey@nara.gov>

Suggested some edits, but otherwise fine by me to send.

On Tue, Jun 22, 2021 at 11:27 AM Evangela Wimbush-Jeffrey <evangela.wimbush-jeffrey@nara.gov> wrote:

Good morning,

When you get a chance, can you review this letter and let us know what you think. Thanks!

Evangela C. Wimbush-Jeffrey | Records Management Oversight & Reporting
National Archive and Record Administration | Office of the Chief Record Officer
(301) 837-0730 (Office) | (b) (6) (Cell) | evangela.wimbush-jeffrey@nara.gov

Forwarded message

From: **Donald Rosen** <donald.rosen@nara.gov>

Date: Thu, Jun 10, 2021 at 5:58 PM

Subject: Fwd: CORRESPONDENCE -- 2021-06-06_UD-2021-0033_DOD NAVY_Open Letter_1301-1b

To: Brewer, Laurence laurence.brewer@nara.gov

Cc: Evangela Wimbush-Jeffrey <evangela.wimbush-jeffrey@nara.gov>

Hi Laurence

Attached is a draft open letter for a case at DOD/Navy. Please see attachments and draft letter.

Thank ,

Don

NARA-NGC21-710-00890

Donald Ro en
Director, Records Management Oversight and Reporting
Office of the Chief Record Officer
301-837-3426

[Quoted text hidden]

--

Laurence Brewer, CRM

Chief Records Officer for the U.S. Government
National Archive and Record Administration

Laurence.Brewer@nara.gov

Office: (301) 837-1539

Cell: (b) (6)

Blog: Record E pre



Signed Navy Letter

3 me age

Tina Chase Fomukong <tina.chasefomukong@nara.gov>

Fri, Jul 2, 2021 at 7:06 AM

To: Jametta Davis <jametta.davis@nara.gov>, Evangela Wimbush-Jeffrey <evangela.wimbush-jeffrey@nara.gov>

Good morning Jametta and Evangela,
Here is the signed Navy Letter.

Tina
Tina m. Chase Fomukong
Management & Program Analyst
Office of the Chief Records Officer
National Archives & Records Administration
tina.chasefomukong@nara.gov
301 837 1907

 **2021-07-02_UD-2021-0033_DOD NAVY_Open Letter_1301-1b.pdf**
99K

Jametta Davi jametta davi @nara gov

Fri, Jul 2, 2021 at 9 18 AM

To: Tina Chase Fomukong <tina.chasefomukong@nara.gov>

Thanks Tina! Have a great weekend.

[Quoted text hidden]

Tina Chase Fomukong <tina.chasefomukong@nara.gov>

Fri, Jul 2, 2021 at 9:29 AM

To: Jametta Davis <jametta.davis@nara.gov>

You're welcome! 🙏

Tina m Chase Fomukong
Management & Program Analyst
Office of the Chief Records Officer
National Archives & Records Administration
tina_chasefomukong@nara.gov
301-837-1907

[Quoted text hidden]

UD Page

3 me age

Karyn Skevakis <karyn.skevakis@nara.gov>

Thu, Jul 8, 2021 at 9:06 AM

To: Andrea Noel <andrea.noel@nara.gov>, Jametta Davis <jametta.davis@nara.gov>

Hi Andrea and Jametta,

I am updating the UD web page this morning, does anyone have any updates?

Karyn

Karyn Skevakis

Records Management Oversight and Reporting

College Park, MD 20740

Office - (301) 837-3069

Mobile - (b) (6)

Jametta Davis <jametta.davis@nara.gov>

Thu, Jul 8, 2021 at 10:43 AM

To: Karyn Skevakis <karyn.skevakis@nara.gov>

No additional updates. Did you get the open email for UD-2021-0033 on Friday?

Jametta

[Quoted text hidden]

Karyn Skevaki karyn kevaki @nara gov

Thu, Jul 8, 2021 at 10 57 AM

To: Jametta Davis <jametta.davis@nara.gov>

Yep - thanks so much. I did just update the entry in RUDDS for that one for you since I was in there already. I just finished updating the page and now I get to write a new one for DOJ.

Karyn Skevakis

Records Management Oversight and Reporting

College Park, MD 20740

Office - (301) 837-3069

Mobile - (b) (6)

[Quoted text hidden]

May 26, 2021

NARA Complaint ICO Navy DOJ JAG Destruction of Records.
Appeal Records of WRNMMC 13-19 etc.
Corrected/Streamlined

I. ALLEGATION.

I am alleging that, **Department of the Navy, Office of the Judge Advocate General (DON JAG)** destroyed or may be about to destroy:

1. FOIA Appeal case processing records and notes of my administrative appeal to DON JAG (dated July 27, 2013 but sent by confirmed fax of August 19, 2013 at 4:51) of my June 29, 2013 FOIA/PA Request FOIA Request #13-19 and Department of the Navy Office of the Judge Advocate General (DON JAG) appellate determination letter “ser 14/396; Subject: Freedom of Information Act (FOIA) Appeal 2013 dated 18 Sep 13.”
2. FOIA Appeal case processing records of my subsequent January 18, 2014 administrative appeal to DON JAG and DON JAG’s February 4, 2014 final appellate determination thereto (sought under my January 15, 2017 FOIA request **DON 18-AR** to DON On administrative appeal of my **DON 18-AR**, DON JAG affirmed for the second time that DON JAG could not locate case records required to be maintained in its very own office, which must therefore have been destroyed.
3. Else records are at risk of actual, impending, or threatened damage, alienation, or unauthorized destruction.

The “Case records” of my administrative appeal to DON JAG (dated July 27, 2013 but sent by confirmed fax of August 19, 2013 at 4:51) of my June 29, 2013 FOIA/PA Request FOIA Request #13-19 may be in immediate, eminent danger of being destroyed IAW Navy’s claimed disposition schedule of 7 years, despite the records being sought in subsequent FOIA requests. The Department of the Navy Office of the Judge Advocate General falsely stated by letter (DON JAG letter 5720 2014Y000054, ser 14/06 dated February 4, 2014) that I had not appealed my June 29, 2013 FOIA/PA Request FOIA Request #13-19 (when I had done so by confirmed fax), leading the presumption that DON JAG has destroyed records of that appeal or are about to destroy them.

DOJ JAG’s February 4, 2014 letter also contains materially false statements. While the matters relating to the alleged improper FOIA requests/appeals processing are not matters for NARA, the impending or actual unauthorized disposition of records is NARA’s responsibility.

This complaint specifically and **only** addresses records in the custody of **Department of Navy** not those of any other entity.

II. ACTION SOUGHT.

1. Notify Department of Navy within 5 working days.
2. Provide me a point of contact by return email to discuss this matter.

3. Permit me to discuss the Agency's reply prior to deciding on this complaint to preclude the likely provision of misinformation, as has been done in the past.
4. If records have not been destroyed, seek that the Agency provide them to you along with a record count and page number count for each record.

III. IDENTIFICATION OF RECORDS.

Background.

1. I appealed my FOIA/Privacy Act request #13-19 (related to a DVD of my medical records) to DON JAG by letter dated July 27, 2013 but sent by confirmed faxes to DON JAG of Aug 19 4:51AM & Aug 19 5:05AM. That Appeal addressed my FOIA requests 13-01 to 13-24, including my FOIA request 13-19.
2. Department of the Navy Office of the Judge Advocate General (DON JAG) letter ser 14/396; subject Freedom of Information Act (FOIA) Appeal 2013 dated 18 Sep 13 combined multiple distinctly different appeals, but acknowledged my August 19 Appeal, stating:

“This responds to your FOIA appeal dated July 20, 2013, received in our office on July 26, 2013; three separate appeals dated July 22, 2013, also received on July 26, 2013; an appeal dated July 27, 2013, received August 19, 2013; and an appeal dated and received August 19, 2013.”
3. I submitted a subsequent appeal on January 18, 2014 to DON JAG.
4. DON JAG replied in an appellate determination letter of February 4, 2014, falsely stating that I had not appealed my FOIA request #13-19 (and errantly citing a July 20, 2013 appeal vice the correct appeal dated **July 27, 2013** but sent by confirmed faxes to DON JAG of Aug 19 4:51AM & Aug 19 5:05AM):
5. Thereafter on January 15, 2017, I submitted a FOIA request **DON 18-AR** (DON-NAVY 2018-003238) to DON JAG seeking records FOIA appeals records related to “Hammond Appeal letter regarding unanswered PA/FOIA requests dated July 27, 2013 but received in your office on August 19, 2013” and “Hammond appeal letter subject FOIA/Privacy Act Request Appeal; Requestor Number # 13-19 - Medical Records; Copy of DVD Containing PDF files of records received as of May 14, 2012, dated January 18, 2014.”
6. On June 9, 2018 I submitted an administrative appeal (DON-NAVY-2018-008414) to my FOIA request **DON 18-AR** identifying (among other things) specific records that had not been released and are now presumed destroyed. DON JAG closed that appeal on January 25, 2019 without sending me any appellate determination letter nor posting such appellate determination letter to FOIAonline. Notwithstanding that DON did not send me the appellate determination letter, FOIAonline affirms **that DOJ JAG could not locate records required to be retained in DON JAG's own office.** The records identified in

that closed appeal have not been released and must be presumed **destroyed**. Those records are identified in paragraph B below.

Records Alleged Destroyed or in Imminent Danger of Being Destroyed.

A, DON JAG Case Records of my Appeal of FOIA Request #13-19 (dated July 27, 2013 but received by DON JAG via fax on August 19, 2013.

B. FOIA DON 18-AR. “FOIA Case Records of Appeal; Original 2012 DVD” (DON-NAVY 2018-003238)ⁱ. In closing my administrative appeal of DON 18-AR (under appeal number DON-NAVY-2018-008414), **DON JAG affirmed for the second time that it could not locate records required to be maintained in DON JAG’s very own office. If DON JAG is to be believed (else false official statements), **DOJ JAG has destroyed those records identified in appeal number DON-NAVY-2018-008414,** which it is required to have maintained:**

- a. Records in **DON JAG’s FOIA Appeal case file** (which should contain all records related to my Appeal).
- b. Records of any and all records relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, **“A copy (not the original, though it looked exactly the same) of the DVD was in fact mailed to you on November 19, 2013.”**
- c. Records of any and all record relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, **“While you sent the DVD back to WRNMMC by letter dated November 26, 2013.”**
- d. Records of Lattin’s false **claim that I did not appeal my FOIA Request 13-19** regarding the Original 2012 DVD of my medical records in question in 2013 and
- e. Records of **Department of the Navy Office of the Judge Advocate General (DON JAG) letter 5720 2014Y000054, ser 14/06 dated February 14, 2014** or internal records related to it.
- f. Records of **my letter to Mr. Lattin of February 11, 2014 subject Request for Clarification of your Determination letters of February 4, 2014 and 18 Sep 2013** or for internal records related to it.
- g. Records of **my letter to Mr. Lattin of February 25, 2014, subject Follow up on my letter of February 11, 2014 Requesting Clarification of Your Determination letters of February 4, 2014 and 18 Sep 2013** or internal records related to it.
- h. Records of **Department of the Navy Office of the Judge Advocate General (DON JAG) letter Ser 5800, Ser 14/024 of March 27, 2017** responding to my letter of March 6, 2014 and March 27, 2014 or internal records related to it.
- i. Records of **forwarding my FOIA Request or Appeals and any responses thereto.**
- j. Records **correspondence route sheets.**
- k. Records **internal notes** related to the processing of my appeal.
- l. Records of **Action Officer notes.**
- m. Records of **how my appeal 13-19 was reported in DON JAG FOIA Reports.**

- n. Records of how my appeal of January 18, 2014 was reported for FOIA reporting.

IV. NAVY PRIOR INACCURATE CLAIMS CONTRADICTED.

V. APPLICABLE RETENTION SCHEDULE, NARA GRS 4.2 Item 20

020	<p>Access and disclosure request files. Case files created in response to requests for information under the Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR) process, Privacy Act (PA), Classification Challenge, and similar access programs, and completed by:</p> <ul style="list-style-type: none"> • granting the request in full • granting the request in part • denying the request for any reason including: <ul style="list-style-type: none"> o inability to fulfill request because records do not exist o inability to fulfill request because request inadequately describes records o inability to fulfill request because search or reproduction fees are not paid 	<p>Temporary. Destroy 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.</p>	DAA-GRS-2016-0002-0001
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VI. 32 CFR PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

32 CFR §286.6 Preservation of records.

Each DoD Component shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration (NARA). Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

VII. 36 CFR § 1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the [NARA](#)-approved retention period of a temporary record (other than court-ordered disposal under [§ 1226.14\(d\)](#) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

VIII. 44 U.S. CODE § 3106 - UNLAWFUL REMOVAL, DESTRUCTION OF RECORDS

(a) FEDERAL AGENCY NOTIFICATION.—

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from

another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—

In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

([Pub. L. 90–620](#), Oct. 22, 1968, [82 Stat. 1298](#); [Pub. L. 98–497](#), title I, [§ 107\(b\)\(21\)](#), title II, [§ 203\(b\)](#), Oct. 19, 1984, [98 Stat. 2290](#), 2294; [Pub. L. 113–187](#), [§ 4](#), Nov. 26, 2014, [128 Stat. 2009](#).)

This is submitted upon information, belief, and records available to me.

With my respect,

/s/

Robert Hammond
Whistleblower

ⁱ FOIA Request DON 18-AR sought:

1. All records of any kind in the possession of DON JAG, DON FOIA/PA Office or DON Public Liaison Office related to my January 18, 2014 appeal of my June 29, 2013 FOIA/PA Request WRNMC #13-19 to Walter Reed and the DON JAG February 4, 2014 final appellate determination thereto at Enclosure (1), Attachments A (pp. 3 -9), as described in Background above, from the time that my FOIA appeal was submitted on January 18, 2014 to present.
2. Such records would include but not be limited to:
 - a. All records in DON JAG’s FOIA Appeal case file (which should contain all records related to my Appeal)
 - b. Any and all records relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, “A copy (not the original, though it looked exactly the same) of the DVD was in fact mailed to you on November 19, 2013.”
 - c. Any and all records relied upon by G. E. Lattin in his February 4, 2014 letter at Attachment A to my letter at Enclosure (1) supporting Lattin’s determination that, “While you sent the DVD back to WRNMMC by letter dated November 26, 2013, it remains that WRNMMC discharged its obligation to you under the original request.”
 - d. Any communications by email, fax or in any other format related to my FOIA Request at Enclosure (1) or the appeal thereof between any of the following parties:
 - 1) Walter Reed Privacy Officer, Joseph E. Davidge;
 - 2) Walter Reed’s FOIA Officer, Judy Bizzell;
 - 3) OPNAV DNS-36;
 - 4) DON FOA/PA;
 - 5) Robin Patterson (DON FOIA/PA;
 - 6) DON CIO;
 - 7) DON JAG;
 - 8) Julka, Christopher A CIV DON, CIO;
 - 9) DON FOIA Public Liaison;
 - 10) Garcia, Della, BUMED;
 - 11) Partridge, Heather;
 - 12) DONFOIA-PA;

-
- 13) BUMED.FOIA@med.navy.mil;
 - 14) Muck, Steve CIV SECNAV, DON;
 - 15) (b) (6)
 - 16) Defense Health Agency;
 - 17) Linda Thomas (DHA);
 - 18) Me (Robert Hammond).
- a. Any records of forwarding my FOIA Request or Appeals and any responses thereto.
 - b. Correspondence route sheets.
 - c. Internal notes.
 - d. Action Officer notes.



Office of the Chief
Records Officer for the
U.S. Government

Sent Via Email. No Hard Copy to Follow.

July 2, 2021

Mr. Maurice King
Department of the Defense
Department of the Navy
1000 Navy Pentagon, 5E170
Washington, DC 22350
maurice.king@navy.mil

Dear Mr. King:

The National Archives and Records Administration (NARA) has been notified of a potential unauthorized destruction of records at the Department of the Navy. A member of the public has alleged that the Navy's Office of Judge Advocate General (DON JAG) has destroyed FOIA case processing records (see enclosure).

NARA requests that the Navy investigate this matter to determine if all applicable FOIA records were provided at the time of the request and whether responsive records were/or will be destroyed in accordance with the appropriate records disposition schedules. Please note that per 36 CFR 1230.14, if records have been destroyed without NARA's proper authorization, the agency must report these incidents promptly to NARA.

NARA requests that you provide NARA with a response within 30 days in accordance with 36 CFR 1230.16. Your report should include a description of the records; the records schedule disposition citation that covers the files; details regarding the records destruction incident and recovery efforts; and a statement of the safeguards that have been or will be implemented to prevent future unauthorized disposals of such records. If you have any questions, please contact me at laurence.brewer@nara.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laurence R. Brewer". The signature is written in a cursive style with a large initial 'L'.

LAURENCE BREWER
Chief Records Officer
for the U.S. Government

Enclosure



Office of the Chief
Records Officer for the
U.S. Government

Sent Via Email. No Hard Copy to Follow.

October 19, 2021

Mr. Maurice King
Department of the Defense
Department of the Navy
1000 Navy Pentagon, 5E170
Washington, DC 22350
maurice.king@navy.mil

Dear Mr. King:

The National Archives and Records Administration (NARA) has received the Department of the Navy's response regarding NARA's request for further information pertaining to an allegation of the Office of Judge Advocate General's unauthorized destruction of FOIA case processing records (UD-2021-0033). During your investigation, the Navy determined that all applicable FOIA records were provided to the requestor and that related FOIA responsive records have been maintained in accordance with approved NARA schedule authorities.

Based on the information that you provided, the reporting requirements of 36 CFR 1230.14 have been met. NARA considers this matter closed. If you have any questions, please contact me at laurence.brewer@nara.gov. Thank you for your attention to this matter.

Sincerely,

LAURENCE BREWER
Chief Records Officer
for the U.S. Government