



**Department of Veterans Affairs  
Office of Inspector General  
Washington, DC 20420**

September 21, 2020

Mike Kaszuba  
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[Sent via: mkaszuba@publicrecordmedia.org]

Ref: FOIA Appeal # 20-00035-APP for FOIA # 20-00507-FOIA

Mr. Kaszuba:

This letter responds to your FOIA appeal, received on September 16, 2020, of the referenced Department of Veterans Affairs Office of the Inspector General (VA OIG) FOIA response. As background, your July 16, 2020 FOIA request sought records related to the VA OIG investigation on Sterling Medical Associates, Inc. and the request was denied in the August 24, 2020 response by the VA OIG FOIA Office, citing FOIA Exemption 7A, 5 U.S.C. § 552 (b)(7)(A), to protect law enforcement records for which an information release could reasonably be expected to interfere with enforcement proceedings.

In your appeal letter, you argue as follows, based on the U.S. Department of Justice (DOJ) response to a similar FOIA request from you:

“... it seems that - in all likelihood - DOJ’s investigation of Sterling Medical Associates has terminated. If that is the case, then your agency is unable to assert FOIA Exemption 7A as a reason to withhold documents responsive to PRM’s Request. If ‘enforcement actions’ (which trigger the application of FOIA Exemption 7A) have been completed, then FOIA Exemption 7A is no longer a colorable reason for the withholding of records.”

Agencies may protect records under FOIA Exemption 7A, if the records fall within the legal guidelines set by the courts. Specifically, the courts have required agencies to determine, in order to claim this exemption, that disclosure of the records may reasonably cause an articulable harm to law enforcement proceedings. Your appeal raises two issues based on this legal standard.

a. Articulable harm. The investigation from which you requested records remains an open investigation as of the date of the FOIA response (and as of the date of this letter) and a public release could reasonably be expected to interfere with ongoing

proceedings by revealing the scope of the investigation, among other harms. See, e.g., *ACLU of New Jersey v. Department of Justice*, No. 11-2553, 2012 WL 4660515 (D.N.J. Oct. 2, 2012), (granting defendant's motion for summary judgment where the withheld information concerned an open investigation.)

b. Law enforcement proceedings. The courts have interpreted the term "law enforcement proceedings" in FOIA Exemption 7A to include not only criminal actions, but civil actions and regulatory proceedings as well. See, e.g., *Graves v. EEOC*, No. CV 02-6842, slip op. at 10 (C.D. Cal. Apr. 4, 2003) (finding an employment dispute sufficient to meet the standard), aff'd, 144 F. App'x 626 (9th Cir. 2005). The VA OIG Office of Investigations will close the investigation when they determine that law enforcement proceedings are complete.<sup>1</sup>

Therefore, after a review of the appeal and the FOIA file, I find the FOIA response was proper and the appeal is denied. This is the final decision of the Department of Veterans Affairs on your appeal. The FOIA requires that I advise that, if you believe the Department erred in this decision, you have the right to file a complaint with the appropriate United States District Court. The FOIA also requires I advise that FOIA requesters may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer as non-exclusive alternatives to litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@██████████; telephone at ██████████; toll free at ██████████; or facsimile at ██████████. Please note that OGIS does not have the authority to mediate Privacy Act requests.

Respectfully,

*Christopher Connor*

Christopher Connor  
Chief, Information Release Office (50CI)

Copy to: VA OIG FOIA Office

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<sup>1</sup> The courts have held that FOIA does not provide a mechanism to challenge substantive agency decisions or to compel agencies to perform their missions as directed by the requester. See, *Gillin v. Department of the Army* (D.N.H. May 28, 1993); *Niagara Mohawk Power Corp. v. Department of Energy* (D.D.C. Feb. 23, 1996).