

Arizona Daily Star

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FROM: Emily Bregel, Arizona Daily Star reporter, cell 410-868-1297

TO: General Counsel, U.S. Department of Veterans Affairs

DATE: June 15, 2017

To whom it may concern:

The *Arizona Daily Star*, pursuant to the Freedom of Information Act, hereby appeals the decision of the U.S. Department of Veterans Affairs to withhold the names of dermatology specialists who work at the Southern Arizona VA Health Care System in Tucson, Ariz.

History of the FOIA request:

On April 27, 2017, the *Star* requested the names of all dermatologists and dermatology specialists such as physician assistants who are currently working at the Tucson VA. (The *Star* also requested the names of all Tucson VA specialists in a separate April 18 FOIA. As of June 15, 2017, the *Star* has not received a response.) [Copies of the April 27 and April 18 requests are attached]

In its May 12 response, the VA would not provide the names of the dermatology providers, citing FOIA Exemption 6 [5 U.S.C. § 552 (b)(6)]. In the response VA FOIA officer Donna Wilson said, in part, “We are withholding all information which, if disclosed, would constitute a clearly unwarranted invasion of an individual’s personal privacy under FOIA Exemption 6 [5 U.S.C. § 552 (b)(6)]. Specifically, the names of the providers have been redacted to protect their privacy as it is as likely as not that they would be contacted by the media as a result of this request.” [A copy of the May 12 VA response is attached]

No pertinent privacy interest in the records:

There is no privacy interest in the records requested, which the VA itself appears to concede through its publication of many of the provider names in its own public database of doctors, available at www.va.gov/providerinfo/.

In an April 26, 2017 email to a *Star* reporter, VA spokesman Steven Sample directed a reporter to the VA’s public database of its providers and provided a link to the database. The reason the *Star* cannot rely solely on the information published in the database is that it appears to be out-of-date: At least one of the dermatologists still listed on the database has since moved out of state. The *Star* is requesting an up-to-date listing of the current specialists at the Tucson VA which includes those who are either already named publicly, or will be named publicly when the VA’s own database is updated.

Relevant case law:

Substantial case law supports the *Star*'s request for these records. This includes:

- *Wash. Post Co. v. U.S. Dept. of Health and Human Services*, 690 F.2d 252, 261 (D.C. 1982). Holding that the disclosure of National Cancer Institute consultants' non-federal employment and financial information to the *Washington Post* was not exempt under the FOIA, stating, "under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in the Act."
- *AquAlliance v. U.S. Bureau of Reclamation*, 139 F. Supp. 3d 203 (D.D.C. 2015). Holding that the names and addresses of individuals were improperly redacted because minimal privacy interest existed where the individuals would be identified merely as having participated in a program, without stigma, embarrassment, or danger attached to such information.
- *Kleinert v. Bureau of Land Mgmt.*, 132 F. Supp. 3d 79 (D.D.C. 2015). Holding that the names of officials were improperly redacted because the agency failed to explain how revealing someone's position in the agency invaded that person's privacy.
- U.S. Office of Personnel Management Regulation 5 C.F.R. Section 293.311, which mandates the release of present and former Federal employees' names and position titles to the public.

Substantial public interest:

To the extent there is any privacy interest in the records, it is easily outweighed by the overwhelming public interest in their release. Provider shortages at the VA have contributed to significant and widely reported wait-time problems at veterans' hospitals across the U.S., to the outrage of veterans and veterans' advocates. It is inarguably in the public interest for the *Star*, or a member of the public, including veterans themselves, to be able to determine at what level the local VA hospital is staffed by verifying the number of providers currently employed there. That verification is necessary in order to judge the validity of local veterans' concerns that there are provider shortages at the Tucson VA that could undermine quality of care.

This is particularly important in the context of specialty providers whose services may be needed urgently by veterans whose access to care could be severely constrained and delayed by provider shortages.

Pursuant to FOIA requirements, we request a response to this appeal within 20 working days. Please contact *Star* reporter Emily Bregel as soon as possible if there are any questions regarding the *Star*'s appeal.

Thank you in advance for your consideration.

Sincerely,

Emily Bregel

Reporter

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