

This document is made available through the declassification efforts  
and research of John Greenewald, Jr., creator of:

# The Black Vault



The Black Vault is the largest online Freedom of Information Act (FOIA)  
document clearinghouse in the world. The research efforts here are  
responsible for the declassification of hundreds of thousands of pages  
released by the U.S. Government & Military.

**Discover the Truth** at: <http://www.theblackvault.com>

Merit Systems Protection Board  
1615 M Street, NW, Suite 500  
Washington, DC 20419

VIA E-MAIL Through FOIAonline [REDACTED]

December 16, 2016

**RE: FOIA Request** [REDACTED] **(Final Response)**

Dear [REDACTED],

This is the final response for your Freedom of Information Act (FOIA) request to the U.S. Merit Systems Protection Board (MSPB) dated October 30, 2016 and received on October 31, 2016. In your request, you sought a “copy of the Freedom of Information Act APPEALS Log(s) for the Merit Systems Protection Board for the time period since 2009.” Your request was processed in accordance with 5 C.F.R. § 1204, which implements the FOIA, 5 U.S.C. § 552.

We conducted a comprehensive search of our FOIA processing system and of the Office of General Counsel and Board offices for records responsive to your request. We were able to locate FOIA appeal logs from 2012 through the present. These appeal logs include the tracking number, request type, requester organization (if applicable), date submitted, status of perfection, date due, closed date, status, disposition and detail of the appeal. Portions of the records have been partially withheld pursuant to FOIA Exemption 6. *See* 5 U.S.C. § 552(b)(6).

**FOIA Exemption 6** exempts from disclosure of personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public’s right to disclosure against the individual’s right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

The records are being released to you electronically and are being sent via e-mail through FOIAonline.

If you have any questions regarding this request, or if you disagree with this disposition, in whole or part, you have the right to seek assistance from the FOIA Public Liaison, appeal the determination, or contact the Office of Government Information Services to participate in dispute resolution services.

If you wish to contact the FOIA Public Liaison, you may do so via email to foiahq@mspb.gov or telephone at (202) 254-4475. If you wish to participate in dispute resolution services, you may contact the Office of Government Information Services (OGIS). 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@nara.gov  
Telephone at 202-741-5770  
Toll free at 1-877-684-6448  
Facsimile at 202-741-5769.

If you wish to appeal the determination, you may do so by submitting your appeal through FOIAonline or by mailing your appeal to:

Chairman, c/o Clerk of the Board  
U.S. Merit Systems Protection Board  
1615 M Street, NW  
Suite 500  
Washington, DC 20419.

Your appeal should be identified as a "FOIA Appeal" on both the letter and the envelope, if applicable. It should include a copy of your original request, a copy of this letter and your reasons for appealing this decision. You may also submit your appeal by email to foiahq@mspb.gov or by fax at (202) 653-7130. Your appeal must be filed within ninety (90) days from the date of this letter.

Sincerely,

//signed//

Karin Kelly  
Government Information Specialist  
Merit Systems Protection Board

Tracking Number	Type	Requester Organization	Submitted	Perfected?	Due	Closed Date	Status	Dispositions	Detail
MSPB-OCB-2013-000017	Appeal		10/11/2012	Yes	11/08/2012	11/29/2012	Closed	Partially affirmed & partially reversed/remanded	Denial of documents under exemption (b)(6)
MSPB-OCB-2013-000071	Appeal	MSPB Watch LLC	01/10/2013	Yes	02/08/2013	01/28/2013	Closed	Completely reversed/remanded	The requester is does not like format of the responsive documents
MSPB-OCB-2013-000074	Appeal		01/18/2013	Yes	02/19/2013	03/11/2013	Closed	Partially affirmed & partially reversed/remanded	<p>I request information on attorneys Ms. Lorna Jerome (DHS), Mr. Andrew J. Niedrick, Ms. Susan T. Grundmann, Ms. Anne Wagner, and Mr. Mark A. Robbins. Three are board members, one is an Attorney-Examiner at MSPB and the first one argues cases at MSPB.</p> <p>-Ms. Wagner and Mr. Robbins are members of the DC Bar.</p> <p>So that means that you are either incorrect or lying. I repeat, to which states are these attorneys licenced to practice law. In order to file a formal complaint, one must contact the State Supreme Court and your preventing me from excising my right.</p> <p>Second, since these records do exist, at least for those in the employ of MSPB, you are still in violation of FOIA until it is transmited.</p> <p>Third, MSPB is required to make reports to Congress. I believe the records do exist as to how many VEOA cases were heald, the dispositions of those cases, etc. You have an automated systems, these records do exist...</p>
MSPB-PHRO-2013-000082	Appeal		01/23/2013	Yes	02/21/2013	02/11/2013	Closed	Affirmed on Appeal	Requester does not agree with our response of no records can be retrieved under his name.
MSPB-SFRO-2013-000089	Appeal		01/28/2013	Yes	02/26/2013	02/21/2013	Closed	Affirmed on Appeal	Requester believes our response is incomplete because he did not receive the audio recordings.
MSPB-OCB-2013-000090	Appeal	General Services Administration	01/28/2013	Yes	02/26/2013	03/08/2013	Closed	Closed for other reasons, Request withdrawn	<p>The MSPB has hearing room or court room. That ledger contains all the scheduled cases both for 2012 and 2013. I would like a copy of the ledger if Mspb does not want to sort thru scheduled hearing for GSA scheduled hearings.</p> <p>I am a GSA employee and I would like to attend the hearings to inform myself of the valuable information.</p> <p>The hearings are open to the public but if we cannot access the dates of the hearings the openness is quite useless.</p>

MSPB-OCB-2013-000119	Appeal	MSPB Watch LLC	02/26/2013	Yes	03/26/2013	03/13/2013	Closed	Partially affirmed & partially reversed/remanded	<p>This is an appeal of the Merit System Protection Board's ("MSPB") Feb. 21, 2013 determination of my Freedom of Information Act ("FOIA") request, No. MSPB-OCB-2013-000066. In that request, a copy of which is attached, I stated:</p> <p>In the case Dzinh Ton Nguyen v. Dep't of the Army, 2013 MSPB LEXIS 31, DOCKET NUMBER DC-0752-13-0153-I-1, the administrative judge stated that "the Board has directed its administrative judges to dismiss without prejudice all pending appeals which may be potentially affected by the retroactivity provision of the [Whistleblower Protection Enhancement Act] until after the issue has been decided." I respectfully seek this directive to the judge corps.</p> <p>In the MSPB's determination (see attached), the Board stated that it found two responsive documents. One was withheld "in accordance with the FOIA exemption 5, which provides protection for inter or intra-agency memorandums or other materials that is subject to the deliberative process privilege." The other is a copy of the Whistleblower Protection Enhancement Act, Pub. L. 112-199 (not attached)</p> <p>I appeal this determination because the invocation of the deliberative process privilege seems improper in this case.</p>
MSPB-OCB-2013-000120	Appeal	Chang, Ruthenberg & Long PC	02/27/2013	Yes	03/27/2013	03/28/2013	Closed	Partially affirmed & partially reversed/remanded	<p>Appealing the determination to withhold 4,600 pages purportedly in accordance with exemption (b)(6) of the FOIA.</p> <p>FOIA request is attached</p>
MSPB-OCB-2013-000134	Appeal	MSPB Watch LLC	03/25/2013	Yes	04/22/2013	04/19/2013	Closed	Affirmed on Appeal	<p>Dear Chairman Grundmann:</p> <p>This is an appeal under 5 U.S.C. 552, the Freedom Information Act, in the above-captioned matter.</p> <p>On January 30, 2013, I requested the following:</p> <p>"Any documents showing any arrangement, contract, terms, conditions, or coordination between the MSPB and Thomson Reuters (which owns Westlaw) and/or MSPB and Reed Elsevier (which owns Lexis-Nexis) whereby initial decisions and Board opinions are submitted to, or collected by, Westlaw and/or Lexis-Nexis."</p> <p>Via an initial determination dated March 22, 2013, I received 58 pages of invoices totaling approximately \$338,000 in FY 2013 for subscription services by various MSPB entities (field offices, headquarters, etc.) from West Publishing Corp. (which owns Westlaw) and Reed Elsevier, Inc. (which owns Lexis-Nexis).</p> <p>While I find the documents useful, I do not believe my request was met. The documentation shows how MSPB employees presumably may obtain the MSPB's own Initial Decisions and Board Opinions from Westlaw and Lexis, but it does not show how the Initial Decisions and Board Opinions found themselves to the aforementioned databases in the first place! Truth be told, I seek to find out how much it would cost (whether directly or through lost revenue) to make these government documents available to the public. I seek to help appropriate officials, such as yourself or lawmakers in Congress, determine whether it would be feasible and prudent to make the Initial Decisions publicly available, where they would, I believe, help pro se litigants tremendously (and perhaps even lower the MSPB's adjudicative costs in the process, or simply pay for themselves). I note that the apparent cost of the MSPB's legal subscription services, as evidenced by the documents I received, amounts to less than one percent of the MSPB's annual budget.</p>

MSPB-OCB-2013-000144	Appeal		04/08/2013	Yes	05/06/2013	05/03/2013	Closed	Affirmed on Appeal	<p>This is an appeal from the March 29, 2013, denial.</p> <p>The request was filed electronically, so no "copy" is available as an attachment. However, the denial, attached, accurately excerpts the request.</p> <p>The request was for email addresses of private sector Board practitioners. The information is readily available through your e-filing, email records. I specifically excluded pro se appellants.</p> <p>Public interest: I conduct surveys of Board practitioners regarding comments, concerns, and suggestions as to perceived good and bad points in Board operations and procedures. Results of those surveys are published by me in books I write or in broadcast emails to practitioners. Those comments may also find themselves to the Board by way of informal discussions I have with Board personnel, through my teaching, which may include audiences among which Board employees or officials are present, and if I choose, through formal suggestions to the Board for changes in Board operations or in responses to Board solicitation of practitioners' comments on changes initiated by the Board. The Board being a public agency, entrusted with administration of civil service adjudication functions involving hundreds of thousands of employees, hundreds of agencies, and affecting the broader public, Board operations, and changes in those operations, are in the public interest since the Board serves the public interest.</p> <p>Obtaining comments and suggestions from private practitioners before the Board on a national basis is an important source of information from which to develop suggestions for the improvement of Board operations. Electronic communications, through email addresses, is fast and inexpensive, encouraged by the Board (through its e-filing system).</p>
MSPB-OCB-2013-000146	Appeal	MSPB Watch LLC	03/25/2013	Yes	04/22/2013	04/08/2013	Closed	Closed for other reasons, Request withdrawn	<p>Dear Chairman Grundmann:</p> <p>This is an appeal under 5 U.S.C. 552, the Freedom Information Act, in the above-captioned matter.</p> <p>On February 7, 2013, I requested the following:</p> <p>"[A]ll referrals under 5 USC 1221(f)(3) to the Office of Special Counsel, from Jan. 1, 2011 to the present, and all responses from OSC pertaining to the same provision."</p> <p>(Emphasis added.) Via an initial determination dated March 22, 2013, I received seven such referrals and one response from OSC (listed below and attached), with copies of corresponding Initial and Final Decisions (not attached). However, all of these referrals were sent in 2012, and none from 2011. Moreover, all of the referral letters from 2012 correspond with appellants who prevailed in their Individual Rights of Action in 2012 (calendar year), and all such appellants' cases generated referral letters.</p> <p>Public records indicate that a handful of appellants prevailed in their IRAs in 2011 (see list below), and so corresponding referral letters ought to exist for these cases. These referral letters, and any responses by OSC, are captured by my initial FOIA request.</p> <p>Accordingly, I believe several responsive documents have been omitted from the MSPB's initial determination.</p>
MSPB-OCB-2013-000149	Appeal		04/09/2013	Yes	05/07/2013	04/30/2013	Closed	Affirmed on Appeal	See attachment
MSPB-OCB-2013-000172	Appeal		05/01/2013	Yes	05/30/2013	05/24/2013	Closed	Completely reversed/remanded	Appealing FOIA exemption (b)(6) for the requested document.

MSPB-OCB-2013-000192	Appeal	MSPB Watch LLC	05/30/2013	Yes	06/28/2013	07/01/2013	Closed	Closed for other reasons, Request withdrawn	FY 2013 FOIA Log contained sensitive data.
MSPB-OCB-2013-000205	Appeal		05/31/2013	Yes	06/28/2013	07/01/2013	Closed	Affirmed on Appeal	Requester stated he did not see the record he expected to receive or, if you did, it appeared not to have been properly annotated.
MSPB-OCB-2013-000239	Appeal		08/15/2013	Yes	09/13/2013	08/16/2013	Closed	Closed for other reasons, Request withdrawn	Requester is appealing the August 2, 2013, response to his FOIA request dated July 24, 2013. The request was for documents showing the expenses incurred by the Board for establishing and maintaining the electronic filing system and also for Board reports or audits on the effectiveness of the e-filing system. The response was there were no records and no formal study. Requester said he did not ask for a formal study. He asked for internal reports or audits, without qualification, of the effectiveness of the system. He doubted there have been no internal reviews of the system. He also doubted that there have been no reports of the expenses of the system.
MSPB-OCB-2013-000240	Appeal		08/15/2013	Yes	09/13/2013	08/16/2013	Closed	Closed for other reasons, Request withdrawn	This is an appeal of the August 2, 2013, determination that no initial decision could be found in the case of Gary McLeod v. Dept. Treasury, SE-07528110084.
MSPB-OCB-2013-000241	Appeal		08/15/2013	Yes	09/13/2013	08/22/2013	Closed	Closed for other reasons, Request withdrawn	<p>This is an appeal from the August 9, 2013 response to my request of July 17, 2013.</p> <p>I asked for the latest case processing statistics showing average disposition times for PFRs.</p> <p>I received a spreadsheet through September 2013.</p> <p>I question the adequacy of your search.</p> <p>I believe the Board Chair and Executive Director and OAC Director receive monthly or weekly reports of PFR case processing times.</p> <p>I also requested ORO guidance to the regions on processing of furlough appeals.</p> <p>I received nothing.</p> <p>I question the adequacy of your search.</p> <p>I believe ORO has been sending on emails and receiving suggestions on treatment of furlough appeals, e.g., consolidation, use of lead cases, and class action treatment.</p> <p>Please conduct another search and supply the information responsive to my requests.</p>
MSPB-OCB-2014-000042	Appeal		12/19/2013	Yes	01/21/2014	01/17/2014	Closed	Completely reversed/remanded	Requester is appealing the (b)(5) decision in regards to his FOIA request (MSPB-OCB-2014-000024) provided to him by OCB.

									<p>I am appealing the January 2, 2104 denial of my request for expedited processing of this FOIA request. The stated reason for the denial was "Did not provide a valid justification for expediting this request."</p> <p>Per relevant MSPB regulation at 5 CFR Section 1204.11(c)(2) and 1204.22, I appeal the denial. My "compelling reason" for requesting expedited processing is that I need these unpublished initial decisions of the MSPB to prepare my brief in my pending appeal of the Board's final decision in Carson v. Dept. of Energy, docket no. AT-1221-13-0285-W-1. This is in Carson v. MSPB, docket no. 13-1273, CADC.</p> <p>The certified record of the case was provided by MSPB on 12/13. If I do not receive this information promptly, I may have to request an extension of time to file my brief at CADC. My request for expedited processing and appeal of its denial may be relevant to the Court's consideration of such a request.</p> <p>I certify the facts contained in my initial FOIA request and this appeal to be true to the best of my knowledge and belief.</p>
MSPB-2014-000049	Appeal		01/02/2014	No	TBD	01/09/2014	Closed	Closed for other reasons, Request withdrawn	
MSPB-OCB-2014-000051	Appeal		12/31/2013	Yes	01/31/2014	01/30/2014	Closed	Affirmed on Appeal	Requester is appealing a "no records" response to his FOIA request for a copy of any MSPB plans dated or originated in November or December 2013 for catching up with the workload backlog.
MSPB-OCB-2014-000055	Appeal		01/12/2014	Yes	02/11/2014	01/17/2014	Closed	Closed for other reasons, Request withdrawn	Requester is appealing the initial FOIA response of 1/9/14 in FOIA tracking no. MSPB-OCB-2014-000047. He did not get the initial decisions that he had identified in his FOIA request.
MSPB-OCB-2014-000058	Appeal		01/14/2014	No	TBD	01/22/2014	Closed	Closed for other reasons, Request withdrawn	<p>1- ALTHOUGH THE COVER LETTER IN THE MSPB RESPONSE TO THIS FOIA (RECEIVED TODAY) SAID THAT A DOCUMENT WAS ENCLOSED, NO DOCUMENT WAS ENCLOSED.</p> <p>2- THE REQUEST WAS FOR DOCUMENTS WHICH SHOWED DIFFERENCES IN THE GS-14 AND THE GS-15 POSITION DESCRIPTIONS FOR MSPB JUDGES. THEREFOR , THE PDs THEMSELVES SHOULD HAVE BEEN PRODUCED, AND THEY WERE NOT.</p>



MSPB-OCB-2014-000121	Appeal		03/04/2014	Yes	05/02/2014	04/07/2014	Closed	Partially affirmed & partially reversed/remanded	<p>Requester is appealing refusal to fully disclose certain documents, including FOIA logs maintained by U.S. Merit System Protection Board from calendar years 2005 until present. OCB provide a no records response for items 1 through 8 and 10. See items below that Mr. Donaldson requested:</p> <ol style="list-style-type: none"> <li>1. How many complaints/grievance that were filed against Attorney-Examiners (i.e. Administrative Judges) that MSPB received from calendar year 2005-present.</li> <li>2. The basis of those complaints (i.e. biased, illegal process, etc.etc.)</li> <li>3. The dispositions of those complaints (to include sustained or insufficient evidence).</li> <li>4. The average processing time to investigate and adjudicate those complaints.</li> <li>5. The required processing time (i.e. what regulation was utilized which states as the appropriate time to investigate/adjudicate).</li> <li>6. The regulation or procedure that determines the time for the investigation and adjudication.</li> <li>7. The regulation or procedure that dictates whom is charged with said investigation/adjudication.</li> <li>8. The regulation or procedure utilized to investigate and adjudicate those complaints.</li> <li>9. The FOIA laws the board utilized during Calendar years 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, &amp; 2013.</li> <li>10. The evidence that those complaints were transmitted to the petitioners, in a timely manner.</li> </ol>
MSPB-OCB-2014-000160	Appeal		04/08/2014	Yes	05/19/2014	05/19/2014	Closed	Partially affirmed & partially reversed/remanded	Requester is appealing the withholding of a copy of a settlement agreement in Erica Lewis v. Department of Defense to which exemption (b)(5) of the FOIA was applied.
MSPB-2014-000196	Appeal	MSPB Watch	06/08/2014	Yes	07/09/2014	12/19/2014	Closed	Affirmed on Appeal	Requester is appealing the decision to send OSC originated documents to OSC as referrals.
MSPB-OCB-2014-000216	Appeal		07/02/2014	Yes	08/04/2014	08/01/2014	Closed	Affirmed on Appeal	<p>The MSPB clerk Bernard Parker has failed to provide me with the information requested in my 3/20/2014 FOIA/Privacy Act request to the Merit System Board System. He has failed to provide me with the thirty days advance written notice of specific instances of unacceptable performance on which the Department of Homeland Security's actions were based under the provisions of 5 USC part 4303(A)(l) and 5 CFR part 752.401(b). He has also failed to provide me with my, the appellant's written response to the Department's thirty days advance written notice of specific instances of unacceptable performance under the provisions of 5 CFR part 752.401(c). The Merit System Board System are required to have these records. Without these documents the Department of Homeland Security has failed to take a legal adverse action under the provisions of 5 CFR part 752.</p>

MSPB-OCB-2014-000242	Appeal		09/02/2014	No	TBD	09/23/2014	Closed	Completely reversed/remanded	Requester is appealing that a thorough search of the MSPB records found no information responsive to the subject FOIA, is erroneous. There is no evidence to support a "no records" conclusion by Mr. Aaron. In fact, internal correspondence, which [he] received from the Clerk of the Board on 23rd of June 2014, confirms that records were, indeed, generated as a result of [his] request to reopen case DA-0752-08-0262-1-2 based on new evidence of perjury by the agency's proposing and removing officials in that case. As such, the Clerk of the Board generated at least one record which was responsive to [his] request.
MSPB-OCB-2015-000003	Appeal		10/02/2014	No	TBD	11/07/2014	Closed	Affirmed on Appeal, No records	Requester is appealing the no records response provided in our letter dated September 22, 2014.
MSPB-OCB-2015-000020	Appeal	The Oregonian	11/10/2014	No	TBD	02/27/2015	Closed	Closed for other reasons, Request withdrawn	The above FOIA request was closed because it was modified. Why wasn't another FOIA request opened? MSPB-2014-000239  Submitted  Evaluation  Assignment  Processing Active Closed
MSPB-OCB-2015-000094	Appeal	Law Offices of Keith Goffney	04/16/2015	Yes	05/14/2015	05/11/2015	Closed	Partially affirmed & partially reversed/remanded	The FOIA Appeal is necessitated by the omission from the Response of documents known to be in possession of the Board. Specifically omitted was Petitioner's Petition for Review (and the envelope enclosure) that was dispatched from Los Angeles on January 27, 2014, and received at the Board's offices, via Federal Express. Also omitted was any copy of an envelope postmarked January 28, 2014, by the U.S. Postal Service, showing appropriate postage for alleged transmittal of the Petition For Review on that day alone with several requisite copies. We believe and contend that an envelope postmarked January 28, 2014, was never used to transmit the Petition For Review (which had been sent the day prior by Federal Express).
MSPB-OCB-2015-000100	Appeal	Harvard Law School	04/27/2015	Yes	05/26/2015	05/11/2015	Closed	Affirmed on Appeal	See attachment.
MSPB-OCB-2016-000017	Appeal	Barrio Juan Martin	10/19/2015	Yes	11/17/2015	11/10/2015	Closed	Affirmed on Appeal	See attached. Note that the appeal covers MSPB's single response to FOIA Requests 2015-000147, 148, 149, and 150.
MSPB-2016-000029	Appeal		11/20/2015	Yes	12/21/2015	12/21/2015	Closed	Affirmed on Appeal, Records not reasonably described	Per the relevant regulations, I appeal this FOIA response because I wish to further establish my contentions of "broken covenant" as it applies to you, the Chairman of U.S. Merit Systems Protection Board (MSPB) and the heads of agencies (as defined in 5 U.S.C. 2302(a)(2)(C)(ii)).

MSPB-OCB-2016-000041	Appeal		12/14/2015	Yes	01/13/2016	02/23/2016	Closed	Affirmed on Appeal	<p>This a FOIA Appeal on both the letter and the envelope"</p> <p>The reason I am appeal the final disposition: Full Grant is because the Board's Administrative Judge failed to provide me a copy of the final disposition of Docket number D-0752-07-0206-I-1: Jerry O Jones, Appellant v. Department of the Treasury, Agency to the Intervener, Louise Rhodes, 3503 S. Ewing Avenue, Dallas, Texas 75216-5911.</p> <p>A settlement was finalized on March 26, 2008 in the Appellant's favor. Therefore I was deprived in knowing the outcome of this settlement which denied me equal rights to justice.</p> <p>Also, I initially request the ruling of Docket Number DA-0752-07-0206-I-1 on August 4, 2015 but did not receive the request for the ruling for this docket number. A copy is enclosed.</p>
MSPB-OCB-2016-000067	Appeal		02/11/2016	No	TBD	02/19/2016	Closed	Closed for other reasons, Request withdrawn	<p>I am appealing based on the non-response and the lack of clarity in communicating with the FOIA designee via e-mail interaction. You will notice that for some reason the designee felt the need to seek information from an outside agency regarding documents that are in the MSPB's possession. While i did not understand his rationale, I chose to forego questioning the designee regarding this approach. This was in June 2015; three months after I received a "still interested" e-mail from the designee (Mar. 2015) and one month after I was advised by the designee that my request was now in the cue to be processed. Thereafter, I submitted several status requests to the designee, the latter in Sept. 2015, which he apparently chose to ignore. Fast-forward to Feb 2016 and the designee e-mails me an advisory regarding sending my request out for yet another agency referral. Additionally, I note that the FOIA tracking number for this request has been altered several times during processing for reason that seem incomprehensible. To that point, the designee has failed to advise me with any specifics regarding the processing of my request which includes but is not limited to why he feels the need for yet another inter-agency referral at this late stage in the processing of my FOIA request. Furthermore, my initial FOIA request was assigned the 'simple' track for agency processing. As such, I am bewildered at the designee's year-long action in what was purported to be a relatively 'simple' FOIA request for processing by MSPB officials.</p> <p>On appeal, I respectfully request a timely detailed response and expedited release of the documents originally requested well over a year ago under the FOIA statute.</p> <p>Supporting Files Attached via E-mail</p>

MSPB-2016-000081	Appeal	Wisconsin State Journal	02/25/2016	Yes	03/24/2016	03/22/2016	Closed	Affirmed on Appeal	<p>The information I requested – the settlement agreement between an appellant in a case before the Merit Systems Protection Board, Mario DeSanctis, and the Department of Veterans Affairs – is of clear and pressing interest to the public. That includes the readers of the Wisconsin State Journal newspaper, for which I report.</p> <p>The former employer of Mr. DeSanctis, the Tomah VA Medical Center in Tomah, Wis., has been the subject of considerable public interest and scrutiny in recent months.</p> <p>Much of the interest centers on charges of wrongdoing by the facility's staff, including the alleged over-prescription of opiate drugs to veterans who were patients at the center. A federal investigation found deficiencies in care at Tomah contributed to the 2014 death of a U.S. Marine, Jason Simcakoski.</p> <p>The public deserves to know under what conditions Mr. DeSanctis ended his employment with the Tomah VA – particularly if taxpayer dollars were expended as part of his departure from the agency.</p> <p>I believe the public's right to know the terms of the settlement far outweighs any privacy concerns.</p> <p>Therefore I appeal the denial of my request and ask that it be overturned.</p> <p>I appreciate your consideration of and prompt attention to this matter.</p>
MSPB-2016-000098	Appeal		03/09/2016	Yes	04/06/2016	11/21/2016	Closed	Partially affirmed & partially reversed/remanded	<p>I appeal the determination dated February 25th withholding access to specified Board records, FOIA Case MSPB-OCB-20 16-000075. The decision was incorrect because 1) factual portions of the withheld reports were withheld improperly. These factual portions, for example, described the extent and data losses and ramifications of the computer system outage. Also 2) there is no evidence that any attempt was made to release segregable releasable portions. The FOIA statute requires the release of all segregable releasable portions of otherwise exempt records. Moreover, the President's Memo articulates and establishes a presumption of openness to be followed by agencies. Furthermore, the Attorney General's Memo on FOIA instructs agencies to release records, even if technically exempt, if they will not cause foreseeable harm. The Attorney General asks agencies to pay particular attention to the b(5) exemption as an area where such releases should be made, and this is precisely the exemption cited in the initial denial letter. The initial denial letter dated February 25th signed by the Clerk to the Board did not identify that any such review for the release of segregable portions was done. In addition, exemption b(5) does not apply to factual portions, except where they are inextricably intertwined with opinion matter. In this case, the description of WHAT happened is separate from the description of how to correct the problem and prevent it from happening in the future. As the initial denial letter says: " (the documents) present options and make policy recommendations for consideration by agency management." Therefore, it not only possible but feasible to separate out fact (releasable) from opinion (protectable). That legally necessary separation of non-exempt portions was not done in this case. For those reasons, the initial determination should be reversed in this instance.</p>

MSPB-2016-000119	Appeal		04/04/2016	Yes	05/02/2016	06/07/2016	Closed	Completely reversed/remanded	<p>This is in response to your letter dated April 3, 2016, regarding my FOIA/PA Appeal</p> <p>I filed in person to the Board on April 4, 2016. I find no evidence to support a withdrawal of my April 4, 2016, FOIA/PA appeal. As I noted in my appeal, this serves as my final administrative attempt to gain access to my records. As a reminder included below is the applicable Regulation on Board Appeals.</p> <p>Title 5, Code of Federal Regulations Administrative Personnel Chapter II - Merit Systems Protection Board (MSPB) Subchapter A - Organization and Procedures Part 1204- Availability of Official Information § 1204.22 Decision on appeal.</p> <p>A decision on an appeal will be made within 20 workdays after the appeal is received. A decision not to provide expeditious processing of a request will be made within 15 workdays after the appeal is received. The decision will be in writing and will contain the reasons for the decision and information about the appellant's right to seek court review of the denial.</p>
MSPB-2016-000159	Appeal		07/05/2016	No	TBD	08/02/2016	Closed	Affirmed on Appeal, No records	<p>Dear Chairmen of the Board or whom it may concern,</p> <p>Per the directions of the United States Merit Systems Protection Board emailed dated July 1, 2016, request that I appeal the pending case to the Chairmen of the Board. This is the submission of the second appeal in this case, Docket Number: PH-0752-13-5332-I-2.</p> <p>Please reconsider the final deposition that was undecided in the attached email. This is my good Muslim life and my disabled elderly Muslim mother's life in the United States of America.</p> <p>Too late to restore our dignity, reputation and character that was maliciously stripped from us.</p> <p>The theft of my original Muslim Birth Certificate by the Administrative Law Judge for reasons of validations is unbelievable and unacceptable. The continued refusal by the USMSPB to return the authentic Birth Certificate is unbelievable and unacceptable.</p> <p>Please, the Board MUST produce our authentic Muslim Birth Certificate (The rightful owners of the document is the ONLY persons that can doing the validation).</p>

									<p>Redactions overbroad as there is public interest in the conduct of public officials, including both misconduct and how an agency accounts for misconduct and holds individuals accountable. That is clearly the case here involving an official - who may have been one of several engaged in misconduct - who was terminated but got his job back when the deciding official was sick.</p> <p>1. Michael Nicley, the deciding official in this matter, is dead, and therefore privacy concerns no longer apply. (link to obit: <a href="http://www.legacy.com/obituaries/tucson/obituary.aspx?pid=17341185">http://www.legacy.com/obituaries/tucson/obituary.aspx?pid=17341185</a> also see attached)</p> <p>2. There appear to be instances where Martinez's name is redacted when it shouldn't be.</p> <p>3. There may be names of specific units that would not disclose methods or sources and therefore should be released. Also, there are matters involving a 13-year-old case, and redacting the type of case seems overbroad.</p> <p>4. As for the withholding of the partially executed settlement and fully executed settlement, these should be released on a public interest argument. There is absolutely an overriding public interest that far outweighs Mr. Martinez's privacy concerns. He certainly was willing to be public about the allegations when he challenged his removal from government service for an act that would appear to be against the law. He admitted to intercepting a phone conversation without the legally required approval of a Federal District Judge, and then attempted to do so again in front of another federal agent. That Mr. Martinez admittedly did this and was allowed to keep his job is certainly a matter of public interest because it involves inherently governmental activity, involves a possible violation of the law and indicates how the government engages in its work. Based on Mr. Martinez's own defense this does not appear to be an isolated incident as he refers to another agent who admitted to doing the same.</p>
MSPB-2016-000188	Appeal	The Center for Investigative Reporting	08/26/2016	Yes	09/26/2016	11/22/2016	Closed	Partially affirmed & partially reversed/remanded	<p>5. As for Mr. Martinez's defense, there are sections of his list of witnesses</p>
MSPB-2016-000238	Appeal		09/15/2016	Yes	10/14/2016	11/10/2016	Closed	Completely reversed/remanded	<p>I received an official MSPB response from Ms. Karin Kelly, referencing Tracking Number MSPB-2016-000165. As part of the Released Records I received from Ms. Kelly, was a redacted document titled: Leotis Walker v USPS, DC-0752-01-0145-1-1_Redacted.</p> <p>Therefore, the purpose of this letter is to state that I, being the wife of the deceased, Leotis Walker, is appealing the current redacted format of Release Record: Leotis Walker v USPS, DC-0752-01-0145-1-1_Redacted, and am asking to receive all records maintained by MSPB of my deceased husband, in a non-redacted format.</p> <p>Continuing, I understand that records maintained in an MSPB system of records is subject to the Privacy Act of 1974, 5 U.S.C. §552a., and that MSPB is, therefore, not authorized to release any personal information of Mr. Walker to a third party without prior written consent. Mr. Walker is now deceased. Moreover, I further understand that there are release exemptions that apply and that courts have held that an individual's privacy interest is extinguished or diminished once the individual is deceased.</p> <p>Therefore, and as instructed in Ms. Kelly's status letter to me, I am submitting documentation such as a death certificate showing that my husband Leotis Walker is deceased, and am praying that I will then receive non-redacted copies of his Released Records. Attached, please find supporting documentation of my deceased husband, and in which I pray is sufficient to have your organization to resend to me in an non-redacted format, document: Leotis Walker v USPS, DC-0752-01-0145-1-1_Redacted.</p>

MSPB-2016-000242	Appeal		09/19/2016	Yes	10/18/2016	TBD	Assignment Determination	<p>On July 8, 2016, I submitted the attached Freedom of Information Act (FOIA) Request via online submission to www.foia.gov for (C)opies of all records including electronic communications generated from December 1, 2013, to the present, between MSPB Administrative Law Judges containing the words "Uniformed Services Employment and Reemployment Act" or "USERRA."</p> <p>On July 28, 2016, the MSPB acknowledged receipt of my FOIA request and assigned MSPB-OCB-2016-000154 as the tracking number for my request. In the acknowledgment, Ms. Karin Kelly invoked a 10 day extension to the 20 business day mandate to respond. Ms. Kelly wrote (Y)our request will require the need to search for, collect, and examine a potentially voluminous amount of records from MSPB Headquarters and from regional offices.</p> <p>On August 8, 2016, I replied to the Ms. Kelly's acknowledgement and disagreed with Ms. Kelly's assessment of "voluminous amount of records." The eDiscovery capability in Microsoft Office 365 can perform keyword searches and sort through thousands of emails and attached documents, across multiple email accounts, to find the records likely to be relevant to my FOIA request, with ease and can be completed within minutes. If the MSPB still requires further consultation on the methods and practice of examining employee email accounts, the DOJ may be available to assist.</p> <p>73 calendar days has passed since I submitted the attached FOIA Request to your office. The MSPB has failed to seek an extension to process my request or grant access to the requested records. As such, the MSPB has failed to comply the with relative FOIA statutes. I appeal the failure of the MSPB to act and comply with the relative FOIA statutes. This serves as my final administrative attempt to gain access to requested records.</p>	
MSPB-2017-000006	Appeal		10/10/2016	Yes	11/08/2016	11/07/2016	Closed	Affirmed on Appeal	<p>Ms. Kelly invoked a FOIA exemption to a Privacy Act Request. The information requested involves records retrievable under my name and therefore the only Privacy interest is my own. As such, FOIA exemption (b)(6) is not applicable and the records must be disclosed.</p> <p>As such, the MSPB has failed to comply the with relative Privacy Act statutes. I appeal the failure of the MSPB to comply with the relative Privacy Act statutes. This serves as my final administrative attempt to gain access to requested records.</p>