



DEPARTMENT OF VETERANS AFFAIRS
Office of the General Counsel
Washington DC 20420

AUG 05 2011

William E. Reukauf
Associate Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Attn: Catherine A. McMullen, Chief, Disclosure Unit

In Reply Refer To:

Re: OSC File Number DI-11-1155

Dear Mr. Reukauf:

This is in response to Ms. McMullen's email dated July 1, 2011, regarding the proposed action taken in the OSC File Number DI-11-1155. Your office requested a letter stating what action was proposed, and that such information would be included in your public file.

A proposed removal was given to the employee in OSC File Number DI-11-1155. This information is being disclosed to OSC from the employee's personnel records pursuant to the law enforcement exception of the Privacy Act, 5 U.S.C. § 552a(b)(7). VA would not release this information to the public because the employee is considered to be a lower level employee whose privacy interests are outweighed by the public's need to know. See for example, Hoyos v. United States, No. 98-4178, slip op. at 3 (11th Cir., Feb. 1, 1999) and Forest Service Employees for Environmental Ethics v. U.S. Forest Service, 524 F.3d 1021 (9th Cir. 2008).

We acknowledge that the Privacy Act does not permit an agency which has properly disclosed information pursuant to an exception to control subsequent uses and disclosures by another agency. Accordingly, we object to this information being included in your public file, but concede that VA has no authority to require OSC to withhold it from the public.

If you have any questions about this request, please contact Katherine Seto in the Office of General Counsel at 202-461-7629.

Sincerely yours,

for *Thomas J. McKeever, Jr.*
Walter A. Hall
Assistant General Counsel