

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)
WINKLER LAW LLC,)
 Plaintiff)
))
v.)
))
UNITED STATES DEPARTMENT OF)
VETERANS AFFAIRS,)
))
 Defendant)
_____)

Civil Action No. 20-12125

COMPLAINT

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff Winkler Law LLC. (“Winkler Law”) seeks the immediate processing and release of agency records it requested on September 2, 2020 from the United States Department of Veterans Affairs (VA), through six medical centers operated by the Veterans Health Administration, a component of the VA. Winkler Law has yet to receive a single communication or responsive document from VA.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii).

3. Venue lies in this district, where Winkler Law has its principal place of business, under 5 U.S.C. § 552(a)(4)(B).

The Parties

4. Winkler Law LLC is a professional limited liability company with a principal place of business at 120 Holmes Street, Suite 313, Quincy, Massachusetts, 02171.

5. The U.S. Department of Veterans Affairs (“VA”) is a federal agency headquartered at 810 Vermont Ave. NW, Washington DC 20420. VA has possession, custody, and control over records sought by Plaintiff. VA is an agency within the meaning of 5 U.S.C. 552(f)(1).

VA FOIA PROCESS

6. The VA has a decentralized system for handling FOIA requests and instructs requestors to contact the FOIA office where the records are maintained.

7. The records sought by the Plaintiff are maintained in individual Veterans Health Administration medical centers (VA Medical Centers).

8. Because of Covid-19, the VA is not accepting hard copy FOIA requests. Instead, the VA currently instructs requestors to send requests through e-mail, and provides e-mail contact information for designated FOIA officers at each VA facility, including its VA Medical Centers.

FACTS

9. Since Covid-19 began, the VA, like other healthcare providers, has struggled to purchase sufficient personal protective equipment (“PPE”) for staff and patients at the VA’s various medical centers and outpatient clinics.

10. Each VA Medical Center directly purchases most supply requirements, including PPE, for direct delivery through its local acquisition office. Vendors are encouraged by the VA

to contact each facility individually for inclusion in the procurement process.

11. In March 2020, Attorney General William Barr announced a nationwide task force devoted to address Covid-19 related market manipulation, price-gouging and hoarding. The task force was directed to develop effective enforcement measures and best practices, work closely with other agencies empowered to designate particular items and equipment as scarce, and coordinate nationwide investigations and prosecutions of these illicit activities.

12. The U.S. Attorney's Office in Boston (the "USAO") is participating in the task force and, among other things, is investigating one or more sellers of PPE for hoarding and/or possible price gouging in sales to VA Medical Centers and other healthcare customers.

13. The question of what conduct might constitute price gouging is determined, at least in part, by market prices for PPE at the time sales were made to various clients.

14. Market prices of PPE increased significantly between March and June 2020, during the first phase of the Covid-19 pandemic, as various governmental entities and healthcare providers competed with one another to buy the necessary PPE for their staff and patients.

15. Disclosure of the prices at which PPE was actually being purchased by particular VA Medical Centers is in the public interest to ensure that the conduct by the current targets of the USAO's investigation is fairly and justly evaluated in the light of the actual market prices for PPE at the times at which PPE was sold to VA Medical Centers and others.

16. On September 2, 2020, Winkler Law served FOIA requests on the following VA Medical Centers by email at the email addresses for FOIA requests that are provided by the VA on its website:

- a. Edith Nourse Rogers Memorial Veterans Hospital
Bedford, Massachusetts. Exhibit A, hereto.

All purchase orders and invoices regarding N-95 masks purchased by your facility between April 15 and May 15, 2020. This request includes, without limitation, all purchases from all suppliers.

- b. VA North Texas Health Care System
Dallas, Texas. Exhibit B, hereto.

All purchase orders and invoices regarding (1) N-95 masks and (2) face shields purchased by your facility between April 1 and May 5, 2020. This request includes, without limitation, all purchases from all suppliers.

- c. Marion VA Medical Center
Marion, Illinois. Exhibit C, hereto.

All purchase orders and invoices regarding (1) N-95 masks; (2) face shields; (3) nitrile gloves; and (4) gowns that were purchased by your Marion, Illinois and Evansville, Indiana facilities between March 15 and April 30, 2020. This request includes, without limitation, all purchases from all suppliers.

- d. Charlie Norwood VA Medical Center
Augusta, Georgia. Exhibit D, hereto.

All purchase orders and invoices regarding 3-ply, non-medical masks purchased by your facility between May 15 and June 15, 2020. This request includes, without limitation, all one-time purchases from all suppliers.

- e. Togus VA Medical Center
Augusta, Maine. Exhibit E, hereto.

All purchase orders and invoices regarding N-95 masks purchased by your facility between May 1 and June 15, 2020. This request includes, without limitation, all purchases from all suppliers.

- f. VA Central Iowa Health Care System
Des Moines, Iowa. Exhibit F, hereto.

All purchase orders and invoices regarding N-95 masks purchased by your facility between April 1 and April 30, 2020. This request includes, without limitation, all purchases from all suppliers.

17. The e-mail provided by the VA for the FOIA offices set forth in Paragraphs 13d, e, and f, above, were returned as undeliverable. As instructed on the VA's website, Winkler Law then sent those three requests by e-mail to the general FOIA e-mail specified by the VA on its website for the VHA Central Office for routing to the appropriate responder. Exhibit G, hereto.

18. More than two months since service of the six FOIA requests, Winkler Law has received no communication from the VA whatsoever, and no record or document has been provided in response to its FOIA requests.

Cause of Action

**Violation of the Freedom of Information Act for Wrongful
Withholding of Agency Records**

19. Plaintiff Winkler Law repeats and realleges paragraphs 1–18.

20. Defendant VA, through its acts and omissions, has wrongfully withheld agency records requested by Plaintiff Winkler Law.

21. Plaintiff Winkler Law has exhausted its administrative remedies with respect to Defendant VA's wrongful withholding of the requested records because Defendant VA has not responded within the time limits set forth in 5 U.S.C. § 552(a)(6)(A). See, 5 U.S.C. § 552(a)(6)(C).

22. Plaintiff Winkler Law is entitled to injunctive relief with respect to the release and disclosure of the requested records.

Requested Relief

WHEREFORE, Plaintiff Winkler Law prays that this Court:

- A. Declare that Defendant has violated FOIA;
- B. Order Defendant to conduct a reasonable search for records and to produce the requested records expeditiously;
- C. Award Plaintiff Winkler Law costs and reasonable fees incurred in this action under 5 U.S.C. § 552(a)(4)(E); and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully Submitted,

Dated: November 26, 2020

s/ Susan G. Winkler

Susan G. Winkle4
BBO #530682
Winkler Law LLC
120 Holmes St., Suite 313
Quincy, MA 02171
(617) 642-6671
winkler.susan@gmail.com

September 1, 2020

VIA EMAIL

vhbedfoia@va.gov

Stacey Wallace (or alternate)
Freedom of Information Act Officer
Edith Nourse Rogers Memorial Veterans Hospital
200 Springs Road
Bedford, MA 01730

RE: Freedom of Information Act Request

Dear Ms. Wallace:

This is a request under the Freedom of Information Act. I hereby request copies of:

All purchase orders and invoices regarding N-95 masks purchased by your facility between April 15 and May 15, 2020. This request includes, without limitation, all purchases from all suppliers.

As FOIA requires, please release all reasonably segregable nonexempt portions of documents.

Please note that 5 U.S.C. Section 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. Electronic production by email to winkler.susan@gmail.com is acceptable. Further, I am requesting a waiver of all fees under 5 U.S.C. Section 552(a)(4)(A)(iii). The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government during the pandemic, and is not primarily in my commercial interest. If the fee for production is expected to exceed \$35.00, please contact me first to discuss the cost before proceeding beyond the first 100 copies.

If you have any questions regarding this request, please contact me at winkler.susan@gmail.com. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

/s/ Susan Winkler

Susan Winkler
Winkler Law LLC
120 Holmes Street, Suite 313
Quincy, MA 02171
(617) 642-6671

Exhibit A

September 1, 2020

VIA EMAIL

549foia@va.gov

Cheryl Johnson (or alternate)
Freedom of Information Act Officer
VA North Texas Health Care System
4500South Lancaster Road
Dallas, TX 75216

RE: Freedom of Information Act Request

Dear Ms. Johnson:

This is a request under the Freedom of Information Act. I hereby request copies of:

All purchase orders and invoices regarding (1) N-95 masks and (2) face shields purchased by your facility between April 1 and May 5, 2020. This request includes, without limitation, all purchases from all suppliers.

As FOIA requires, please release all reasonably segregable nonexempt portions of documents.

Please note that 5 U.S.C. Section 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. Electronic production by email to winkler.susan@gmail.com is acceptable. However, I am requesting a waiver of all fees under 5 U.S.C. Section 552(a)(4)(A)(iii). The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government during the pandemic, and is not primarily in my commercial interest. If the fee for production is expected to exceed \$35.00, please contact me first to discuss the cost before proceeding beyond the first 100 copies.

If you have any questions regarding this request, please contact me at winkler.susan@gmail.com. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

/s/ Susan Winkler

Susan Winkler
Winkler Law LLC
120 Holmes Street, Suite 313
Quincy, MA 02171
(617) 642-6671

Exhibit B

September 2, 2020

VIA EMAIL

vhamarionilfoia@va.gov

Deanna Duncan (or alternate)
Freedom of Information Act Officer
Marion VA Medical Center
2401 West Main Street
Marion, IL 62959

RE: Freedom of Information Act Request

Dear Ms. Duncan:

This is a request under the Freedom of Information Act. I hereby request copies of:

All purchase orders and invoices regarding (1) N-95 masks; (2) face shields; and (3) nitrile gloves; and (4) gowns that were purchased by your Marion, Illinois and Evansville, Indiana facilities between March 15 and April 30, 2020. This request includes, without limitation, all purchases from all suppliers.

If it assists you in your search, we believe the purchasing officer for Marion, Illinois was Russel L. Kelly, and the purchasing officer for Evansville, Indiana was Crystal Whitmore. If the request for information from the Evansville VA Health Care Center should be forwarded to a different FOIA office, please let me know. The two centers are listed together on the VA's website.

As FOIA requires, please release all reasonably segregable nonexempt portions of documents.

Please note that 5 U.S.C. Section 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. Electronic production by email to winkler.susan@gmail.com is acceptable. Further, I am requesting a waiver of all fees under 5 U.S.C. Section 552(a)(4)(A)(iii). The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government during the pandemic, and is not primarily in my commercial interest. If the fee for production is expected to exceed \$35.00, please contact me first to discuss the cost before proceeding beyond the first 100 copies.

If you have any questions regarding this request, please contact me at winkler.susan@gmail.com. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

/s/ Susan Winkler
Susan Winkler
Winkler Law LLC
120 Holmes Street, Suite 313
Quincy, MA 02171
(617) 642-6671

Exhibit C

September 2, 2020

VIA EMAIL

Augusta509foiarequests@va.gov

Shawana Burch Williamson (or alternate)
Freedom of Information Act Officer
Charlie Norwood VA Medical Center
1 Freedom Way (00)
Augusta, GA 30904

RE: Freedom of Information Act Request

Dear Ms. Burch:

This is a request under the Freedom of Information Act. I hereby request copies of:

All purchase orders and invoices regarding 3-ply non-medical masks purchased by your facility between May 15 and June 15, 2020. This request includes, without limitation, all one-time purchases from all suppliers.

As FOIA requires, please release all reasonably segregable nonexempt portions of documents.

Please note that 5 U.S.C. Section 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. Electronic production by email to winkler.susan@gmail.com is acceptable. Further, I am requesting a waiver of all fees under 5 U.S.C. Section 552(a)(4)(A)(iii). The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government during the pandemic, and is not primarily in my commercial interest. If the fee for production is expected to exceed \$35.00, please contact me first to discuss the cost before proceeding beyond the first 100 copies.

If you have any questions regarding this request, please contact me at winkler.susan@gmail.com. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

/s/ Susan Winkler

Susan Winkler
Winkler Law LLC
120 Holmes Street, Suite 313
Quincy, MA 02171
(617) 642-6671

Exhibit D

September 1, 2020

VIA EMAIL

Vhatog_foia@va.gov

Austin Brown (or alternate)
Freedom of Information Act Officer
Togus VA Medical Center
1 VA Center
Augusta, Maine 04330

RE: Freedom of Information Act Request

Dear Ms. Johnson:

This is a request under the Freedom of Information Act. I hereby request copies of:

All purchase orders and invoices regarding N-95 masks purchased by your facility between May 1 and June 15, 2020. This request includes, without limitation, all purchases from all suppliers.

As FOIA requires, please release all reasonably segregable nonexempt portions of documents.

Please note that 5 U.S.C. Section 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. Electronic production by email to winkler.susan@gmail.com is acceptable. Further, I am requesting a waiver of all fees under 5 U.S.C. Section 552(a)(4)(A)(iii). The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government during the pandemic, and is not primarily in my commercial interest. If the fee for production is expected to exceed \$35.00, please contact me first to discuss the cost before proceeding beyond the first 100 copies.

If you have any questions regarding this request, please contact me at winkler.susan@gmail.com. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

/s/ Susan Winkler

Susan Winkler
Winkler Law LLC
120 Holmes Street, Suite 313
Quincy, MA 02171
(617) 642-6671

Exhibit E

September 2, 2020

VIA EMAIL

centraliowavafoia@va.gov

Laurel Williamson (or alternate)
Freedom of Information Act Officer
VA Central Iowa Health Care System
3600 30th Street
Des Moines, Iowa 50310

RE: Freedom of Information Act Request

Dear Ms. Williamson:

This is a request under the Freedom of Information Act. I hereby request copies of:

All purchase orders and invoices regarding N-95 masks purchased by your facility between April 1 and April 30, 2020. This request includes, without limitation, all one-time purchases from all suppliers.

As FOIA requires, please release all reasonably segregable nonexempt portions of documents.

Please note that 5 U.S.C. Section 552(a)(4)(A)(iv)(II) requires that you provide the first 100 copies to me at no charge. Electronic production by email to winkler.susan@gmail.com is acceptable. Further, I am requesting a waiver of all fees under 5 U.S.C. Section 552(a)(4)(A)(iii). The information I seek is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government during the pandemic, and is not primarily in my commercial interest. If the fee for production is expected to exceed \$35.00, please contact me first to discuss the cost before proceeding beyond the first 100 copies.

If you have any questions regarding this request, please contact me at winkler.susan@gmail.com. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

/s/ Susan Winkler

Susan Winkler
Winkler Law LLC
120 Holmes Street, Suite 313
Quincy, MA 02171
(617) 642-6671

From: Susan Winkler <winkler.susan@gmail.com>
Sent: Wednesday, September 2, 2020 8:45 AM
To: vhafoia2@va.gov
Subject: FOIA Requests
Attachments: FOIA Final Augusta ME VA.pdf; FOIA Final Des Moines Iowa VA (1).pdf; FOIA Final Augusta GA VA.pdf

Dear VHA Central Office,

I have tried reaching out directly to the VA centers who have FOIA contacts listed on-line in connection with FOIA requests for purchase orders and invoices connected to purchases of N-95 masks by two particular VA centers and 3-ply non-medical masks by a third VA center during specified weeks during the pandemic.

For two of the centers (Maine and Iowa) the emails were returned as not deliverable because the address provided on-line is restricted; for the third (Georgia) the email was returned as not deliverable because the address couldn't be found (I double checked the on-line listing - Augusta509foiarequests@va.gov is correct as listed). The centers for which the on-line filings could not be completed are:

1. Charlie Norwood VA Medical Center, Augusta, Georgia
2. Togus VA Medical Center, Augusta, Maine
3. VA Central Iowa Health Care System, Des Moines, Iowa

I have attached the specific requests hereto. Can you please help route these FOIA requests to the appropriate responder?

Any assistance is very much appreciated.

Thank you!

Susan Winkler
617-642-6671

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WINKLER LAW LLC

(b) County of Residence of First Listed Plaintiff Norfolk (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Susan Winkler, Winkler Law LLC, 120 Holmes St., Suite 313, Quincy, Massachusetts 02171. (617) 642-6671

DEFENDANTS

U.S. DEPARTMENT OF VETERANS AFFAIRS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) USAO, One Courthouse Way, Suite 9200, Boston, MA 02210.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 USC 522

Brief description of cause:

Failure of VA to respond to lawfully issued and served FOIA requests

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/26/2020

Susan Winkler

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Winkler Law LLC v. U.S. Department of Veterans Affairs

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT. 110,
- II. 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Susan Winkler

ADDRESS Winkler Law LLC, 120 Holmes St, Suite 313, Quincy, MA 02171

TELEPHONE NO. 617-642-6671