

**J. RONI FREUND &
MARY S. MATHEWSON,**

V.

Vet. App. No. 21-4168

On June 21, 2021, J. Roni Freund and Mary S. Mathewson (“Petitioners”), on behalf of themselves and all similarly situated claimants, filed a Request for Class Certification and Class Action (“RCA”). On November 7, 2021, Petitioners filed a Reply in Support of the RCA (“RCA Reply”). At pages 4–5 and 12 of the RCA, and page 11 of the RCA Reply, Petitioners noted that their counsel in December 2020 had submitted a Freedom of Information Act (“FOIA”) request for information to permit calculating the proposed class’s size (the “FOIA

Request”). At page 12 of the RCA, Petitioners noted that VA had not responded to the FOIA Request. On March 10, 2022, the Court issued an Order that requires the Secretary to obtain an affidavit(s) addressing matters including the FOIA Request’s status.

Petitioners respectfully submit this *Solze* Notice to apprise the Court that, on March 21, 2022, their counsel received the Board of Veterans’ Appeals’s (“Board’s”) response to the FOIA Request. This Notice’s **Exhibit** is a copy of the Board’s narrative response. The Board provided, together with that narrative response, a Microsoft Excel document with information responsive to the FOIA Request (the “FOIA Response”).

Petitioners further submit this *Solze* Notice to apprise the Court that their counsel does not currently intend to challenge the FOIA Response’s completeness. Through the FOIA Request, counsel requested thirteen items of information regarding each appeal for which the Veterans Appeals Control and Locator System (“VACOLS”) reports the current status as “HIS” (short for “history,” or closed); the underlying rating decision’s notification date as January 1, 2011, or later; the Statement of the Case (“SOC”) date in a manner that indicates VA issued an SOC; and for which one or more of the following statements also is true: (i) the value that VACOLS reports for the appeal’s “Disposition” is “G – Advance failure to respond” or (ii) VACOLS reports a “Form 9 date” as “00/00/00” or [blank], or else as being more than sixty days after the “SOC date” that VACOLS reports for the appeal.

The FOIA Response contains all thirteen fields of information requested, for what Petitioners’ counsel has no current reason to doubt are all of the appeals that VACOLS identifies as being within the scope of the FOIA request’s criteria. The number of appeals for which the FOIA Response provides that information is **487,135**. The following table further

specifies, by year of SOC date, the number of appeals for which the FOIA Response provides this information:

SOC Date's Year	Number of Appeals in FOIA Response
2011	3,418
2012	18,075
2013	30,327
2014	48,830
2015	52,327
2016	71,829
2017	76,669 ¹
2018	66,102
2019	73,213
2020	44,790
2021	1,555
Total	487,135

In Petitioners' understanding, filing the full FOIA Response or addressing further its contents would be beyond the scope of the Court's intent for a *Solze* notice such as this. They would be happy, however, to provide the Court with the full FOIA Response in its native Microsoft Excel format and/or to address further its contents. Petitioners also cautiously note that, on behalf of themselves and all similarly situated claimants, they reserve all rights.

¹ Petitioners note, in the light of the March 10, 2022, Order's first itemized question (*see* Order, at 4), that of the 76,669 appeals with an SOC date in 2017 for which the FOIA Response reports information, 10,644 have an SOC date of January 1 through February 23, 2017. The remaining 66,025 have an SOC date of February 24 through December 31, 2017.

Dated: March 24, 2022

Respectfully submitted,

/s/ John D. Niles

John D. Niles

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Counsel for Petitioners

Exhibit



U.S. Department
of Veterans Affairs

Board of Veterans' Appeals

Washington, DC 20420

www.bva.va.gov

In Reply Refer To: 01C1

21-01811-F

March 21, 2022

Mr. John D. Niles
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1525 SW Topeka Blvd., Suite D
Topeka, KS 66601

Sent via email to:

john@carpenterchartered.com

Dear Mr. Niles:

This is in response to your Freedom of Information Act (FOIA) request dated December 10, 2020, and received on December 11, 2020. You requested records from the Board of Veterans' Appeals (BVA) Veterans Appeals and Control Locator System (VACOLS) concerning appeals with a status of "History"/"HIS".

I have enclosed the requested record.

If you are unsatisfied with this response, you may contact either the Office of Government Information Services (OGIS) or the VA FOIA Public Liaison for mediation services. Both will assist in resolving disputes between FOIA requesters and VA as a non-exclusive alternative to litigation. Using OGIS or the VA FOIA Public Liaison does not affect your right to pursue litigation. You may contact OGIS or the VA Public Liaison in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 1-877-684-6448
Facsimile: 202-741-5769

VA FOIA Public Liaison
John Buck, Director, VA FOIA Service
810 Vermont Avenue, NW (005R1C)
Washington, DC 20420

E-mail: vacofoiaservice@va.gov
Telephone: 1-877-750-3642
Facsimile: 202-632-7581

Page 2.

John Niles Carpenter Chartered

You may appeal this determination by writing to the VA Office of General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, or email your request to: OGCFOIAAppeals@va.gov. Your appeal must be received within 90 calendar days of the date of this letter. Please state clearly why you disagree with the determination of this office.

Sincerely,

A handwritten signature in cursive script that reads "Kary D. Charlebois".

Kary D. Charlebois
FOIA/Privacy Officer

Enclosures:

Carpenter_FTR_data_March2022 (red).xlsx