

2. Specifically, MLAA challenges the failure of the USCG to disclose records in response to MLAA's Freedom of Information Act request (the "FOIA Request"), and challenges the failure of the USCG to conduct an adequate search of its records for documents responsive to its FOIA Request.

3. Nearly 2 years have elapsed since MLAA filed its FOIA Request. The USCG has failed to make a final determination regarding the FOIA Request within the time period prescribed by 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(E)(iii).

4. The USCG has also failed to make a final determination regarding MLAA's two (2) interim FOIA Appeals (the "Interim FOIA Appeals") regarding the FOIA Request within the time period prescribed by 5 U.S.C. § 552(a)(6)(A)(ii) and 5 U.S.C. § 552(a)(6)(E)(iii).

5. The USCG's failure to make a final determination on MLAA's FOIA Request within the statutory limit violates the FOIA. MLAA has constructively exhausted the administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

Jurisdiction and Venue

6. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

7. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B), because MLAA's principal place of business is in this judicial district. *See (Exhibit A: MLAA 2021 Delaware Corporate Franchise Tax Report (showing Principal Place of Business at 276 Fifth Ave., Suite 704, New York, NY 10001))*.

Parties

8. Plaintiff MLAA is a non-partisan, non-profit 501(c)(3) corporation organized under the laws of the state of Delaware. MLAA's principal place of business is in New York City, New York. MLAA is a legal advocacy organization advocating for the human rights of seafarers and working to end shipboard sexual misconduct and other abusive behaviors in the U.S. maritime industry. MLAA has uncovered extensive evidence that shipboard sexual misconduct, in particular, is an epidemic in the maritime industry that affects far too many of the more than 200,000 U.S. Coast Guard-credentialed mariners who work in this vital industry. In furtherance of its mission to be legal advocates on behalf of a vulnerable mariner population, MLAA uses a combination of research, public education, litigation, and advocacy. As part of its research, MLAA uses government records made available to it under the FOIA. In furtherance of its mission, MLAA gathers information of potential public interest, including government records made available to it under the FOIA, and then uses its editorial skills to turn those raw materials into distinct works before

distributing those works free of charge to a global audience. Through its website,¹ Facebook account, Instagram account,² and electronic mailing lists, original and distinct stories created and published by MLAA reach tens of thousands of readers every month. Accordingly, MLAA is a representative of the news media within the meaning of 5 U.S.C. § 552(a)(4)(A).

9. Defendant USCG is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 701(b)(1). The USCG has possession, custody, and control of records responsive to MLAA'S FOIA Request.

Background

10. The USCG is the United States' primary maritime law enforcement agency and possesses broad legal authority over the United States' entire maritime domain.

11. A sexual assault committed upon the high seas aboard a vessel documented under the laws of the United States of America ("USCG-documented vessels") is a federal crime, and the USCG is the primary federal law enforcement agency responsible for responding to and investigating such crimes. 18 U.S.C. Chapter 109A.

12. Prior to 1990, there was no legal requirement for masters or persons in charge of USCG-documented vessels to report allegations of shipboard sexual assault to the

¹ <https://www.maritimelegalaid.com>

² <https://www.instagram.com/maritimelegalaid>

USCG. See U.S. Government Accountability Office, “*Coast Guard: Information Needed to Assess the Extent of Sexual Assaults on Ships.*”³

13. In 1980 female seafarers in the Pacific Northwest formed the Women’s Maritime Association (“WMA”), a support network for seafaring women and the first organization of its kind. Part of the WMA’s founding mission was to “take whatever steps necessary to ensure women’s right to work, free of harassment.”⁴

14. From its inception, members of the WMA began advocating for legislation to eliminate sexual harassment and sexual abuse at sea. In 1990, after a more than 10-year fight by the WMA, the shipboard sexual assault allegation reporting requirement of 46 USC § 10104 became part of the U.S. Code.

15. In 2020 MLAA learned of the existence of 46 USC § 10104 and subsequently began investigating the USCG’s enforcement efforts regarding the shipboard sex crime allegation reporting law.

16. After extensive research over more than two years, including via the FOIA, MLAA subsequently learned that over the past more than 30 years the USCG has released zero public information regarding its actual enforcement of 46 USC § 10104.

³ U.S. Government Accountability Office, “*Coast Guard: Information Needed to Assess the Extent of Sexual Assaults on Ships.*” <https://www.gao.gov/assets/rced-89-59.pdf> (December 1988).

⁴ MaritimeLegalAid.com, “*The Long, Tragic History of 46 USC 10104.*,” <https://www.maritimelegalaid.com/foia/the-long-tragic-history-of-46usc10104-aka-the-federal-shipboard-sexual-assault-reporting-law> (September 20, 2021).

17. The first two request items under MLAA's FOIA Request concern 46 USC § 10104, also known as "*The Federal Shipboard Sexual Assault Allegation Reporting Law*," and also known as the "*Skipper Reporting Law*." See MaritimeLegalAid.com, "*The Long, Tragic History of 46 USC 10104...*" (Exhibit O).

18. In the two years that have elapsed since MLAA filed its FOIA Request, the USCG has been unable to provide MLAA with even a single record responsive to MLAA's records request for "reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104."

19. This failure to provide MLAA with any records of sexual assault allegation reports has led MLAA to conclude that 1) the USCG has not enforced this exceedingly important shipboard safety law, and mariners are therefore at a greatly heightened risk of being sexually assaulted at sea due to the USCG's lack of enforcement of 46 U.S.C. § 10104, or 2) the USCG has not conducted an adequate search of its records to locate records responsive to MLAA's request for "reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104."

20. In addition to investigating the USCG's enforcement of 46 U.S.C. § 10104, since its inception MLAA has investigated the USCG's enforcement of laws and regulations against sexual misconduct committed by mariners credentialed by the USCG ("USCG-credentialed mariners"). As part of its mission, the USCG is

responsible for the licensing and credentialing of more than 200,000 civilian USCG-credentialed mariners who work afloat in the U.S. maritime industry.

21. The USCG's role in enforcing laws and regulations against sexual misconduct committed by USCG-credentialed mariners begins during the mariner application process. The USCG is legally required to prevent convicted sex offenders and other dangerous persons from obtaining merchant mariner credentials, regardless of whether the underlying crime occurred onboard a vessel or ashore.

22. The USCG and the USCG Administrative Law Judge program ("USCG-ALJ") are also responsible for enforcing laws and regulations against shipboard sexual misconduct aboard USCG-documented vessels.

23. To promote safety at sea, Congress has authorized the USCG to suspend or revoke merchant mariner credentials for acts of incompetence, misconduct, negligence, violations of law or regulation, and use of dangerous drugs. According to Walter J. Brudzinski, the USCG's Chief Administrative Law Judge, the USCG-ALJ "initiates 400-600 suspension and revocation (S&R) cases each year." *See* Walter J. Brudzinski in Maritime Logistics Professional, "*USCG Can Suspend and Revoke Merchant Mariner Credentials.*"⁵

⁵ Maritime Logistics Professional, "*USCG Can Suspend and Revoke Merchant Mariner Credentials,*" <https://www.maritimeprofessional.com/magazine/story/201609/insights-merchant-credentials-516462> (Q3 2016 Issue).

24. Through documents obtained by MLAA, including documents released to MLAA by the USCG via the FOIA, an extremely disturbing picture of the USCG's actual enforcement efforts against shipboard sexual misconduct has emerged. Over the past two years MLAA has published numerous articles on its findings.

25. For example, in 2019, the USCG and the USCG-ALJ issued only a 3 month outright suspension to a USCG-credentialed mariner in his 60's who was credibly accused of subjecting a 19 year old female cadet from the U.S. Merchant Marine Academy to weeks of shipboard sexual harassment, sexual assault, stalking, and general terror aboard a Maersk Line containership. The evidence against the mariner was so strong that Maersk Line fired him from his job, yet within 3 months of signing a USCG settlement agreement he was back at sea, working on ships. *See MaritimeLegalAid.com, "In Secret 2019 Settlement Agreement, USCG Gave 3 Month Suspension to Mariner who Subjected a USMMA Cadet to Weeks of Shipboard Sexual Terror Aboard a Maersk Ship. USMMA Continues to Send him Cadets."*⁶. Additionally, the USCG-ALJ settlement agreement issued to the mariner, which constituted a final agency decision, was never proactively disclosed to the public as required by the Administrative Procedures Act.

⁶ MaritimeLegalAid.com, "*In Secret 2019 Settlement Agreement...*," <https://www.maritimelegalaid.com/foia/2019-uscg-secret-settlement-agreement-with-maersk-sexual-predator> (October 28, 2021).

26. In another case from 2016, USCG Administrative Law Judge Bruce Tucker Smith approved a settlement agreement that levied only a one-month suspension for a USCG-credentialed ship captain who was convicted of a sex crime in Virginia state court. That settlement agreement, which constituted a final agency decision, was also never proactively disclosed to the public as required by the Administrative Procedures Act. *See* MaritimeLegalAid.com, “*In Secret Settlement Agreement, Federal Judge Bruce Tucker Smith Gave a One Month Suspension to a Coast Guard-Credentialed Ship Captain Who Was Convicted of a Sex Crime.*”⁷

27. In another case from 2018, the USCG and USCG-ALJ issued a settlement agreement to a USCG-credentialed mariner who was convicted of sex crimes by the 184th District Court of Harris County, Texas. The conviction required the mariner to register as a sex offender under Texas’ statewide “Sex Offender Registry.” Despite the known danger this mariner posed to residents of the state of Texas and to other mariners, the USCG and a USCG-ALJ judge issued a settlement agreement to the mariner that created a path for him to obtain his unlimited tonnage merchant mariner’s license. The existence of the settlement was never disclosed to the public as required by the Administrative Procedures Act. *See* MaritimeLegalAid.com, “*In 2018 a Texas A&M Maritime Academy Cadet and Registered Sex Offender was*

⁷ MaritimeLegalAid.com, “*In Secret Settlement Agreement Federal Judge Bruce Tucker Smith Gave a One Month Suspension...*,” <https://www.maritimelegalaid.com/foia/judge-bruce-tucker-smith-protects-sexual-predators> (March 30, 2022).

Given a Settlement Agreement by the U.S. Coast Guard Allowing Him to Obtain his Merchant Mariner's License."⁸

28. The three examples given here are only a small glimpse of a deeply disturbing pattern of leniency given to USCG-credentialed mariners who have been found to have engaged in sexual misconduct by the USCG.

29. Most troubling to MLAA is the pattern of secrecy surrounding the USCG's enforcement of laws and regulations against sexual misconduct committed by USCG-credentialed mariners. The secrecy and lack of transparency on the part of the USCG has prevented other USCG-credentialed mariners from knowing whether or not they are trapped on a ship with a sexual predator and has prevented mariners from knowing whether or not they are at a heightened risk of sexual assault at sea.

30. Before MLAA began its investigation of the USCG via the FOIA in 2020, the public had no knowledge of any of these cited cases, nor any knowledge of the many other cases MLAA has written about wherein the USCG gave extraordinarily lenient punishments to USCG-credentialed mariners who the USCG knew were sexual predators.

31. Through the FOIA process, MLAA seeks to pierce the veil of administrative secrecy that surrounds these important issues, open USCG action to the light of

⁸ MaritimeLegalAid.com, "*In 2018 a Texas A&M Maritime Academy Cadet and Registered Sex Offender was Given a Settlement Agreement by the U.S. Coast Guard...*," <https://www.maritimelegalaid.com/foia/texas-cadet-registered-sex-offender-uscg-settlement-agreement> (May 5, 2021).

public scrutiny, and eventually make the maritime workplace safer for hundreds of thousands of Americans.

Procedural History

32. MLAA submitted its FOIA Request on June 30, 2020 (*Exhibit B*). The FOIA request was received by the USCG on July 6, 2020 and was assigned FOIA number 2020-CGFO-01886.

33. In response to an invitation by the USCG FOIA Officer to narrow and clarify the scope of the FOIA Request, on July 29, 2020, MLAA submitted a letter to the USCG that narrowed and clarified the scope of the FOIA Request (*Exhibit C*).

34. In its narrowed and clarified FOIA Request (2020-CGFO-01886), MLAA requested the following records from the USCG:

a. All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.

b. All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. “All documents” includes, but is not limited to,

reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

c. All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

35. MLAA's FOIA Request sought Expedited Processing and waiver of all fees under the FOIA.

36. After initially directing communications regarding the FOIA Request to Amanda Ackerson, Management and Policy Analyst at U.S. Coast Guard (CG-6P),

Office of Privacy Management, MLAA was subsequently directed to channel all communications regarding the FOIA Request to Denise Robinson (“S/A Robinson”), Special Agent, Coast Guard Investigative Service (“CGIS”).

37. On September 8, 2020, MLAA received an email from S/A Robinson alerting MLAA that the USCG had granted MLAA’s request for a waiver of all fees associated with the FOIA Request, and that the USCG had also approved MLAA’s request for Expedited Processing under the FOIA (*Exhibit D*).

38. After numerous emails and phone calls to the USCG regarding the delays in processing MLAA’s FOIA Request, on Monday December 28, 2020, nearly 6 months after the FOIA Request was received by the USCG, MLAA received an interim response letter from Barbara Whitelaw, Chief, Office of Information Management, U.S. Coast Guard Headquarters (*Exhibit E*).

39. In her letter, Whitelaw stated: “*A search of the Administrative Law Judge (CG-OOJ) and the Coast Guard Investigative Service (CGIS) for documents responsive to your request produced a total of 395 pages. Of the 395 pages, it has been determined that 48 pages are releasable in their entirety, 135 pages are partially releasable, and 208 pages are being withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(6) and (b)(7)(C)...Enclosed are 183 pages with certain information withheld as described below...*”

40. In her letter, Whitelaw stated: *“I am the person responsible for the denial of your request. Also participating in this decision are Mr. John C. Johns, Managing Attorney Advisor, Office of the Chief Administrative Law Judge; LCDR Jessica Burrell, Legal Counsel, Coast Guard Investigative Service; and Mr. Michael Berkow, Director, Coast Guard Investigative Service.”*

41. In her letter, Whitelaw also stated: *“The Office of Investigations (CG-INV-3) and the Coast Guard Investigative Service (CGIS) are still processing your request. CGIS's processing includes a request to the National Archives and Records Administration (NARA) to retrieve and send copies of legacy cases which may be responsive to your request. Once the processing has been completed, all releasable responsive records will be provided to you and will complete the processing of your FOIA.”* MLAA never received any copies of legacy cases from the NARA responsive to MLAA’s FOIA Request.

42. Included among the 183 pages partially released to MLAA pursuant to Whitelaw’s letter were 4 Case Management Reports created by the CGIS. Although MLAA had requested records dating back to the enactment of 46 USC § 10104 in 1989, the oldest CGIS Case Management Report received from Whitelaw dated to 2016, meaning MLAA did not receive any records from the CGIS that dated from between the years 1989 and 2016.

43. The remainder of the 183 pages partially released to MLAA pursuant to Whitelaw's letter were 8 files that originated from the USCG-ALJ. The most recent document released to MLAA by the USCG-ALJ dated to 1999, meaning the USCG-ALJ did not release any documents to MLAA for the 20 year period from 2000-2020.

44. Whitelaw's letter stated that the CGIS and the USCG Office of Investigations & Casualty Analysis ("CG-INV") were continuing to process MLAA's request, but her letter did not state that the USCG-ALJ was continuing to search for documents responsive to the FOIA Request. Whitelaw's letter did not indicate that any further documents responsive to MLAA's FOIA Request would be forthcoming from the USCG-ALJ.

45. On January 8, 2021, MLAA received the USCG's 2nd interim response. The 2nd interim response was from the CG-INV. The 2nd interim response included an interim response letter (*Exhibit F*) from Captain Jason Neubauer, Chief, CG-INV.

46. In his letter, Captain Neubauer stated: "*This is the interim response to your Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG), dated August 5, 2020, for Enforcement Reports involving sexual offenses received by the USCG pursuant to 46 U.S. Code §10104 occurring from 1990 to present. We have located a total of 580 pages of material responsive to your request; however, 456*

pages are partially released, 93 pages fully released, and 31 pages are being withheld in their entirety.”

47. In his letter, Captain Neubauer stated: *“I am the person responsible for the partial denial of your request. Also participating in this decision are Ms. Dawn Patterson, Chief, FOIA and Data Administration Division and LT Pamela Tirado, Office of Information and Intelligence Law. If you are not satisfied with the response to this request, you have the right to appeal.”*

48. Since January 8, 2021, MLAA has not received any additional records from Captain Jason Neubauer or the CG-INV, and MLAA never received a final response to its FOIA Request from the CG-INV.

49. On March 22, 2021, MLAA filed an interim appeal (“Interim Appeal #1”) with the USCG in response to Barbara Whitelaw’s interim response letter of December 28, 2020 (*Exhibit G*).

50. On April 1, 2021, MLAA filed an interim appeal (“Interim Appeal #2”) with the USCG in response to Captain Jason Neubauer’s interim response letter of January 8, 2021 (*Exhibit H*).

51. On April 13, 2021 MLAA received an email from S/A Robinson confirming receipt of both Interim FOIA Appeal #1 and Interim FOIA Appeal #2 (*Exhibit I*). The email stated: *“Mr. Melogy’s appeals have been aggregated into one as they*

concern the same initial FOIA request. His appeal has been assigned number 2021-CGAP-00009 and is in the queue for processing.”

52. On August 27, 2021 MLAA received a letter from Kathleen Claffie, Chief, Office of Privacy Management, USCG (*Exhibit J*). The letter stated, “*This [letter] is in response to your two letters dated March 21, 2021, in which you appealed the partial denial responses from Ms. Barbara Whitelaw...and Captain J.D. Neubauer...*”

53. The end result of Claffie’s lengthy, four-page letter was that the USCG was not releasing any further records to MLAA in response to our FOIA Request or the two Interim Appeals we filed in response to the two interim response letters. Per Claffie’s letter, certain items were “*remanded to the Chief, Administrative Law Judge (CG-OOJ)*”, certain items were remanded to the Coast Guard Investigative Service, certain items were remanded to the Coast Guard Hearing Office (CG-094H), and certain items were remanded to the Office of Investigations and Casualty Analysis (CG-INV).

54. On September 16, 2021 MLAA received a letter from G.T. Vachon, Chief, U.S. Coast Guard Hearing Office (*Exhibit K*). Per Vachon’s letter, the USCG Hearing Office determined that 156 pages of records held by the U.S. Coast Guard Hearing Office were responsive to MLAA’s FOIA Request, and that all 156 pages were being withheld in their entirety pursuant to various FOIA exemptions.

55. On May 5, 2022, nearly two months after submitting its FOIA Request and nearly 8 months after last receiving any communication from the USCG regarding its FOIA Request, MLAA suddenly and unexpectedly received a final response letter from one USCG department (the USCG-ALJ) along with a smattering of records responsive to MLAA's FOIA Request (*Exhibit L*). The letter was written by Lauren S. Staiti, Senior Attorney Advisor, USCG-ALJ.

56. In her final response letter from the USCG-ALJ, Ms. Staiti wrote, "This letter is the final response of the Office of the Chief Administrative Law Judge (CG-OOJ) to your Freedom of Information Act (FOIA) request numbered 2021-CGFO-02053."

57. Lauren Staiti's final response letter of May 5, 2022 was perplexing, because her letter was the first time MLAA had learned of the *supposed* existence of a "FOIA Request 2021-CGFO-02053." MLAA never made such a FOIA Request, MLAA never received acknowledgment of such a FOIA Request, and MLAA never received final responses to its FOIA Request numbered 2020-CGFO-01886, which should still be still open and active as of the date of this Complaint.

58. The interim appeal items Ms. Staiti addressed in her letter of May 5, 2022 were contained only in Interim Appeal #1, which was submitted to the USCG by MLAA on March 22, 2021. MLAA's Interim Appeal #1 was based on Barbara Whitelaw's interim response letter of December 28, 2020, which was sent to MLAA in response to MLAA's FOIA Request numbered "2020-CGFO-01886." MLAA

never submitted additional interim appeals, and it would therefore be impossible for the USCG-ALJ to respond on May 2, 2022 to appeal items that did not relate to MLAA's FOIA Request numbered "2020-CGFO-01886."

59. Lauren Staiti's final response letter for the USCG-ALJ further perplexed MLAA, because in drafting her response, Ms. Staiti misstated MLAA's interim appeal item #1. Interim appeal item #1 clearly sought "all final orders and opinions in S&R cases involving sexual misconduct by credentialed mariners since 1989," and including "all documents, filings, exhibits, evidence, and other documents connected to each sexual misconduct case."

60. Interim appeal item #1 would include a large volume of records responsive to MLAA's FOIA Request. However, Ms. Staiti somehow misread interim appeal item #1, misstated interim appeal item #1 in her final response letter, and then failed to produce any records specifically in response to interim appeal item #1.

61. On May 18, 2022 MLAA timely filed a FOIA Appeal in response to Lauren Staiti's USCG-ALJ final response letter of May 2, 2022 (*Exhibit M*).

62. As of the date of this Complaint, MLAA has not received a response or acknowledgment of its Appeal of Lauren Staiti's Final Response Letter from the USCG-ALJ. More than 20 business days have passed since MLAA timely filed its Appeal. Therefore, MLAA has constructively exhausted the administrative remedies

under 5 U.S.C. § 552(a)(6)(C)(ii) with respect to Lauren Stati's final response letter from the USCG-ALJ dated May 2, 2022.

63. Over the course of more than two years since submitting its FOIA Request, Lauren Stati's Final Response Letter from the USCG-ALJ dated May 2, 2022 is the only final response MLAA has received from any unit, office or department of the USCG in response to its FOIA Request.

64. Seeking to bring order and clarity to a frustrating and chaotic process that had been dragging on for nearly two years, on May 13, 2022 MLAA sent a letter to the USCG FOIA Officer via email (*Exhibit N*).

65. MLAA's letter of May 13, 2022 stated, "FOIA Officer, This letter constitutes a request under the Freedom of Information Act ("FOIA") and seeks to narrow and clarify the scope of an existing FOIA Request (FOIA 2020-CGFO-01886). This letter does NOT constitute a new FOIA Request."

66. MLAA's letter of May 13, 2022 stated, "When MLAA filed FOIA Request # 2020-CGFO-01886, MLAA was unfamiliar with the exact nature of the USCG's recordkeeping system, its filing practices, and the manner in which its files and records are compiled. MLAA was entirely 'in the dark' about the structure and arrangement of the files and records that the USCG would be searching through in order to locate the particular records that were responsive to MLAA's FOIA Request...Since filing its FOIA request, MLAA has gained some limited

understanding of the inner workings of the USCG and the manner in which its files and records are compiled...Therefore, MLAA narrows and clarifies the scope...for records related to investigations of sexual misconduct by USCG-credentialed mariners to specific offices, departments, and systems within the USCG.”

67. As of the date of this Complaint, MLAA has not received a response or acknowledgment of its May 13, 2022 attempt to narrow and clarify the scope of its FOIA Request.

68. Since receiving Lauren Staiti’s USCG-ALJ Final Response Letter of May 2, 2022, MLAA has not received any further correspondence from the USCG and has not received any additional records from the USCG. The USCG has not made a final determination on MLAA’s FOIA Request within the time limits prescribed by the FOIA, and MLAA has constructively exhausted the administrative remedies available under the FOIA.

MLAA’S CLAIMS FOR RELIEF

COUNT 1

FAILURE TO COMPLY WITH FOIA

69. MLAA incorporates each of the foregoing paragraphs of this Complaint.

70. Pursuant to FOIA, 5 U.S.C. § 552(a), MLAA has a statutory right to access requested agency records.

71. USCG has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i) for MLAA's FOIA Request and has failed to issue a final determination on the FOIA Request.

PRAYER FOR RELIEF

WHEREFORE, MLAA respectfully requests that this Court enter a judgment for MLAA and award the following relief:

72. Declare the records sought by MLAA's FOIA Request are public under 5 U.S.C. § 552 and must be disclosed;

73. Declare that MLAA's FOIA Request numbered "2020-CGFO-01886" is open and active;

74. Declare that Defendant granted a total fee waiver with respect to MLAA's FOIA Request numbered "2020-CGFO-01886";

75. Order Defendant, by a date certain, to conduct a search of its records that is designed to prove beyond material doubt that its search for records responsive to MLAA's FOIA Request was reasonably calculated to uncover all relevant records.

76. Order Defendant, by a date certain, to demonstrate that they have conducted an adequate search;

77. Order Defendant, by a date certain, to produce to MLAA any and all nonexempt records or portions of records responsive to MLAA's FOIA Request, as

well as a Vaughn index of any records or portions of records withheld due to a claim of exemption;

78. Enjoin Defendant from withholding the requested records;

79. Award MLAA its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

80. Grant MLAA such other and further relief as the Court may deem just and proper.

Dated: June 28, 2022

/s/ J. Ryan Melogy
J. RYAN MELOGY
Maritime Legal Solutions, PLLC
276 Fifth Ave., Suite 704-1454
New York, NY 10001
Telephone: (302) 827-3890
E-mail: maritimelegalsolutions@pm.me

Counsel for Plaintiff

Exhibit A

State of Delaware

Annual Franchise Tax Report

CORPORATION NAME MARITIME LEGAL AID & ADVOCACY, LTD.			TAX YR. 2021
FILE NUMBER 4068548	INCORPORATION DATE 2020/11/04	RENEWAL/REUOCATION DATE	
PRINCIPAL PLACE OF BUSINESS 276 FIFTH AVE. SUITE 704 NEW YORK, NY 10001			PHONE NUMBER 3028273890
REGISTERED AGENT HARVARD BUSINESS SERVICES, INC. 16192 COASTAL HWY LEWES DE 19958			AGENT NUMBER 9020245
AUTHORIZED STOCK BEGIN DATE	END DATE	DESIGNATION/ STOCK CLASS	NO. OF SHARES PAR VALUE/ SHARE
OFFICER JOHN MELOGY	NAME	STREET/CITY/STATE/ZIP 3 GERMAY DR UNIT 4, #1929 WILMINGTON, DE 19804	TITLE PRESIDENT
DIRECTORS JOHN MELOGY	NAME	STREET/CITY/STATE/ZIP 3 GERMAY DR UNIT 4, #1929 WILMINGTON, DE 19804	
<p><i>NOTICE: Pursuant to 8 Del. C. 502(b), If any officer or director of a corporation required to make an annual franchise tax report to the Secretary of State shall knowingly make any false statement in the report, such officer or director shall be guilty of perjury.</i></p>			
AUTHORIZED BY (OFFICER, DIRECTOR OR INCORPORATOR) JOHN MELOGY 3 GERMAY DR UNIT 4, #1929 WILMINGTON, DE 19804 US		DATE 2022/05/29	TITLE PRESIDENT

M.L.A.A.

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Jun 30

An Epic Sexual Assault Scandal, 30 Years in the Making, is Coming for the U.S. Coast Guard. This FOIA Request is only the Beginning.





June 30, 2020

VIA E-MAIL to "EFOIA@uscg.mil"

Commandant (CG-611)

Attn: FOIA Officer

Re: Freedom of Information Act Request

Dear FOIA Coordinator:

This letter constitutes a request under the Freedom of Information Act ("FOIA") and is submitted on behalf of Maritime Legal Aid Society ("MLAS") to the United States Coast Guard ("USCG"). Maritime Legal Aid is a non-profit legal aid and advocacy organization working to change the culture of the U.S. maritime industry afloat by forcing the U.S. Coast Guard to take seriously the issue of sexual harassment and sexual assault at sea aboard U.S. commercial vessels.

Pursuant to [46 U.S. Code § 10104](#), ship's masters and other individuals in charge of documented vessels are required to report complaints of sexual offenses prohibited under [18 U.S. Code Chapter 109A](#) to the Secretary of Homeland Security, or to the Secretary of the department in which the USCG is operating. MLAS seeks documents, information, and data regarding the reporting of these complaints of sexual offenses to the USCG.

Background

46 U.S. Code § 10104 “Requirement to report sexual offenses” reads as follows:

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than \$5,000.

The threshold for sexual contact that must be reported to the U.S. Coast Guard comes from Chapter 109A of title 18, also known as the “Sexual Abuse Act.” Per 18 U.S. Code § 2246, “sexual contact” is defined as “*the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.*”

The clear reading of these statutes is this: if a crewmember aboard a documented vessel reports that he or she was the victim of “*intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,*” or if a crewmember is the victim to an even more serious sexual assault, the master must report the victim’s allegations to the USCG.

46 U.S. Code § 10104 does not allow the master or other individual in charge of a documented vessel to make his or her own judgment as to the validity of the complaint. If the master receives a complaint of sexual offenses, he or she is required by law to report the complaint to the USCG.

The reporting requirement of 46 U.S. Code § 10104 were implemented in response to the troubling findings of a Government Accountability Office (GAO) investigation into the prevalence of sexual assault against women in the U.S. merchant marine (GAO/RCED-89-59). The GAO discovered numerous sexual assaults committed against female mariners aboard ships, and found that none of the sexual assaults were ever reported to the U.S. Coast Guard, or to any law enforcement agency by the vessels’ captains or the shipping companies.

In their report, the GAO investigated the rape of an American female mariner aboard a U.S. flag tanker. According to the GAO report, the victim, a documented female mariner, alleged that she was attacked and raped while asleep by another U.S. Coast Guard credentialed mariner aboard the tanker.

According to the GAO report:

She managed to escape her assailant and reported the incident to the ship's officers...According to a Coast Guard official, the ship's captain did not report the alleged crime. Once ashore, the victim herself reported the assault to the Coast Guard and later to the FBI. We were told by one knowledgeable retired Coast Guard official that three Coast Guard district offices declined to investigate the incident until the victim finally prevailed upon one of them to initiate an investigation. The investigation eventually resulted in a formal hearing before a Coast Guard administrative law judge. The accused was found guilty of misconduct and the ruling was upheld on appeal, resulting in revocation of his seaman's documents...subpoenaed information from the accused's personnel file and other company records indicated that as many as eight women mariners had earlier filed complaints with their employer about various sexual offenses allegedly committed by him...One woman who had previously worked with the accused testified at the hearing that he had repeatedly offered her money if she would sleep with him and had promised her overtime if she would grant him sexual favors...We could find no evidence, however, that any of the complaints was ever reported by ships' officers or other company representatives to the Coast Guard. Furthermore, according to a Coast Guard official the alleged rape at issue in the hearing had also not been reported by the ship's master or other responsible officials. It was only brought to the Coast Guard's attention, sometime after the incident, by the alleged victim herself.

To summarize: a female mariner was raped aboard a U.S. flag tanker by another crewmember. She then reported the rape to the Captain of the ship, and the Captain did not notify the USCG or any other law enforcement agency. When the woman tried to report the rape to the USCG, 3 USCG district offices refused to investigate. Finally, her incredible persistence paid off, and she prevailed upon the USCG to investigate. During the accused's formal hearing before a Coast Guard administrative law judge, it was revealed that as many as eight women mariners had earlier filed complaints with their employer about various sexual offenses allegedly committed by him. His USCG license was revoked, and an untold number of women were spared the horror of working for this man thanks to an incredibly brave survivor of sexual assault.

In another case, the GAO was told of the rape of an American female mariner aboard a different U.S.

flag oil tanker, a story that was recounted to the GAO directly by the victim, who had contacted the GAO after she read about the GAO's ongoing investigation in the newsletter of the Women's Maritime Association.

According to the GAO:

This woman told us that she had experienced several incidents of sexual assault and harassment in her career in the merchant marine. The alleged rape occurred...after the victim, the assailant, and several other crew members had returned to their ship after drinking and dancing ashore. The alleged victim had returned alone and gone to her room to sleep. Her assailant came into the unlocked room (company safety regulations, she said, required that rooms be kept unlocked), and because of his greater strength was able to overcome her attempts at resistance and raped her. The alleged victim claimed that she did not cry out for help—or report the incident later—because she feared that she would suffer repercussions if she did. She believed then, and remains convinced, that the burden of proof would have been on her to establish that she had not instigated the affair. It seemed easier, she told us, to live with the secret of being raped, than to expose herself to public embarrassment and censure.

In another case, the GAO investigated alleged abusive sexual contact against an American female mariner aboard a U.S. flag freighter at the hands of U.S. Coast Guard licensed officers. The GAO found:

The victim, a graduate of the U.S. Merchant Marine Academy, was employed as relief third mate aboard a grain ship bound for Bangladesh from the East Coast. She was dismissed by the ship's captain in Portland, Oregon, allegedly for job misconduct. She disputed the charge, claiming that the captain, opposed to having a woman on his ship, had been trying to have her removed from the moment she came aboard. Because of his blatant hostility, she alleged, including the making of derogatory remarks and references to her in sexually degrading terms, she lived and worked in an atmosphere of constant intimidation and had no support or recourse against the sexual advances of the chief mate, who repeatedly propositioned her and touched parts of her body. After her dismissal the alleged victim lodged a grievance through her union representative and a complaint of sexual harassment and other charges with the EEOC. Her case was settled without going to hearing or arbitration under an arrangement in which she received a financial settlement in the amount of wages that would have been due for the uncompleted portion of the voyage and the expunging of all adverse comments from her personnel record.

In yet another case, the GAO found that a U.S. Coast Guard credentialed crewmember aboard a

passenger vessel in Hawaii sexually assaulted another female crew member, threatened two female crewmembers with violence in front of several witnesses, and subsequently received only a 3 month suspension of his U.S. Coast Guard merchant mariner's credential as punishment for his conduct.

According to the GAO:

This case, also involving abusive sexual contact as defined by the [Sexual Abuse Act](#), was one of only two such cases reported to us by U.S. Coast Guard headquarters as a result of a search of its automated database of administrative law judge decisions and orders. The incident in question occurred...aboard a U.S. passenger liner moored in Hilo, Hawaii. An intoxicated male crew member of the ship, after verbally abusing a female crew member in a bar ashore, including making lewd and obscene statements to her in a loud and threatening manner, resumed this behavior some minutes later aboard ship. Pursuing two female crew members in a threatening manner, speaking vulgarities, and touching the body of one of them, the assailant followed them into the ship's galley and in front of several witnesses threatened them. As a result of his behavior aboard ship, the assailant was fired from his job and served with a charge of misconduct at the Coast Guard's Marine Safety Office in Honolulu. He was found guilty at an administrative hearing, and his merchant mariner's document was suspended for 3 months with an additional suspension of 6 months remitted on 12 months probation.

The GAO report details 8 separate incidents involving sexual assault against female mariners aboard U.S. Coast Guard documented vessels in the U.S. merchant marine, but they found that “*more sexual assaults actually take place than are reported to authorities.*” Regarding the reasons that mariners may be reluctant to report sexual assaults and sexual misconduct aboard ships, [the GAO report](#) noted the following:

According to a retired senior Coast Guard investigator, a psychologist, attorneys in private practice, and several women who had worked at sea, conditions of work aboard ship impose particular pressures on victims to refrain from reporting sexual assaults and related offenses. Specifically, they said that the shipboard setting constitutes a self contained, confined, and isolated work environment characterized by a special set of social relationships and interpersonal dynamics. With crew members highly dependent on one another, living and working at close quarters and predominantly male, women crew may experience an atmosphere of resentment, sexual innuendo, harassment, and even intimidation. Under such conditions, they may fear incurring the animosity of male crew members by reporting instances of sexual assault and related offenses. They are also fearful of doing anything that might cause

them to lose their jobs, which pay considerably better than jobs on land for which they might be qualified.

Sadly, [the GAO report](#) also found the following:

One of the victims told us that of the approximately 12 women she knew of who had worked at sea, all but two had some experience of harassment involving force or threats. Most, she said, tended to view this with a certain resignation as something that goes with “the territory.” In view of the apparent reluctance of many victims of rape and other sexual offenses to report these incidents to authorities, we have no way of determining how many offenses of this nature may actually be taking place within the merchant marine or in other at sea occupations.

The GAO also found that the U.S. Coast Guard did not take the issue of sexual assault at sea seriously, and noted that GAO investigators “*found it difficult to compile statistics on sexual assault at sea, because the Coast Guard, lacking a requirement or procedure for systematically reporting and centrally compiling information relating to sexual assaults committed aboard merchant ships, was unable to provide us with information concerning cases not already known to us.*”

The GAO also found that the U.S. Coast Guard officials could not identify any requirement or provision of the marine casualty reporting regulations that would require ships’ officers to report sexual assaults aboard their vessels. The [GAO report](#) found the following:

Currently, the Coast Guard has no specific requirements for the reporting of shipboard sexual assaults and other offenses covered by the Sexual Abuse Act... While the Coast Guard maintains a marine casualty reporting system that requires ships’ masters and other responsible officers to report various shipboard occurrences, including any death or injury that involves incapacitation for over 72 hours, these regulations have been viewed within the Coast Guard as relating primarily to the safe operation of the vessel itself rather than to the welfare and well-being of individual crew members.

Coast Guard officials could not identify any provision of the marine casualty reporting regulations that would require ships’ officers to report injuries (defined by us to include both physical and emotional traumas) that do not result in 72-hour incapacitation of the victim. By the same token, these officials

were unable to cite any other statutory or regulatory provisions that would require that incidents of sexual assault and related offenses committed aboard ship be reported to the Coast Guard.

Our work revealed no instances of sexual assaults or related sexual offenses reported to the Coast Guard through the marine casualty reporting system. Moreover, information obtained from women mariners tended to confirm that such incidents are rarely reported to the Coast Guard or other law enforcement authorities.

Recommendations of the GAO Report

Because of the troubling findings of the GAO investigation, the GAO made several recommendations and suggestions for updating the legal and regulatory framework to protect men and women from the scourge of sexual assault and sexual misconduct at sea. [The GAO Report](#) stated:

*Establishing a requirement for the reporting of sexual offenses, at least within that portion of the maritime industry that is currently regulated by the Coast Guard, could, in our view, accomplish several worthwhile purposes. First, such a regulation would serve to publicize the act and increase awareness of its provisions and the penalties it provides for those who commit specific sexual offenses within the special maritime and territorial jurisdiction of the United States. Second, it would provide information on the circumstances and extent of such offenses, and a basis for determining if additional actions are necessary. Third, it could well serve to increase the willingness of victims to come forward. **Aware of the captain's obligation to investigate and report their charges, victims might have greater confidence that their accusations would be taken seriously and that their safety and welfare would be adequately safeguarded for the duration of their voyage or service aboard ship.***

[The GAO Report](#) concluded:

In order to (1) promote greater awareness and understanding of the [Sexual Abuse Act](#) within the U.S. maritime industry, (2) obtain more complete information on and understanding of the extent of sexual assaults and related offenses in the industry, and (3) foster a climate conducive both to deterring sexual offenses and reporting their occurrence to appropriate authorities, we recommend that the Secretary of Transportation direct the Commandant of the Coast Guard to require that masters of vessels or other responsible officials promptly report to the Coast Guard any complaint of a criminal sexual offense covered by the Sexual Abuse Act as soon as possible following its occurrence or report of its occurrence.

Following the publication of the GAO report on sexual assault in the U.S. Merchant Marine, the U.S. Coast Guard, using its legislative authority granted by Congress, implemented a regulatory provision ([46 U.S. Code § 10104](#)), which required masters of vessels or other responsible officials to promptly report to the Coast Guard any complaint of a criminal sexual offense covered by [the Sexual Abuse Act](#). However, the U.S. Coast Guard made the penalty for not reporting a sexual assault only a \$5,000 civil fine.

This law went into effect in 1989—approximately 31 years ago.

According to our research, it appears that the USCG implemented [46 U.S. Code § 10104](#) in response to the highly critical GAO Report, but then made the penalty for not reporting minimal, and subsequently never publicized the new law and never enforced the law.

Despite extensive research, MLAS has been unable to find a single example of a report of sexual offenses having been submitted to the USCG pursuant to [46 U.S. Code § 10104](#) since the law went into effect in 1989.

Despite extensive research, MLAS has been unable to find a single example of a master or other individual in charge of a documented vessel being punished by the USCG for knowingly failing to report in compliance with [46 U.S. Code § 10104](#) since the law went into effect in 1989.

According to the USCG's own data, there are more than [200,000 USCG credentialed mariners](#) working in the U.S. maritime industry. We find it difficult to believe that, in the 31 years since [46 U.S. Code § 10104](#) became the law of the sea, ZERO mariners aboard documented vessels have reported a sexual offense prohibited by the Sexual Abuse to the master or other individual in charge of a documented vessel.

If the USCG is not receiving reports of sexual offenses, it means that there is likely widespread lawbreaking and non-reporting of sexual assaults in the U.S. maritime industry. Therefore we are seeking more information from the USCG on this issue.

Documents and Data Requested:

1. All USCG policies and procedures for the collection, storage, analysis, use, retention, and deletion of data received by the USCG pursuant to [46 U.S. Code § 10104](#).
2. All USCG policies and procedures concerning the sharing of information regarding reports of sexual offenses received by the USCG pursuant to [46 U.S. Code § 10104](#) with law enforcement agencies, including the U.S. Coast Guard Investigative Service and the FBI, and any other law enforcement agencies.
3. All reports and records of sexual offenses that have been received by the U.S. Coast Guard pursuant to [46 U.S. Code § 10104](#) from any employee of the U.S. Maritime Administration or any employee of the United States Merchant Marine Academy at any time since the year 2005, with any personally identifiable information about the victim or the accused omitted from the report, if required by law.
4. All reports and records regarding the sexual misconduct of a USCG credentialed mariner against any student of the U.S. Merchant Marine Academy that have been reported to the U.S. Coast Guard by any employee of the U.S. Maritime Administration or any employee of the United States Merchant Marine Academy at any time since the year 2005, with any personally identifiable information about the victim or the accused omitted from the report, if required by law.
5. All reports and records relating to USCG credentialed mariners who have been investigated or punished by the USCG for failing to report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to [46 U.S. Code § 10104](#), with any personally identifiable information about the victim or the accused omitted from the report, if required by law.

6. The total number of USCG credentialed mariners who have been investigated or punished by the USCG for knowingly failing to report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code since the year 2000.
7. The total number of reports of sexual offenses that have been received by the USCG pursuant to 46 U.S. Code § 10104 since the year 2000.
8. A copy of each report of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the year 2000, with any personally identifiable information about the victim or the accused omitted from the report, if required by law.
9. The total number of reports of sexual offenses that were received by the U.S. Coast Guard pursuant to 46 U.S. Code § 10104 in the calendar year 2019.
10. The total number of reports of sexual offenses that were received by the U.S. Coast Guard pursuant to 46 U.S. Code § 10104 in the calendar year 2018.
11. The total number of reports of sexual offenses that were received by the U.S. Coast Guard pursuant to 46 U.S. Code § 10104 in the calendar year 2017.
12. The total number of reports of sexual offenses that were received by the U.S. Coast Guard pursuant to 46 U.S. Code § 10104 in the calendar year 2016.
13. The total number of reports of sexual offenses that were received by the U.S. Coast Guard pursuant to 46 U.S. Code § 10104 in the calendar year 2015.
14. The total number of “open” investigations of USCG credentialed mariners regarding allegations of SEXUAL MISCONDUCT of any kind that are currently being investigated by any USCG official, including members of the U.S. Coast Guard Investigative Service, anywhere in the United States, under the regulations of 46 CFR Part 5 and/or 33 CFR Part 20. This information may be available from CDR Christopher Jones, Detachment Chief at the “Suspension & Revocation National Center of Expertise,” or from Captain Jason Neubauer, USCG, or from individual USCG district offices.

15. According to CDR Christopher Jones, USCG, one of the primary reasons the USCG is hesitant to take action against mariners who commit sexual assault at sea is because of the “Equal Access to Justice Act,” which, according to CDR Jones, “requires the Coast Guard to pay claims to mariners that prevail at S&R hearings under certain circumstances.” Please provide all records and reports pertaining to mariners who have successfully prevailed against the USCG under the “Equal Access to Justice Act.”
16. All records and reports regarding the total amount of money the USCG has paid to mariners who have successfully prevailed against the USCG under the “Equal Access to Justice Act.”
17. All records and reports regarding investigations of USCG credentialed mariners accused of sexual misconduct that have been conducted by the U.S. Coast Guard Investigative Service since the year 2000, with any personally identifiable information about the victim, the accused, or witnesses omitted from the report, if required by law.
18. The total number of sexual misconduct investigations of USCG credentialed mariners accused of sexual misconduct that have been conducted by the U.S. Coast Guard Investigative Service since the year 2000. This information can be obtained from the U.S. Coast Guard Investigative Service headquarters in Washington, D.C. Their telephone number is 202-372-3000.
19. All records and reports held by the U.S. Coast Guard Investigative Service regarding the investigation of Maersk Captain Mark Stinziano, with any personally identifiable information about the victim or the accused or witnesses omitted from the reports and records, if required by law.
20. The total number of individuals who have reported sexual misconduct allegations against Maersk Captain Mark Stinziano to the USCG or to the U.S. Coast Guard Investigative Service.
21. All records and reports held by the U.S. Coast Guard Investigative Service regarding the investigation of Maersk Captain Paul Willers, with any personally identifiable information about the victim or the accused or witnesses omitted from the reports and records, if required by law.
22. The total number of credentialed mariners who have had a Suspension and Revocation complaint served on them by the USCG, or who have been otherwise punished, for allegations related to any type of sexual misconduct since the year 2000.

Request for Expedited Processing

Expedited processing is justified because the request: 1) is made by an organization “primarily engaged in disseminating information,” which MLAS accomplishes through its large mailing list of newsletter subscribers and via its widely read blog located at <https://www.maritimelegalaid.com/blog>; and 2) covers information about which there is an “urgency to inform the public about an actual or alleged federal government activity,” MLAS is an organization “primarily engaged in disseminating information.”

There is an “urgency to inform the public” about whether or not masters or other individuals in charge of documented vessels are reporting complaints of sexual offenses prohibited under chapter 109A of title 18, United States Code to the USCG in accordance with federal law. If the USCG is not receiving these reports, USCG credentialed mariners at sea aboard U.S. documented vessels are at a greatly heightened risk of sexual assault aboard their vessels, as the GAO concluded in their report discussed at length in this request. The information MLAS is seeking has the potential to immediately prevent actual sexual assaults at sea from occurring. This is an incredibly urgent need. Any delay in processing this request could literally result in mariners being sexually assaulted at sea.

Request for “News Media” Fee Status

MLAS is a “representative of the news media” for fee waiver purposes. Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of government,” any duplication fees should be waived. However, if the USCG disputes that MLAS is a representative of the news media, MLAS is willing to pay any fees up to \$1,000,000.

Conclusion

Thank you for your consideration of this request. As provided for by federal regulation, I will anticipate your determination of our request for expedited processing within 10 business days. For questions regarding this request I can be contacted via email at maritimelegalaid@gmail.com.

Respectfully Submitted,

J. Ryan Melogy

MLAS Chief Legal Officer

Comments (0)

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< Victims Speak: “Kings Point Must Change”

Maritime Legal Aid & Advocacy

<http://maritimelegalaid.com>
maritimelegalaid@gmail.com

July 29, 2020

VIA E-MAIL to "EFOIA@uscg.mil"

Commandant (CG-611)
Attn: FOIA Officer
U.S. Coast Guard Stop 7710
2703 Martin Luther King Jr. Ave. SE
Washington D.C. 20593-7710

Re: Freedom of Information Act Request

Dear FOIA Coordinator:

This letter constitutes a request under the Freedom of Information Act ("FOIA") and is submitted on behalf of Maritime Legal Aid Society ("MLAS") to the United States Coast Guard ("USCG"). Maritime Legal Aid is a non-profit legal aid and advocacy organization working to change the culture of the U.S. maritime industry afloat by forcing the USCG to take seriously the issue of sexual harassment and sexual assault at sea aboard U.S. commercial vessels.

Pursuant to [46 U.S. Code § 10104](#), ship's masters and other individuals in charge of documented vessels are required to report complaints of sexual offenses prohibited under [18 U.S. Code Chapter 109A](#) to the Secretary of Homeland Security, or to the Secretary of the department in which the USCG is operating. MLAS seeks documents, information, and data regarding the reporting of these complaints of sexual offenses to the USCG.

Background

[46 U.S. Code § 10104](#) "Requirement to report sexual offenses" reads as follows:

(a) *A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under [chapter 109A of title 18, United States Code](#).*

(b) *A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than \$5,000.*

The threshold for sexual contact that must be reported to the USCG comes from [Chapter 109A of title 18](#), also known as the “Sexual Abuse Act.” Per [18 U.S. Code § 2246](#), “sexual contact” is defined as “*the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.*”

The clear reading of these statutes is this: if a crewmember aboard a documented vessel reports that he or she was the victim of “*intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,*” or if a crewmember is the victim of an even more serious sexual assault, the master or other individual in charge of a documented vessel must report the victim’s allegations to the USCG.

It is clear that [46 U.S. Code § 10104](#) does not allow the master or other individual in charge of a documented vessel to make his or her own judgment as to the validity of the complaint. If the master receives a complaint of sexual offenses, he or she is required by law to report the complaint to the USCG.

The reporting requirement of [46 U.S. Code § 10104](#) were implemented in response to the deeply troubling and horrifying findings of a [Government Accountability Office \(GAO\) investigation](#) into the prevalence of sexual assault against women in the U.S. merchant marine ([GAO/RCED-89-59](#)). The GAO discovered numerous rapes and other serious sexual assaults committed against female mariners aboard ships, and found that none of the rapes or sexual assaults were ever reported to the USCG, or to any law enforcement agency by the vessels’ captains or the shipping companies who owned the vessels.

[The GAO Report](#) concluded:

*In order to (1) promote greater awareness and understanding of the [Sexual Abuse Act](#) within the U.S. maritime industry, (2) obtain more complete information on and understanding of the extent of sexual assaults and related offenses in the industry, and (3) foster a climate conducive both to deterring sexual offenses and reporting their occurrence to appropriate authorities, we recommend that the Secretary of Transportation direct the Commandant of the Coast Guard to require that masters of vessels or other responsible officials **promptly report** to the Coast Guard any complaint of a criminal sexual offense covered by the Sexual Abuse Act **as soon as possible following its occurrence or report of its occurrence.***

Following the publication of the GAO report on sexual assault in the U.S. Merchant Marine, the USCG, using its legislative authority granted by Congress, implemented a regulatory provision ([46 U.S. Code § 10104](#)), which required the master or other individual in charge of a documented vessel to promptly report to the USCG any complaint of a criminal sexual offense covered by [the Sexual Abuse Act](#). However, the U.S. Coast Guard made the penalty for not reporting a sexual assault only a \$5,000 civil fine.

This law went into effect in 1989—approximately 31 years ago.

According to our research, it appears that the USCG implemented [46 U.S. Code § 10104](#) in response to the highly critical GAO Report, but then made the penalty for not reporting minimal, and subsequently never publicized the new law, never adequately informed the public of the law, and never enforced the law.

Despite extensive research, MLAS has been unable to find a single example of a report of sexual offenses having been submitted to the USCG pursuant to [46 U.S. Code § 10104](#) since the law went into effect in 1989.

Despite extensive research, MLAS has been unable to find a single example of a master or other individual in charge of a documented vessel being punished by the USCG for knowingly failing to report in compliance with [46 U.S. Code § 10104](#) since the law went into effect in 1989.

According to the USCG's own data, there are more than [200,000 USCG credentialed mariners](#) working in the U.S. maritime industry. We find it difficult to believe that, in the 31 years since [46 U.S. Code § 10104](#) became the law of the sea, mariners aboard documented vessels have not reported a great number sexual offenses

prohibited by the Sexual Abuse Act to the masters or other individuals in charge of documented vessels.

If the USCG is not receiving reports of sexual offenses, there is likely widespread lawbreaking and non-reporting of sexual assaults in the U.S. maritime industry. Therefore we are seeking more information from the USCG on this issue.

Consistent with our organization's mission, and pursuant to the Freedom of Information Act, 5 U.S.C. § 552, MLAS respectfully requests the following information from the USCG:

Documents and Data Requested:

1. All reports of sexual offenses received by the USCG pursuant to [46 U.S. Code § 10104](#) since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to [46 U.S. Code § 10104](#) since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since [46 U.S. Code § 10104](#) was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

Request for Expedited Processing

_____ Expedited processing is justified because the request: 1) is made by an organization “primarily engaged in disseminating information,” which MLAS accomplishes through its large mailing list of newsletter subscribers and via its widely read blog located at <https://www.maritimelegalaid.com/blog>; and 2) covers information about which there is an “urgency to inform the public about an actual or alleged federal government activity.”¹ MLAS is an organization “primarily engaged in disseminating information.”²

There is an “urgency to inform the public” about whether or not masters or other individuals in charge of documented vessels are reporting complaints of sexual offenses prohibited under chapter 109A of title 18, United States Code to the USCG in accordance with federal law. If the USCG is not receiving these reports, USCG credentialed mariners at sea aboard U.S. documented vessels are at a greatly heightened risk of sexual assault aboard their vessels, as the GAO concluded in their report discussed in this request.

There is a “*compelling need*” for this information, because a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or individuals. The information MLAS and our partner organizations are seeking has the potential to immediately prevent actual sexual assaults at sea from occurring. This is an incredibly urgent need. Any delay in processing this request could literally result in mariners being sexually assaulted at sea.

Request for “News Media” Fee Status and Fee Waiver

MLAS is a “representative of the news media” for fee waiver purposes. Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will “*contribute significantly to public understanding of the operations or activities of government,*” any duplication fees should be waived. Under FOIA, “Representative of the News Media” is defined as “[a]ny person or entity that gathers information of

¹ See 5 U.S.C. § 552(a)(6)(E)(v)(II) (2012); *Al-Fayed v. CIA*, 254 F. 3d 306 (D.C. Cir. 2001)

² *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.C. Cir. 2004)

potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”

Please visit the following hyperlink for an example of a news article which required MLAS to take raw materials from a GAO report and then use the raw materials to create a completely distinct work that we distributed to a niche audience of people in the U.S. maritime industry resulting in more than 6,000 unique readers in only 2 weeks, with an average visitor time of more than 7 minutes on the article:

<https://www.maritimelegalaid.com/blog/an-epic-sexual-assault-scandal-30-years-in-the-making-is-coming-for-the-us-coast-guard-and-this-foia-request-is-only-the-beginning>

There is no doubt that the information we are seeking will contribute significantly to public understanding of the USCG’s approach to sexual assault aboard documented vessels.

The FOIA’s fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations, since the FOIA as a whole is to be construed broadly in favor of disclosure. See, e.g., *Dep’t of Air Force v. Rose*, 425 U.S. 352, 366 (1976). Further, the disclosure of this information is of no commercial interest to MLAS. Under the FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. See, e.g., *The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 Fed. Reg. 10012, 10017–18 (Mar. 27, 1987). None of those interests are present in this request, as MLAS works to achieve its goals through media outreach and public education.

Conclusion

Thank you for your consideration of this request. As provided for by federal regulation, I will anticipate your determination of our request for expedited processing within 10 business days. For questions regarding this request I can be contacted via email at maritimelegalaid@gmail.com.

Respectfully Submitted,

J. Ryan Melogy
MLAA Chief Legal Officer
Coordinator, MLAA Open Government Project



Ryan <kpmelogy@gmail.com>

RE: Request For Expedited Processing--FOIA Number 2020-CGFO-01886

Robinson, Denise E CGSA <Denise.E.Robinson@uscg.mil>
To: "kpmelogy@gmail.com" <kpmelogy@gmail.com>

Tue, Sep 8, 2020 at 9:27 AM

Good morning Ryan,

I'm sorry for the delay in reaching out to you. I've been out of the office and am just returning this morning.

I spoke with the FOIA office:

The Coast Guard will be granting your FOIA fee waiver.

The Coast Guard will be granting your request for expedited FOIA processing. Please note, this does not mean that your request is completed immediately. It means your request goes to the top of the stack and is processed with other expedited requests. Your request is being handled.

However, I do need an answer to this question that was sent to you on 8/21/2020 and I never saw a reply from you. If you did reply, please resend to me:

---BEGIN EMAIL---

The Office of Investigations (CG-INV) has a portion of the responsive records ready to be reviewed. Those records include personally identifiable information (PII) which is usually withheld from release under Exemption 6 and/or Exemption 7(C). To speed up the response, you may amend your request to receive a releasable copy of the responsive records. This would mean that the offices would redact any portions of the records that are usually withheld from release without a legal sufficiency review being conducted. If you wish to have the records reviewed by a CG attorney before they are provided to you, it may take a longer time to complete processing.

Please provide a response on how you would like to proceed with your request within the next 30 days. If we do not receive a response by this time, we will assume you are no longer interested in pursuing the request and it will be administratively closed.

Thank you,

Amanda C. Ackerson

Management and Policy Analyst

U.S. Coast Guard (CG-6P)

Office of Privacy Management

2703 MARTIN LUTHER KING JR AVE SE STOP 7710 WASHINGTON DC 20593-7710

amanda.c.ackerson@uscg.mil

---END EMAIL---

And thank you for letting me know you no longer represent the victim you told me about.

Respectfully,

S/A Denise Robinson

From: J. Ryan Melogy

Sent: Friday, September 4, 2020 10:14:02 PM (UTC+00:00) Monrovia, Reykjavik

To: Ackerson, Amanda C CIV; HQS-SMB-FOIA

Cc: Robinson, Denise E CGSA

Subject: [Redirected as per INC000003235683] [Non-DoD Source] Re: Request For Expedited Processing--FOIA number 2020-CGFO-01886

I'm sorry, correction:

This is my 4th Request for an update on my request for expedited processing.

On Fri, Sep 4, 2020 at 3:12 PM J. Ryan Melogy <maritimelegalaid@gmail.com> wrote:

Amanda,

I am following up on my previous emails.

This is my third request for an update on my request for expedited processing.

I tried to call you but you did not answer and do not allow voicemails.

Best regards,

J. Ryan Melogy

MLAA

On Thu, Sep 3, 2020 at 10:09 AM J. Ryan Melogy <maritimelegalaid@gmail.com> wrote:

Hello,

I am following up on my previous email.

Can you please give me an update on my FOIA request and on my request for expedited processing?

I tried to call you but you did not answer and do not allow voicemails.

Best regards,

J. Ryan Melogy

MLAA

On Tue, Sep 1, 2020 at 3:54 PM J. Ryan Melogy <maritimelegalaid@gmail.com> wrote:

Hello,

I have not received a response to my previous email.

I would like to know the status of my request for expedited processing and also the status of my FOIA request.

Thank you,

J. Ryan Melogy

On Tue, Aug 18, 2020 at 4:08 PM J. Ryan Melogy <kpmelogy@gmail.com> wrote:

Amanda,

I have requested information from the USCG under the Freedom of Information Act regarding the USCG's enforcement (or non-enforcement) of 46 CFR 10104, and information regarding the USCG's enforcement (or non-enforcement) of the Sexual Abuse Act of 1986, which criminalized certain sex crimes committed onboard documented vessels, no matter where in the world those vessels are located.

As I stated in my FOIA request, there is a "compelling need" for this information, because a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or individuals. The information our organization is seeking has the potential to immediately prevent actual sexual assaults at sea from occurring, and this is an incredibly urgent need. Any delay in processing this request could literally result in mariners being sexually

assaulted at sea, could result in crucial evidence being lost or destroyed through non-reporting, and could result in sex criminals avoiding punishment and thus being allowed to continue their pattern of sexual assaults against other credentialed mariners.

Additionally, there is an “urgency to inform the public” about whether or not masters or other individuals in charge of documented vessels are reporting complaints of sexual offenses prohibited under chapter 109A of title 18, United States Code to the USCG in accordance with federal law. If the USCG is not receiving these reports, USCG credentialed mariners at sea aboard U.S. documented vessels are at a greatly heightened risk of sexual assault aboard their vessels, as the GAO concluded in their report discussed in our FOIA request.

Another factor is this: If the public is informed of these issues of non-enforcement, the sex criminals posing as credentialed mariners would also be informed, and this sudden public attention brought to bear on this issue could dissuade them from continuing their illegal behavior and thereby prevent rapes and other sex crimes from occurring aboard documented vessels. The logic here would be that they would fear that the public attention brought to bear on this issue would result in a law enforcement response from the USCG, although I will admit that, given the history of the USCG allowing the maritime industry to essentially ignore laws designed to prevent sexual assaults at sea and the USCG's history of allowing sexual predators and rapists to run rampant in this industry, it is far from certain whether or not this response would ever materialize.

That being said, our request for Expedited Processing has not been granted or denied as required by law. We have not received any recent communication from you regarding this issue, and it appears that there may be some shenanigans happening behind the scenes.

In an email to me on July 6, 2020 you wrote:

Dear Mr. Meloy,

This acknowledges receipt of your June 30, 2020, Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG). Your request was received in this office on July 6, 2020 and has been assigned FOIA number 2020-CGFO-01886.

In your email of July 6, 2020 you also wrote:

Your request for expedited processing is under review.

In your email of July 6, 2020 you also wrote:

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, please contact this office. You may send an e-mail to efoia@uscg.mil, call 202-475-3522, or you may contact our FOIA Public Liaison in the same manner.

On July 14, 2020 I responded to your email and wrote:

Amanda... You say that if I would like to narrow the scope of my request, please contact your office and you will make every effort to comply with my request in a timely manner. Thank you for this opportunity.

Can you please tell me: if I submit an amended request with a narrowed scope, would this “reset” the day that my submission was considered received (July 6, 2020)?

I am interested in narrowing the scope of my request.

On July 14, 2020 you then quickly replied:

Good morning,

Your request has been tolled until an updated request has been received. Once received, the processing clock will start again. Please submit your updates in writing. Your requests for expedited processing and a fee waiver will be reviewed upon receipt of your clarified request.

Sincerely,

Amanda C. Ackerson

On Wednesday July 29, 2020 I sent you my “clarified request.”

I did not hear back from you regarding my clarified request until August 5, 2020, when you told me that the clock had restarted on my FOIA request instead of being "tolled" as you had told me on July 14, 2020.

When I protested, you responded in an email of August 6, 2020 in which you wrote:

Good morning,

Unfortunately, for the last few weeks, I've had issues concerning incoming and outgoing email messages. Some messages that were to be sent were sent by the system much later.

As it concerns your request, my email concerning tolling, also known as stopping the clock, was sent late.

Amanda, this doesn't even make sense. Your email of July 14, 2020 was not sent late. It was sent in direct response to my email of July 14, 2020 in which I stated that I wanted to clarify my request that was already being processed. Why would you start talking about your email not working? This seems like silliness.

Much of my request was reasonably described and you had begun to work on it. You are not allowed to simply restart the clock by making up a nonsensical story about your email not working.

According to you, the USCG was processing my FOIA request and processing my application for expedited processing from July 6, 2020 until July 14, 2020. That was 7 Business Days.

On July 14, 2020 you stopped the clock. The clock restarted when you received my clarified request on July 29, 2020.

Today is Tuesday August 18, 2020. There have been 14 business days since the clock restarted once you received my clarified request on July 29, 2020.

7 + 14 = 21 Business days.

My request for expedited processing is required by law to be processed within 10 business days. Only in exceptional cases may an additional extension of 10 business days be applied to the request for expedited processing.

In any event, we are now past both the 10 business day mark and the 20 business day mark and you have not ruled on my request for expedited processing. This is illegality.

I hereby request information on my request for expedited processing.

If you have invoked a 10 day extension of the expedited processing window, I would appreciate an explanation of the legal basis for this 10 day extension.

I also request clarification on the tolling issue. Your excuse about your email not working is insufficient and illogical. As I have already shown, your email regarding the stopping of the clock on July 14, 2020 was in direct response to my email of July 14, 2020. There was no delay of email.

Thank you,

J. Ryan Melogy
Maritime Legal Aid & Advocacy
Chief Legal Officer

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave, SE
STOP 7710
WASHINGTON DC 20593-7710
Staff Symbol: CG-6P
Phone: (202) 475-3522
Fax: (202) 372-8413

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FOIA 2020-CGFO-01886

Mr. J. Ryan Melogy
MLAS Chief Legal Officer
MLAS Open Government Project
maritimelegalaid@gmail.com

Dear Mr. Melogy:

This is the interim response to your Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG), dated June 30, 2020, and received by the USCG on July 6, 2020. You are seeking:

1. All reports of sexual offenses received by the USCG pursuant to [46 U.S. Code § 10104](#) since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to [46 U.S. Code § 10104](#) since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since [46 U.S. Code § 10104](#) was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

A search of the Administrative Law Judge (CG-OOJ) and the Coast Guard Investigative Service (CGIS) for documents responsive to your request produced a total of 395 pages. Of the 395 pages, it has been determined that 48 pages are releasable in their entirety, 135 pages are

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partially releasable, and 208 pages are being withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(6) and (b)(7)(C).

The Office of Investigations (CG-INV-3) and the Coast Guard Investigative Service (CGIS) are still processing your request. CGIS's processing includes a request to the National Archives and Records Administration (NARA) to retrieve and send copies of legacy cases which may be responsive to your request. Once the processing has been completed, all releasable responsive records will be provided to you and will complete the processing of your FOIA.

Enclosed are 183 pages with certain information withheld as described below:

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 7(C), 7(D), and 7(E).

FOIA Exemption 6 exempts from disclosure 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 privacy. The types of documents and/or information that we have withheld may consist of, driver license, Social Security Numbers (SSN), home addresses, dates of birth, merchant mariners document numbers, license numbers, medical records (including drug or alcohol test results), names of their parties or witnesses, names of junior Coast Guard personnel, identifying roles/descriptions for persons whose names are withheld, email addresses, passport numbers, and Tax ID numbers. 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.

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

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I am the person responsible for the denial of your request. Also participating in this decision are Mr. John C. Johns, Managing Attorney Advisor, Office of the Chief Administrative Law Judge; LCDR Jessica Burrell, Legal Counsel, Coast Guard Investigative Service; and Mr. Michael Berkow, Director, Coast Guard Investigative Service.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Commandant (CG-6P), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave., S.E. STOP 7710, Washington DC, 20593-7710 following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need any further assistance or would like to discuss any aspect of your request, please contact this office by sending an e-mail to efoia@uscg.mil or you may contact our FOIA Public Liaison, Mrs. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS 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; or facsimile at 202-741-5769.

Sincerely,

WHITELAW.BARBARA
RA.L.1025718573

Digitally signed by
WHITELAW.BARBARA.L.102571
8573
Date: 2020.12.22 15:01:46
-05'00'

Barbara Whitelaw
Chief, Office of Information Management
U.S. Coast Guard Headquarters
By direction

Enclosures: (1) Four CGIS Case Files, 108 pages
(2) Eight ALJ Case Files, 75 pages

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 2ND ST SW STOP 7501
WASHINGTON DC 20593-7501
Staff Symbol: CG-INV-3
Phone: (202) 372-1283
Fax: (202) 372-8354
Email: Ternia.R.Pipkins@uscg.mil

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FOIA 2020-CGFO-01886

Mr. J. Ryan Melogy
Maritime Legal Aid Society
Email: maritimelegalaid@gmail.com

Dear Mr. Melogy:

This is the interim response to your Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG), dated August 5, 2020, for Enforcement Reports involving sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 occurring from 1990 to present. We have located a total of 580 pages of material responsive to your request; however, 456 pages are partially released, 93 pages fully released, and 31 pages are being withheld in their entirety.

Enforcement Reports 5765077, 5768060, 5779090, and 5783941 are still under investigation. This material has also been withheld in accordance with 5 U.S.C. § 552(b)(7)(A) because the material was compiled for law enforcement purposes and release could reasonably be expected to interfere with an ongoing law enforcement proceeding. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 7(C), 7(D) and 7(E).

A search of the Marine Information for Safety and Law Enforcement (MISLE) database for documents responsive to your request produced a total of 580 pages. Of those pages, I have determined that 93 pages are releasable in their entirety, 456 pages are partially releasable, and 31 pages are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(A).

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 7(C), 7(D), and 7(E).

Enclosed are 549 pages with certain information withheld as described below:

Exemption 6 exempts from disclosure 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 privacy. The types of documents and/or information that we have withheld may consist of Social Security Numbers (SSN), home addresses, telephone numbers, date of birth/age, merchant mariners document number, license numbers, medical records, including drug or alcohol test results, name of third parties or witnesses, names of junior Coast Guard personnel, identifying roles/descriptions for persons whose names are withheld, email addresses, passport numbers, and Tax ID numbers. 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.

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I

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FOIA 2020-CGFO-01886

have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

I am the person responsible for the partial denial of your request. Also participating in this decision are Ms. Dawn Patterson, Chief, FOIA and Data Administration Division and LT Pamela Tirado, Office of Information and Intelligence Law.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Commandant (CG-611), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave., S.E. STOP 7710, Washington DC, 20593-7710 following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact CG-INV-3 that processed your request. You may send an e-mail to efoia@u.cg.mil or you may contact our FOIA Public Liaison, Mrs. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS 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; or facsimile at 202-741-5769.

Sincerely,



J. D. Neubauer
Captain, U. S. Coast Guard
Chief, Office of Investigations and Casualty Analysis
By direction

Enclosure(s): (1) Marine Information for Safety and Law Enforcement printouts on CD-ROM
(2) Enforcement Reports
(3) (549) Pages Released

21 March 2021

Maritime Legal Aid & Advocacy, Ltd.

3 Gerday Dr.
Unit 4 #1929
Wilmington, DE 19804
maritimelegalaid.com
maritimelegalaid@gmail.com

Commandant (CG-6P)

Attn: FOIA APPEALS
2703 Martin Luther King Jr. Ave.
S.E. STOP 7710
Washington DC, 20593-7710

Re: Freedom of Information Act Appeal

Dear FOIA Coordinator:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the United States Coast Guard ("USCG") by Maritime Legal Aid & Advocacy, Ltd. ("MLAA"). MLAA is appealing the determinations of Barbara Whitelaw, Chief of Office of Information Management at USCG Headquarters, described in Whitelaw's FOIA Interim Response letter dated December 22, 2020.

Background

Maritime Legal Aid & Advocacy, Ltd. (MLAA) is a non-profit legal advocacy organization working to end shipboard sexual misconduct in the U.S. maritime industry. We believe the problem we are trying to solve is a very significant problem that affects far too many of the more than 215,000 USCG credentialed mariners who work in this vital industry. In furtherance of our mission, MLAA seeks documents from the USCG regarding the USCG's enforcement (or non-enforcement) of 46 USC § 10104, also known as the "Federal Shipboard Sexual Assault Allegation Reporting Law," and documents relating to investigations of sexual misconduct committed by USCG credentialed mariners.

Over the past 30 years the USCG has released very little public information regarding its enforcement of laws and regulations against sexual misconduct by USCG credentialed mariners. Through the FOIA process, MLAA seeks to pierce the veil of administrative secrecy that surrounds this important issue, open USCG action to the light of public scrutiny, and make the maritime workplace safer for hundreds of thousands of Americans.

Procedural History

On July 29, 2020, in an amended FOIA request, MLAA requested the following records from the USCG:

1. *All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.*
2. *All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*
3. *All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*

MLAA's request was assigned the following FOIA I.D. number: 2020-CGFO-01886.

In MLAA's FOIA request we sought Expedited Processing and waiver of all fees.

MLAA was subsequently notified by the USCG that our application for Expedited Processing had been approved and that all fees related to our FOIA request had also been waived.

On December 22, 2020, nearly 6 months after filing our amended FOIA request, MLAA received an interim response from the USCG in a letter signed by Barbara Whitelaw, Chief of the Office of Information Management at USCG Headquarters. Whitelaw's Interim Response Letter is one of two separate Interim Response Letters MLAA has so far received in response to our FOIA request.

Whitelaw's letter pertains to documents in the possession of:

- 1) The Coast Guard Criminal Investigative Service (CGIS), and
- 2) The USCG Administrative Law Judge Program

A second Interim Response Letter received by MLAA on January 8, 2021 pertains to documents in the possession or control of the USCG Office of Investigations & Casualty Analysis (CG-INV), and was signed by Captain Jason Neubauer, USCG.

This appeal pertains only to the determinations made by Barbara Whitelaw regarding CGIS and ALJ documents. MLAA will file a second FOIA appeal in response to Captain Neubauer's Interim Response Letter.

In FOIA Update Vol. XVI, No. 3 (1995) issued by the Department of Justice's Office of Information Policy (OIP) ("Determining the Scope of A FOIA Request"), the OIP wrote

First, there is the basic fact that in most situations the FOIA requester will be unfamiliar with the exact nature of the agency's recordkeeping system, its filing practices, and the manner in which its files and records are compiled. FOIA requesters often are entirely "in the dark" about the structure and arrangement of the files and records that an agency will be searching through in order to locate the particular records that are responsive to their FOIA requests."

When MLAA requested documents from the USCG regarding its enforcement of laws against shipboard sexual misconduct, we were, as the OIP stated in Update Vol. XVI, No. 3, entirely "in the dark" about the structure and arrangement of the USCG's filing and records systems. After receiving two Interim Response Letters and several hundred pages of documents from three different USCG offices in response to our FOIA request, we find ourselves still largely in the dark on important questions regarding the USCG's recordkeeping systems, especially the recordkeeping system of the USCG ALJ Program.

The USCG ALJ Program Response:

According to Barbara Whitelaw, the search of the USCG ALJ database was conducted or supervised by Mr. John C. Johns, Managing Attorney Advisor, Chief Administrative Law Judge. According to Whitelaw, Johns' search of the ALJ Program's files returned only 8 releasable documents responsive to our very broad request. These 8 documents, totaling 108 released or partially released pages, are all opinions or orders issued by USCG Administrative Law Judges. The USCG referred to these 8 documents as "case files," but they are not "case files," they are each only part of one case file. Strikingly, the most recent ALJ opinion released to MLAA dates from 1998—more than 20 years ago.

According to the USCG ALJ Program's own data, USCG ALJs preside over 600-900 Suspension and Revocation cases annually. According to the USCG, all filings in each of those

cases are required to be filed with the ALJ Docketing Center, which is located in Baltimore, Maryland. Managing Attorney-Advisor John C. Johns works at the Docketing Center, and Lauren Meus is the Hearing Docket Clerk.

According to 33 CFR § 20.401, any Suspension and Revocation proceeding commences when the Coast Guard files a complaint with the Hearing Docket Clerk and serves a copy of the complaint on the respondent.

According to the USCG, the ALJ Docketing Center docketed *“all filings in an administrative proceeding for each case...maintains the file room and develops and maintains a system for file storage and retrieval.”* Docketing Center staff also *“provides help to parties in filing documents, maintains a system for tracking and monitoring the status of outgoing and archived files, and answers public inquiries on case status.”*

According to the USCG, the Administrative Procedure Act (APA) also *“requires that all ALJ decisions be indexed and available for inspection and copying”* at the ALJ Docketing Center.

According to the USCG, *“The [docketing] center staff prepare a general index of all cases and a specialized index of contested cases that summarize and review such cases for legal issues. The public can search cases by name, topic and by keyword. The center maintains the paper version of these decisions and publishes electronic versions of them on the web in conformance with the Electronic FOIA. The center also maintains the case files in accordance with National Archives and Records Administration requirements.”*

It should be noted that MLAA has been unable to locate an active searchable online index of S&R cases maintained by the USCG ALJ Program.

According to the USCG, *“The rules of practice and procedure, describing how to file documents in Suspension and Revocation proceedings, can be found at 33 C.F.R. Part 20, Subpart C...Once a document is filed, it becomes part of the official record, which can be viewed by the public (33 C.F.R. § 20.903). All sensitive personally identifiable information, classified, and other privileged information will be redacted prior to public release.”*

MLAA is seeking from the USCG ALJ Program *“all documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989.”*

Through records released to MLAA by the USCG Office of Investigations & Casualty Analysis (CG-INV) via the FOIA, we have learned there are numerous filings related to charges of sexual misconduct by USCG credentialed mariners that have been docketed with the ALJ Docketing Center since 1998—which is the date of the most recent case file released to MLAA

by the USCG ALJ Program—and yet we did not receive any documents relating to these S&R cases from Barbara Whitelaw or USCG ALJ Managing Attorney-Advisor John C. Johns.

For example, CG-INV released documents to MLAA relating to “*USCG vs. [Redacted], Activity # 3113755, Docket 2007-0075.*” This case concerns the Chief Mate aboard the *M/V Sealand Achiever* who was accused by the USCG via the S&R process of at least 13 counts of shipboard sexual misconduct, including forcefully raping, sexually assaulting, and sodomizing the ship’s 2nd Mate, directing lewd and lascivious remarks at deck and engine cadets, using the ship’s master key to enter the room of the engine cadet while she was sleeping to solicit and engage in sexual acts, and creating a hostile work environment for numerous crewmembers.

This case dates from 2007, and yet we did not receive any mention of this case or any of its case files from the USCG ALJ Program in the documents released to MLAA along with Whitelaw’s Interim Response Letter dated December 22, 2020.

In another example, we have independently located the final order and opinion in “*USCG vs. Michael James Neil, Docket Number: CG S&R 05-0373, CG Case No. 2307534,*” which was issued by USCG ALJ Judge Walter J. Brudzinski and dated August 18, 2005. This case deals with a mariner who was convicted of “*Cruelty to a Juvenile, Molestation of a Juvenile, and Aggravated Incest.*” The result of the case was Neil having his merchant mariner’s license revoked by Judge Brudzinski. However, the USCG ALJ Program did not provide this opinion to MLAA in their response to our FOIA request, nor did they provide any of the filings made to the ALJ Docketing Center concerning this case.

Appeal #1:

With respect to documents within the possession of the USCG ALJ Program that are responsive to our FOIA request, MLAA appeals the decision of Barbara Whitelaw on the grounds that records or parts of records responsive to our request have been withheld by the USCG ALJ Program.

MLAA appeals the USCG's failure to provide documents responsive to our FOIA request held by the USCG ALJ Program, including not only all final orders and opinions in S&R cases involving sexual misconduct by credentialed mariners since 1989, but also failure to provide MLAA with all documents, filings, exhibits, evidence, and other documents connected to each sexual misconduct case.

33 CFR § 20.903 “Records of proceedings,” states:

(a) The transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings constitute the official record of a proceeding. This record also includes any motions or other matters regarding the disqualification of the ALJ.

(b) Any person may examine the record of a proceeding at the U. S. Coast Guard Administrative Law Judge Docketing Center; Room 412; 40 S. Gay Street; Baltimore, MD 21201–4022. Any person may obtain a copy of part or all of the record after payment of reasonable costs for duplicating it in accordance with 49 CFR part 7.

Accordingly, the entire record of each case should be within the possession of the ALJ Docketing Center as required by law, and this complete case record in all sexual misconduct S&R cases initiated since 1989 should be provided to MLAA pursuant to the FOIA.

Appeal #2:

MLAA appeals the decision of Barbara Whitelaw to withhold all “Settlement Agreements” between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by the USCG.

What has become clear through the reading of the documents obtained from the CG-INV is that many, perhaps most, S&R cases involving sexual misconduct by credentialed mariners are eventually resolved through Settlement Agreements between the USCG and the mariner. It appears to be the policy of the USCG to attempt to settle all sexual misconduct cases without a hearing, and it is the explicit policy of the USCG to forge Settlement Agreements in all S&R cases where the USCG is not seeking the revocation of a mariner’s credentials. Based on documents obtained from the CG-INV, mariners who sign Settlement Agreements in sexual misconduct S&R cases often receive penalties that seem extraordinarily lenient.

For example, on April 18, 2016 a USCG ALJ issued a consent order for a settlement agreement with a mariner who had recently been convicted in Virginia of criminal sexual battery (*USCG vs. [Redacted], Activity #5723166 Docket # 2016-0122*). According to documents from the “Marine Information for Safety and Law Enforcement” (MISLE) database (a database system managed and used by the USCG) provided to MLAA by the CG-INV, the mariner who had been recently convicted of a sex crime was given a Settlement Agreement that only resulted in a one month suspension of his USCG-issued license when, by law, the conviction should have resulted in the loss of his credentials and also warranted a 1-5 year assessment period following the conviction. What’s truly disturbing about this Settlement Agreement is that the mariner held a USCG-issued master’s license and is the Captain of his vessel.

In “*USCG vs. [Redacted], Activity # 3113755, Docket 2007-0075*,” the case concerning the Maersk Chief Mate aboard the *M/V Sealand Achiever* who was accused by the USCG via the S&R process of at least 13 counts of shipboard sexual misconduct, the mariner received a Settlement Agreement, with a consent order from an ALJ judge approving the settlement agreement received by CG-INV on May 16, 2007. We do not know what is contained in that Settlement Agreement, but it is crucial that the public learns whether or not a known sexual

predator is being allowed to continue working aboard ships under the authority of his USCG license and credentials.

MLAA seeks, as part of its broad FOIA request, all Settlement Agreements and all related filings and documents in all S&R cases involving sexual misconduct by credentialed mariners since 1989. It is vital that the maritime community and the broader public learn how the USCG is using Settlement Agreements in cases involving sexual misconduct by credentialed mariners.

Appeal #3

Settlement Agreements used in the S&R process are approved through consent orders issued by federal judges and represent “final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases,” and therefore the FOIA requires that these Settlement Agreements be proactively released to the public by the USCG on an ongoing basis. MLAA appeals the withholding of Settlement Agreements on the basis that records or parts of records responsive to our request have been withheld by the USCG, and on the basis that the FOIA requires these documents to be made available to the public on an ongoing basis.

Under FOIA's “reactive” mechanism found in § 552(a)(3) & § 552(a)(2), the FOIA identifies certain categories of records that an agency must make available to the public on an ongoing basis, with no FOIA request necessary. This affirmative obligation applies to:

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;***
- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;*
- (C) administrative staff manuals and instructions to staff that affect a member of the public;*
- (D) copies of all records, regardless of form or format—*
 - (i) that have been released to any person under paragraph (3) [§ 552(a)(3)]; and*
 - (ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or*
 - (II) that have been requested 3 or more times; and*
- (E) a general index of the records referred to under subparagraph (D)[.]*

Appeal #4:

MLAA seeks the names of all parties to the Settlement Agreements, and seeks the names of mariners accused of sexual misconduct in all documents that have been released by the USCG and in all documents that will be released. We appeal the redaction of the names of the accused on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

MLAA finds no basis in law for the withholding of the names of credentialed mariners who have admitted to misconduct by signing Settlement Agreements, or for withholding the names of credentialed mariners who have been charged with sexual misconduct by the USCG.

Appeal #5:

MLAA appeals the decision of Barbara Whitelaw to withhold all documents generated in the negotiation of "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by the USCG.

The sexual misconduct Settlement Agreement documents sought by MLAA under our broad FOIA request include emails and other documents exchanged between USCG personnel and credentialed mariners accused of sexual misconduct, and between USCG personnel and the mariner's attorney or attorneys.

Federal courts have consistently rejected the position that information exchanged between adversaries during settlement negotiations are entitled to distinct protection under FOIA. In *County of Madison v. Department of Justice*, 641 F. 2d 1036, 1040-41 (1st Cir. 1981), it was held that settlement proposals submitted to an agency by "past and potential adversaries" must be disclosed for lack of satisfying the "inter-agency or intra-agency" threshold requirement of Exemption 5, 5 U.S.C. § 552(b)(5). See also *Norwood v. FAA*, 580 F. Supp. 994, 1002-03 (W.D. Tenn. 1984). In other cases, district court judges have refused to accord settlement documents protection under FOIA Exemption 5 because of their conclusion that there exists no distinct "settlement negotiations" privilege.

In *Center for Auto Safety v. Department of Justice*, 576 F. Supp. 739, 749 (D.D.C. 1983), it was found that such a privilege had not been established by the courts in the civil discovery context, nor could one be implied directly from the special federal rule of evidence (Rule 408) prohibiting the admissibility at trial of settlement negotiation details. This conclusion was followed in *NAACP Legal Defense & Educational Fund v. Department of Justice*, 612 F. Supp. 1143, 1146 (D.D.C. 1985).

Appeal #6:

MLAA appeals Barbara Whitelaw's decision to withhold the release of 208 of the 395 pages of documents determined responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

In her Interim Response Letter Whitelaw states that she has completely withheld 208 of 395 pages responsive to our FOIA request pursuant to FOIA exemptions found in 5 USC §552(b)(6) and (b)(7)(C).

The documents that were withheld under 5 USC §552(b)(7)(C) must be disclosed under the FOIA because they are required to be made available to the public and are not expected to constitute an unwarranted invasion of personal privacy.

5 USC §552 (b)(7)(C) states that the agency is required to make available to the public information that is "*records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to constitute an unwarranted invasion of personal privacy.*"

Given that any personally identifiable information about the victim or 3rd parties can be redacted from the documents pursuant to Exemption 6, all documents should be released as they would not invade the personal privacy of any of the relevant individuals or reveal their identities.

Appeal #7:

MLAA appeals the USCG's redaction of information on produced documents on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

With respect to 183 pages of documents fully or partially released pursuant to our FOIA request, MLAA believes the FOIA requires the USCG to release withheld and redacted information, notwithstanding the USCG's claims that the redacted information is exempt.

According to FOIA Exemption 7(C), certain records or information may be determined to constitute an unwarranted invasion of personal privacy if the agency believes the privacy interest of identifies of individuals outweighs minimal public interest in disclosing the information. MLAA argues that this is not the case here. MLAA believes the public interest in the release of this redacted information outweighs the public interest in withholding it, because the information redacted from the documents (for example: the names of the accused) have the potential to show misconduct and inappropriate behavior by individuals in charge of documented vessels and by other USCG credentialed mariners.

As shown in various previous court cases, some public interest factors should be properly taken into consideration and given great weight in this case. Courts have found the public

interest in disclosure to be strong when the requested information shows misconduct. *See, e.g., Congressional News Syndicate v. Department of Justice*, 438 F. Supp. 538, 544 (D.D.C. 1997) (misconduct by White House staffers).

Here there is a strong public interest to release exempted information from the documents because by sharing the information about previous cases of sexual abuse and providing proof that serious abuses did in fact occur, there is the hope that such abuses will not occur in the future. One court has shared a similar sentiment that there is an “*obvious public interest*” in full disclosure of such documents to share information about past abuse to prevent future abuse.” *Tax Reform Research Group v. IRS*, 419 F. Supp. 415, 418 (D.D.C. 1976).

Appeal #8:

MLAA appeals the USCG’s failure to search the records of the United States Coast Guard Hearing Office or the office of the United States Coast Guard Judge Advocate General for information responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

According to the USCG, “*the mission of the Hearing Office is to adjudicate civil penalty cases. The civil penalty process is remedial in nature. Its goals are to gain compliance with statutes and regulations that the Coast Guard enforces and to deter future violations. A fair and informal administrative process promotes maritime safety, security and environmental protection.*”

The Hearing Office claims statutory authority to carry out its mission is found in Title 46 Sec. 2103 and Title 46 Sec. 2107.

Title 46 Sec. 2103, “Superintendence of the merchant marine,” states:

The Secretary has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly administer this subtitle. The Secretary may prescribe regulations to carry out the provisions of this subtitle.

Title 46 Sec. 2107, “Civil penalty procedures,” states:

(a) After notice and an opportunity for a hearing, a person found by the Secretary to have violated this subtitle or a regulation prescribed under this subtitle for which a civil penalty is provided, is liable to the United States Government for the civil penalty

provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty under this subtitle until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

Because of the broad role in policing the maritime community claimed by the USCG JAG and Hearing Office, MLAA believes that a search for documents responsive to our request should be conducted by the USCG Hearing Office and the USCG JAG.

Appeal #9:

MLAA appeals the USCG's redaction of the names of Federal Administrative Law Judges from documents responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

MLAA finds no basis in law for the redaction of the names of federal judges.

Appeal #10:

In her Interim Response Letter Whitelaw provided the text of USC §552(b)(7)(A), yet Whitelaw does not state how many records responsive to our request were withheld pursuant to FOIA exemption 7A. MLAA appeals Whitelaw's failure to state how many records were withheld pursuant to §552(b)(7)(A) on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

The U.S. Coast Guard Investigative Service Response:

According to Barbara Whitelaw, the search of the files of the USCG Investigative Service returned only 4 releasable investigation files responsive to our very broad request, with the oldest case file dating from 2016.

Appeal #10:

MLAA appeals the decision of Barbara Whitelaw and the USCG Investigative Service to withhold decades' worth of documents responsive to our FOIA request on the grounds that

records or parts of records responsive to our request have been improperly withheld by the USCG.

MLAA finds it difficult to believe that the CGIS did not investigate any allegations of sexual misconduct by a USCG credentialed mariner between 1989 and 2016.

Appeal #11:

MLAA appeals the decision of Barbara Whitelaw to withhold documents generated in the investigation of the credentialed mariner accused of shipboard sexual misconduct in “USCG vs. [Redacted], CSE-2018-11-000096” on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

The public has a right to know the name of the mariner accused of sexual misconduct in this case—a person who signed a Settlement Agreement with the USCG over the allegations.

In our FOIA request, MLAA requested the following:

*All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. **“All documents” includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG’s custody or control, whether they exist in “working,” investigative, retired, electronic mail, or other files currently or at any other time.***

With respect to CGIS case “CSE-2018-11-000096,” MLAA seeks “All documents including but not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes that have ever been within USCG’s custody or control, whether they exist in “working,” investigative, retired, electronic mail, or other files currently or at any other time.

MLAA knows from experience that the USCG is capable of searching its vast email database for emails on specific cases and specific names, and MLAA seeks all emails exchanged by USCG and CGIS personnel with others within the agency and outside of the agency regarding CSE-2018-11-000096.

CSE-2018-11-000096 is a case with particular importance to MLAA because documents obtained from the CG-INV show that the master of the vessel broke the Federal Sexual Assault Allegation Reporting Law by not reporting an allegation of shipboard sexual assault to the USCG as required by 46 USC 10104.

Documents obtained from the CG-INV also show that the master of the vessel or his employer (Maersk Line, Limited—a subsidiary of the largest shipping company in the world) were not punished for their violation of the Federal Sexual Assault Allegation Reporting Law. The documents also show that the perpetrator of these shipboard sex crimes was given a Settlement Agreement that resulted in no suspension or revocation of his USCG merchant mariner credentials.

The documents from *CSE-2018-11-000096* show the CGIS communicating with lawyers from Maersk, with the Department of Transportation's Office of Inspector General, with the U.S. Merchant Marine Academy, and others. There was no doubt significant communication between the CGIS and the CG-INV over how to proceed with this case, and MLAA seeks all electronic communications exchanged over this very important case.

Conclusion

Thank you for your prompt response to this appeal. I anticipate that you will produce responsive documents within 20 working days. For questions regarding this request I can be contacted via email at maritimelegalaid@gmail.com.

Respectfully Submitted,

J. Ryan Melogy
MLAA, Chief Legal Officer

1 April 2021

Maritime Legal Aid & Advocacy, Ltd.

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Commandant (CG-6P)

Attn: FOIA APPEALS
2703 Martin Luther King Jr. Ave.
S.E. STOP 7710
Washington DC, 20593-7710

Re: Freedom of Information Act Appeal

Dear FOIA Coordinator:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the United States Coast Guard ("USCG") by Maritime Legal Aid & Advocacy, Ltd. ("MLAA"). MLAA is appealing the determinations of Captain Jason Neubauer, Chief, Office of Investigations and Casualty Analysis, described in Neubauer's FOIA Interim Response Letter dated January 8, 2021.

Background

Maritime Legal Aid & Advocacy, Ltd. (MLAA) is a non-profit legal advocacy organization working to end shipboard sexual misconduct in the U.S. maritime industry. We believe the problem we are trying to solve is a very significant problem that affects far too many of the more than 215,000 USCG credentialed mariners who work in this vital industry. In furtherance of our mission, MLAA seeks documents from the USCG regarding the USCG's enforcement (or non-enforcement) of 46 USC § 10104, also known as the "Federal Shipboard Sexual Assault Allegation Reporting Law," and documents relating to investigations of sexual misconduct committed by USCG credentialed mariners.

Over the past 30 years the USCG has released very little public information regarding its enforcement of laws and regulations against sexual misconduct by USCG credentialed mariners. Through the FOIA process, MLAA seeks to pierce the veil of administrative secrecy that surrounds this important issue, open USCG action to the light of public scrutiny, and make the maritime workplace safer for hundreds of thousands of Americans.

Procedural History

On July 29, 2020, in an amended FOIA request, MLAA requested the following records from the USCG:

1. *All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.*
2. *All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*
3. *All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*

MLAA's request was assigned the following FOIA I.D. number: 2020-CGFO-01886.

In MLAA's FOIA request we sought Expedited Processing and waiver of all fees.

MLAA was subsequently notified by the USCG that our application for Expedited Processing had been approved and that all fees related to our FOIA request had also been waived.

On December 22, 2020, nearly 6 months after filing our amended FOIA request, MLAA received an interim response from the USCG in a letter signed by Barbara Whitelaw, Chief of the Office of Information Management at USCG Headquarters. Whitelaw's Interim Response Letter is one of two separate Interim Response Letters MLAA has so far received in response to our FOIA request.

Whitelaw's letter pertains to documents in the possession of:

- 1) The U.S. Coast Guard Investigative Service (CGIS), and
- 2) The USCG Administrative Law Judge Program

A second Interim Response Letter dated and received by MLAA on January 8, 2021 pertains to documents in the possession or control of the USCG Office of Investigations & Casualty Analysis (CG-INV), and was signed by Captain Jason Neubauer, USCG.

This appeal pertains only to the determinations made by Captain Jason Neubauer in his Interim Response Letter of January 8, 2021. MLAA has already filed a separate FOIA appeal in response to Barbara Whitelaw's Interim Response Letter.

Captain Neubauer's Misstatement of Our FOIA Request:

In Barbara Whitelaw's Interim Response Letter, she repeated, verbatim, at the beginning of her letter, the three categories of records we are seeking in our FOIA request.

In his Interim Response Letter, Captain Jason Neubauer took a different approach. First, he misstated our FOIA request. He then proceeded to produce a selection of documents based on his misstatement of our FOIA request instead of documents responsive to our request.

In his Interim Response Letter Neubauer wrote:

This is the interim response to your Freedom of Information Act (FOIA) request to the U.S. Coast Guard (USCG), dated August 5, 2020, for Enforcement Reports involving sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 occurring from 1990 to present.

To be clear, MLAA did not specifically request "Enforcement Reports involving sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 occurring from 1990 to present."

We have already stated the relevant language of our FOIA request in the Procedural History section of this appeal, and will not waste words restating it again here.

Appeal #1

We appeal the entire response of the CG-INV to our FOIA request on the grounds that Captain Jason Neubauer did not respond to our FOIA request and instead responded to his own inaccurate description of our FOIA request, and on the grounds that because of his inaccurate description of our FOIA request, records or parts of records responsive to our request have been withheld by the CG-INV.

MLAA does not believe the CG-INV provided a response to our FOIA request, and we appeal the determinations of Captain Jason Neubauer and the CG-INV on this basis.

Our Request for Reports of Sexual Offenses pursuant to 46 U.S. Code § 10104

46 U.S. Code § 10104 reads:

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than \$5,000.

Regarding *46 U.S. Code § 10104*, MLAA is primarily seeking to answers three very important questions that are of great interest to the maritime community:

1) whether or not USCG credentialed masters and other persons in charge of documented vessels are reporting allegations of sexual offenses prohibited under chapter 109A of title 18 U.S. Code to the USCG in accordance with the Federal Shipboard Sexual Assault Allegation Reporting Law (*46 U.S. Code § 10104*),

2) whether the Federal Shipboard Sexual Assault Allegation Reporting Law is, or has ever been, enforced by the USCG, and

3) whether or not the USCG has ever investigated or punished a person or a corporation for failing to report an allegation of a sexual offense prohibited under chapter 109A of title 18 U.S. Code in accordance with the Federal Shipboard Sexual Assault Allegation Reporting Law.

_____Federal law requires USCG documented commercial vessels to report a wide variety of casualties, accidents, and incidents to the USCG. To facilitate reporting, the USCG has created a reporting form titled "[CG-2692: Report of Marine Casualty, Commercial Diving Casualty, or OCS-Related Casualty](#)." The "owner, agent, master, operator, or person in charge" of commercial vessels are required to use CG-2692 when transmitting reports of "reportable marine casualties" to the USCG. CG-2692 includes the following categories of incidents that are required to be reported to the USCG:

- 1. Unintended grounding or an unintended strike of (allision with) a bridge*
- 2. Intended grounding or intended strike of a bridge that created a hazard to navigation, the environment or the safety of the vessel, or that meets any of the criteria in 3 through 8 below*

3. *Loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel*
4. *Occurrence materially and adversely affected the vessel's seaworthiness or fitness for service or route*
5. *Loss of life*
6. *Injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties*
7. *Occurrence causing property damage in excess of \$75,000*
8. *Occurrence involving significant harm to the environment*

Reporting form CG-2692 states, *“This form satisfies the requirement for written reports of casualties and accidents found in the Code of Federal Regulations...In accordance with 46 CFR §4.05-10...this form shall be filled out as completely and accurately as possible.”*

46 CFR § 4.05-10 “Written report of marine casualty,” states:

(a) The owner, agent, master, operator, or person in charge must, within 5 days, file a written report of any marine casualty required to be reported under § 4.05-1. This written report is in addition to the immediate notice required by § 4.05-1. This written report must be delivered to a Coast Guard Sector Office or Marine Inspection Office. It must be provided on Form CG-2692...

(b) If filed without delay after the occurrence of the marine casualty, the report required by paragraph (a) of this section suffices as the notice required by § 4.05-1(a).

46 CFR § 4.05-1(a) states:

“Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Sector Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty...”

As an example of how this reporting system works, if a person employed aboard a documented vessel in commercial service sustains an injury that requires professional medical treatment beyond first aid and renders the individual unfit to perform his or her routine duties, that injury must be immediately reported to the USCG via phone call, email, or VHF radio, and the injury must also be reported to the USCG on form CG-2692 via mail, email, or fax within 5 days of the injury.

When received by the USCG, this “reportable marine casualty” (the injury to the crewmember) is then entered into the USCG’s “Marine Information Safety and Law Enforcement System (MISLE)” and assigned a MISLE Activity Number. The USCG then

investigates the reportable marine casualty. When the USCG's investigation is completed/closed, an "Incident Investigation Report" is prepared for public release.

The USCG maintains an online database of Incident Investigation Reports that can be searched by the public. The publicly searchable database of Incident Investigation Reports is maintained and accessed via a website known as the "[Coast Guard Maritime Information Exchange \(CGMIX\)](#)."

In MLAA's investigation of the USCG's reporting systems, we searched the CGMIX for Incident Investigation Reports and for information about the number of Incident Investigation Reports contained within the database. According to the CGMIX website, the database contains Incident Investigation Reports for closed investigations of reportable marine casualties dating from October 2002 to present.

Because the public-facing CGMIX database interface will not return more than 5,000 results for a date range query, we are not able to determine exactly how many Incident Investigation Reports are contained in the database. To estimate the number of Incident Investigation Reports in the database, we conducted open searches of five one-year date ranges. A search of the one-year period from January 1, 2015 to December 31, 2015 returned 2,071 Incident Investigation Reports. A search of the one-year period from January 1, 2016 to December 31, 2016 returned 3,467 Incident Investigation Reports. A search of the one-year period from January 1, 2017 to December 31, 2017 returned 3,242 Incident Investigation Reports. A search of the one-year period from January 1, 2018 to December 31, 2018 returned 3,496 Incident Investigation Reports. A search of the one-year period from January 1, 2019 to December 31, 2019 returned 3,444 Incident Investigation Reports.

These 5 searches revealed that the database contains 15,720 Incident Investigation Reports for the five year period from January 1, 2015 to December 31, 2019—an average of 3,144 per year. Using a slightly more conservative average of 3,000 per year would mean that over the past 10 years approximately 30,000 reportable marine casualties have been reported to the USCG on form CG-2692 by owners, agents, masters, operators, or persons in charge of vessels in commercial service.

What seems clear from the high number of Incident Investigation Reports contained in the CGMIX database is that the commercial maritime industry takes at least some of the USCG's vessel safety reporting requirements seriously. However, the USCG has decided not to include the reporting requirements of 46 U.S. Code § 10104 on form CG-2692.

MLAA has been unable to locate any reporting form created by the USCG for reporting allegations of shipboard sexual assault as required by 46 U.S. Code § 10104, or any system for the public to view the completed investigation reports involving allegations of shipboard sexual assault reported to the USCG pursuant to 46 U.S. Code § 10104.

This failure to create a formal reporting system for allegations of shipboard sexual assault, and the failure to incorporate allegations of shipboard sexual assault into the USCG's marine casualty reporting systems (CG-2692 and CGMIX) raises the very important question of how exactly allegations of shipboard sexual assault are being reported to the USCG pursuant to 46 U.S. Code § 10104.

In our FOIA request, MLAA requested the following:

All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.

To clarify this request for the CG-INV: what MLAA is asking for are the reports that have been submitted to the USCG by masters and other persons in charge of documented vessels pursuant to 46 U.S. Code § 10104.

If CG-2692 included a requirement to report allegations of sexual assault pursuant to 46 U.S. Code § 10104, "all reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104" would include every CG-2692 that has been submitted to the USCG because of an allegation of shipboard sexual assault. This form would be a "Report."

Appeal #2

We appeal the failure of the CG-INV to provide MLAA with even a single Report of an allegation of a sexual offense prohibited under chapter 109A of title 18, United States Code in accordance with 46 U.S. Code § 10104, on the grounds that records or parts of records responsive to our request have been withheld by the CG-INV.

We find it difficult to believe that the USCG has not received a single report pursuant to 46 U.S. Code § 10104 in the past 30+ years. We appeal the failure of the CG-INV to search for those reports of sexual offenses submitted to the USCG pursuant to 46 U.S. Code § 10104 and their failure to release those reports to MLAA.

Claim Made by USCG that Allegations of Shipboard Sexual Offenses are Reported to the USCG via USCG form CG-706B, aka the Vessel's "Official Logbook"

In a telephone call with Chuck Wolfe, USCG Assistant Senior Investigation Officer at Coast Guard Sector New York, Mr. Wolfe told MLAA that, pursuant to 46 U.S. Code § 10104, the USCG requires allegations of shipboard sexual assault to be transmitted to the USCG via USCG form [CG-706B](#), also known as a vessel's "Official Logbook."

Federal law requires the master or person in charge of a U.S. vessels on a voyage from a port in the United States to a foreign port, or the master of a vessel of at least 100 gross tons and on a voyage between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean, to maintain an Official Logbook/CG-706B and to send the paper Logbook to the nearest Officer in Charge, Marine Inspection (OCMI) when the voyage is completed.

MLAA was told by USCG Investigator Chuck Wolfe that when the Official Logbooks are received by an OCMI, the Logbook is read in its entirety by a member of the OCMI who searches for entries in the Logbook required by 46 U.S. Code § 10104. Mr. Wolfe told MLAA that unlike in the case of, for example, an injury that requires professional medical treatment beyond first aid, or an occurrence causing property damage in excess of \$75,000, the USCG does not recognize any legal requirement for a master or person in charge of a documented vessel to immediately report an allegation of shipboard sexual assault to the USCG.

Because some vessels required to maintain an Official Logbook engage in foreign voyages that last months, or sometimes years, the implication of this policy decision by the USCG is that it may take months or years for the USCG to even receive the document that would allow them to learn about an allegation of shipboard sexual assault.

Additionally, many USCG documented commercial vessels—and likely the vast majority of documented commercial vessels—are not required to maintain an Official Logbook/CG-706B, which raises the question of how those commercial vessels not required to maintain a CG-706B are required to report allegations of shipboard sexual assault pursuant to 46 U.S. Code § 10104.

According to [CG-706B](#), the Official Logbooks received by the USCG “*are maintained at the OCMI’s office for six months before being transferred to the nearest Federal Records Center for 60 years. After 60 years the Official Logbooks are sent to the National Archives Regional Center for permanent storage. A record of all official logbooks and their location must be maintained by the submitting office.*”

This means that the CG-INV knows the location of every CG-706B that has been submitted to an OCMI office since 1989, and that the USCG is able to search these official documents for allegations of sexual assault pursuant to 46 U.S. Code § 10104.

MLAA finds it very difficult to believe that in more than 30 years not a single report of a complaint of a sexual offense prohibited under chapter 109A of title 18, U.S. Code has been submitted to the USCG via form CG-706B pursuant to 46 U.S. Code § 10104.

Based on the response of the CG-INV to our FOIA request, and based on the documents received by MLAA from the CG-INV pursuant to our FOIA request, which included zero reports of sexual offenses, MLAA does not believe that the USCG performed a search of all Official Logbooks in its possession or within the possession of the Federal Records Centers where the USCG sent the indexed Logbooks.

Appeal #3

MLAA appeals the failure of the CG-INV to search all Official Logbooks dating to 1989 that are either in its possession, or in the possession of the Federal Records Centers where the USCG sent the indexed Logbooks, for reports of complaints of a sexual offense prohibited under chapter 109A of title 18, on the grounds that records or parts of records responsive to our request have been withheld by the CG-INV.

We asked for reports received from mariners by the USCG. The USCG told us that at least some of those reports are in the Official Logbooks. If this search is burdensome, it is only burdensome because the USCG has failed to create a more efficient system for reporting allegations of shipboard sexual assault. MLAA does not believe that the USCG's intentional failure to create an efficient reporting system for allegations of shipboard sexual assault excuses the agency from conducting a thorough search of Official Logbooks in response to our FOIA request.

Further, MLAA is not convinced that the Official Logbooks are even read by USCG personnel, or that every single Official Logbook received by the USCG since 1989 was read in its entirety by USCG personnel who were looking for reports of sexual offenses pursuant to 46 U.S. Code § 10104. A thorough review of these Official Logbooks is needed to ensure that any federal sex crimes reported in the Official Logbooks have been thoroughly investigated by the USCG, and to ensure that the USCG fully responds to our FOIA request.

The Documents CG-INV Released to MLAA are “Enforcement Summaries,” and These Summaries Do Not Include Large Numbers of Documents Relevant to our FOIA Request.

In MLAA's FOIA request we requested the following:

All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. “All documents” includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in “working,” investigative, retired, electronic mail, or other files currently or at any other time.

All of the documents released to MLAA by the CG-INV are titled “Enforcement Summaries” and are exactly that. They are summaries. Not included are an unknown, but certainly large, number of documents responsive to our request that were used to create the Enforcement Summaries or never became part of an Enforcement Summary.

For example, CG-INV released a heavily redacted 45 page “Enforcement Summary” for the case “*USCG vs. [Redacted], Activity # 3113755, Docket 2007-0075.*” This case concerns the Chief Mate aboard the M/V Sealand Achiever who was accused by the USCG via the S&R process of at least 13 counts of shipboard sexual misconduct, including forcefully raping, sexually assaulting, and sodomizing the ship’s 2nd Mate, directing lewd and lascivious remarks at deck and engine cadets, using the ship’s master key to enter the room of the engine cadet while she was sleeping to solicit and engage in sexual acts, and creating a hostile work environment for numerous crewmembers.

Referenced in the Enforcement Summary for “*USCG vs. [REDACTED], Activity #3113755, Docket 2007-0075*” are numerous Exhibits, including “*Exhibit Label CG-4: Evidence Description: Maersk Answer to Subpoena dated February 28, 2007. Due to size of documents, all files kept at Sector North Carolina*” and various other exhibits.

In another case involving Maersk titled “*USCG vs. [REDACTED], Activity# 5763463, Docket 2019-0151*” the CG-INV failed to provide the Exhibits listed in the Enforcement Summary.

Appeal #4

MLAA appeals the failure of Captain Jason Neubauer to produce all Exhibits referenced in all Enforcement Summaries provided to MLAA pursuant to our FOIA request, on the grounds that records or parts of records responsive to our request have been withheld by the CG-INV.

Appeal #5:

MLAA appeals the decision of Captain Jason Neubauer to withhold all “Settlement Agreements” between the USCG and credentialed mariners in cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by the USCG.

What has become clear through the reading of the documents obtained from the CG-INV is that many, perhaps most S&R cases involving sexual misconduct by credentialed mariners are eventually resolved through Settlement Agreements between the USCG and the mariner. It appears to be the policy of the USCG to attempt to settle all sexual misconduct cases without a hearing, and according to the USCG’s Chief ALJ, it is the explicit policy of the USCG to forge Settlement Agreements in all S&R cases where the USCG is not seeking the revocation of a mariner’s credentials. Based on documents obtained from the CG-INV, mariners who sign Settlement Agreements in sexual misconduct S&R cases often receive penalties that seem extraordinarily lenient.

For example, on April 18, 2016 a USCG ALJ issued a consent order for a settlement agreement with a mariner who had recently been convicted in Virginia of criminal sexual battery (*USCG vs. [Redacted], Activity #5723166 Docket # 2016-0122*). According to documents provided to MLAA, the mariner who had been recently convicted of a sex crime was given a Settlement Agreement that resulted in only a one month suspension of his USCG-issued license when, by law, the conviction should have resulted in the loss of his credentials and also warranted a 1-5 year assessment period following the conviction. What's truly disturbing about this Settlement Agreement is that the mariner held a USCG-issued master's license and is the Captain of his vessel.

In "*USCG vs. [Redacted], Activity # 3113755, Docket 2007-0075*," the case concerning the Maersk Chief Mate aboard the *M/V Sealand Achiever* who was accused by the USCG via the S&R process of at least 13 counts of shipboard sexual misconduct, the mariner received a Settlement Agreement, with a consent order from an ALJ judge approving the settlement agreement received by CG-INV on May 16, 2007. We do not know what is contained in that Settlement Agreement, but it is crucial that the public learns whether or not a known sexual predator is being allowed to continue working aboard ships under the authority of his USCG license and credentials.

MLAA seeks, as part of its broad FOIA request, all Settlement Agreements and all related filings and documents in all S&R cases involving sexual misconduct by credentialed mariners since 1989. It is vital that the maritime community and the broader public learn how the USCG is using Settlement Agreements in cases involving sexual misconduct by credentialed mariners.

Appeal #6

Settlement Agreements used in the S&R process are approved through consent orders issued by federal judges and represent "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases," and therefore the FOIA requires that these Settlement Agreements be proactively released to the public by the USCG on an ongoing basis. MLAA appeals the withholding of all Settlement Agreements on the basis that records or parts of records responsive to our request have been withheld by the USCG, and on the basis that the FOIA requires these documents to be made available to the public on an ongoing basis.

Under FOIA's "reactive" mechanism found in § 552(a)(3) & § 552(a)(2), the FOIA identifies certain categories of records that an agency must make available to the public on an ongoing basis, with no FOIA request necessary. This affirmative obligation applies to:

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases...

Appeal #7:

MLAA seeks the names of all parties to the Settlement Agreements, and seeks the names of all mariners accused of sexual misconduct in all documents that have been released by the USCG and in all documents that will be released. We appeal the redaction of the names of the accused mariners on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

MLAA finds no basis in law for the withholding of the names of credentialed mariners who have been investigated for sexual misconduct, charged with sexual misconduct, convicted of sexual misconduct, or who have admitted to misconduct by signing Settlement Agreements.

MLAA seeks the names of these sexually deviant USCG credentialed mariners so that the public and the more than 215,000 USCG credentialed mariners can be informed of the potential for being trapped on a vessel at sea with an extraordinarily dangerous person.

Appeal #8:

MLAA appeals the decision of Jason Neubauer to withhold all documents generated in the negotiation of "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by the USCG.

The sexual misconduct Settlement Agreement documents sought by MLAA under our broad FOIA request include emails and other communications exchanged between USCG personnel and credentialed mariners accused of sexual misconduct, between USCG personnel and the mariner's attorney or attorneys, and between USCG personnel and employers of mariners such as Maersk Line, Limited and its affiliated companies and the attorneys of those employers.

Federal courts have consistently rejected the position that information exchanged between adversaries during settlement negotiations are entitled to distinct protection under FOIA. In *County of Madison v. Department of Justice*, 641 F.2d 1036, 1040-41 (1st Cir. 1981), it was held that settlement proposals submitted to an agency by "past and potential adversaries" must be disclosed for lack of satisfying the "inter-agency or intra-agency" threshold requirement of Exemption 5, 5 U.S.C. § 552(b)(5). See also *Norwood v. FAA*, 580 F. Supp. 994, 1002-03 (W.D. Tenn. 1984). In other cases, district court judges have refused to accord settlement documents protection under FOIA Exemption 5 because of their conclusion that there exists no distinct "settlement negotiations" privilege.

In *Center for Auto Safety v. Department of Justice*, 576 F. Supp. 739, 749 (D.D.C. 1983), it was found that such a privilege had not been established by the courts in the civil discovery context, nor could one be implied directly from the special federal rule of evidence (Rule 408) prohibiting the admissibility at trial of settlement negotiation details. This conclusion was

followed in *NAACP Legal Defense & Educational Fund v. Department of Justice*, 612 F. Supp. 1143, 1146 (D.D.C. 1985).

Appeal #9:

MLAA appeals Jason Neubauer's decision to fully withhold the release of 31 of 580 pages of documents determined responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

In his Interim Response Letter Neubauer states that he has completely withheld 31 of 580 pages responsive to our FOIA request pursuant to FOIA exemptions (b)(6), (b)(7)(C), and (b)(7)(A).

The documents that were withheld under 5 USC §552(b)(7)(C) must be disclosed under the FOIA because they are required to be made available to the public and are not expected to constitute an unwarranted invasion of personal privacy.

5 USC §552 (b)(7)(C) states that the agency is required to make available to the public information that is "*records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to constitute an unwarranted invasion of personal privacy.*"

Given that any personally identifiable information about the victim or 3rd parties can be redacted from the documents pursuant to Exemption 6, all documents should be released as they would not invade the personal privacy of any of the relevant individuals or reveal their identities.

Neubauer writes that "*Enforcement Reports 5765077, 5768060, 5779090, and 5783941 are still under investigation. This material has also been withheld in accordance with 5 U.S.C. §552(b)(7)(A).*" It is our understanding of Neubauer's letter that the pages of documents in Enforcement Reports 5765077, 5768060, 5779090, and 5783941 are not counted as part of the 580 total pages of documents responsive to our FOIA request. If this is true, then we do not understand how the (b)(7)(A) exemption could legally be applied to closed cases, and we appeal the use of the (b)(7)(A) exemption to cases that are closed on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG

Appeal #10:

MLAA appeals Jason Neubauer's redaction of information on produced documents on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

With respect to 456 pages of documents partially released pursuant to our FOIA request, MLAA believes the FOIA requires the USCG to release withheld and redacted information, notwithstanding the USCG's claims that the redacted information is exempt.

According to FOIA Exemption 7(C), certain records or information may be determined to constitute an unwarranted invasion of personal privacy if the agency believes the privacy interest of identifies of individuals outweighs minimal public interest in disclosing the information. MLAA argues that this is not the case here. MLAA believes the public interest in the release of this redacted information outweighs the public interest in withholding it, because the information redacted from the documents (for example: the names of the accused) have the potential to show misconduct and inappropriate behavior by individuals in charge of documented vessels and by other USCG credentialed mariners.

As shown in various previous court cases, some public interest factors should be properly taken into consideration and given great weight in this case. Courts have found the public interest in disclosure to be strong when the requested information shows misconduct. *See, e.g., Congressional News Syndicate v. Department of Justice*, 438 F. Supp, 538, 544 (D.D.C. 1997).

Here there is a strong public interest to release exempted information from the documents because by sharing the information about previous cases of sexual misconduct and abuse, there is the hope that such abuses will not occur in the future. One court has shared a similar sentiment that there is an “*obvious public interest*” in full disclosure of such documents to share information about past abuse to prevent future abuse.” *Tax Reform Research Group v. IRS*, 419 F. Supp. 415, 418 (D.D.C. 1976).

In his letter, Neubauer also invoked the (b)(7)(A) exemption with respect to partially released documents. We do not understand how the (b)(7)(A) exemption could legally be applied to closed cases, and we appeal the use of the (b)(7)(A) exemption on partially released documents in closed cases on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Appeal #11:

In his Interim Response Letter Neubauer referenced exemption (b)(7)(A), yet Neubauer did not state how many records responsive to our request were withheld pursuant to FOIA exemption (b)(7)(A). MLAA appeals Neubauer's failure to state how many records were withheld pursuant to (b)(7)(A) on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Appeal #12:

MLAA appeals Jason Neubauer's redaction of the names of Federal Administrative Law Judges from documents responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

MLAA finds no basis in law for the redaction of the names of federal judges, yet on numerous documents released to MLAA by the CG-INV the names of federal judges have been redacted. MLAA also appeals the redaction of the names of federal judges on S&R Settlement Agreements and related documents on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG

Appeal #13:

MLAA appeals the failure of the CG-INV to release any documents related to the CGIS Investigation with the Case Management ID "CSE-2017-12-002274" on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

The 2017-2018 CGIS investigation titled "CSE-2017-12-002274" involved allegations of sexual harassment and sexual assault made by a USMMA cadet aboard *M/V APL Korea* against the vessel's Chief Mate—a USCG credentialed mariner.

According to the 7 page Case Management Report released to MLAA by the CGIS via the FOIA, the CGIS investigator consulted with "USCG District 1 Legal, Boston, MA" and determined that the facts of the investigation and the report made by the victim "*did not meet the elements in accordance with US Code Statute for Sexual Assault.*"

This legal determination by USCG District 1 Legal, Boston, MA does not have any bearing on whether or not the conduct of this mariner and the facts of the CGIS investigation warranted a Suspension & Revocation investigation or prosecution by the CG-INV. In Suspension & Revocation proceedings, the burden of proof is on the CG-INV to establish the allegations in the complaint by a preponderance of the evidence, which is wholly different from the evidentiary standards in a criminal proceeding.

Given the seriousness of the allegations against this credentialed mariner, MLAA finds it very difficult to believe that the CG-INV was not aware of this CGIS investigation, that the CG-INV did not conduct its own investigation into these sexual harassment and sexual assault allegations by a young female credentialed mariner, or that the CG-INV did not at least create documents related to *CSE-2017-12-002274* that are responsive to our FOIA request.

MLAA appeals the failure of the CG-INV to provide MLAA with all documents related to the allegations contained in *CSE-2017-12-002274*, including investigation reports and related documents, including, but not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes, including all documents that have ever been within

CG-INV's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

If the CG-INV made a decision not to open an investigation into the allegations contained in *CSE-2017-12-002274*, MLAA seeks all documents, emails, etc. related to the decision of the CG-INV not to investigate the allegations and MLAA appeals the CG-INV's failure to provide those documents on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Appeal #14:

MLAA appeals the decision of Jason Neubauer to withhold documents generated in the investigation of the credentialed mariner accused of shipboard sexual misconduct in "USCG vs. [REDACTED], Activity# 5763463, Docket 2019-0151" on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

With respect to "*USCG vs. [REDACTED], Activity# 5763463, Docket 2019-0151*," MLAA seeks "*All documents including but not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*"

With respect to electronic communications, MLAA knows from experience that the USCG is capable of searching its vast email database for specific email addresses, specific cases, and specific names. MLAA seeks all emails exchanged by CG-INV personnel, including Captain Jason Neubauer, with others within the USCG and outside of the agency regarding *USCG vs. [REDACTED], Activity# 5763463, Docket 2019-0151*.

USCG vs. [REDACTED], Activity# 5763463, Docket 2019-0151 is a case with particular importance to MLAA and to the public because documents provided to MLAA by the CG-INV pursuant to our FOIA request show that the master of the *M/V Maersk Memphis* broke the Federal Sexual Assault Allegation Reporting Law by not reporting an allegation of shipboard sexual assault to the USCG as required by 46 USC 10104.

These released documents also show that neither master of the vessel or his employer (Maersk Line, Limited) were punished for their blatant violation of the Federal Sexual Assault Allegation Reporting Law and their attempted coverup, which involved intentionally omitting an allegation of sexual assault from the ship's Official Logbook and never notifying the USCG of the sexual assault allegation.

The CG-INV documents also show that the perpetrator of these shipboard sex crimes was given a Settlement Agreement that resulted in no suspension or revocation of his USCG merchant mariner credential.

The documents from *USCG vs. [REDACTED]*, Activity# 5763463, Docket 2019-0151 and from the related CGIS investigation (*CSE-2018-11-000096*) show the CGIS communicating with lawyers from Maersk, with the Department of Transportation's Office of Inspector General, with the U.S. Merchant Marine Academy, and others. There was no doubt significant communication between the CGIS and the CG-INV over how to proceed with this case, and MLAA seeks all communications related to this very important case, including all documents related to the decision of the CG-INV not to charge the captain of the Maersk Memphis or Maersk Line, Limited with violating 46 USC § 10104.

Appeal #15:

MLAA appeals the failure of the CG-INV to search the records of all USCG Marine Safety Offices and the records of the Suspension and Revocation National Center of Expertise (S&R NCOE) for records responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

According to LCDR Randy Waddington, former Chief, Investigations Division, U.S. Coast Guard Office of Investigations and Casualty Analysis, Beginning in late 2014, "*the Suspension and Revocation National Center of Expertise shifted from primarily a support resource for investigators to a quality-control clearinghouse for all formal complaints issued against merchant mariners. With several staff attorneys among its ranks, the S&R NCOE is able to ensure that every case complaint that goes before an administrative law judge (ALJ) is thoroughly vetted and researched in light of the most current case law.*"

Because of its role as a "quality-control clearinghouse for all formal complaints issued against merchant mariners," the S&R NCOE should contain a great number of documents responsive to our FOIA request. The various Marine Safety Offices of the USCG should also contain a great number of documents responsive to our FOIA request, and MLAA appeals the decision of Jason Neubauer to not conduct a search of these USCG offices.

Appeal #16:

MLAA appeals the decision of Jason Neubauer to withhold all documents and communications generated in the investigation of Captain Mark Stinziano, including settlement agreement discussions, that are responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Appeal #17:

MLAA appeals the decision of Jason Neubauer to withhold all documents and communications generated in the investigation of Captain Paul Willers, including settlement agreement discussions, that are responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Appeal #18:

MLAA appeals the decision of Jason Neubauer to withhold all documents and communications generated in the investigation of crimes or violations of law committed by Maersk Line, Limited that are responsive to our FOIA request, including settlement agreement discussions, on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Appeal #19:

MLAA appeals the decision of Jason Neubauer to withhold all communications between the CG-INV and employees of the U.S. Merchant Marine Academy that are responsive to our FOIA request on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG.

Conclusion

Thank you for your prompt response to this appeal. I anticipate that you will produce responsive documents within 20 working days. For questions regarding this request I can be contacted via email at maritimelegalaid@gmail.com.

Respectfully Submitted,

J. Ryan Melogy
MLAA, Chief Legal Officer



Ryan [REDACTED]

Fwd: FOIA Appeals

Ryan [REDACTED]
Draft

Mon, Aug 2, 2021 at 4:08 PM

----- Forwarded message -----

From: **Robinson, Denise E CGSA** <[REDACTED]>
Date: Tue, Apr 13, 2021 at 9:52 AM
Subject: FOIA Appeals
To: maritimelegalaid@gmail.com <maritimelegalaid@gmail.com>

Good morning Ryan,

I received the following response from the FOIA office regarding your appeals: "Mr. Melogy's appeals have been aggregated into one as they concern the same initial FOIA request.

His appeal has been assigned number 2021-CGAP-00009 and is in the queue for processing".

I will provide you an update as soon as I receive one.

Respectfully,

S/A Robinson

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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Appeal 2021-CGAP-00009
FOIA 2020-CGFO-01886
FOIA 2021-CGFO-02053

August 27, 2021

Mr. J. Ryan Melogy
Maritime Legal Aid & Advocacy, Ltd.
96285 Piney Island Drive
Fernandina Beach, FL 33034

Dear Mr. Melogy:

This is in response to your two letters dated March 21, 2021 and April 1, 2021, in which you appealed the partial denial responses from Ms. Barbara Whitelaw, Chief, Office of Information Management, letter of December 22, 2020, and Captain J. D. Neubauer, Chief, Office of Investigations and Casualty Analysis, letter of January 8, 2021, respectively. Your amended request of August 5, 2020, was for the following records:

1. All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of Title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within the USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

Your two letters mentioned above included lists of items for which you are appealing. Specifically, your letter of March 21, 2021, listed 11 items, and your letter of April 1, 2021, listed 19 items; 30 items total. This letter will address these items collectively where possible, but individually where necessary.

With respect to the 11 items listed in your March 21, 2021 letter:

- Appeal item numbers 1, 2, 3, and 5 are being remanded to the Chief, Administrative Law Judge (CG-OOJ) to address the specific issues raised and for direct response to you. Your request will be placed in its processing queue commensurate with the date of your original request. This action preserves your right to appeal, should any records continue to be withheld from the subsequent response to you.

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Appeal 2021-CGAP-00009

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- Appeal item number 6 pertains to the withholding of 208 pages in full. This appeal item is denied. These records were properly withheld pursuant to Exemption 7(A).
- Appeal item number 8 is being remanded to the Coast Guard Hearing Office (CG-094H) to address the specific issues raised and for direct response to you. Your request will be placed in its processing queue commensurate with the date of your original request. This action preserves your right to appeal, should any records continue to be withheld from the subsequent response to you.
- Appeal item numbers 4, 7, 9, and 11 pertain to the withholding of names that were redacted in the released records. These appeal items are denied. The names in these records were properly redacted pursuant to Exemptions 6 and 7(C).
- Appeal item number 10 requests the number of pages that were withheld pursuant to Exemption 7(A). In answer to this specific item, the number of withheld pages was 147.

With respect to the 19 items listed in your April 1, 2021 letter:

- Appeal item numbers 1, 2, 3, 4, 5, 6, 8, 13, 14, 15, 16, 17, 18, and 19 are being remanded to the Chief, Office of Investigations and Casualty Analysis (CG-INV) to address the specific issues raised and for direct response to you. Your request will be placed in its processing queue commensurate with the date of your original request. This action preserves your right to appeal, should any records continue to be withheld from the subsequent response to you.
- Appeal item numbers 7, 10, and 12 pertain to the withholding of names that were redacted in the released records. These appeal items are denied. The names in these records were properly redacted pursuant to Exemptions 6 and 7(C).
- Appeal item number 9 pertains to the withholding of 31 pages in full. This appeal item is denied. These records were properly withheld pursuant to Exemption 7(A).
- Appeal item number 11 requests the number of pages that were withheld pursuant to Exemption 7(A). In answer to this specific item, the number of withheld pages was 31.

This letter explains our application of Exemptions 6, 7(C), and 7(A) as the basis for denying portions of your appeal.

Exemption 6 protects the privacy interest of individuals contained in "personnel, medical and similar files" in general. This exemption applies because the information contained within responsive documents qualify as "similar files." Congress intended the term "similar files" to be interpreted broadly, rather than narrowly. The Supreme Court stated the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information." Rather, the Supreme Court made clear that all information, which "applies to a particular individual," meets the threshold requirement therein. *United States Department of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982).

Exemption 7(C) protects law enforcement information when the disclosure of such information could reasonably be expected to constitute an unwarranted invasion of personal privacy. It is applied in this

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situation because the responsive documents are comprised of records compiled by an agency primarily engaged in law enforcement carrying out its mandated function.

The purpose for which records is sought cannot be considered in determining whether they will be released or withheld. We have no prerogative to selectively release protected information to you, and can only release it to the general public if determined its interest in disclosure outweighs the privacy interest of those mentioned in the records. Exemptions 6 and 7(C) require privacy interests of the individuals concerned to be weighed against the general public interest in disclosure of the requested records. The first step in this balancing process is to identify and evaluate any privacy interests in the agency records. The next step is to determine whether any general public interests would be served by disclosure. The final step is to weigh any privacy interests in nondisclosure against any general public interests in disclosure. United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

The general public interest in determining the identities of person(s) mentioned in the investigation is negligible. To meet the standard for qualification as public interest, disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or narrow segment of interested persons. Moreover, the Supreme Court has ruled that the identified public interest must be related to the core purpose of the FOIA before it can be included in the balancing equation. Thus, the public interest must be related to the “agency’s performance of its statutory duties.” Reporters Committee, 489 U.S. 773. To qualify for general public interest, this relationship must be direct, rather than merely derivative. In this case, release of the subject personally identifiable information would, of itself, directly reveal little or nothing of interest to the general public regarding the U.S. Coast Guard’s mission performance. On balance, the demonstrable privacy interests of those involved in the investigation clearly outweigh any general public interest.

Exemption (b)(7)(A) protects information compiled for law enforcement purposes, to the extent that production of such law enforcement information could reasonably be expected to interfere with enforcement proceedings. It requires a two-step analysis focusing on: (1) whether the law enforcement proceeding is pending or prospective, and (2) whether release of information could reasonably be expected to cause some distinct harm if disclosed. It is applied in this situation because Investigation Activity 3923873 is a record compiled by an agency primarily engaged in law enforcement carrying out its mandated function. Although exemption (b)(7)(A) is temporal in nature and is not intended to endlessly protect material simply because it is in an investigatory file, it nevertheless remains viable throughout the duration of long-term investigations. Butler v. United States Dep’t of Justice, No. 86-2255, 1994 WL 55621, at 24 (D.D.C. February 23, 1996).

Assisting me in this decision were Ms. Amanda Ackerson, FOIA Public Liaison, and Ms. Pamela Tirado, Office of Information and Intelligence Law.

You have the right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS 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; or, facsimile at 202-741-5769.

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FOIA 2021-CGFO-02053

In accordance with 5 U.S.C. § 552(a)(6)(A)(ii) and 6 CFR § 5.9(b), this is the final administrative decision that will be taken on the portions of your request that were denied above. You have the right under the FOIA to seek judicial review in the District Court of the United States (1) in the district in which you reside, (2) in the district in which you have your principal place of business, (3) in the district in which the records are located, or (4) in the District of Columbia.

Should you decide to appeal the forthcoming responses from CG-INV, CG-OOJ, or CG-094H), please include that you are reinstating the appeal you had originally filed. If you wish to communicate with us concerning your FOIA request, please refer to the new FOIA request number 2021-CGFO-02053 and address your correspondence to:

Commandant (CG-INV)
U.S. Coast Guard
Attn: FOIA Coordinator
2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7501

Commandant (CG-OOJ)
U.S. Coast Guard
Attn: FOIA Coordinator
2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7501

Commandant (CG-094H)
U.S. Coast Guard
Attn: FOIA Coordinator
2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7501

Sincerely,


Kathleen Claffie
Chief, Office of Privacy Management
United States Coast Guard

Copy: CG-INV
CG-OOJ
CG-094H
CG-CGIS

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

3700 Martin Luther King Jr. Ave SE
Washington, DC 20585-0001
Staff Symbol: CG-094H
Phone: (202) 796-6243
Fax: (202) 372-8422

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Appeal 2021-CGAP-01009
FOIA 2020-CGFO-01886
FOIA 2021-CGFO-02053

SEP 5 2022

Mr. J. Ryan Melogy
Maritime Legal Aid & Advocacy, Ltd.
96285 Piney Island Drive
Fernandina Beach, FL 33034

Dear Mr. Melogy:

This letter responds to Appeal item number 8 in the subject FOIA request. Specifically, in your Appeal item #8, you appeal the USCG's failure to search the records of the USCG Hearing Office or the office of the USCG Judge Advocate General for information responsive to your FOIA request on the grounds that records or parts of records responsive to your request have been improperly withheld by the USCG.

A search of the Coast Guard Hearing Office, which is under the cognizance of the USCG Judge Advocate General, for documents responsive to your request produced a total of 156 pages. Of those pages, I have determined that 131 pages of the records are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(7)(A). Additionally, I have determined that 25 pages of the records are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(5).

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 7(C), 7(D), and 7(E).

FOIA Exemption 5 protects from disclosure inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

I am the person responsible for the denial of your request.

If you need any further assistance or would like to discuss any aspect of your request, please contact the Commandant (COMDT, CG-6). You may send an email to efoia@uscg.mil or you may contact our FOIA Public Liaison, Mrs. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an

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administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8001 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; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Commandant (CG-6P), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave. STOP 7710, Washington DC, 20593-7710, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Sincerely,



G. T. Vachon

Chief, U.S. Coast Guard Hearing Office

U.S. Department of
Homeland Security

United States
Coast Guard



United States Coast Guard
Office of the Chief Administrative Law Judge

40 S. Gay Street Room 412
Baltimore, MD 21202
Staff Symbol: CG-00J
Phone: (410) 262-5140
Fax: (410) 262-3135
Email: Leahen.S.Stall@uscg.mil

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FOIA 2021-CGFO-02053
May 2, 2022

Mr. Ryan Melogy
Maritime Legal Aid and Advocacy, LTD
96285 Piney Island Dr.
Fernandina Beach, FL 32034

Dear Mr. Melogy:

This letter is the final response of the Office of Chief Administrative Law Judge (CG-00J) to your Freedom of Information Act (FOIA) request numbered 2021-CGFO-02053. On March 21, 2021 and April 1, 2021 respectively, you appealed the Coast Guard's response to FOIA request number 2021-CGFO-02053. After reviewing your appeal the Coast Guard FOIA Office (CG-6P) remanded appeal items 1, 2, 3, and 5 to CG-00J "to address the specific issues raised in your appeal."

In your original request you sought the following responsive records:

1. All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. The request include all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed member, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of federal regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

In your appeal, items numbers 1, 2, 3, and 5 were remanded for CG-00J's response state the following:

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1. With respect to documents within the possession of the USCG ALJ Program that are responsive to our FOIA request, MLAA appeals the decision of Barbara Whitelaw on the grounds that records or parts of records responsive to our request have been withheld by USCG ALJ Program.
2. MLAA appeals the decision of Barbara Whitelaw to withhold all "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that the records or parts of records responsive to our request have been withheld by the USCG.
3. Settlement Agreements used in the S&R process are approved through consent orders issued by federal judges and represent "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases" and therefore the FOIA requires that these Settlement Agreements be proactively released to the public by the USCG on an ongoing basis. MLAA appeals the withholding of Settlement Agreements on the basis that records or parts of records responsive to our request have been withheld by the USCG, and on the basis that the FOIA requires these documents to be made available to the public on an ongoing basis.
5. MLAA appeals the decision of Barbara Whitelaw to withhold all documents generated in the negotiation of "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by USCG.

After reviewing your appeal it appears you did not receive all the responsive records we found. Therefore, to ensure you receive all responsive documents, we are resending all documents found responsive to the initial request, as well as, additional records found responsive to your request. In total, we found 871 pages of responsive records comprising of 28 individual cases. To find those cases we searched our paper files, Marine Information for Safety and Law Enforcement (MISLE) database for electronic files, and requested copies of older case files from the National Archives and Records Administration (NARA). These 871 pages are responsive to appeal items 1, 2, and 3 only.

Of these 871 pages, I determined 501 pages are releasable in their entirety and 370 pages are partially releasable after applying 5 U.S.C. § 552 (b)(6) (FOIA Exemption 6). Specifically, Exemption 6 protects from disclosure all "personnel or medical files" and "similar files" the release of which would constitute a clearly unwarranted invasion of personal privacy. Please note, I have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's guidance.¹ This requires a balancing of the public's right to disclosure against the individual's right privacy. To determine whether Exemption 6 protects against disclosure, an agency should engage in a four-step analysis:

1. Determine whether the information at issue is a personnel, medical, or similar file;
2. Determine whether there is a significant privacy interest in the requested information;
3. Evaluate the requester's asserted FOIA public interest; and

¹ Department of Justice (DOJ), "Freedom of Information Act Guidelines," March 15, 2022, <https://www.justice.gov/oip/pubs/Doc/1483516/download>

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4. If there is significant public interest, balance the competing interest between privacy and the public interest.

Wash. Post *ex. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).

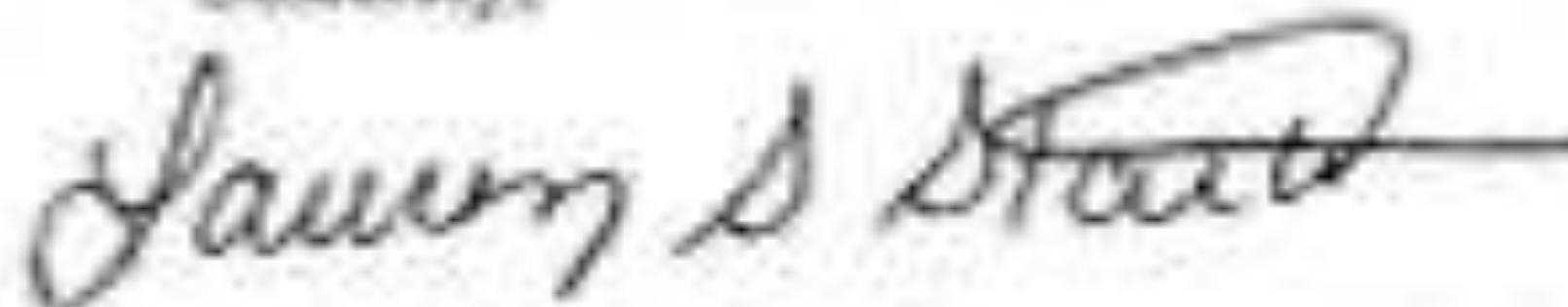
Here, we have redacted the names and personal information concerning individuals involved in the S&R cases. I reviewed the 4 steps above and find witnesses' personal information in sexual assault cases fall squarely within the type of information Exemption 6 is meant to protect. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Accordingly, all 370 pages are partially redacted in accordance with Exemption 6.

Regarding Appeal item 5, CG-00J is not the record holder for any documents generated during settlement negotiations between the Coast Guard and credentialed mariner. The only records sent to CG-00J are settlement agreements which are included in our responsive documents. I informed CG-6P we did not have responsive records to that Appeal item and requested they forward the remand to an office who would possess responsive records.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to Commandant (CG-6P), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave., S.E. STOP 7710, Washington DC, 20593-7710 or via email at EF0IA@uscg.mil following the procedures outlined in the DHS regulations at 6 C.F.R. § 3.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you need any further assistance or would like to discuss any aspect of your request, please contact this office. You may send an email to efoia@uscg.mil or you may contact our FOIA Public Liaison, Ms. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS 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; or facsimile at 202-741-5769.

Sincerely,



LAUREN S. STATTI
Senior Attorney Advisor
United States Coast Guard
Office of the Chief Administrative Law Judge

Maritime Legal Aid & Advocacy, Ltd.

276 Fifth Ave.
Suite 704-1454
New York, NY 10001
maritimelegalaid.com
help@maritimelegalaid.com

May 18, 2022

VIA E-MAIL to “EFOIA@uscg.mil”

Commandant (CG-611)
Attn: FOIA Officer
U.S. Coast Guard Stop 7710
2703 Martin Luther King Jr. Ave. SE
Washington D.C. 20593-7710

Re: FOIA Appeal (USCG ALJ): FOIA 2021-CGFO-02053

Dear FOIA Coordinator:

This letter constitutes an Appeal under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the United States Coast Guard (“USCG”) by Maritime Legal Aid & Advocacy, Ltd. (“MLAA”).

MLAA is appealing the determinations of Lauren S. Staiti of the USCG Office of the Chief Administrative Law Judge, described in Staiti’s FOIA Final Response Letter dated May 2, 2022, concerning FOIA Request 2020-CGFO-01886 and Interim FOIA Appeal 2021-CGFO-02053.

Background:

MLAA is a registered 501(c)(3) non-profit organization fighting for the human rights of seafarers and fighting to make the maritime industry safe for everyone. MLAA seeks to change the culture of the U.S. maritime industry afloat and protect mariners from shipboard sexual violence by forcing the USCG to take seriously the issue of sexual harassment and sexual assault at sea aboard USCG-documented vessels.

MLAA’s principal place of business is in New York.

Bases of Appeal:

1. The USCG Office of the Chief Administrative Law Judge (“ALJ”) has **NOT** conducted a thorough search of its records in order to demonstrate beyond material doubt that its searches for documents responsive to MLAA’s FOIA Request 2020-CGFO-01886 and MLAA’s Interim Appeal FOIA 2021-CGFO-02053 were reasonably calculated to uncover all relevant records.

MLAA possesses irrefutable proof that the ALJ has not conducted a legally adequate search of its records, because MLAA is in possession of records originating from the ALJ that are responsive to FOIA Request 2020-CGFO-01886 and Interim Appeal FOIA 2021-CGFO-02053 that were obtained independently of the FOIA process, and which are clearly records responsive to our FOIA Request and Interim Appeal. However, these FOIA-independent records responsive to our records requests were not delivered to MLAA along with Ms. Staiti’s Final Determination Letter.

Therefore, MLAA appeals the Final Determination of Lauren Staiti on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG Office of the Chief Administrative Law Judge, and on the grounds that the ALJ has not conducted an adequate search of its records.

2. Ms. Staiti misstated Appeal Item #1, and therefore failed to provide a large number of records sought under Appeal Item #1, which states:

“Appeal #1:

MLAA appeals the USCG's failure to provide documents responsive to our FOIA request held by the USCG ALJ Program, including not only all final orders and opinions in S&R cases involving sexual misconduct by credentialed mariners since 1989, but also failure to provide MLAA with all documents, filings, exhibits, evidence, and other documents connected to each sexual misconduct case.

33 CFR § 20.903 “Records of proceedings,” states:

(a) The transcript of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings constitute the official record of a proceeding. This record also includes any motions or other matters regarding the disqualification of the ALJ.

(b) Any person may examine the record of a proceeding at the U. S. Coast Guard Administrative Law Judge Docketing Center; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. Any person may obtain a copy of part or all of the record after payment of reasonable costs for duplicating it in accordance with 49 CFR part 7.

Accordingly, the entire record of each case should be within the possession of the ALJ Docketing Center as required by law, and this complete case record in all

sexual misconduct S&R cases initiated since 1989 should be provided to MLAA pursuant to the FOIA.”

Therefore, MLAA appeals the Final Determination of Lauren Staiti and appeals Staiti’s failure to provide MLAA with the complete Records of Proceedings and complete case files for all cases involving credentialed-mariner sexual misconduct allegations since 1989, on the grounds that records or parts of records responsive to our request have been improperly withheld by the USCG Office of the Chief Administrative Law Judge, and on the grounds that the ALJ has not conducted an adequate search of its records.

New Narrowed Scope of Records and Data Requested from the USCG Office of the Chief Administrative Law Judge:

On May 13, 2022, MLAA sent a letter to the USCG FOIA Coordinator that sought to dramatically narrow and clarify the scope of FOIA Request 2020-CGFO-01886 and FOIA Interim Appeal 2021-CGFO-02053. With respect to records requested from the USCG Office of the Chief Administrative Law Judge, MLAA’s narrowed and clarified FOIA Request seeks only the following records:

“All complete case files and All Related Records for all mariner “Suspension & Revocation” cases that involved allegations of sexual misconduct committed by a USCG-credentialed mariner, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records from cases that were “docketed” as well as cases that were not “docketed” and includes all “Consent Orders” and “Settlement Agreements” between the USCG and credentialed mariners related to allegations of sexual misconduct, including for shipboard sexual misconduct as well as sexual misconduct discovered during safety and suitability investigations or flagged during background checks.”

Conclusion:

Thank you for your consideration of this FOIA Appeal. For questions regarding this request I can be contacted via email at help@maritimelegalaid.com.

Respectfully Submitted,

J. Ryan Melogy
Chief Legal Officer
Maritime Legal Aid & Advocacy

U.S. Department of
Homeland Security

United States
Coast Guard



United States Coast Guard
Office of the Chief Administrative Law Judge

40 S. Gay Street Room 412
Baltimore, MD 21202
Staff Symbol: CG-00J
Phone: (410) 262-5140
Fax: (410) 262-3135
Email: Leahen.S.Stall@uscg.mil

5720
FOIA 2021-CGFO-02053
May 2, 2022

Mr. Ryan Melogy
Maritime Legal Aid and Advocacy, LTD
96285 Piney Island Dr.
Fernandina Beach, FL 32034

Dear Mr. Melogy:

This letter is the final response of the Office of Chief Administrative Law Judge (CG-00J) to your Freedom of Information Act (FOIA) request numbered 2021-CGFO-02053. On March 21, 2021 and April 1, 2021 respectively, you appealed the Coast Guard's response to FOIA request number 2021-CGFO-02053. After reviewing your appeal the Coast Guard FOIA Office (CG-6P) remanded appeal items 1, 2, 3, and 5 to CG-00J "to address the specific issues raised in your appeal."

In your original request you sought the following responsive records:

1. All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. The request include all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed member, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of federal regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

In your appeal, items numbers 1, 2, 3, and 5 were remanded for CG-00J's response state the following:

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2021-CGFO-02053

1. With respect to documents within the possession of the USCG ALJ Program that are responsive to our FOIA request, MLAA appeals the decision of Barbara Whitelaw on the grounds that records or parts of records responsive to our request have been withheld by USCG ALJ Program.
2. MLAA appeals the decision of Barbara Whitelaw to withhold all "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that the records or parts of records responsive to our request have been withheld by the USCG.
3. Settlement Agreements used in the S&R process are approved through consent orders issued by federal judges and represent "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases" and therefore the FOIA requires that these Settlement Agreements be proactively released to the public by the USCG on an ongoing basis. MLAA appeals the withholding of Settlement Agreements on the basis that records or parts of records responsive to our request have been withheld by the USCG, and on the basis that the FOIA requires these documents to be made available to the public on an ongoing basis.
5. MLAA appeals the decision of Barbara Whitelaw to withhold all documents generated in the negotiation of "Settlement Agreements" between the USCG and credentialed mariners in S&R cases involving sexual misconduct on the grounds that records or parts of records responsive to our request have been withheld by USCG.

After reviewing your appeal it appears you did not receive all the responsive records we found. Therefore, to ensure you receive all responsive documents, we are resending all documents found responsive to the initial request, as well as, additional records found responsive to your request. In total, we found 871 pages of responsive records comprising of 28 individual cases. To find those cases we searched our paper files, Marine Information for Safety and Law Enforcement (MISLE) database for electronic files, and requested copies of older case files from the National Archives and Records Administration (NARA). These 871 pages are responsive to appeal items 1, 2, and 3 only.

Of these 871 pages, I determined 501 pages are releasable in their entirety and 370 pages are partially releasable after applying 5 U.S.C. § 552 (b)(6) (FOIA Exemption 6). Specifically, Exemption 6 protects from disclosure all "personnel or medical files" and "similar files" the release of which would constitute a clearly unwarranted invasion of personal privacy. Please note, I have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's guidance.¹ This requires a balancing of the public's right to disclosure against the individual's right privacy. To determine whether Exemption 6 protects against disclosure, an agency should engage in a four-step analysis:

1. Determine whether the information at issue is a personnel, medical, or similar file;
2. Determine whether there is a significant privacy interest in the requested information;
3. Evaluate the requester's asserted FOIA public interest; and

¹ Department of Justice (DOJ), "Freedom of Information Act Guidelines," March 15, 2022, <https://www.justice.gov/oiip/page.do?cid=1483516> download

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4. If there is significant public interest, balance the competing interest between privacy and the public interest.

Wash. Post *co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).

Here, we have redacted the names and personal information concerning individuals involved in the S&R cases. I reviewed the 4 steps above and find witnesses' personal information in sexual assault cases fall squarely within the type of information Exemption 6 is meant to protect. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Accordingly, all 370 pages are partially redacted in accordance with Exemption 6.

Regarding Appeal item 5, CG-00J is not the record holder for any documents generated during settlement negotiations between the Coast Guard and credentialed mariner. The only records sent to CG-00J are settlement agreements which are included in our responsive documents. I informed CG-6P we did not have responsive records to that Appeal item and requested they forward the remand to an office who would possess responsive records.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to Commandant (CG-6P), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave., S.E. STOP 7710, Washington DC, 20593-7710 or via email at FOIA@uscg.mil following the procedures outlined in the DHS regulations at 6 C.F.R. § 3.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you need any further assistance or would like to discuss any aspect of your request, please contact this office. You may send an email to cfoia@uscg.mil or you may contact our FOIA Public Liaison, Ms. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS 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; or facsimile at 202-741-5769.

Sincerely,



LAUREN S. STATTI
Senior Attorney Advisor
United States Coast Guard
Office of the Chief Administrative Law Judge

FOIA Request # 2020-CGFO-01886: Narrowing the Scope

From: J. Ryan Melogy <Ryan@maritimelegalaid.com>

To amanda.c.ackerson@uscg.milEFOIA@uscg.mil

CC

Date: Friday, May 13th, 2022 at 1:33 PM

FOIA Officer,

Please find attached a letter from our organization that seeks to narrow and clarify the scope of an existing FOIA Request (FOIA 2020-CGFO-01886). This letter does NOT constitute a new FOIA Request.

This letter is submitted on behalf of Maritime Legal Aid & Advocacy, Ltd. (“MLAA”) (a.k.a. “Maritime Legal Aid Society”) to the United States Coast Guard (“USCG”).

I would greatly appreciate a timely acknowledgement of your receipt of this letter. In the past, our many communications to your office concerning this FOIA Request have simply been ignored. We will no longer be ignored.

Thank you for your consideration of this request. For questions regarding this request I can be contacted via email at ryan@maritimelegalaid.com or help@maritimelegalaid.com.

Acta Non Verba,

J. Ryan Melogy
Maritime Legal Aid & Advocacy
maritimelegalaid.com

Maritime Legal Aid & Advocacy, Ltd.

276 Fifth Ave.
Suite 704-1454
New York, NY 10001
maritimelegalaid.com
help@maritimelegalaid.com

May 13, 2022

VIA E-MAIL to “EFOIA@uscg.mil”

Commandant (CG-611)
Attn: FOIA Officer
U.S. Coast Guard Stop 7710
2703 Martin Luther King Jr. Ave. SE
Washington D.C. 20593-7710

Re: Narrowing the Scope of FOIA Request # 2020-CGFO-01886

Dear FOIA Coordinator:

This letter constitutes a request under the Freedom of Information Act (“FOIA”) and seeks to narrow and clarify the scope of an existing FOIA Request (**FOIA 2020-CGFO-01886**). This letter does NOT constitute a new FOIA Request.

This letter is submitted on behalf of Maritime Legal Aid & Advocacy, Ltd. (“MLAA”) (a.k.a. “Maritime Legal Aid Society”) to the United States Coast Guard (“USCG”).

MLAA is a registered 501(c)(3) non-profit organization fighting for the human rights of seafarers and fighting to make the maritime industry safe for everyone. MLAA seeks to change the culture of the U.S. maritime industry afloat and protect mariners from shipboard sexual violence by forcing the USCG to take seriously the issue of sexual harassment and sexual assault at sea aboard USCG-documented vessels.

MLAA’s principal place of business is in New York.

Background:

MLAA submitted its original FOIA Request on June 30, 2020. The original FOIA request was received by the USCG on July 6, 2020 and was assigned FOIA number 2020-CGFO-01886. On July 29, 2020, MLAA submitted an amended FOIA Request to the USCG that narrowed and clarified the scope of FOIA Request #2020-CGFO-01886.

With respect to FOIA Request # 2020-CGFO-01886, the USCG granted MLAA’s request for “Expedited Processing” and granted MLAA’s request to waive all fees associated with the FOIA Request.

After receiving several partial responses to FOIA Request # 2020-CGFO-01886 over the past 22 months, MLAA again seeks to narrow and clarify FOIA Request #2020-CGFO-01886.

Records and Data Requested In July 29, 2020 FOIA Request:

1. All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.
2. All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.
3. All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.

New Narrowed Scope of Records and Data Requested:

1. The USCG has not provided MLAA with any records responsive to request category #1. Specifically, the USCG has not produced any "*reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104.*" Additionally, since submitting the FOIA Request, MLAA has learned that the reporting requirement of 46 U.S. Code § 10104 was not added to the Code of Federal Regulations in 1989. MLAA has also learned that the USCG never began the rule-making process required to add the reporting requirements of 46 U.S. Code § 10104 to the Code of Federal Regulations.

Since submitting the FOIA Request, MLAA has learned that the requirement to report complaints of shipboard sexual offenses contained in 46 U.S. Code § 10104 was added to the United States Code in 1990. Since submitting the FOIA Request, MLAA has also learned that the USCG never created an electronic reporting mechanism for transmitting reports of sexual offenses from USCG-documented vessels to the USCG, and the USCG has never created any type of centralized database to collect and organize the reports of sexual offenses received by the USCG pursuant to the reporting requirement contained in 46 U.S. Code § 10104.

Instead, according to USCG officials, the reporting mechanism for "*a master or other individual in charge of a documented vessel*" submitting to the USCG a "*complaint of a sexual offense prohibited under [chapter 109A](#) of title 18, United States Code*" pursuant to 46 U.S. Code § 10104 has, for more than 32 years, been via a documented vessel's "*Official*

Logbook.”

The requirements for USCG-documented vessels to maintain *Official Logbooks* are contained in 46 U.S. Code § 11301 (“*Logbook and entry requirements*”).

Therefore, MLAA narrows and clarifies the scope of request category #1 to the following:

“All reports of complaints of sexual offenses and all related records received by the USCG via any documented vessel’s “Official Logbook” pursuant to 46 U.S. Code § 10104 since the reporting law was added to the United States Code in 1990, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. “All Related Records” includes all records of sexual misconduct by USCG-credentialed mariners reported to the USCG via a vessel’s Official Logbook, including allegations of “sexual harassment” by a USCG-credentialed mariner.”

Further, MLAA requests that the USCG conduct a thorough search of all USCG-documented vessels’ “Official Logbooks”—received since 1990 and currently within the custody of the USCG—in order to demonstrate beyond material doubt that its search for reports of complaints of sexual offenses received by the USCG via any documented vessel’s “Official Logbook” pursuant to 46 U.S. Code § 10104 was reasonably calculated to uncover all relevant records.

2. The USCG has not provided MLAA with any records responsive to request category #2. On September 10, 2021 MLAA received a letter from G.T. Vachon, Chief, USCG Hearing Office, stating that a search of the records of the Hearing Office for records responsive to FOIA Request category #2 had produced a total of 156 pages.

Vachon’s letter further stated that all 156 pages were being withheld from MLAA in their entirety, and that 131 pages of the 156 were being withheld pursuant to FOIA Exemption 7(A), which protects from disclosure records related to an ongoing law enforcement investigation or enforcement proceeding. Through documents contained in a case file released to MLAA by the USCG Administrative Law Judge Docketing Center, MLAA has since learned that the records being withheld by the USCG Hearing Office most likely relate to an enforcement action against shipping giant Maersk Line, Limited (“MLL”) due to the failure of MLL to comply with the reporting requirement of 46 U.S. Code § 10104.

However, in an article published by CNN on February 16, 2022 (“[Rape at Sea: Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted](#)”), CNN wrote, “A spokesman for Maersk Line, Limited said that while the company was initially fined for failing to notify the Coast Guard of Melogy’s [46 U.S. Code § 10104] complaint, it appealed and said those charges were dismissed.”

Further, according to documents obtained by MLAA, it appears the enforcement action in question against MLL was referred to the USCG Hearing Office by officials in the USCG “Office of Investigations & Casualty Analysis (CG-INV).” And yet the CG-INV has not provided any records related to the MLL 46 U.S. Code § 10104 enforcement action against MLL.

According to the “[Process Flow Chart](#)” on the [website of the USCG Hearing Office](#), if a Party appeals a final assessment, 1) the Hearing Officer may request comments from the initiating

unit, 2) the Hearing Officer then forwards initiating unit's appeal comments to Party, 3) the Hearing Officer then forwards the case to the Commandant of the USCG, 4) the appeal is then decided by the Commandant of the USCG.

If MLL was in fact issued a final assessment by the Hearing Officer and ultimately prevailed on appeal, there are records within the office of the Commandant of the USCG responsive to MLAA's FOIA Request, and if the appeal was granted, those records are no longer exempt under FOIA Exemption 7(A) because the enforcement proceedings have concluded.

Therefore, MLAA narrows and clarifies the scope of request category #2 to the following:

“All Records related to an investigation or punishment of any person or corporation (including Maersk Line, Limited) for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the United States Code in 1990. “All Records” includes, but is not limited to records held by the USCG JAG Office, USCG Hearing Office, USCG Office of Investigations and Casualty Analysis (CG-INV), any “Initiating Unit,” and the USCG Commandant’s Office. “All Records” also includes, but is not limited to, Appeals, Appellate Decisions, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. “All Records” also includes any and all correspondence, including correspondence via electronic mail, between any employee or agent of the USCG and any person or corporation (including any employee or agent of Maersk Line, Limited) related to an investigation into the failure of a person or corporation to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104. “All Records” includes all records that have ever been within USCG’s custody or control, whether they exist in “working,” investigative, retired, electronic mail, or other files currently or at any other time.”

3. When MLAA filed FOIA Request # 2020-CGFO-01886, MLAA was unfamiliar with the exact nature of the USCG's recordkeeping system, its filing practices, and the manner in which its files and records are compiled. MLAA was entirely “in the dark” about the structure and arrangement of the files and records that the USCG would be searching through in order to locate the particular records that were responsive to MLAA's FOIA Request.

Because of this, MLAA's FOIA Request category #3 was broadly drafted to include a potentially enormous volume of records held by the USCG related to any investigation of sexual misconduct of any kind initiated against any USCG-credentialed mariner since 1989. Since filing its FOIA request, MLAA has gained some limited understanding of the inner workings of the USCG and the manner in which its files and records are compiled. Therefore, MLAA now seeks to greatly narrow and clarify the scope of request category #3. Although the USCG is comprised of a vast number of departments, offices, and systems, the documents and records sought by MLAA likely reside in a limited number of those departments and offices.

Therefore, MLAA narrows and clarifies the scope of request category #3 for records related to investigations of sexual misconduct by USCG-credentialed mariners to specific offices, departments, and systems within the USCG:

3a. From the USCG “National Maritime Center” at Martinsburg, WV:

“All complete credentialed mariner files and All Related Records and communications related to every mariner application for a merchant mariner credential, whether original issue or renewal, that was flagged on a background check for a crime involving sexual misconduct during the USCG’s “safety and suitability evaluation,” during the credential issue or renewal process, or at any other time, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records of mariner applicants who had their applications for an original or renewal issue merchant mariner credential approved by the USCG as well as those mariners who were denied a merchant mariner credential because of a criminal record involving a crime of a sexual nature.”

3b. From the USCG “Headquarters”:

“All complete “Administrative Clemency” files and All Related Records and communications for all merchant mariner applications for “Administrative Clemency” where the underlying crime or offense committed by the mariner involved sexual misconduct, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records that indicate whether or not a mariner who was approved or denied “Administrative Clemency” in a case where the underlying crime or offense committed by the mariner involved sexual misconduct holds a current and valid merchant mariner credential, whether those documents are held at USCG Headquarters, the National Maritime Center, or elsewhere within the USCG. “All Related Records” also includes all records held by the “Administrative Clemency Review Board,” including all “Approval Letters” and “Denial Letters” where the underlying crime or offense committed by the mariner involved sexual misconduct. “All Related Records” also includes all records that contain the names of the members of the USCG “Administrative Clemency Review Board.””

3c. From the USCG “Administrative Law Judge Program”:

“All complete case files and All Related Records for all mariner “Suspension & Revocation” cases that involved allegations of sexual misconduct committed by a USCG-credentialed mariner, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes records from cases that were “docketed” as well as cases that were not “docketed” and includes all “Consent Orders” and “Settlement Agreements” between the USCG and credentialed mariners related to allegations of sexual misconduct, including for shipboard sexual misconduct as well as sexual misconduct discovered during safety and suitability investigations or flagged during background checks.”

3d. From the USCG Office of Investigations & Casualty Analysis (CG-INV):

“All complete investigation files and All Related Records for any investigation into sexual misconduct of any kind initiated against any USCG credentialed mariner, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes all records obtained through the discovery process, records obtained from any state or federal criminal justice system, “Letters of Warning” issued to credentialed mariners for sexual misconduct, and all communications between the USCG and credentialed mariners or their legal representatives concerning the negotiation of sexual misconduct Suspension & Revocation “Settlement Agreements.””

3e. From the USCG “Coast Guard Investigative Service (CGIS)”:

“All complete investigation files and All Related Records for all CGIS investigations into allegations of sexual misconduct committed by USCG-credentialed mariners, since 46 U.S. Code § 10104 was added to the United States Code in 1990. “All Related Records” includes all records related to referrals of sexual misconduct investigations to any office of the U.S. Department of Justice by the CGIS or USCG, all communications between the U.S. Department of Justice and CGIS related to referrals of sexual misconduct investigations (including all emails between the USCG and @usdoj.gov email addresses concerning criminal referrals of sexual misconduct investigations), all records obtained by the CGIS through the discovery process, all records obtained from any state or federal criminal justice system, and all records related to referrals of CGIS sexual misconduct investigations to the USCG Office of Investigations & Casualty Analysis (CG-INV).”

Conclusion:

Thank you for your consideration of this request. For questions regarding this request I can be contacted via email at help@maritimelegalaid.com.

99.81 KB, 1 file attached
Respectfully Submitted,

MLAA-USCG 2nd Amended FOIA Request 2020-CGFO-01886.pdf 99.81 KB

J. Ryan Melogy
Chief Legal Officer
Maritime Legal Aid & Advocacy

M.L.A.A.

Survivors Speak Midshipman-X Legal Academy Leaders Contact

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The Long, Tragic History of 46 USC 10104, AKA “The Federal Shipboard Sexual Assault Allegation Reporting Law”

*The Long, Tragic History of 46 USC 10104, AKA
“The Federal Shipboard Sexual Assault Allegation
Reporting Law,” AKA “The Skipper Reporting Law.”*

Author: [J. Ryan Melogy](#)

On November 3, 2020, the [United States Coast Guard Hearing Office](#) issued a Preliminary Assessment Letter (PAL) to [Maersk Line, Limited](#) (MLL) notifying the company that it was facing a fine of \$10,000 for a violation of [46 USC § 10104](#), also known as the *Federal Shipboard Sexual Assault Allegation Reporting Law*. On its face, the November PAL appears to represent a routine civil penalty by the Coast Guard

Hearing Office against an American shipping company - designed to deter future violations of a federal statute. However, the PAL and the \$10,000 fine actually represent something much more significant: The \$10,000 fine issued against MLL is the first known case of enforcement of [46 USC § 10104](#), which was added to the [U.S. Code](#) in 1990. This U.S. Coast Guard (USCG) enforcement action against MLL, for a violation of the sexual assault allegation reporting requirement of [46 USC § 10104](#), represents a significant policy shift by the USCG. This shift has the potential to fundamentally change the way the USCG and the entire U.S. maritime industry handle the issue of shipboard sexual misconduct. While the USCG may finally be poised to take the issue of shipboard sexual assault seriously, the history of [46 USC § 10104](#) and the human suffering that has occurred in the U.S. maritime industry because of the U.S. Coast Guard's unwillingness to enforce the *Federal Shipboard Sexual Assault Allegation Reporting Law* has been tragic.

There is no way to know how many *reported* sexual assaults have gone *unreported* by vessel operators in violation of [46 USC § 10104](#) over the past 31 years. Nonetheless, in an industry with [more than 215,000 U.S. Coast Guard-credentialed mariners](#), the number of illegally unreported shipboard sexual assault allegations is likely in the hundreds or even in the thousands. The reported sexual assaults in the maritime industry likely represent only a fraction of the onboard sexual assaults that have actually occurred. According to the Rape, Abuse & Incest National Network ("[RAINN](#)"), the largest anti-sexual violence organization in the United States, [2/3 of all sexual assaults go unreported](#). The unique conditions of shipboard workplaces such as extended sea passage times, lack of communication with home, stressful and hazardous jobs, and a hierarchical command structure with often only the highest ranking officers communicating with the company office, the number of unreported onboard assaults could even be greater.

One of the most consequential results of the illegal non-reporting of shipboard sexual assault allegations is that the perpetrators have escaped justice and even escaped legal scrutiny, which, as this article will show, has been demonstrated to create more victims in the industry as they inevitably continue their predatory behavior. While not quantifiable, over the course of more than thirty one years, the non-enforcement of [46 USC § 10104](#) and the toleration of sexual assault by the USCG and the U.S. maritime industry has certainly taken a tragic toll on American mariners.

The History of [46 USC § 10104](#)

In November of 1987, Congressman Mike Lowry of Washington State [wrote to the U.S. Government Accountability Office \(GAO\)](#) requesting information on sexual assaults committed against women working aboard vessels in the U.S. maritime industry. The GAO is often referred to as the "congressional watchdog," and the agency is tasked with providing fact-based, nonpartisan information to Congress. Congressman Lowry had been persuaded to seek a GAO investigation into the issue of shipboard sexual assaults against women by the efforts of the [Women's Maritime Association](#) (WMA), based in Seattle, Washington.

The WMA formed in 1980 as a support network for seafaring women and was the first organization of its kind. Members of the WMA included women who worked on fishing boats, seafood processors, oil tankers, tugboats, research boats, deep sea merchant ships, ferries, and warships of the U.S. Navy and Coast Guard. Part of the WMA's founding mission was to "take whatever steps necessary to insure women's right to work, free of harassment." From its inception, members of the WMA began advocating for legislation to eliminate sexual harassment and sexual abuse at sea. Anne Mosness became president of the WMA in 1984, and Mosness is perhaps the person most responsible for the enactment of 46 USC § 10104.

In an interview with the author, Mosness described why she dedicated nearly a decade trying to make the maritime work environment safer for all seafarers:

One summer, my dad needed an extra crewperson for a few weeks on his fishing boat in Alaska. It was wild and fun and after a couple seasons, I bought my own boat. I was delighted to find the Women's Maritime Association and other adventurous women who exchanged information about maritime job opportunities and training programs, balancing relationships and families with careers, skills needed to be valuable workers, safety concerns of being isolated, and especially because we were women entering traditionally male workplaces, and there was always the risk of being subjected to verbal or sexual harassment, or worse.

Occasionally, we'd be told that someone had to deal with intrusive physical touching, intimidation, threats of pay being withheld or loss of employment if sexual favors weren't granted. Extremely disturbing were reports of sexual assaults, including several rapes aboard tankers owned by one of the major American oil companies.

We heard of threats of "sex or swim" and of women tossed off their vessels. In 1982, Lucy Gwin published "Going Overboard," about working on a supply boat running out to the Gulf of Mexico offshore oil fields. Although thrown off the boat, she survived to write the book.

We learned of the Sexual Abuse Act of 1986 that provided specific penalties of imprisonment and fines for sexual crimes that occurred onboard vessels upon the high seas. Yet, law enforcement officers weren't prepared to investigate shipboard sexual violence or even take reports. Many victims feared retaliation, and others simply left the industry where they'd once been excited to work. As captain of my own boat, I didn't fear reprisals, and as a former counselor in a sheltered workshop, I cared deeply about helping people dealing with abusive situations. We reached out to members of Congress, describing the risks women faced and asking them to investigate. Eventually we persuaded Congressman Mike Lowry to write to the GAO so the information we were receiving could be verified and remedies put into place.

Because of Lowry's November 1987 request, which was the result of years of determined work by Anne

Mosness and the WMA, the GAO undertook a study in 1988 to examine the problems experienced by women working on the water. The GAO investigation eventually resulted in two official reports to Congress. The first report was released in December 1988 and titled "[Coast Guard: Information Needed to Assess the Extent of Sexual Assaults on Ships.](#)" The second GAO report titled "[TUNA/PORPOISE OBSERVER PROGRAM: More Needs to Be Done to Identify and Report Harassment of Observers.](#)" was delivered to Congress in November 1990.

The 1988 GAO Report (the "Coast Guard GAO Report") was the most consequential and eventually led to the passage of 46 U.S. Code § 10104. The Coast Guard GAO Report began with a short response to Congressman Lowry outlining the scope of the investigation the GAO had conducted. It began:

Dear Mr. Lowry:

This report responds to your November 4, 1987, request for information regarding sexual assaults on women working in the U.S. merchant marine. In subsequent discussions with your office, we agreed to (1) determine the number of women documented, licensed, and working in the U.S. merchant marine and selected other occupations; (2) determine, to the extent possible, the number of shipboard sexual assaults on women reported to government agencies in the Pacific Northwest states of Washington, Oregon, and Alaska; and (3) examine whether changes are needed in laws and regulations relating to sexual assaults on women working aboard ships at sea.

The WMA was pleased to learn that a GAO investigation into their concerns was initiated, however the organization expressed concerns about the scope of the study—particularly the fact that the investigation into shipboard sexual assaults was limited to only three Pacific Northwest states. According to the May/June 1988 edition of the WMA newsletter, the WMA believed "the investigation was too limited to adequately determine the extent of the problems women face when they are isolated, in often hostile working environments, without support or legal redress. We have asked that the investigation be continued and expanded to all areas of the country."

Despite the initial concerns, the WMA played an important role in helping the GAO conduct its continued investigations. Through word of mouth and through its newsletter, the WMA leadership urged members who had been the victims of sexual misconduct at sea to write about their experiences and then submit those stories to the GAO. The GAO subsequently interviewed many of the women who submitted testimonials and investigated their claims.

The findings of the [Coast Guard GAO Report](#) were horrific. The Report painted a picture of an industry where sexual harassment and sexual violence against women were rampant, where serious sex crimes committed aboard vessels were almost never reported to law enforcement, and where perpetrators were rarely punished in any way. The GAO discovered evidence of numerous sexual assaults that had been

committed against female mariners aboard ships, none of which were ever reported to the USCG or any other law enforcement agency by the vessels' captains or the shipping companies that operated the vessels.

In one instance, the GAO investigated the rape of an American female mariner—a sexual assault alleged to have occurred on Christmas Eve in 1981 aboard a U.S. flag tanker off the coast of California. According to the GAO report:

This alleged sexual assault occurred on Christmas Eve 1981 aboard a U.S. tanker off the coast of California. The victim, a documented female mariner, alleged that she was attacked and raped while asleep by another seaman aboard the tanker. She managed to escape her assailant and reported the incident to the ship's officers. She then insisted on leaving the vessel to visit a doctor ashore. In investigating the alleged incident, the ship's captain discovered that the victim and another crew member, the ship's third mate, had been drinking prior to the incident and that the victim was in the third mate's bed at the time of the alleged rape (the latter was away from his room on duty at that time). For drinking aboard the ship in violation of ship's rules, the master fired both the alleged victim and the third mate [but not the alleged rapist].

According to a Coast Guard official, the ship's captain did not report the alleged crime. Once ashore, the victim herself reported the assault to the Coast Guard and later to the FBI. We were told by one knowledgeable retired Coast Guard official that three Coast Guard district offices declined to investigate the incident until the victim finally prevailed upon one of them to initiate an investigation. The investigation eventually resulted in a formal hearing before a Coast Guard administrative law judge. The accused was found guilty of misconduct and the ruling was upheld on appeal, resulting in revocation of his seaman's documents.

An important piece of evidence in the Coast Guard administrative hearing and later in a separate civil suit brought by the victim was the tanker company's personnel record on the accused. This record showed that as many as eight women employees had previously complained to employer representatives of some type of offensive sexually related behavior by him. One woman who had previously worked with the accused testified at the hearing that he had repeatedly offered her money if she would sleep with him and had promised her overtime if she would grant him sexual favors.

The terrible ordeal suffered by the female mariner highlighted several serious problems, including: 1) the willingness of a shipping company to employ a senior officer who had already been accused of sexual misconduct by as many as eight different women, 2) the intentional failure of the captain and shipping company to report her rape allegation or any of the previous allegations of sexual misconduct against the officer to the USCG or to any other law enforcement agency, 3) the unwillingness of the USCG to even investigate her rape allegation once the victim herself reported the crime, and 4) the retaliation the victim faced from the ship's captain and the shipping company once she came forward to report that she had been

raped by one of the ship's senior officers.

It was only through incredible persistence that the victim was able to prevail upon the USCG to investigate the crime and to eventually have the officer's license revoked by an administrative law judge. The brave survivor spared an untold number of other women the horror of working aboard a vessel with a known sexual predator, but the effort required to achieve that outcome was truly extraordinary.

In an interview with the author, Anne Mosness described that in her position as president of the WMA she had assisted the victim for several years following her rape. According to Mosness, after prevailing in her civil suit, the woman was reinstated into her position aboard the tanker, but then suffered such unrelenting hostility from her fellow crew members that she soon left maritime work entirely.

In another case, the GAO was told of the rape of an American female mariner aboard a different U.S. flag oil tanker. The story was recounted to the GAO directly by the victim, who contacted the GAO after she read about the ongoing investigation in the WMA's newsletter. According to the GAO:

Requesting that she not be publicly identified, this woman told us that she had experienced several incidents of sexual assault and harassment in her career in the merchant marine. The alleged rape occurred on New Year's Eve of 1982, a year after the widely publicized rape aboard another tanker described in case 3 above. The incident occurred after the victim, the assailant, and several other crew members had returned to their ship after drinking and dancing ashore. The alleged victim had returned alone and gone to her room to sleep. Her assailant came into the unlocked room (company safety regulations, she said, required that rooms be kept unlocked), and because of his greater strength was able to overcome her attempts at resistance and raped her. The alleged victim claimed that she did not cry out for help—or report the incident later—because she feared that she would suffer repercussions if she did. She believed then, and remains convinced, that the burden of proof would have been on her to establish that she had not instigated the affair. It seemed easier, she told us, to live with the secret of being raped, than to expose herself to public embarrassment and censure.

In another case, the GAO investigated alleged sexual harassment and abusive sexual contact against an American female mariner aboard a U.S.-flag grain ship. According to the GAO Report:

The victim, a graduate of the U.S. Merchant Marine Academy, was employed as relief third mate aboard a grain ship bound for Bangladesh from the East Coast. She was dismissed by the ship's captain in Portland, Oregon, allegedly for job misconduct. She disputed the charge, claiming that the captain, opposed to having a woman on his ship, had been trying to have her removed from the moment she came aboard. Because of his blatant hostility, she alleged, including the making of derogatory remarks and references to her in sexually degrading terms, she lived and worked in an atmosphere of constant intimidation and had no support or recourse against the sexual advances of the chief mate, who repeatedly

propositioned her and touched parts of her body. After her dismissal, the alleged victim lodged a grievance through her union representative and a complaint of sexual harassment and other charges with the EEOC. Her case was settled without going to hearing or arbitration under an arrangement in which she received a financial settlement in the amount of wages that would have been due for the uncompleted portion of the voyage and the expunging of all adverse comments from her personnel record.

In another case, the GAO found that a crew member aboard a passenger vessel in Hawaii sexually assaulted another female crew member and threatened two female crewmembers with violence in front of several witnesses. The assaulting crew member subsequently received only a 3 month suspension of his U.S. Coast Guard merchant mariner credential as punishment for his conduct. According to the GAO Report:

This case, also involving abusive sexual contact as defined by the Sexual Abuse Act, was one of only two such cases reported to us by U.S. Coast Guard headquarters as a result of a search of its automated database of administrative law judge decisions and orders. The incident in question occurred on December 11, 1986, aboard a U.S. passenger liner moored in Hilo, Hawaii. An intoxicated male crew member of the ship, after verbally abusing a female crew member in a bar ashore, including making lewd and obscene statements to her in a loud and threatening manner, resumed this behavior some minutes later aboard ship. Pursuing two female crew members in a threatening manner, speaking vulgarities, and touching the body of one of them, the assailant followed them into the ship's galley and in front of several witnesses threatened them. As a result of his behavior aboard ship, the assailant was fired from his job and served with a charge of misconduct at the Coast Guard's Marine Safety Office in Honolulu. He was found guilty at an administrative hearing, and his merchant mariner's document was suspended for 3 months with an additional suspension of 6 months remitted on 12 months probation.

For sexually assaulting a female crewmember, and sexually harassing and threatening two female crewmembers with violence while intoxicated, the mariner's ultimate punishment from the USCG Administrative Law Judge was a 3 month suspension of his merchant mariner's credential. After that 3 month suspension, he was free to work anywhere in the industry.

In total, the [December 1988 Coast Guard GAO Report](#) detailed eight separate incidents involving sexual assault against female mariners aboard documented vessels in the U.S. merchant marine, finding that "*more sexual assaults actually take place than are reported to authorities.*" Regarding the reasons that mariners may be reluctant to report sexual assaults and sexual misconduct aboard ships, the GAO report noted the following:

According to a retired senior Coast Guard investigator, a psychologist, attorneys in private practice, and several women who had worked at sea, conditions of work aboard ship impose particular pressures on victims to refrain from reporting sexual assaults and related offenses. Specifically, they said that the shipboard setting constitutes a self contained, confined, and isolated work environment characterized by a

special set of social relationships and interpersonal dynamics. With crew members highly dependent on one another, living and working at close quarters and predominantly male, women crew may experience an atmosphere of resentment, sexual innuendo, harassment, and even intimidation. Under such conditions, they may fear incurring the animosity of male crew members by reporting instances of sexual assault and related offenses. They are also fearful of doing anything that might cause them to lose their jobs, which pay considerably better than jobs on land for which they might be qualified...

One of the victims told us that of the approximately 12 women she knew of who had worked at sea, all but two had some experience of harassment involving force or threats. Most, she said, tended to view this with a certain resignation as something that goes with "the territory." In view of the apparent reluctance of many victims of rape and other sexual offenses to report these incidents to authorities, we have no way of determining how many offenses of this nature may actually be taking place within the merchant marine or in other at sea occupations.

The [Coast Guard GAO Report](#) found that the USCG did not take the issue of sexual assault at sea seriously, and noted that GAO investigators "*found it difficult to compile statistics on sexual assault at sea, because the Coast Guard, lacking a requirement or procedure for systematically reporting and centrally compiling information relating to sexual assaults committed aboard merchant ships, was unable to provide us with information concerning cases not already known to us.*" The GAO Report released in December 1988 also identified a critical gap in federal law: there existed no legal requirement for the master or other individual in charge of a Coast Guard documented to report allegations of shipboard sexual assault to the United States Coast Guard or to any other legal authority.

The [Coast Guard GAO report](#) concluded the following:

Currently, the Coast Guard has no specific requirements for the reporting of shipboard sexual assaults and other offenses covered by the Sexual Abuse Act... While the Coast Guard maintains a marine casualty reporting system that requires ships' masters and other responsible officers to report various shipboard occurrences, including any death or injury that involves incapacitation for over 72 hours, these regulations have been viewed within the Coast Guard as relating primarily to the safe operation of the vessel itself rather than to the welfare and well-being of individual crew members.

Coast Guard officials could not identify any provision of the marine casualty reporting regulations that would require ships' officers to report injuries (defined by us to include both physical and emotional traumas) that do not result in 72-hour incapacitation of the victim. By the same token, these officials were unable to cite any other statutory or regulatory provisions that would require that incidents of sexual assault and related offenses committed aboard ship be reported to the Coast Guard.

Our work revealed no instances of sexual assaults or related sexual offenses reported to the Coast Guard

through the marine casualty reporting system. Moreover, information obtained from women mariners tended to confirm that such incidents are rarely reported to the Coast Guard or other law enforcement authorities.

Because of this identified gap in federal law, the GAO made the following recommendation for executive action in its December 1988 Coast Guard Report:

The Secretary of Transportation should direct the Commandant of the Coast Guard to require that masters of vessels or other responsible officials promptly report to the Coast Guard any complaint of a criminal sexual offense covered by the Sexual Abuse Act of 1986 as soon as possible following its occurrence or report of its occurrence.

Armed with the Coast Guard GAO Report, the WMA began lobbying members of Congress and imploring them to take action to implement the recommendations of the report. The GAO's finding that there existed no federal law or regulation that required allegations of shipboard sexual assault to be reported to any law enforcement agency by the master or operator of the vessel surprised many members of Congress, and action on the findings came quickly. On March 2, 1989, members of the U.S. House of Representatives Committee on Merchant Marine and Fisheries sent a letter to Admiral Paul Yost, Commandant of the Coast Guard, that stated: "*We strongly urge you to follow the GAO's recommendation. Sexual offenses cannot be tolerated as an occupational hazard for females on U.S. - flag vessels.*" The letter was signed by Representatives Walter Jones, Billy Tauzin, Robert Davis and Jolene Unsoeld.

Throughout 1989, Mosness and other WMA members continued to lobby and communicate with their Congressional Representatives, especially Representative Jolene Unsoeld (D-Wa), regarding the need for a shipboard sexual assault allegation reporting requirement, and on March 23, 1989, Representative [Unsoeld introduced a bill in the Congress, H.R. 1647, which would make the GAO recommendation law.](#)

Although H.R. 1647 was not enacted, by the end of 1989 the efforts of the WMA were successful. On December 12, 1989 the GAO's recommendation for the creation of a shipboard sexual assault allegation reporting requirement law was fulfilled with the [enactment of section 214 of the Coast Guard Authorization Act of 1989, P.L. 101-225.](#)

The reporting requirement became classified in the U.S. Code at [46 USC § 10104](#), *Requirement to Report Sexual Offenses*, which reads:

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than

\$5,000.

Despite the obvious weaknesses, such as setting the penalty for a violation of the law's reporting requirement at only a \$5,000 civil fine, the enactment of the reporting law was a triumph for Anne Mosness and the WMA. They had worked for nearly a decade to see a common-sense shipboard sexual assault allegation reporting law enacted, and they had finally succeeded. But Mosness and the WMA would eventually learn that the passage of a law creating a reporting requirement did not guarantee its enforcement in the real world.

[Chapter 109A of title 18](#), also known as the "Sexual Abuse Act" or the "Sexual Abuse Act of 1986" made specific types of sexual misconduct federal crimes. The sex crimes listed in Chapter 109A of title 18 include *aggravated sexual abuse*, *sexual abuse*, *sexual abuse of a minor or ward*, *abusive sexual contact*, and *offenses resulting in death*. Of those crimes, *abusive sexual contact*, defined in [18 U.S. Code § 2246](#), is the lowest level sex crime punishable under the Sexual Abuse Act. *Abusive sexual contact* would include acts that would often be colloquially referred to as "groping," "fondling," "goosing," or other inappropriate sexual touching. While it might be obvious that 46 USC § 10104 requires an allegation of rape committed onboard a documented vessel to be reported to the Coast Guard or to the Secretary, it is critical for masters and operators of vessels to understand that the threshold for sexual offenses that must be reported is much lower than rape.

The conduct prohibited by [Chapter 109A of title 18](#) applies to acts committed "*in the special maritime and territorial jurisdiction of the United States*," which is defined in [18 U.S. Code § 7](#):

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes:

(1) *The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.*

(2) *Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.*

The clear reading of [46 USC § 10104](#) together with [Chapter 109A of title 18](#) and [18 U.S. Code § 7](#) is the following: if a crewmember aboard a U.S. Coast Guard documented vessel that is operating in the *special maritime and territorial jurisdiction of the United States* reports that he or she was the victim of "*intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any*

person,” or if a crewmember reports that he or she was the victim of an even more serious sexual assault prohibited by Chapter 109A of title 18, such as rape, the master or other individual in charge of the vessel *must* report the victim’s allegations to the U.S. Coast Guard or to the Secretary of the Department in which the U.S. Coast Guard is operating. [46 U.S. Code § 10104](#) does not permit the master or other individual in charge of a documented vessel to make his or her own judgment as to the validity of the victims’ allegations of sexual assault. If the master or other individual in charge of the vessel receives a complaint of a sexual offense prohibited under chapter 109A of title 18, he or she is required by law to report the complaint to the U.S. Coast Guard, regardless of their own opinion as to the validity of the allegations.

This law applies across the board to all USCG documented vessels. [According to the Department of Homeland Security](#):

Vessel documentation refers to the system under which a vessel receives a certificate of documentation (COD) from the U.S. Coast Guard. A COD is required for the operation of a vessel of at least 5 net tons in certain trades including: (1) Fisheries on the navigable waters of the United States or its Exclusive Economic Zone; (2) foreign trade or trade with U.S. overseas territories; and (3) coastwise trade (trade between U.S. ports without leaving U.S. territorial waters) as described in [46 U.S.C. 12102](#) and [46 U.S.C. chapter 121, subchapter II](#). The COD is also a required element, in 46 U.S.C. 31322, to establish a vessel’s entitlement to preferred mortgage status. Under 46 U.S.C. 31326, preferred mortgages have priority over other liens on vessels, and they offer an enhancement to the security available to lenders.

According to MarineTitle.com, which maintains a database containing a full listing of all Coast Guard documented vessels, there are (as of September 2021) [more than 220,000 vessels which possess current and valid certificates of documentation](#). According to MarineTitle.com’s database, the [current approximate number of endorsements for documented vessels](#) are 1) Coastwise: 49,112, 2) Fishery: 22,277, 3) Registry: 13,585, and 4) Recreation: 167,311. The clear reading of 46 U.S. Code § 10104 is that the shipboard sexual assault allegation reporting requirement applies to all of those Coast Guard documented vessels when they are operating in the *special maritime and territorial jurisdiction of the United States*.

In the years immediately following the enactment of the reporting law, it became clear to Anne Mosness and the members of the WMA that there remained widespread unfamiliarity and even ignorance of the reporting law throughout all sectors of the maritime industry, even among Coast Guard officials at Coast Guard Headquarters and in the field. The Coast Guard had not sought the enactment of the *Federal Shipboard Sexual Assault Allegation Reporting Law*, and had not sought out a new role as the federal law enforcement agency that would eliminate sexual misconduct aboard documented vessels. Even if the Coast Guard had supported the newly enacted reporting law, the law posed a daunting enforcement challenge. Accounting for growth in the number of documented vessels over the past 31 years, and removing recreational vessels from the tally, in 1990 there were tens of thousands of Coast Guard documented commercial vessels that would need to be notified of the new law and then monitored for compliance

following the codification of 46 U.S. Code § 10104.

In a letter to Rep. Jolene Unsoeld in April 1992, Mosness expressed frustration that the law Unsoeld had championed in Congress was not being enforced by the Coast Guard. In her letter of April 1992, Mosness described two recent cases in which it was alleged that female merchant mariners had been enslaved and falsely imprisoned aboard documented vessels and stated that the Coast Guard was still not taking the issue of sexual violence against women in the maritime industry seriously. "While some Coast Guard personnel make an effort to be sensitive to these issues," Mosness wrote in her letter to Unsoeld, "when I asked one what he would do if he received a report of rape onboard a fishing vessel, he responded that in his experience *'it takes two to tango.'*"

In May of 1992 Representative Unsoeld wrote to Admiral William Kime, Commandant of the U.S. Coast Guard, regarding the concerns of Mosness and the WMA. In her letter to the Commandant, Unsoeld wrote:

I am still receiving complaints that the Coast Guard is not adequately educating its personnel on the Sexual Abuse Act and not implementing the legislation to require reporting of sexual assaults. In fact, the Women's Maritime Association has asked me to request another GAO investigation of whether the recommendations of the 1988 report have been implemented and to assess regional and field office training programs and procedures. I would therefore appreciate your assistance in providing me with the information on specific steps the Coast Guard has taken to implement the GAO findings. In addition, I would like copies of any Coast Guard regulations or guidelines issued based on the GAO findings and/or the law requiring reporting of shipboard sexual assaults. I also request a listing of the cases reported since enactment of this law.

On Sept. 1, 1992, Unsoeld received a reply from Acting Coast Guard Commandant, Rear Admiral Robert Kramek. Kramek wrote:

The Coast Guard has not yet promulgated specific regulations in response to 46 U.S. Code § 10104. Regulatory projects, including for merchant mariners and the many regulations for chemical testing for dangerous drugs for merchant mariners and the many regulations with mandatory deadlines resulting from the Oil Pollution Act of 1990, have delayed complete revision to 46 CFR, Parts 4 and 5. However, the need for immediate regulatory action is mitigated by the fact that 46 U.S. Code § 10104 is quite clear and specific. Masters must report complaints of sexual offenses.

The Coast Guard has taken several other specific actions to comply with the letter and spirit of these laws and the recommendations of the GAO report. These actions include:

-The Coast Guard made specific reference to the provisions of the 46 U.S. Code § 10104 in its 1991 publication explaining the Federal requirement for commercial fishing industry vessels. This publication

has been widely distributed throughout the commercial fishing industry.

-References to the Sexual Abuse Act and the provisions of 46 U.S. Code § 10104 will be included in the next revision to Volume 5 of the Coast Guard's Marine Safety Manual, which provides policy guidance to the Coast Guard's marine safety investigators.

-Copies of the requirement to report sexual offenses contained in Title 46 (46 U.S. Code § 10104) are provided to each of the students in the Coast Guard's Marine Safety Investigating Officer's Course in Yorktown, Virginia. This course is used for training all of the Coast Guard's Marine Safety Investigating Officers...

I have directed that every member of the Coast Guard receive specific training in the prevention of sexual harassment and sexual misconduct in the workplace. I have clearly stated my position on this subject in many forums and I am sure reports of this nature in the merchant marine community are fully pursued by our investigating officers. I am unaware of any cases in the merchant fleet reported to the Coast Guard since December 1989, which have not been fully investigated. If you are aware of any such cases, please let me know so appropriate action can be taken."

Sincerely,

Robert E. Kramek

Rear Admiral, U.S. Coast Guard

By the fall of 1992 the Coast Guard had taken small steps to notify the maritime industry and its own personnel of the new reporting requirement of 46 U.S. Code § 10104, but there was no real effort to enforce the reporting requirement, and for women working in the industry, nothing had changed. The fall 1992 edition of the WMA newsletter stated that the WMA,

"had hoped...the maritime work environment would become safer for women and we could focus more on sharing sea stories, job information and skills, mentoring younger women, and providing a forum for women engaged in a unique and challenging way of life...However, even in this year, we have received reports of nine cases of rape, false imprisonment and abusive touching. That doesn't count the stories of public humiliation, assignment of inappropriate and unsafe tasks, discrimination or withholding wages for sexual favors... We have met with several Congresspeople, industry representatives, the Coast Guard, Navy and media... Since we are the voice for women employed on vessels, and we hear their concerns, fears, frustrations and hopes, we echo them on these pages. We will continue working with the Coast Guard and other enforcement agencies and the fishing industry and merchant marine to publicize the laws, develop educational material and clear reporting procedures...

The WMA continued to advocate for the Coast Guard to promulgate specific regulations to implement 46 U.S. Code § 10104 and to deter shipboard sexual assaults. One of the most important Coast Guard requirements advocated by the WMA was a requirement for every documented vessel to display a placard aboard the vessel that clearly stated the sexual misconduct allegation reporting requirements of 46 U.S. Code § 10104 and that also included a toll free phone number that mariners could call to report sexual misconduct occurring aboard their vessel. These ideas had also been suggested by the GAO in its December 1988 Report to Congress.

As 1993 began, Anne Mosness and members of the WMA continued to lobby the Coast Guard and Congress to implement these ideas. In a letter to the Coast Guard dated January 28, 1993, Anne Mosness of the WMA wrote,

We feel strongly, as stated within the Coast Guard training manuals on the subject, that 'prevention is the best tool to eliminate sexual harassment.' The only way for the industry to even know there are laws on the books is for the Coast Guard to acknowledge their seriousness and publicize them, through placards, printed information, adapting the Coast Guard harassment video to civilian use and inclusion of information in regulatory hearings and meetings. A clear reporting procedure, with either a toll-free number with trained personnel to take reports or trained personnel available at each Coast Guard station and vessel would increase the likelihood that reports would be made. It is a lot to ask for, but nothing less would allow the continuation of an atmosphere of tolerance and the sense that some ships are beyond the law. An aggressive, unified stance now would educate everyone to the seriousness of the problems, and lessen the opportunity for the lowest of lifeforms on a vessel to harass, intimidate or terrorize co-workers.

Representative Jolene Unsoeld also continued to question what the Coast Guard was actually doing to implement 46 U.S. Code § 10104 and to address the problems of sexual misconduct in the maritime industry that had been exposed in the 1988 and 1989 GAO Reports. On February 10, 1993, Representative Unsoeld wrote a letter to Admiral Kime, the Commandant of the Coast Guard, in which she asked the Commandant about the implementation of a 46 U.S. Code § 10104 placard requirement for documented vessels, among other issues. In her letter to the Commandant Unsoeld wrote:

I continue to have questions about the Coast Guard's actions to discourage sexual assaults at sea and to set up an efficient process for reporting complaints...I do not believe that one paragraph in the back of that pamphlet [Federal Requirements for Fishing Vessel Safety] will reach many civilian officers.... How does the Coast Guard convey information on the Sexual Abuse Act and the Skipper Reporting Law to unlicensed mariners?...In the area of reporting...I hear concerns that the Coast Guard reporting system does not allow for efficient data collection and compilation. What is the process and how and when can it be improved? I am told that the 800 number used to report other shipboard emergencies cannot be used for sexual assault complaints. Is this true and, if so, why not?

On March 26, 1993 Admiral Kime responded to Unsoeld's letter. The Commandant replied:

Dear Mrs. Unsoeld:

This is in response to your letter of February 10, 1993, in which you were seeking information about the Coast Guard's actions in support of the Sexual Abuse Act of 1986 and the Skipper Reporting requirement in 46 U.S. Code § 10104. I hope the following information is helpful in addressing your concerns.

In the area of education, the Coast Guard has tried several routes to improve the awareness of both of the laws that you discussed in your letter.

- The Coast Guard asked the Defense Mapping Agency to publish a Notice to Mariners concerning the Skipper Reporting Act...Unfortunately, the Defense Mapping Agency did not feel that subject was appropriate for publication in the Notice to Mariners and denied our request.

- The Coast Guard has written a letter to the members of the Commercial Fishing Industry Vessel Advisory Committee for distribution among their constituency. A copy of this letter is also enclosed. In this letter, we are encouraging marine employers to promulgate specific regulations against sexual harassment on their vessels. With this type of regulation, the Coast Guard can then pursue suspension and revocation actions against licensed or documented merchant mariners under a charge of misconduct—a violation of a ship's regulation or order.

- Questions regarding these two laws have been added to the test question data base for merchant mariner licensing examinations, requiring anyone now testing for a license to be familiar with these provisions.

- There is no regular contact with unlicensed mariners by the Coast Guard. In disseminating information to this group, we must rely on the marine employers. These laws are a specific topic of the curriculum of the Coast Guard's Investigating Officer and Law Enforcement Boarding Officer Courses, so our officers are informed of these provisions and can act accordingly if incidents are reported to them during their investigative visits.

- The idea of requiring a placard which outlines these requirements has been discussed. However, there is concern that these placards are now so abundant that they are being ignored. As a result, other alternatives such as the Notice to Mariners were explored. We are still exploring additional educational means.

In the area of reporting:

- The Coast Guard Marine Safety program recently (January 1, 1993) implemented a new Personnel Action module in its computerized Marine Safety Information System. This new module has the capability to note specific offenses and should aid us in data collection and compilation. Data is entered directly by field personnel as cases are investigated.

- The Coast Guard discontinued the 800 number used to report shipboard emergencies because of the lack of use. Reports of sexual assault should go directly to the Marine Safety Office in the local area.

I hope you find this information helpful. I am available to meet with you at any mutually convenient time if you so desire.

J. W. Kime

Admiral, U.S. Coast Guard

Commandant

A regulation to require every documented vessel to display a placard with the requirements of 46 U.S. Code § 10104 was perhaps the most important implementation sought by the WMA. The placard was a common-sense way to alert the entire industry of the new law, and would perhaps have been the most effective method. But Admiral Kime claimed in his letter to Unsoeld that “*there is concern that these placards are now so abundant that they are being ignored.*” It is difficult to view that policy decision by the Coast Guard as anything other than an effort to avoid making the law widely known and understood.

The idea for a nationwide toll free number to report shipboard sexual offenses to the Coast Guard was also a priority of the WMA. Yet Kime wrote to Unsoeld that the Coast Guard was shutting down the existing 800 number and directing mariners to contact the “*Marine Safety Office in the local area.*” In the age before widespread internet access availability, it was unclear how victims or masters who were required to report allegations of shipboard sexual assault would find the numbers for local Marine Safety Offices, or even determine which office was the appropriate one to contact when reporting an allegation of sexual assault that occurred offshore, or halfway around the world. The problem of efficient data collection and compilation had also been raised in the Coast Guard GAO Report. But contrary to Kime’s claims in his letter to Unsoeld, as this public MERPAC comment will show, no effort would ever be made by the Coast Guard to create an efficient system for reporting and tracking allegations of shipboard sexual assault sent to the Coast Guard in accordance with the reporting law.

In 1994, Rep. Unsoeld lost her bid for re-election and was swept from office in what was called the “Republican Revolution.” With Unsoeld gone, there were no strong champions of the reporting law left in Congress. Anne Mosness, exhausted from the long fight to see legislative reform enacted to protect female seafarers, moved on to other things. In 1994, she resigned her role as President of the WMA and over the next couple years, became co-chair of three political action committees focused on fisheries issues in the Pacific Northwest and devoted the rest of her career to environmental and fisheries issues. **The Coast Guard never issued implementing regulations regarding 46 U.S. Code § 10104.** With no one writing letters to the Commandant of the Coast Guard regarding their enforcement of 46 U.S. Code § 10104 and with no action on the part of the Coast Guard to enforce the law or monitor compliance, the law quickly

faded from memory, while remaining firmly established in the U.S. Code.

In July of 2020, Maritime Legal Aid & Advocacy (MLAA), a non-profit legal advocacy organization working to end shipboard sexual misconduct in the U.S. maritime industry, [submitted a request to the U.S. Coast Guard](#) under the [Freedom of Information Act](#) (FOIA) seeking records related to 46 USC § 10104. In its FOIA request, MLAA sought the following records from the Coast Guard:

1. *All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.*
2. *All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*
3. *All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*

On December 22, 2020, nearly 6 months after submitting its FOIA request, MLAA received an interim response letter from the U.S. Coast Guard. While the Coast Guard did provide some documents related to investigations of sexual misconduct by credentialed mariners, the documents provided by Coast Guard in response to MLAA's FOIA request did not contain any reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104, nor did the the Coast Guard's response contain any documents related to the enforcement of the *Federal Shipboard Sexual Assault Allegation Reporting Law*.

On April 1, 2021, in response to two interim response letters from the Coast Guard, MLAA filed an [appeal to the Coast Guard of the partial denial of its FOIA request](#). In MLAA's FOIA appeal to the Coast Guard, MLAA clarified its request regarding documents related to 46 U.S. Code § 10104 as follows:

Regarding 46 U.S. Code § 10104, MLAA is primarily seeking answers to three very important questions

that are of great interest to the maritime community:

- 1) *whether or not USCG credentialed masters and other persons in charge of documented vessels are reporting allegations of sexual offenses prohibited under chapter 109A of title 18 U.S. Code to the USCG in accordance with the Federal Shipboard Sexual Assault Allegation Reporting Law (46 U.S. Code § 10104),*
- 2) *whether the Federal Shipboard Sexual Assault Allegation Reporting Law is, or has ever been, enforced by the USCG, and*
- 3) *whether or not the USCG has ever investigated or punished a person or a corporation for failing to report an allegation of a sexual offense prohibited under chapter 109A of title 18 U.S. Code in accordance with the Federal Shipboard Sexual Assault Allegation Reporting Law.*

In response to MLAA's FOIA request and two subsequent appeals, as of November 4, 2021, the U.S. Coast Guard has been unable to produce even a single report of sexual offenses that had been submitted to the Coast Guard in accordance with 46 USC § 10104 over a more than 30 year period.

Through extensive research, FOIA requests, and through conversations with Coast Guard officials, including a phone call with a Coast Guard Assistant Senior Investigating Officer at Coast Guard Sector New York in July of 2020, it became clear to the author that the Coast Guard has never created any kind of official reporting or tracking system for reports of sexual offenses sent to the U.S. Coast Guard in accordance with 46 USC § 10104. Further, that the Coast Guard was unable to locate or produce any reports of sexual offenses that had *ever* been received by the Coast Guard pursuant to 46 USC § 10104.

In the [December 1988 Coast Guard GAO Report](#), the GAO noted that the Coast Guard then already maintained a marine casualty reporting system that required ships' masters and other responsible officials to report various shipboard occurrences, including any death or injury that involved passengers, and the incapacitation of a crewmember for over 72 hours. But the GAO also noted that "*Coast Guard officials could not identify any provision of the marine casualty reporting regulations that would require ships' officers to report injuries (defined by us to include both physical and emotional traumas) that do not result in 72-hour incapacitation of the victim.*"

The Coast Guard has not historically viewed protecting mariners from unsafe or hostile working conditions, or from shipboard sexual misconduct, as among its responsibilities. As the GAO noted in its Coast Guard GAO Report, the marine casualty reporting regulations "*have been viewed within the Coast Guard as relating primarily to the safe operation of the vessel itself rather than to the welfare and well-being of individual crew members.*" By the Coast Guard's logic, the reason for reporting to the Coast Guard that a crewmember has been incapacitated for more than 72 hours has nothing to do with the fact that the crewmember is in pain or might die. The reason for reporting the incapacitation is that the vessel no longer

maintains its full complement of required mariners, which creates a potential safety hazard for the vessel itself.

Perhaps the most efficient way to implement the sexual assault allegation reporting requirement of 46 U.S. Code § 10104 would have been to add the requirement to the list of marine casualties required to be reported to the Coast Guard through its existing marine casualty reporting system. Adding reports of sexual offenses to the list of incidents required to be reported would also have immediately put the entire maritime industry on notice of the new reporting law. But that never happened. There are 8 categories of marine casualties that must be reported to the Coast Guard on Coast Guard form [CG-2692](#), "*Report of Marine Casualty, Commercial Diving Casualty, or OCS-Related Casualty*." The reporting categories are listed in [46 CFR § 4.05-1\(a\)](#) "*Notice of marine casualty*," which requires the reportable marine casualty to be immediately reported to the Coast Guard after addressing resultant safety concerns:

(a) Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Sector Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in -

(1) An unintended grounding, or an unintended strike of (allision with) a bridge;

(2) An intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a) (3) through (8);

(3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel;

(4) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems;

(5) A loss of life;

(6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties; or

(7) An occurrence causing property-damage in excess of \$75,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.

(8) An occurrence involving significant harm to the environment as defined in § 4.03-65.

According to [46 CFR § 4.05-10](#) the owner, agent, master, operator, or person in charge of the vessel must file the written report of marine casualty on form [CG-2692](#) within 5 days, a requirement that is in addition to the immediate notice required under [46 CFR § 4.05-1\(a\)](#).

As an example of how Coast Guard's marine casualty reporting system works, if a person employed aboard a documented vessel in commercial service sustains an injury that requires professional medical treatment beyond first aid and renders the individual unfit to perform his or her routine duties, that injury must be immediately reported to the nearest Coast Guard Sector Office, Marine Inspection Office or Coast Guard Group Office via phone, email, or VHF radio. The injury must also be reported to the USCG in writing on form CG-2692 via mail, email, or fax within 5 days of the injury. When received by the USCG, this reportable marine casualty (the injury to the crewmember) is then entered into the USCG's "Marine Information Safety and Law Enforcement System" (MISLE) and assigned a MISLE Activity Number. A Coast Guard Safety Officer then investigates the report, and when the investigation is completed and closed, an Incident Investigation Report is prepared for public release.

The USCG maintains an online database of Incident Investigation Reports that can be searched by the public. The publicly searchable database of Incident Investigation Reports is maintained and accessed via a website known as the "[Coast Guard Maritime Information Exchange \(CGMIX\)](#)." In the author's investigation of the CGMIX reporting system in 2021, he searched the CGMIX for Incident Investigation Reports and for information about the number of Incident Investigation Reports contained within the database. According to the CGMIX website, the database contains Incident Investigation Reports for closed investigations of reportable marine casualties dating from October 2002 to present.

Because the public-facing CGMIX database interface will not return more than 5,000 results for a date range query, the author was not able to determine exactly how many Incident Investigation Reports are contained in the database. To estimate the number of Incident Investigation Reports in the database, he conducted open searches of five one-year date ranges. A search of the one-year period from January 1, 2015 to December 31, 2015 returned 2,071 Incident Investigation Reports. A search of the one-year period from January 1, 2016 to December 31, 2016 returned 3,467 Incident Investigation Reports. A search of the one-year period from January 1, 2017 to December 31, 2017 returned 3,242 Incident Investigation Reports. A search of the one-year period from January 1, 2018 to December 31, 2018 returned 3,496 Incident Investigation Reports. A search of the one-year period from January 1, 2019 to December 31, 2019 returned 3,444 Incident Investigation Reports.

These 5 searches revealed that the database contains 15,720 Incident Investigation Reports for the five year period from January 1, 2015 to December 31, 2019—an average of 3,144 per year. Using a more conservative average of 2,500 per year, over the 31 year period that would mean that over the past 31 years that 46 U.S. Code § 10104 has been part of the U.S. Code, approximately 77,500 reportable marine casualties have been reported to the USCG on form CG-2692 by owners, agents, masters, operators, or

persons in charge of vessels in commercial service. Using a yearly average of 3,000 reports would result in approximately 93,000 reports.

What seems clear from the high number of Incident Investigation Reports contained in the CGMIX database is that the commercial maritime industry takes at least some of the USCG's vessel safety reporting requirements seriously. They take seriously the reporting requirements the Coast Guard requires them to take seriously, and they do not take seriously the requirements the Coast Guard does not require them to take seriously.

The author has been unable to locate any reporting form ever created by the Coast Guard for reporting allegations of shipboard sexual assault as required by 46 U.S. Code § 10104, or any system for the public to view the completed investigation reports involving allegations of shipboard sexual assault reported to the USCG pursuant to 46 U.S. Code § 10104. This failure to create a formal reporting system for allegations of shipboard sexual assault, and the failure to incorporate allegations of shipboard sexual assault into the USCG's marine casualty reporting systems (CG-2692 and CGMIX) raises the very important question of how exactly allegations of shipboard sexual assault are being reported to the USCG pursuant to 46 U.S. Code § 10104. The answer seems to be that they simply are not being reported.

On November 3, 2020, the [United States Coast Guard Hearing Office](#) issued a Preliminary Assessment Letter (PAL) to [Maersk Line, Limited](#) (MLL) notifying the company it was facing a fine of \$10,000 for a violation of [46 USC § 10104](#), also known as the *Federal Shipboard Sexual Assault Allegation Reporting Law*. The result of a Coast Guard Freedom of Information Act appeal filed by MLAA appears to confirm that the November 3, 2020 fine issued against Maersk is the first time the law has ever been enforced by the Coast Guard.

In its FOIA request and in its appeal, MLAA requested that the Coast Guard Hearing Office produce "All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989."

In a letter directed to MLAA on September 16, 2021 in response to the Freedom of Information Act appeal, the Hearing Office responded:

A search of the Coast Guard Hearing Office, which is under the cognizance of the USCG Judge Advocate General, for documents responsive to your request produced a total of 156 pages. Of those pages, I have determined that 131 pages of the records are withheld in the entirety pursuant to 5 U.S. Code § 552(b)(7)(A). Additionally, I have determined that 25 pages of the records are withheld in their entirety pursuant to 5 U.S. Code § 552(b)(5).

FOIA exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings.

The remaining 25 pages were withheld pursuant to FOIA exemption 5, which protects inter-agency or intra-agency memorandums or letters. Because the 156 pages withheld pursuant to FOIA exemption 7A relate to an ongoing law enforcement investigation, it can be assumed that all of these documents relate to the MLL fine.

MLL is an American company headquartered in Virginia and a subsidiary of [A.P. Moller-Maersk](#), a Danish business conglomerate that is one of the largest vessel operators in the world. During 2020 A.P. Moller-Maersk generated nearly \$40 billion in revenue. The MLL subsidiary of A.P. Moller-Maersk claims that it “operates the largest U.S.-flag fleet in commercial service” and that its business includes providing “transportation, ship management and maritime technical services to government and commercial customers.”

The U.S. Coast Guard Hearing Office is located at Coast Guard headquarters in Washington, D.C. According to the [website of the Coast Guard Hearing Office](#),

The mission of the Hearing Office is to adjudicate civil penalty cases. The civil penalty process is remedial in nature. Its goals are to gain compliance with statutes and regulations that the Coast Guard enforces and to deter future violations. A fair and informal administrative process promotes maritime safety, security and environmental protection.

The November 3, 2020 PAL stated the following:

Activity No. 5783941

Party: Maersk Line, Limited

Date of Violation: February 3, 2015

Subject: MAERSK IDAHO

Amount: \$10,000.00

Date: November 20, 2020

Re: Preliminary Assessment Letter (PAL)

MAERSK LINE LIMITED

2510 WALMER AVE STE C

NORFOLK, VA 23510

Dear Sir or Madam:

In my capacity as a Coast Guard Civil Penalty Hearing Officer, I have received a report alleging that you, as managing operator of the MAERSK IDAHO, are liable for a civil penalty for violation of Federal law as described on the Charge Sheet enclosure.

The Coast Guard's civil penalty procedures are contained in Subpart 1.07 of Title 33 of the Code of Federal Regulations (33 CFR 1.07). My role is to determine whether there was a violation. If I find there was a violation, I must then decide what civil penalty, if any, is appropriate. The maximum civil penalty that may be assessed in this case is \$10, 245. Based upon the information in the case file that I have, it appears to me that a violation did occur and that a civil penalty of \$10,000 is appropriate. However, I will not make a final decision until you have had an opportunity to respond.

You have 30 days from receipt of this letter to take one of the following actions [See Enclosure (4)]:

You can submit evidence in lieu of a hearing

You can pay the proposed penalty now thru www.pay.gov

You can set up a payment plan by calling our collections department at (510) 437-3644

You can request a hearing in writing and submit what you want to raise and dispute at a hearing

...

Sincerely,

S.M. Griffin

Commander, U.S. Coast Guard

U.S. Coast Guard Hearing Office

To such a large company, a \$10,000 civil fine would not seem to be a significant amount of money. However, Maersk's MLL subsidiary has been determined to vigorously oppose the imposition of the fine. In response to the Coast Guard's \$10,000 PAL, MLL responded with a request for an enormous volume of documents, including many that likely never existed.

The maritime industry is highly regulated, and much of that regulation is enforced by the Coast Guard. But when it comes to the critical safety issues of shipboard sexual harassment and sexual assault, the Coast Guard has made conscious decisions to allow shipping companies to self-regulate. Over the course of decades, the Coast Guard has chosen not to enforce important laws such as 46 U.S. Code § 10104 and consequently the Coast Guard intentionally allowed sexual predators to operate with near impunity within the maritime industry.

The tragic result of allowing companies and unions to self-police should not be surprising to anyone. When companies are allowed to self-regulate an important safety issue, inevitably they will eventually make decisions that are in their own financial self-interest, and not the interests of crewmember safety.

The only real solution to the issue of shipboard sexual misconduct is increased regulation, increased oversight, and a dramatic increase in enforcement of laws against shipboard sexual misconduct by the Coast Guard.

The issue of sexual misconduct in the maritime industry should be treated as seriously as the issue of oil pollution. Mariners and companies are subject to criminal liability for the non-reporting of oil discharges into the marine environment. They should also be subject to criminal penalties for failures to immediately report allegations of shipboard sexual harassment and sexual assault to the Coast Guard.

The Coast Guard must also use the powers delegated to the agency by Congress to create implementing regulations for 46 U.S. Code § 10104 so that the reporting law becomes part of the Code of Federal Regulations, and the Coast Guard should begin the rule-making process immediately.

Additionally, the Coast Guard should add allegations of shipboard sexual harassment and sexual assault to the list reportable marine casualties that must be reported to the Coast Guard through the existing marine casualty reporting system. Immediate reporting as well as a follow-on written report of sexual misconduct allegations must be required.

The criminal penalty for non-reporting of shipboard sexual misconduct allegations should also apply to an additional officer besides the master of the vessel. Too often, the ship's master himself is responsible for shipboard sexual misconduct, and an additional officer should also be held criminally liable for not immediately reporting allegations of shipboard sexual misconduct to the U.S. Coast Guard.

Placards outlining the reporting requirements of 46 U.S. Code § 10104 should be required to be placed on the vessel's bridge and in other areas of the vessel in the same way that oil pollution placards are required to be posted on vessels, and a dedicated 1-800 number, email address, and smartphone reporting application should be developed that allow mariners 24 hour direct access to a Coast Guard Investigative Service Special Agent who is trained to take immediate action on allegations of shipboard sexual misconduct.

These are a few ideas to get the ball rolling. There is much more the Coast Guard can do. Thank you for taking the time to read this.

J. Ryan Melogy

Maritime Legal Aid & Advocacy

maritimelegalaid.com

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