



# VA WAIT-TIME FOIA REQUESTS AND SUBSEQUENT LAWSUIT

## THE SITUATION

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In May of this year, Americans for Prosperity Foundation (AFPF) filed a series of Freedom of Information Act (FOIA) requests with the Department of Veterans Affairs (VA). The requests seek records about the VA MISSION Act of 2018 and Veterans Community Care Program (VCCP). Through the requests, AFPF wants to understand how the VCCP access standards are being implemented. **There is reason to doubt the VA is being transparent in its calculation and maintenance of wait-time data and management of community care referrals. There is fear another wait-time scandal, similar to that in Phoenix in 2014, is brewing, and the VA is doing little to avoid it.** The requests were sent to agency HQ, as well as fourteen medical centers in FL, AZ, MT, and WV.

As the VA has failed to produce the records requested in the allotted timeframe (20-30 business days), AFPF is bringing suit to compel production of the information. The lawsuit was filed on Tuesday, July 20, 2021.

## BACKGROUND INFORMATION

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The VA has been plagued for years by scandals over misreporting of “wait times” at its facilities. In 2014, for example, sources revealed the VA health care system in Phoenix, Arizona kept “[secret wait lists](#)” to obscure non-compliance with the VA’s then-fourteen-day target wait time.

Congress addressed the issue, in part, with the VA MISSION Act, which established the VCCP. The VCCP requires timely scheduling of appointments and referral to private care whenever the VA cannot provide prompt service. Under the VCCP “access standards,” referral is contingent upon the agency scheduling an appointment within twenty to twenty-eight days, depending on the type of care needed. Wait times must be calculated from the “date of request” for an appointment. **The VA, however, appears to be violating the access standards and determining wait times based on other methods, such as “patient preferred” or “clinically indicated” dates.**

Wait-time data may be inaccurate in other ways, too. During the pandemic, **the VA has been [cancelling and rescheduling appointments](#)**. It is unclear whether this is being done with patient consent. **The practice not only delays referral to community care, but skews appointment data and frustrates proper implementation of the VCCP. This impacts the quality of veteran healthcare.**

For years, the VA has maintained a special review process for FOIA requests that implicate potentially embarrassing or politically sensitive records. This process—called “substantial interest” review—can lead, at best, to unjustified delay. At worst, it leads to inadequate searches, politicized document review, improper redaction, and incomplete disclosure. The VA has admitted that AFPF’s FOIA requests are being subject to such review. Thus, AFPF’s requests are being centrally managed at HQ and subjected to review by political appointees and agency communications staff.

**On top of the lack of transparency—and potentially purposeful manipulation of wait-time data—evidence suggests the VA has improperly suspended or limited community care referral during the pandemic based on legal guidance from the White House.**

AFPF is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. Among other things, AFPF, through its grassroots education project, Concerned Veterans for America Foundation, educates and empowers veterans to lead healthy and prosperous lives, including educating on the privileges and benefits afforded to veterans under the law. As part of its mission, AFPF files and litigates FOIA requests to investigate and learn about the functions of government.