

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARITIME LEGAL AID & ADVOCACY, LTD)

276 Fifth Ave., Suite 704)

New York, NY 10001)

Plaintiff,)

v.)

U.S. MARITIME ADMINISTRATION)

1200 New Jersey Avenue, SE)

Washington, DC 20590)

Defendant.)

X

COMPLAINT

X

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive, declaratory, and other appropriate relief, seeking the release of agency records requested by Plaintiff Maritime Legal Aid & Advocacy, Ltd. (“MLAA”) from Defendant United States Maritime Administration (“MARAD”) via the FOIA.

2. Specifically, MLAA challenges the failure of MARAD to disclose documents in response to a Freedom of Information Act request (“FOIA Request”) properly made by Plaintiff.

3. MLAA's FOIA Request was dated December 30, 2021 and acknowledged as received by MARAD on January 5, 2022. MARAD assigned the FOIA Request "*Control No. 22-0041-FOIA.*" FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(C)

4. It has been 142 total days since MARAD acknowledged receipt of MLAA's FOIA Request and Defendant MARAD has failed to meet the statutory guidelines set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)-(B). MLAA has therefore exhausted all applicable administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

Parties

5. 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 believes 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 regarding the protection 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.

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

Jurisdiction and Venue

7. 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.

8. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B), because MLAA's principal place of business is located in this judicial district at 276 Fifth Ave., Suite 704, New York, NY 10001.

Factual Background

9. Among the most vulnerable U.S. Coast Guard-credentialed mariners in the United States are students at the U.S. Merchant Marine Academy ("USMMA"). The USMMA is directly operated by MARAD. As part of the USMMA's four year course of study, MARAD sends USMMA students out to work on commercial cargo ships as "cadets" for approximately 330 days as part of the USMMA's "Sea Year" program.

10. MARAD is responsible for the operation of the USMMA's Sea Year program and responsible for the safety of USMMA students who serve aboard commercial cargo ships during the Sea Year program.

11. In recent years, extremely disturbing reports regarding the Sea Year program have emerged. These reports, which have been heavily documented in the news media, paint a picture of a highly dysfunctional and tragically unsafe training program that has allowed widespread and rampant sexual abuse to affect USMMA cadets participating in the program.

12. The disturbing reports include numerous first-hand accounts of teenage cadets being violently raped at sea by their much older supervisors during the MARAD-sponsored training program. *See* CNN, “*I was trapped’: Shipping giant investigates alleged rape of 19-year-old during federal training program.*”¹

13. Extremely disturbing reports have also emerged in the news media that paint a picture of MARAD engaging in a pattern of systematic coverups of these shipboard sex crimes in order to protect MARAD’s relationships with the commercial vessel operators MARAD relies on to operate the Sea Year program. *See* CNN, “*Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted.*”²

14. MLAA is committed to learning the extent of MARAD’s knowledge of the sexual abuse problems within the Sea Year program and MARAD’s true policies

¹ CNN, “*I was trapped’: Shipping giant investigates alleged rape of 19-year-old during federal training program,*” <https://www.cnn.com/2021/10/11/business/maersk-rape-investigation-merchant-marine/index.html> (October 12, 2021).

² CNN, “*Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted,*” <https://www.cnn.com/2022/02/16/us/merchant-marine-academy-usmma-sexual-assault-rape-invs/index.html> (February 16, 2022).

concerning the sexual abuse of cadets participating in the Sea Year program—policies which MARAD has refused to release to the public.

15. Through the FOIA process, MLAA seeks to pierce the veil of administrative secrecy that surrounds this important issue, open MARAD policies to the light of public scrutiny, and eventually make the maritime workplace safer for USMMA cadets as well as hundreds of thousands of other credentialed mariners

16. MLAA submitted its original FOIA Request to MARAD on December 30, 2021 (Exhibit A). MLAA also sought expedited processing under the FOIA.

17. MLAA's FOIA Request was received by MARAD and acknowledged on January 5, 2022.

18. The FOIA Request was assigned "*Control No. 22-0041-FOIA*" (Exhibit B).

19. On January 18, 2022 MARAD denied MLAA's request for expedited processing under the FOIA (Exhibit C).

20. As of the date of this filing, MARAD has not communicated in any way with MLAA since denying its request for expedited processing.

CAUSE OF ACTION

21. MLAA repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

22. Defendant MARAD is an agency subject to FOIA and must therefore release, in response to a FOIA request, any disclosable records in its possession at the time of the

request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

23. Defendant MARAD has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, MLAA has exhausted its administrative remedies under the FOIA.

24. Defendant MARAD is permitted to withhold records or parts of records responsive to MLAA's FOIA Request only if one of the FOIA's enumerated exemptions apply.

25. No exemptions permit the withholding of the records sought by MLAA's FOIA Request.

26. Accordingly, MLAA is entitled to an order compelling Defendant MARAD to produce all records responsive to the FOIA Request.

PRAYER FOR RELIEF

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

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

28. 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.

29. Order Defendant, by a date certain, to demonstrate that they have conducted an adequate search;
30. 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;
31. Enjoin Defendant from withholding the requested records;
32. Award MLAA its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
33. Grant MLAA such other and further relief as the Court may deem just and proper.

Dated: New York, NY
May 25, 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

Maritime Legal Aid & Advocacy, Ltd.

3 Germay Dr. Unit 4 #1929
Wilmington, Delaware 19804
<http://maritimelegalaid.com>
help@maritimelegalaid.com

December 30, 2021

VIA E-MAIL to "ost.foia@dot.gov"

Attn: Michael Bell
OST FOIA Officer
U.S. Dept. of Transportation
Office of the Secretary
FOIA Office
1200 New Jersey Ave, SE, W94-122
Washington, DC 20590

Re: Freedom of Information Act Request

Dear Mr. Bell,

This letter constitutes a request under the Freedom of Information Act ("FOIA") and is submitted on behalf of Maritime Legal Aid & Advocacy ("MLAA") to the United States Department of Transportation ("DOT").

Background:

MLAA is a non-profit legal aid and advocacy organization advocating for the human rights of mariners.

On October 12, 2021 Senator Maria Cantwell, Chairwoman of the United States Senate Committee on Commerce, Science and Transportation, sent an official letter to acting Maritime Administrator Lucinda Lesley requesting information related to allegations of sexual assault, rape and sexual harassment posted on the MLAA website, located at www.maritimelegalaid.com. In her letter to Lucinda Lesley, Senator Cantwell wrote:

Through the Maritime Legal Aid & Advocacy ("MLAA"), a legal advocacy group formed on behalf of mariners, victims' stories of shipboard sexual harassment, sexual assault, and rape have bravely shared their personal stories in blog posts on the group's website. You and Deputy Secretary Trottenberg sent an open letter to the King's Point community and posted it on the USMMA website on

Saturday, October 2, 2021 acknowledging these allegations and expressing your unwavering support for the individual who shared her story on September 27. The despicable accounts put forth by brave young women and men just starting promising careers in the maritime industry are frightening and unacceptable. Many of these allegations involve a repeated pattern of crimes and intimidations committed by people in positions of power and responsibility on merchant ships, and include alleged poor oversight or policy failures of USMMA officials and Coast Guard investigators.

In light of the seriousness of these allegations, I ask that you provide the committee with a description of the steps that have been taken by Maritime Administration (“MARAD”), the DOT, and the USMMA to investigate the allegations made on the MLAA’s website, and actions taken in response to findings in those investigations. Additionally, I request the following information:

- 1. How many reports of rape, sexual assault, sexual harassment or related offenses have been reported by or concerning midshipmen of the USMMA in the last 10 years? Please provide a breakdown of these reports that includes whether the incidents occurred on campus, off campus, or at sea during Sea Year, the party that conducted the investigation(s), and the outcome of that investigation.*
- 2. In the event that a midshipman is removed from a vessel following a sexual assault or harassment report(s), does USMMA remove all midshipmen onboard the vessel for their Sea Year? Please include copies of the USMMA policy, regulation or other guidance on this matter.*
- 3. If a vessel or its parent company is the subject of a sexual assault or sexual harassment complaint, does the USMMA assign midshipmen to those vessels in the future? Please include copies of the USMMA policy, regulation or other guidance on this matter.*
- 4. In the event that a midshipman makes an informal or formal complaint of sexual assault, harassment, or discrimination, may they request to be assigned to a different vessel for the duration of their Sea Year? Please include copies of the USMMA policy, regulation or other guidance on this matter.*
- 5. What actions can be and have been taken by the Coast Guard to withdraw or suspend credentials of mariners with a history of allegations of sexual assault and harassment against Sea Year midshipmen?*

The maritime industry and United States Merchant Marine are a vital part of our national security and our nation's economy. Sexual harassment, sexual assault, and other offenses are unacceptable, and the USMMA must immediately take action to stop this behavior and protect the men and women of the USMMA both at the Academy, and at sea. To that end, I request responses to these questions no later than October 26, 2021...

Sincerely,

MARIA CANTWELL

Chair

CC: Admiral Karl L. Schultz, Commandant, United States Coast Guard

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

Documents and Data Requested:

1. DOT's response to Senator Cantwell's letter of October 12, 2021, and all documents related to the response including data, reports, notes, and communications used to create the response.
2. Since January 1, 2021, all communications between DOT and Congress, Congressional Committees, or Congressional staff that include one or more references to the USMMA Sea Year program or to the EMBARC standards released by DOT on December 15, 2021.
3. Since January 1, 2021, all communications between DOT and any Whitehouse officials or staffers that include one or more references to the USMMA Sea Year program or to the EMBARC standards released by DOT on December 15, 2021.

Request for Expedited Processing:

Expedited processing is justified because:

1. This request is made by an organization "primarily engaged in disseminating information to the public" which MLAA accomplishes through its large mailing

list of newsletter subscribers, via its widely read blog located at <https://www.maritimelegalaid.com/blog>, and via its instagram account;

2. This request covers information about which there is an “urgency to inform the public about an actual or alleged federal government activity”; and
3. The subject of this request, which is the sexual harassment, sexual assault, sexual abuse, and rape of USMMA students by USCG-credentialed merchant mariners aboard U.S.-flag cargo ships is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence.

There is an “*urgency to inform the public*” about the operation of the USMMA Sea Year program. Questions asked of DOT by the Senate Commerce Committee ask about whether or not the DOT is sending vulnerable students out to serve aboard cargo ships with known sexual predators. The answers to questions such as, “*If a vessel or its parent company is the subject of a sexual assault or sexual harassment complaint, does the USMMA assign midshipmen to those vessels in the future?*” are urgent questions that affect the physical safety of hundreds, possibly thousands of young mariners.

The public and USMMA students themselves deserve to know the answers to these questions. If the DOT is indeed sending students out to ships with known sexual predators, students at the USMMA who are at sea aboard U.S.-flag vessels participating in the Sea Year program remain at a greatly heightened risk of sexual assault aboard their vessels.

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 MLAA seeks in this request 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.

Expedited Processing Certification:

I hereby certify that the reasons for expedited processing I have given here are true and correct.

Request for “News Media” Fee Status and Fee Waiver:

MLAA 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 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 maritimelegalaid.com to find numerous examples of news articles created by MLAA which required our organization to take raw materials from documents obtained via the Freedom of Information Act and then use those raw materials to create completely distinct works that were distributed to a global audience.

There is no doubt that the information we are seeking will contribute significantly to public understanding of the true policies of DOT with respect to sending USMMA students into isolated environments with known sexual predators. 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 MLAA. 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 MLAA works to achieve its goals through media outreach and public education.

Conclusion:

We are willing to pay up to \$1,000,000. 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 help@maritimelegalaid.com.

Respectfully Submitted,

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

I hereby certify that the reasons for expedited processing I have given here are true and correct.

Exhibit B



U.S. Department
of Transportation
**MARITIME
ADMINISTRATION**

1200 New Jersey Avenue, SE.
Second Floor, West Building
W24-220, Mailstop #4
Washington, D.C. 20590

T. Mitchell Hudson, Jr., FOIA Officer
(202) 366-5320
Ann Herchenrider, FOIA Public Liaison
(202) 366-5165

FOIA Service Center
(202) 366-2666
Facsimile: (202) 366-7485
Toll free: (800) 996-2723, press "0"
Email address: FOIA.MARAD@dot.gov

VIA EMAIL

January 5, 2022

Mr. J. Melogy
Maritime Legal Aid & Advocacy, Ltd.
3 Germany Drive Unit 4 #1929
Wilmington, Delaware 19804
help@maritimelegalaid.com

Control No. 22-0041-FOIA

Dear Mr. Melogy:

The purpose of this letter is to acknowledge the receipt of your request dated December 30, 2021 for information pursuant to the Freedom of Information Act 5 U.S.C. § 552 and to inform you of what you can expect moving forward.

You requested the following information:

1. DOT's response to Senator Cantwell's letter of October 12, 2021, and all documents related to the response including data, reports, notes, and communications used to create the response.
2. Since January 1, 2021, all communications between DOT and Congress, Congressional Committees, or Congressional staff that include one or more references to the USMMA Sea Year program or to the EMBARC standards released by DOT on December 15, 2021.

The FOIA Office received your request on January 4, 2022. The date that a response is due to you, based on the twenty-day turn-around time from the date received by the Maritime Administration (MARAD), Freedom of Information Act Office (FOIA) is

February 2, 2022. Ordinarily, the FOIA Office responds to requests in the order in which they are received.

In recognition of the President's Coronavirus Guidelines for America and following the Department's guidance to take all necessary precautions to protect the health and safety of the Department's workforce, MARAD employees are working remotely and may not be able perform the search of physical documents in a timely manner. Any requests requiring the search of physical documents may not be processed until employees are able to return safely to the office. This does not affect the search of electronic records.

With respect to your request for expedited processing, pursuant to DOT FOIA implementing regulations 49 CFR § 7.31(c)(4), this office will issue a determination regarding whether to grant your expedited processing request within 10 calendar days of its receipt. If your request is granted, it will be given priority and will be processed as soon as practicable.

Lastly, to assist this office in better serving you, please refer to FOIA Control Number **22-0041-FOIA** when inquiring about your request. Please know that we are working on processing your request in a manner designed to be fair and expeditious to all requesters. If you have any questions or concerns, please do not hesitate to call the FOIA Service Center on (202) 366-7375.

Very truly yours,

A handwritten signature in black ink that reads "Andrew" followed by a stylized flourish.

Andrew Larimore
FOIA Service Center
Maritime Administration

Exhibit C



U.S. Department
of Transportation
**MARITIME
ADMINISTRATION**

1200 New Jersey Avenue, S.E.
Second Floor, West Building
W24-220 Mailstop #4
Washington, D.C. 20590

T. Mitchell Hudson, Jr., FOIA Officer
(202) 366-5320
Ann Herchenrider, FOIA Public Liaison
(202) 366-5165

FOIA Service Center
(202) 366-2666
Facsimile: (202) 366-7485
Toll free: (800) 996-2723, Press "0"
Email address: FOIA.MARAD@dot.gov

VIA EMAIL

January 18, 2022

Mr. J. Ryan Melogy
Maritime Legal Aid & Advocacy, Ltd.
3 Germany Drive
Unit 4 #1929
Wilmington, DE 19804
help@maritimelegalaid.com

Subject: FOIA Control Number 22-0041-FOIA

Dear Mr. Melogy:

This letter is in response to your subject Freedom of Information Act (FOIA) request dated December 30, 2021, in which you requested expedited review. The Department of Transportation has promulgated the following regulation detailing the circumstances under which FOIA requests may be given expedited treatment (see 49 C.F.R. § 7.31(c)):

“Requests and appeals will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined that the compelling need involves: (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (ii) Requests made by a person primarily engaged in disseminating information, with an urgency to inform the public of actual or alleged Federal Government activity.”

Requesters who believe they may qualify for expedited treatment under these standards must “submit a statement, certified to be true and correct to the best of that person’s knowledge and belief, explaining in detail the basis for requesting expedited processing.”

Your request includes a statement self-certifying that your statements “concerning the need for expedited review are true and correct to the best of your knowledge and belief,” however, MARAD has determined that the information you cite as evidence that the public has an urgent need for this information falls short of that which is required to place this FOIA request in front of the other pending FOIA requests being responded to at this time.

In support of your request you state:

There is an “*urgency to inform the public*” about the operation of the USMMA Sea Year program. Questions asked of DOT by the Senate Commerce Committee ask about whether or not the DOT is sending vulnerable students out to serve aboard cargo ships with known sexual predators. The answers to questions such as, “*If a vessel or its parent company is the subject of a sexual assault or sexual harassment complaint, does the USMMA assign midshipmen to those vessels in the future?*” are urgent questions that affect the physical safety of hundreds, possibly thousands of young mariners.

The public and USMMA students themselves deserve to know the answers to these questions. If the DOT is indeed sending students out to ships with known sexual predators, students at the USMMA who are at sea aboard U.S.-flag vessels participating in the Sea Year program remain at a greatly heightened risk of sexual assault aboard their vessels.

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 MLAA seeks in this request 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.

Your assertions do not support a finding of urgency concerning the information which you are seeking that warrants processing your request ahead of older requests. Therefore, MARAD determines that your request for expedited review is denied.

A search of MARAD records is ongoing, and a response to the numerous items enumerated in your FOIA is being compiled. When all responsive documents have been located they will be reviewed by the FOIA office for release to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mitch Hudson', written in a cursive style.

T. Mitchell Hudson, Jr.
Freedom of Information Act Officer