



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JUN 18 2009

MR RAYMOND J TONEY ESQ
986 LOSOYA DRIVE
WOODLAND CA 95776

Ref: Request for Information, FOIA

Dear Mr. Toney:

This is in response to your letter dated May 19, 2009 submitted under the provisions of the Freedom of Information Act in which you seek certain documents and information pertaining to the operations of the Board for Correction of Naval Records, hereinafter referred to as the Board. Your request was received by the Board on May 28, 2009. Pursuant to your request the following documents and information are hereby provided.

Request Number 1

All documents specifying, and pertaining to, the procedures used by the Board in processing and adjudicating applications.

Board's Response

The documents you have requested are attached as enclosure (1) and are briefly described as follows: A four page document titled "Board for Correction of Naval Records" setting forth its mission, history, frequently asked questions, process, application and contacts; Secretary of the Navy Instruction 5420.193 dated November 19, 1997 with enclosures and procedures as well as a basic guide for applicants; and finally a three page document setting forth suggestions to applicants regarding petitions for modification or removal of officer fitness reports.

Request Number 2

State the number of individuals currently serving as Board members, or who have been found qualified and are available to

serve as Board members, and the titles of the positions they occupy within the Department of the Navy, apart from their service as Board members.

Board's Response

At the present time the Board's membership is composed of 51 members. Enclosure (2) is partial roster of the Board's membership. Although it lists 48 names, Mr. Joseph Wade whose name appears on page 7 has announced his retirement from the Navy and is thus no longer eligible to serve. Enclosure (2) also lists the job title, page grades and organizations of the remaining 47. The additional Board members whose names do not appear in enclosure (2) are: William J. Hess, a supervisory attorney who heads the Board's Pay Section and holds the pay grade YC/0905/02 which is the equivalent of a GS-13; Mr. Jonathan Ruskin a supervisory attorney who heads the Board's Performance Section and is also a YC/0905/02; Mr. James Exnicios a supervisory attorney heading the Board's Disability Section and also a YC/0905/02; and finally Mr. Brian George a supervisory attorney who heads the Board's Discharge Section and who like his colleagues serves in pay grade YC/0905/02. It should be noted that the section heads are not regularly scheduled Board members. They serve as replacements when regular Board members are unexpectedly unable to attend and the Executive Director and his deputy are unavailable.

Request Number 3

Identify and detail the procedures used by the Board for selecting individuals to serve as Board members, to include required or desired personal and professional qualifications. Also provide all information and documents pertaining to the training, if any, that individuals undergo prior to beginning their service as Board members, and/or as a condition for beginning their service as Board members.

Board's Response

Membership on the Board is a collateral duty and purely voluntary in nature. Members are all high ranking civilian employees who are initially screened by the Board's Executive Director who then forwards the nominee's request for membership along with his or her professional resume to the Assistant Secretary of the Navy for Manpower and Reserve Affairs for final approval. As regards training, during the first month of their initial appointment new Board members are scheduled to attend

meetings as non voting observers so that they will be exposed to every type of case they will be called upon to decide. In addition each new Board member receives a detailed briefing on Board's operations and practices from the Executive Director and/or his deputy as well as the section heads.

Request Number 4

State the number of applications received by the Board, and the number of applications decided by the Board, for calendar years 2005, 2006, 2007 and 2008.

Board's Response

In 2005 the Board received 12,454 applications of which 5,410 were accepted for review. A total of 4,812 of these cases were decided by the Board and another 381 cases were not taken to the Board but closed out administratively. Thus the total number of cases closed in 2005 was 5,193; however it is important to point out that not all of these closed cases were received in 2005. Some of them were undoubtedly received in mid to late 2004 and similarly some applications accepted for review in mid to late 2005 were carried over and closed out in 2006. The same is true in each of the succeeding years covered by your request.

In 2006 11,325 applications were received and 5,792 were accepted as suitable for review. 4,754 cases were decided by the Board and additional 338 cases were closed administratively without a Board decision.

In 2007 11,355 applications were received and 5,554 were accepted as suitable for review. 4,627 cases were decided by the Board and 668 were closed administratively without a decision by the Board.

In 2008 12,506 applications were received and 6,151 were accepted as suitable for review by the Board. 5,632 cases were decided by the Board and 521 were closed administratively without a Board decision.

Request Number 5

State the number, or percentage, of applications decided by the Board that resulted in changes being made to the applicants' military records for calendar years 2005, 2006, 2007 and 2008.

Board's Response

In 2005 1,691 were decided by the Board resulting in corrective changes in the applicants' military record. In 2006 1,556 applicants received corrective changes to their military records as a result of a favorable Board decision. In 2007 the total number was 1,512 and in 2008 the total number was 1,752. It should also be pointed out that in many instances where the applicant's case is administratively closed this is due to the fact that after the applicant filed with the Board but before the Board members met to consider the merits of the case Navy or Marine Corps officials agreed with the applicant's contentions and corrected his or her record thereby obviating any remedial action by the Board.

Request Number 6

State the number of applications, on average, decided by the each day.

Board's Response

Although the Board has no statistical reports showing the average number of applications decided by the Board on a daily basis, the monthly reports running from January 2009 to the end of May show that the monthly average of cases decided by the Board is 407.

Request Number 7

Copies of any reports submitted by the Board to either the Secretary of the Navy or the United States Congress concerning the Board's activities and operations for calendar years 2005, 2006, 2007, and 2008.

Board's Response

Enclosure (3) contains the Board's annual reports to the Assistant Secretary of the Navy for Manpower and Reserve Affairs and cover calendar years 2005 through 2008.

Request Number 8

Specify the hours and business days (for example, 8:00am through 5:00pm, Monday through Friday) during which Board members sits, review, and decide applications.

Board's Response

Regular Board sessions are held on Tuesday through Thursday. They start at 9:00am and usually last for about three to three and a half hours.

Request Number 9

State whether each Board member assigned to adjudicate a given case is expected or required to review the entire application file, including the official military records obtained by the Board for a given case.

Board's Response

In the course of their deliberations Board members will review the application and all documents submitted by the applicant in support of his or her application as well as all relevant portions of the applicant's military record. It should be pointed out that the applicant's entire military record is brought to all Board sessions and is available for inspection by the Board members. The Board members will also review any advisory opinions provided to the Board and the applicant's response to an unfavorable advisory opinion.

Request Number 10

Specify the manner in which Board members are selected to serve on a given Board on a given day.

Board's Response

Board members are expected to attend one session per month. A monthly schedule for meetings is published one month in advance. Since membership on the Board is a collateral duty the selection of a member to attend a particular meeting is for the most part determined by the member's availability. For example some members have asked not to be scheduled at certain times of the month or on certain days of the week. If after the monthly schedule is published a conflict develops between a member's attendance and the performance of his or her regular duties the member is expected to find a replacement. If the conflict develops suddenly with little or no time to find a replacement the Executive Director or his deputy will act as a substitute.

Request Number 11

State whether the Board employs a lawyer whose job is to review applications and/or advise the Board on the merits of applications. If the Board does employ a lawyer, identify the lawyer and his or her job title.

Board's Response

The heads of all four of the Board's examination sections (Pay, Performance, Disability and Discharge) are attorneys who serve as recorders during Board meetings. As recorders they must ensure that the records examiners who actually present cases to the Board members are fair and impartial. Records examiners must not conduct themselves in such a manner so as to become an advocate for the applicant or the government. Unless the Board members expressly ask for it neither records examiners nor recorders are to express an opinion as to whether or not an application should be granted or denied. However it is incumbent upon recorders to point out to the Board members when a particular course of action is contrary to federal law or a long and well established policy of either the Navy or Department of Defense.

Request Number 12

Identify the manner in which Board members prepare for the applications that they are to decide on a given day.

Board's Response

Generally the Board members do not prepare in any way for the applications that they will be called upon to decide during their regularly scheduled meetings. Simply put they do not see or have any knowledge of the cases they will decide before they meet. However, in those situations where an application contains highly technical legal issues or complex factual issues or is of a highly sensitive nature such an application will be advance routed to three specially chosen members who will be exempted from attending a regularly scheduled meeting. Typically these cases are either referred to the Board by a federal court or where the applicant is represented by private counsel. It is not just the complexity of the issues that prompts the Board to take such action but also the sheer volume of the documentary evidence to be reviewed. The specially chosen members usually have anywhere from 10 to 15 working days to review the case before attending a special meeting. Although

the Board has no statistical reports showing the number of applications that are advance routed, it is estimated that between 4 and 8 applications receive such processing each year.

Request Number 13

Identify the manner in which Board member deliberation and voting on applications occurs.

Board's Response

Following the examiner's oral briefing copies of all relevant documents are provided to the Board members. After reading the documents the examiner and recorder answer any questions the members may have. The members then discuss issues of the case among themselves. After discussion, the members cast their votes and offer a rationale for their votes. A majority vote is controlling and a vote sheet is then prepared and placed in the applicant's case file.

Request Number 14

Identify the manner in which applications are presented to Board members for deliberation and voting.

Board's Response

Please refer to the information provided in the Board's Response to Request Number 11, 12 and 13.

Request Number 15

State whether the Board employs "analysts," something comparable, and all information and documents detailing their duties, responsibilities, and functions.

Board's Response

The Board's record examiners perform the duties of "analysts". Enclosure (4) is the official position description for records examiners. It sets out a description of the examiner's duties as well as the requisite skills and qualifications.

Request Number 16

State whether any "analysts" employed by the Board make recommendations to Board members as to how applications should be decided. If "analysts" do make such recommendations, provide all documents and information that used by the "analysts" as guidance in performing their duties and making their recommendations.

Board's Response

Please refer to the information provided in the Board's Response to Request Number 11.

Request Number 17

If any "analysts" are employed by the Board, provide their professional qualifications.

Board's Response

Please refer to the information contained in the Board's Response to Request Number 15.

Request Number 18

State the number of full-time and part-time staff members employed by the Board.

Board's Response

The Board has 29 full-time employees. There are no part-time staff members.

Request Number 19

Specify when the individuals sitting as Board members on a given day receive the applications they are to decide on that given day, and how the applications are transmitted or given to the members, for example, one day in advance via electronic mail, the same day via paper copy, etcetera.

Board's Response

Please refer to the Board's Response to Request Number 12.

Request Number 20

State whether the Board reviews its past decisions when considering subsequent and current applications.

Board's Response

Past decisions of the Board are not precedential in nature and are thus not binding upon the Board when reviewing of current applications. Nevertheless if an applicant makes an argument based on a prior decision the Board will certainly consider it during deliberations.

Request Number 21

State whether the Board has a system for identifying past decisions that are related to or address the same or similar allegations of error and/or injustices in subsequent applications. If there is such a system, please specify how it is utilized and what persons utilize it.

Board's Response

The Board has no such system.

Request Number 22

Describe the procedure(s) and process by which Board decision memoranda are drafted. Specify whether a draft decision is provided to the Board members sitting on a given day for each case, and whether the draft decision contains a recommendation for disposition of the application. Provide all documents, if any, that relate to those procedure(s).

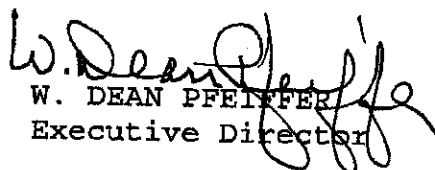
Board's Response

After the Board members vote on a case and articulate the rationale for their decision the examiner to whom the case is assigned prepares a rough draft of the decisional document which is reviewed by the section head who was present at the meeting and performing the duties of recorder. The decisional document is then put in final form and is reviewed by the Deputy Executive Director and Executive Director. In the case where an application has been denied the decisional document is then sent to the applicant. Where the Board votes to grant full or partial relief the decisional document is forwarded for review either to the Assistant Secretary or an official designated by him to take action on his behalf. Following higher level review the decisional document is sent to the applicant and the

appropriate Navy or Marine Corps officials. The Board members who voted on the case are not provided with decisional documents in either rough draft or final form.

I hope this satisfies your requests. If you have any questions regarding the Board's responses please do not hesitate to contact me at (703) 614-9800 or my deputy Mr. Robert D. Zsalman. Mr. Zsalman can be reached at (703) 614-9801.

Sincerely,


W. DEAN PFEIFFER
Executive Director

Enclosures