



April 28, 2023

Via Web Portal Only

DHA FOIA Service Center,
7700 Arlington Blvd.
Suite 5101,
Falls Church, VA 22042-5101

RE: FOIA Request to U.S. Defense Health Agency (DHA) for Records Regarding the non-renewal and expiration of the pastoral care contract at Walter Reed National Military Medical Center (WRNMMC) with the Holy Name College Friary (the Franciscans) and assignment of the contract to Mack Global, LLC.

Dear FOIA Officer:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations. The Request is made by the American Center for Law and Justice (“ACLJ”).¹

Background

Pursuant to DoD FOIA regulation 32 C.F.R. §286.5 (a), this Background addresses “the date, title or name, author, recipient, and subject matter of the record[s]” requested, to the extent known.

According to a press release from the Archdiocese for the Military Services, USA:

The Franciscans’ contract for Catholic Pastoral Care was terminated on March 31, 2023, and awarded to a secular defense contracting firm that cannot fulfill the statement of work in the contract. As a result, adequate pastoral care is not available for service members and veterans in the United States’ largest Defense

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

Health Agency medical center either during Holy Week or beyond. There is one Catholic Army chaplain assigned to Walter Reed Medical Center, but he is in the process of separating from the Army.²

Holy Name College Friary (also called “Franciscans” as they are referenced above) have provided pastoral care (the Catholic term for providing religious services) to patients and families at Walter Reed National Military Medical Center (WRNMMC) for twenty years.³

This year, after their contract “expired,” they continued to provide pastoral care to patients and families until Holy Tuesday, when WRNMMC issued to the Franciscans, “an April 4 cease and desist order to the friars since they ‘continued to provide services beyond’ the March 31 expiration date of the contract.”⁴

Previously, the Franciscans had sought permission to provide pastoral care through Holy Week and end the day after Easter, but according to reports:

[General Counsel Elizabeth] Tomlin told OSV News she had “asked in writing and (in) voicemails to several people within Walter Reed to ... extend the Franciscan contract with a simple pen and ink change at least through Holy Week.” [an extra seven days]

“The Department of Defense never responded to any of my communications,” she said.⁵

The for-profit, secular firm who won the contract, Mack Global, LLC, states on its website that it provides:

Typical Religious Positions We Staff

- Musician for Catholic Services
- Music Director for Catholic Services
- Coordinator for Catholic Religious Education (RE)
- Coordinator for Catholic Youth
- Musician for Protestant Services
- Music Director for Protestant Services
- Coordinator for Protestant Religious Education (RE)

² *Walter Reed National Military Medical Center Terminates Catholic Pastoral Care Contract During Holy Week*, ARCHDIOCESE FOR THE MIL. SERVS., USA (Apr. 7, 2023), <https://www.milarch.org/walter-reed-national-military-medical-center-terminates-catholic-pastoral-care-contract-during-holy-week/>.

³ Brooke Singman, *Walter Reed 'Cease and Desist' Order for Catholic Priests Violates the First Amendment, GOP Lawmakers Say*, FOX NEWS (Apr. 12, 2023), <https://www.foxnews.com/politics/gop-lawmakers-say-walter-reed-cease-and-desist-for-catholic-priests-is-violation-of-the-first-amendment>.

⁴ Gina Christian, *Military Archdiocese: Walter Reed Pastoral Care Contract 'Turns Ministry on its Head'*, CATHOLIC REV. (Apr. 13, 2023), <https://catholicreview.org/military-archdiocese-walter-reed-pastoral-care-contract-turns-ministry-on-its-head/>.

⁵ *Id.*

- Coordinator Protestant Youth⁶

As the Archdiocese for Military Services who has the responsibility to provide pastoral care to Catholics in the military and who the Franciscans would report to, pointed out, the “for-profit company . . . has no way of providing Catholic priests to the medical center . . .”⁷

The Franciscans have issued a statement saying:

While this is certainly disappointing after 20 years of service – after building trust and so many wonderful relationships and friendships – the Franciscan Friars of Holy Name Province respect the process. . . . It has been an incredible privilege – and, really, a very powerful ministerial experience – for the Franciscan Friars to be invited into the lives of these true American heroes who have sacrificed so much for our country.”⁸

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f). The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

When this Request names a person or an office, it includes any alias or pseudonym name and any electronic communication account any such official might use.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is September 1, 2022, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Defense produce the following:

⁶ *Staffing Services*, MACK GLOBAL, <https://mackglobal.com/staffing-services/> (last visited Apr. 21, 2023).

⁷ ARCHDIOCESE FOR THE MIL. SERVS., *supra* note 2.

⁸ David Crary, *Military Hospital Chided for Shift in Catholic Pastoral Care*, AP NEWS (Apr. 12, 2023), <https://apnews.com/article/military-hospital-catholic-priests-walter-reed-ee087761857eccc0281f8a0dce4a8482>.

1. Records of the cease and desist order referenced above and issued to the Franciscans on April 4, 2023 by the DHA and/or the WRNMMC or by a third party on behalf of the DHA and/or the WRNMMC.
2. Records of any communications from General Counsel to the Archdiocese of Military Services, Elizabeth Tomlin (hereinafter Elizabeth Tomlin), to Legal Counsel for DHA and/or WRNMMC since March 1, 2023.
3. Records of any communications since March 1, 2023 about Elizabeth Tomlin, in the custody of those personnel (unknown to the requestor) with the legal authority to extend the contract for one week, award the contract, or recommend to award a contract from April 1, 2023.
4. The Request for Proposal issued by DHA (or its components) or WRNMMC regarding the pastoral care contract at issue in the background above regardless of the date issued.
5. Records of any communications about the bids submitted by Mack Global, LLC and/or the Franciscans, in the custody of those personnel (unknown to the requestor) with the legal authority to award the contract at issue in the background above.
6. Records of any communications between Elizabeth Tomlin and WRNMMC or DHA personnel regarding the pastoral care contract.
7. Records of any communications from the Franciscans, the Archdiocese of Military Services, Mack Global, LLC or third parties about the pastoral care contract at issue to those WRNMMC or DHA personnel (unknown to the requestor) with the legal authority to award the contract.
8. Records of any communications at DHA or WRNMMC regarding the pastoral care of Catholic patients or their families during Holy Week at WRNMMC.

These Requests do NOT seek proprietary medical information of any company or person.

Each request seeks records which include, but are not limited to, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DHA electronic mail or message accounts, non-DHA electronic mail or message accounts, personal electronic mail or message accounts, DHA servers, non-DHA servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
John A. Monaghan, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in black ink, appearing to read "Ben P. Sisney".

Benjamin P. Sisney
Senior Litigation Counsel

A handwritten signature in blue ink, appearing to read "John A. Monaghan".

John A Monaghan
Senior Litigation Counsel