

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop N2-20-16  
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group  
Refer to: Control Number 042820177001 and PIN 8WA2

Pat Anson  
MuckRock  
DEPT MR 36874  
411A Highland Ave  
Somerville, MA 02144-2516

AUG 30 2017

Dear Mr. Anson:

This letter is in response to your Freedom of Information Act (FOIA) request of April 26, 2017, addressed to the Centers for Medicare & Medicaid Services (CMS). Within your correspondence, you sought *all minutes, notes, documents and recordings related to an October 2016 meeting by the Healthcare Fraud Prevention Partnership (HFPP) involving opioid misuse and addiction, and the recommendations HFPP would make regarding Medicare and Medicaid policies affecting opioid prescribing*. In addition, you are seeking *a list of all individuals attending the meeting and their affiliations*.

Our agency initiated a search for records falling within the scope of your request and located 73 pages of responsive documents, as well as three (3) spreadsheets. After careful review of the documents submitted to me, I have determined to release 65 pages to you, in their entirety, without deletions. However, I am denying you access to eight (8) pages, in full, and the three (3) spreadsheets pursuant to Exemptions 4, 7(C), 7(E) and 7(F) of the FOIA (5 U.S.C. § 552(b)(4), (b)(7)(C), (b)(7)(E) & (b)(7)(F)).

Exemption 4 protects information which constitutes "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Commercial or financial matters are "confidential" for the purpose of this exemption if such voluntarily provided information is of a kind that would customarily not be released to the public by the person from whom the information was obtained, or if such required submissions are likely to: impair the government's ability to obtain necessary information in the future; cause substantial harm to the competitive position of the person from whom the information was obtained; or impair the effectiveness of a government program. This exemption is intended to protect the interest of both the government and submitters of information.

The nature of some of the information provided during the Special Session on opioids would be of the sort that could have a negative impact on the competitive posture or business interests of a company if made public. For example, some of the information sought is likely to include specific strategies that private and public payers are implementing to identify fraudulent providers and schemes related to opioids. The release of this sensitive information could put the company at significant financial risk if interested parties use this information to develop and execute schemes and individuals and organizations use this information to game the system and reap financial or other benefit.

Exemption b(7) protects “records or information compiled for law enforcement purposes . . . to the extent that the production of such law enforcement records or information (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, (F) could reasonably be expected to endanger the life or physical safety of any individual.”

Representatives from the Department of Health and Human Services Office of Inspector, state Medicaid and inspector general offices, CMS, and private plan special investigation units were in attendance at this special session to talk about the issues they see related to opioids within their jurisdictions and to share specific techniques to detect and thwart fraud, waste and abuse related to opioids. Unless attribution was expressly granted by a specific partner, the information that was discussed in the public white paper was aggregated and de-identified.

The individuals participating in the special session are likely the same individuals that are directly involved in the development and execution of fraud, waste and abuse reduction strategies within their organizations. Furthermore, most partners are from the private sector and private industry is not subject to FOIA, nor is CMS authorized to release such information.

Please note that the HFPP is not a Federal Advisory Committee, therefore CMS would not have any documents pertaining to recommendations HFPP would make regarding Medicare and Medicaid policies affecting opioid prescribing.

If you believe that the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency’s decision.

Your appeal must be mailed within 90 days from the date of receipt of this letter, to:

Principal Deputy Administrator  
Centers for Medicare and Medicaid Services  
Room C5-16-03  
7500 Security Blvd.  
Baltimore, Maryland 21244-1850

Please clearly mark both the envelope and your letter “Freedom of Information Act Appeal.”

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact Jay Olin at (410) 786-3677 OR the CMS FOIA Public Liaison for assistance at:

Joseph Tripline  
CMS FOIA Public Liaison  
Centers for Medicare & Medicaid Services  
7500 Security Blvd., MS N2-20-16  
Baltimore, Maryland 21244-1850  
Telephone: (410) 786-5353 fax (443)-380-7260

If you are unable to resolve your FOIA dispute through our CMS FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman’s office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road–OGIS  
College Park, MD 20740-6001

Telephone: 202-741-5770  
Toll-Free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: 202-741-5769

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jay Olin". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jay Olin  
Director, Division of FOIA Analysis – C  
Freedom of Information Group

Enclosure