

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta West Area Office
1995 North Park Place SE, Suite 525
Atlanta, Georgia 30339



Moore Injury Law, LLC
Attn: Kevin G. Moore, Esq.
5805 State Bridge Road
Suite G368
Johns Creek, GA 30097

Re: Freedom of Information Act Request #896248: Inspection: ConMed/Insp. #1428552, 1428553, 1309443, 1465596, 1400790

Dear Mr. Moore:

This decision is in response to your Freedom of Information Act (FOIA) request dated August 20, 2020 and received in our office on August 25, 2020 requesting records concerning ConMed. We located the records you seek with the exception of inspections 1309443, 1465596, 1400790; these inspections have been retired and must be retrieved from the National Archive Center. We located inspections 1428552 and 1428553 and conducted a review of the material you requested. After reviewing this information, we have made the following release determination.

Information regarding ConMed is being released only to you. If this request had come from a member of the general public, we might have withheld some of this information under one or more FOIA exemptions.

We have determined the following pages may be released with redaction regarding Inspection #1428552 (159 pages):

1. 5 pages of computer generated forms and/or notes containing financial and/or trade secret information, were redacted pursuant to Exemption 4.
2. 19 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(C).
3. 13 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(D).

We also determined the following pages must be withheld in full:

1. 4 pages of computer generated forms and/or notes containing financial and/or trade secret information were redacted pursuant to Exemption 4.
2. 81 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(C).
3. 4 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(D).

We have determined the following pages may be released with redaction regarding Inspection #1428553 (222 pages):

1. 13 pages of computer generated forms and/or notes containing financial and/or trade secret information, were redacted pursuant to Exemption 4.
2. 55 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(C).
3. 18 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(D).

We also determined the following pages must be withheld in full:

1. 11 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(C).
2. 82 pages of computer generated forms and/or notes with personal identifying information, were redacted pursuant to Exemption 7(D).

FOIA requires that agencies generally disclose records. Agencies may withhold requested records only if one or more of nine exemptions apply.

Exemption 4 of FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). This exemption is intended to protect two categories of information in agency records: (1) trade secrets; and (2) certain confidential or privileged commercial information. We are withholding certain privileged or confidential information pursuant to Exemption 4. When applying this part of exemption 4, the terms “commercial or financial” should not be narrowly construed to include proprietary information only. Rather, they should be given their ordinary meaning.

Exemption 7(C) of FOIA permits an agency to withhold information contained in files compiled for law enforcement purposes if production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). Thus, the purpose of Exemption 7(C) is to protect the privacy of any person mentioned in law enforcement records. In determining whether a protected privacy interest exists, we must evaluate not only the nature of the personal information found in the records, but also whether release of that information to the general public could affect that individual adversely.

Thus, we must consider whether release of even seemingly innocuous personal information could lead to the harassment or annoyance of an individual through unsolicited inquiries. We find that release of personal identifying information withheld here reasonably could be expected to have a negative impact on an individual’s privacy.

Exemption 7(D) of FOIA protects from disclosure information that reasonably could be expected to identify persons or entities providing data to the government in confidence or under circumstances implying confidentiality. 5 U.S.C. § 552(b)(7)(D). The applicability of Exemption 7(D) does not end with termination of an inspection because the potential harm or scrutiny that a confidential informant may be subjected is not dependent upon the phase of an inspection.

Rather, potential harm may result from the mere fact that an individual communicated with the government. We have withheld the noted materials pursuant to Exemption 7(D) to protect from disclosure information that reasonably could be expected to identify persons or entities providing data to the government in confidence or under circumstances implying confidentiality.

When records in our possession are compiled by a state or local agency, our practice is to direct the requester to that state or local agency. We are taking no action regarding these records. Rather, if you are interested in these directly, you should directly contact the agency. If you are unable to obtain these documents from these agencies, please feel free to contact us again and we will process them under the FOIA.

There are no fees associated with this request.

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of this letter. If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or fax your appeal to (202) 693-5538.

Alternatively, you may email your appeal to foiaappeal@dol.gov; appeals submitted to any other email address will not be accepted. The envelope (if mailed), subject line (if emailed), or fax cover sheet (if faxed), and the letter indicating the grounds for appeal, should be clearly marked: "Freedom of Information Act Appeal."

You also may contact the Office of Government Information Services (OGIS) for assistance. OGIS offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.

You may mail OGIS at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001. Alternatively, you may email or contact OGIS through its website at: ogis@nara.gov; Web: <https://ogis.archives.gov>.

Finally, you can call or fax OGIS at: telephone: (202) 741-5770; fax: (202) 741-5769; toll-free: 1-877-684-6448. It is also important to note that the services offered by OGIS, is not an alternative to filing an administrative FOIA appeal.

If you have any questions about this FOIA determination, please contact this office at (678) 903-7301.

Sincerely,
Jeffery M.
Stawowy

Digitally signed by Jeffery M. Stawowy
Date: 2022.10.15 09:17:11 -0400

Jeffery Stawowy
Area Directors