

EXHIBIT A

brownrudnick

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July 20, 2023

VIA FOIA.GOV PORTAL

Hugh Gilmore
FOIA Officer
Centers for Medicare & Medicaid Services
North Building, Room N2-20-06
7500 Security Boulevard
Baltimore, Maryland 21244
hugh.gilmore@cms.hhs.gov
FOIA_Request@cms.hhs.gov

RE: Freedom of Information Act Request

Dear Mr. Gilmore:

We represent several law firms that handle Medicare Secondary Payer lien resolution issues for their own clients, who are claimants in mass toxic tort settlements. Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, we respectfully make a request for the following records in the possession of the Centers for Medicare & Medicaid Services (“CMS”), and all components thereof:

1. Any and all documents – defined herein as including, but not limited to, contracts, agreements, records, reports, or any other writings – and communications – defined herein as including, but not limited to, communications with DOJ, HHS, Medicare, or any other agency – relating to current and projected staffing for the Benefits Coordination & Recovery Center (“BCRC”).
2. Any and all documents and communications relating to current and projected leasehold space or other office space for the BCRC.
3. Any and all documents sufficient to identify each BCRC office and each office’s current pace of reviewing and approving Medicare lien resolutions on an individualized basis.
4. Any and all documents and communications relating to BCRC’s lien resolution process, including, but not limited to, any documents or communications referencing or relating to how long it takes a claim to be reviewed and policies, procedures, or guidance on how cases are individually reviewed.



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5. Any and all documents and communications relating to CMS's parameters or process for whether to apply a global settlement model.
6. Any and all documents and communications concerning other FOIA demands or other requests for information to CMS concerning Medicare liens.
7. Any and all internal memoranda, manuals, guidance, policies, procedures, or other documents relating to how any agency within the Department of Health and Human Services evaluates, modifies, or implements Medicare lien resolution issues on an individualized basis.
8. All documents and communications concerning any communication with the White House, Congress, DOJ, or another government body outside CMS regarding review of Medicare liens on an individualized basis and/or on a collective basis.

We are willing to pay all reasonable fees for obtaining the above-requested records. As provided for in 5 U.S.C. § 552(a)(6)(A)(i), please provide us with your determination regarding the above requested records within twenty (20) days of this request. If waiting for all of the requested records would cause delay, please send the records as they become available. In addition, after a thorough review is conducted, please inform us in writing if any of the above-requested records do not exist. *See Am. Civil Liberties Union v. CIA*, 710 F.3d 422, 426 (D.C. Cir. 2013) (holding that, as a general rule, government agencies must acknowledge the existence of information in response to a FOIA request and may not refuse to confirm or deny the existence of records that do not fall into a FOIA exemption).

Finally, as you know, 5 U.S.C. § 552(b) provides that if some portions of any of the requested records are exempt from release, "reasonably segregable" portions of that information must still be provided. We therefore request, in the event that you determine that some portion of the requested records is justifiably exempt from disclosure, that you provide us with a copy of the remainder of such information and a detailed statement of the reasons for each partial denial of access. Moreover, should any documents be withheld in total, we request that you justify the terms of your assertion of exemption and provide an index of allegedly exempted documents. *See Vaughn v. Rosen*, 484 F.2d 820, 828 (D.C. Cir. 1973), *cert. denied sub nom. Rosen v. Vaughn*, 415 U.S. 977 (1974) (holding that when a government agency declines to release documents sought under FOIA, it "should undertake to justify in much less conclusory terms its assertion of exemption and to index the information").



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Thank you for your attention and effort in this matter. Please contact me at (212) 536-1721 if you have any questions regarding this request.

Very truly yours,

BROWN RUDNICK LLP

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