

**EXHIBIT B**

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group**

Refer to: Control Number 032220247077 and PIN QHTC

3/26/2024

Aaron Lang  
Nelson Mullins Riley & Scarborough LLP  
One Wells Fargo Center  
301 South College Street, 23rd Floor  
Charlotte, NC 28202

Dear Mr. Lang:

I am responding to your 3/22/2024 Freedom of Information Act (FOIA) request, which was addressed to the Centers for Medicare and Medicaid Services (CMS), or one of our agency's Medicare contractors. This letter is to obtain clarification regarding the subject matter of your FOIA request. We are unable to ascertain from your request which particular agency records you wish to obtain. Please provide the CMS employees who may be custodians of the requested records.

The FOIA allows the public to request access to "reasonably described" existing agency records (subject to any applicable FOIA exemptions to disclosure), rather than simply information. This means you must describe the category of records you are seeking or the actual document(s), and provide sufficient details to permit a search with reasonable effort, utilizing existing indices and search tools. Unfortunately, you have not described the records with enough specificity to allow us to continue with the processing of your request.

At this time, we have placed your request in "tolled" status. Therefore, please clarify and describe the records you are seeking, by writing to our office at the above address. After you further advise us what records you are seeking, we can begin to process your FOIA request.

If you have not contacted our office within 10 business days from the date of this letter, your request will be administratively closed.

Thank you for your time and cooperation in this matter.

Sincerely yours,

*Desiree Gaynor*

Desiree Gaynor  
Director, Division of FOIA Analysis – A  
Freedom of Information Group



Aaron C. Lang  
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NELSON MULLINS RILEY & SCARBOROUGH LLP  
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301 S College Center, 23rd Floor  
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April 3, 2024

**VIA OVERNIGHT MAIL**

Desiree Gaynor  
Director, Division of FOIA Analysis  
Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
7300 Security Boulevard  
Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850

**Re: FOIA Request Control Number 032220247077 and PIN QHTC**

Dear Ms. Gaynor,

I write on behalf of The Lanier Law Firm (“Requester”) in response to your March 26, 2024 letter, which claims that CMS is “unable to ascertain” from the Requester’s March 22, 2024 FOIA request (the “Request”) “which particular agency records you wish to obtain.” For the reasons below, CMS must comply with its obligations under FOIA and promptly produce responsive records.

As a threshold matter, the Request, as written, “reasonably describes” existing agency records with sufficient detail to satisfy FOIA. A request is FOIA-compliant where it “enable[s] a professional employee of the agency [] to locate the record with a reasonable amount of effort.” *Am. Ctr. for L. & Just. v. U.S. Dep’t of Homeland Sec.*, 573 F.Supp.3d 78, 81 (D.D.C. Nov. 10, 2021). The Request easily satisfies this standard, including by identifying:

- i. Two “discrete” entities “whose communications are sought” (CMS and HHS);
- ii. At least three “ready-made search terms” (“talcum powder,” “mass tort litigation,” and “Johnson & Johnson”);
- iii. A “specific time period for the request,” (2020-present);
- iv. The types of communications sought (emails, texts, and meeting invites); and
- v. Expressly limits records *not* sought.

*See Gun Owners of Am., Inc. v. FBI*, 594 F. Supp. 3d 37, 48 (D.D.C. 2022).

D. Gaynor  
April 3, 2024  
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While CMS claims that Requester must provide a list of “CMS employees who may be custodians” of records to satisfy FOIA requirements, that is not the law. To the contrary, “[a] FOIA request is not deficient just because it does not provide the name [] of every individual whose communications are sought—the request’s description need only be ‘reasonable’ to implicate the agency’s obligations under the statute.” *Id.* at 47 (finding that a request seeking “all communications” between a federal and state agency regarding a government program “reasonably described” the records sought). Indeed, it is CMS—not Requester—that “is in the best position to determine custodians most likely to have relevant records.” *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 373 F. Supp. 3d 120, 127 (D.D.C. 2019).

Nonetheless, in the interest of resolving this dispute, below is a non-exhaustive list of CMS employees that may have responsive records:

- Division of Medicare Secondary Payor Program Operations:
  - Steve Forry, Director
  - Jacqueline Cipa, Deputy Director
- Office of Financial Management:
  - Julie Lokuta, Health Insurance Administration
  - Brian Broznowicz, Health Insurance Specialist
- Division of Medicare Debt Resolution:
  - Suzanne Mattes, Director
  - David English, Deputy Director
- Division of Contractor Provider Communications:
  - Amy Abel-Matkins, Director
- Contract Management Group:
  - Desiree Wheeler, Director
  - Cindy Sisti, Deputy Director

Please advise Requester within ten days whether CMS believes it still requires additional information to process the Request. Otherwise, we will assume that CMS now considers the Request received and will fully respond to the Request within twenty working days of today’s date, as required under FOIA. Requester reserves any and all rights with respect to the Request, including the right to seek records from custodians not listed above.

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Thank you for your attention to this matter. Please contact me at (704) 417-3012 if you have any questions regarding this request.

Sincerely,

NELSON MULLINS RILEY & SCARBOROUGH LLP

*/s/ Aaron C. Lang*

Aaron C. Lang

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-11-06  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs / Freedom of Information Group**

Request has been assigned: Control Number **032220247077** and PIN **QHTC**

4/9/2024

Aaron Lang  
Nelson Mullins Riley & Scarborough LLP  
One Wells Fargo Center  
301 South College Street, 23rd Floor  
Charlotte, NC 28202

Dear Mr. Lang:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) (5 U.S.C. § 552) request and to provide you with a tracking number. The Centers for Medicare & Medicaid Services (CMS) received your FOIA request on March 22, 2024 pertaining to Communications—including but not limited to emails, text messages, and/or Zoom, Microsoft Teams, or Outlook Calendar invites—created at any time from January 1, 2020 to present, between CMS and the United States Department Health and Human Services (“HHS”), or any subsidiary thereof, regarding the talcum powder mass tort litigation against Johnson & Johnson.

To check the status of your request as it is being processed, please refer to the CMS FOIA website at <https://foia-request.cms.gov/check-status> and enter the control number and PIN (listed at the top of the page) that has been assigned to your request.

Once we complete our initial analysis of your request, we will initiate a search for responsive records. If, however, we determine that your request needs clarification, we will contact you. Additionally, if our searching units advise us that you have requested a voluminous number of records that requires extensive search, production, and review, we will contact you to discuss options for narrowing the scope to process your request as quickly and efficiently as possible.

Please note that CMS receives a very high volume of FOIA requests. The following unusual circumstances, as defined by 5 USC § 552(a)(6), may affect our ability to fulfill a FOIA request within 20 business days. These include circumstances such as (1) the request requires us to search for and collect records from multiple components and/or field offices; (2) the request involves a voluminous number of records that must be located, compiled, transferred to this office, and reviewed. In addition, given our high volume of requests, and in accordance with federal regulations, our processing policy includes factors such as the date and complexity of the request.

The FOIA assumes that requesters are willing to pay fees up to \$25.00. If estimated fees to process your request exceed \$25.00, we will notify you and may suspend processing until we receive written confirmation that you are willing to pay the estimated fees. Additionally, if the

estimated fees exceed \$250.00, the law authorizes us to collect the fees *in advance* of processing the request.

If your request sought a fee waiver or expedited processing, we will send additional communication to provide you with our determination decision(s).

If you are not satisfied with any aspect of the processing and handling of this request, please contact Kenyetta Stringfellow.

You also have the right to seek dispute resolution services from:

Desiree Gaynor  
CMS FOIA Public Liaison  
Centers for Medicare & Medicaid Services  
7500 Security Blvd., MS C5-11-06  
Baltimore, Maryland 21244-1850  
Telephone: (410) 786-5353 fax (443)-380-8871

and/or:

Office of Government Information Services  
National Archives and 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,

*Desiree Gaynor*

Desiree Gaynor  
Director, Division of FOIA Analysis – A  
Freedom of Information Group

NEW: You can now pay for CMS FOIA requests online through a secure website operated by the Department of the Treasury. Please have your invoice (CMS Form 633) readily available and click here to access Pay.Gov and pay online. <https://www.pay.gov/public/form/start/1279541226>