

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE LANIER LAW FIRM)
10940 W. Sam Houston Parkway North,)
Suite 100)
Houston, TX 77064)

Plaintiff,)

v.)

U.S. DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)
200 Independence Ave., SW)
Washington, DC 20201)

and)

CENTERS FOR MEDICARE AND)
MEDICAID SERVICES)
7500 Security Boulevard)
Baltimore, Maryland 21244-1850)

Defendants.)

CIVIL ACTION NO.

COMPLAINT

Plaintiff The Lanier Law Firm, by and through its undersigned counsel, brings this action against Defendants U.S. Department of Health & Human Services (“HHS”) and Centers for Medicare and Medicaid Services (“CMS,” together with HHS, “Defendants”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue in this district is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Because Defendants have failed to comply with the applicable statutory time-limit for responding to a request under the FOIA, Plaintiff is deemed to have constructively exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

4. Plaintiff, The Lanier Law Firm, is a law firm that maintains a principal place of business in Houston, Texas, with additional offices in New York, New York and Los Angeles, California. Plaintiff's full residence address is 10940 W. Sam Houston Parkway North, Suite 100, Houston, TX 77064.

5. Defendant, U.S. Department of Health and Human Services, is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). HHS is headquartered at 200 Independence Ave., SW, Washington, DC 20201. HHS has possession, custody, and control of records that Plaintiff seeks through its FOIA request.

6. Defendant, Centers for Medicare and Medicaid Services, is an operating division within the Office of the Secretary of HHS and is an agency of the executive branch of the U.S. government within the meaning of 5 U.S.C. § 552(f)(1). CMS is headquartered at 7500 Security Boulevard, Baltimore, Maryland 21244-1850. CMS has possession, custody, and control of records that Plaintiff seeks through its FOIA request.

STATEMENT OF FACTS

7. On April 26, 2024, Plaintiff, through counsel, sent a single, narrowly-tailored FOIA request to CMS (the “Request”), seeking:

Communications, from January 2020 to present, concerning the implementation of the United States Department of Health and Human Services’ (“HHS”) global resolution model of Medicare liens or MSP recovery claims in mass tort litigation settlements between any employee within the Office of Financial Management of CMS and the [list of settlement administrator email domains].

A true and correct copy of the Request is annexed as **Exhibit A**.

8. On May 2, 2024, CMS responded that it received the Request on April 26, 2024, and assigned the Request Control Number 042620247032 and PIN 8HHZ. A true and correct copy of CMS’s response letter is annexed as **Exhibit B**.

9. The statutory twenty-working day period for CMS to provide a determination response to the Request ended on May 16, 2024.

10. As of the date of this Complaint, Defendants have failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefore; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff repeats and realleges each allegation set forth in the preceding paragraphs and incorporates them by reference herein.

12. Defendants HHS and CMS are agencies subject to FOIA and must therefore release in response to a FOIA request any disclosable records in their possession at the time of the request

and provide a lawful reason for withholding any material as to which it is claiming an exemption under FOIA.

13. Plaintiff, through the Request, properly requested records within Defendants' control.

14. Plaintiff has exhausted all administrative remedies under the FOIA as to the Request. To trigger FOIA's administrative exhaustion requirement, Defendants were required to make a final determination on the Request no later than May 16, 2024. Because Defendants failed to make a final determination on the Request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

15. Defendants' failure to timely provide a determination on the Request violates the FOIA, 5 U.S.C. § 552(a)(6)(A).

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- (1) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to the Request;
- (2) Order Defendants to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to the Request and an index justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to the Request;
- (4) Award Plaintiff attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant such other and further relief as the Court deems just and proper.

Dated: May 17, 2024

Respectfully submitted,

**NELSON MULLINS RILEY &
SCARBOROUGH**

/s/ James W. Orth

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