

EXHIBIT D



DEPARTMENT OF HEALTH & HUMAN SERVICES

Exhibit 3

FOIA Office
Health Resources and
Services Administration
5600 Fishers Lane, Rm. 13N82
Rockville, MD 20857
Telephone: 301-443-2865

January 29, 2018

Sent via email

Jason Livingston
UNOS
700 North 4th Street
Richmond, VA 23219
jason.livingston@unos.org

Re: Freedom of Information Act (FOIA) Case Number 18F081 Final Response (Revised)

Dear Mr. Livingston:

This final letter responds to your FOIA request dated January 12, 2018. In summary, you requested copies of all responses submitted to the Health Resources and Services Administration (HRSA) in response to the Request for Information for the Organ Procurement and Transplantation Network (OPTN), issued by the Healthcare Systems Bureau on December 1, 2017, with a response deadline of December 23, 2017, including any responses that may have been submitted after the deadline regardless of whether those responses were considered by the government.

On January 19, 2018, this office issued a final response to you advising that no documents had been located responsive to your request, specifically citing that the Healthcare Systems Bureau (HSB) had not received any comments in response to the notice. In your response dated January 19, 2018, you advised that your organization, UNOS, had submitted comments for that period and provided a copy of that communication to reference in the renewed search. In that communication, you indicated that you were not interested in receiving a copy of the comments submitted by UNOS.

Based on the information provided, the Office of Acquisitions Management and Policy (OAMP) conducted a search and located 50 pages of responsive records (excluding comments submitted by UNOS). I have determined to withhold all 50 pages, in their entirety, under FOIA Exemption(s) 4 and 5, 5 U.S.C. § (b)(4) and (b)(5). At this time the procurement period remains open and HRSA has not made a final determination.

Exemption 4 permits the withholding of commercial or financial information that was obtained from a person outside the government and that is privileged or confidential. The withholding of such information is permitted if disclosure is likely to cause substantial competitive harm to the person who submitted the information. The withheld material consists of statements from prospective offerors.

Exemption 5 of the FOIA exempts from disclosure certain inter- or intra-agency communications protected by the court-recognized privileges, in this case the deliberative process privilege. The deliberative process privilege permits the withholding of documents that reflect institutional deliberations and covers agency records that are “predecisional” to an agency decision and “deliberative” as well. It is intended to promote open and frank discussion among those responsible for making governmental decisions. The withheld material consists of feedback, comments and suggestions relative to the procurement requirement that may be improved upon, made clearer, or changed for the better. The requested material may be used in the promulgation of changes to the procurement process.

There will be no charges in this instance because the billable costs are less than our threshold of \$25.

The U.S. Department of Health and Human Services’ (HHS) policy calls for the fullest responsible disclosure consistent with the requirements of administrative necessity and confidentiality which are recognized by the FOIA, 5 U.S.C. § 552 and HHS’ Freedom of Information regulations at 45 C.F.R. Part 5.

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:

Dr. Charmaine Yoest
Assistant Secretary for Public Affairs and Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Please clearly mark both the envelope and your letter “HRSA 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 HRSA’s FOIA Public Liaison for assistance at:

Denise F. Wallace
HRSA FOIA Public Liaison
U.S. Department of Health and Human Services
Health Resources and Services Administration
Freedom of Information Act
5600 Fishers Lane, 13N82

Rockville, MD 20857
Telephone: (301) 443-2865
E-mail: foia@hrsa.gov

If you are unable to resolve your FOIA dispute through our 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
Fax: 202-741-5769

If you have any questions, please do not hesitate to contact Edmund Towles at 301-443-2865 or at FOIA@hrsa.gov.

Sincerely,

For

DFWallace

Thomas Flavin
Freedom of Information Act Office