

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WESTERN STAR HOSPITAL AUTHORITY	:	
INC., t/d/b/a METRO HEALTH EMS	:	CIVIL ACTION
Plaintiff	:	
vs.	:	
	:	
UNITED STATES DEPARTMENT OF	:	
VETERAN AFFAIRS	:	
Defendant	:	NO. 2:18-cv-1011

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. §552 (“FOIA”), for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from the plaintiff, Western Star Hospital Authority, Inc., t/d/b/a/ Metro Health, EMS by the defendant United States Department of Veterans Affairs.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §552(a)(4)(B).

3. This Court also has jurisdiction over this action pursuant to 28 U.S.C. §1331.

4. Venue lies in this district under 5 U.S.C. §552(a)(4)(B) because, upon information and belief, the documents which are the subject of the FOIA request at issue are located at The Department of Veterans Affairs, (the “VA”), Pittsburgh, Western District of PA.

RELEVANT FACTS

5. The plaintiff Western-Star Hospital Authority, Inc. t/d/b/a Metro-Health, EMS (“Metro-Health”), is an emergency transportation company that provides basic life support and advanced life support ambulatory services to the greater Pittsburg area.

6. Metro-Health is a Pennsylvania corporation with a principal place of business located at 5627 Musgrave Street, Philadelphia, PA.
7. B. Lamont Doyle, NREMT-P RN BSN, Chief Operating Officer of Metro-Health EMS, is of African American descent.
8. In that regard, Metro-Health is owned and/or operated by a minority.
9. The defendant United States Department of Veterans Affairs (the “Department of VA”) is a federal cabinet-level agency which provides healthcare and related services to military veterans at VA medical centers and other outpatient medical treatment centers.
10. Among the medical centers utilized by the Department of VA is University of Pittsburgh Medical Center (“UPMC”).
11. UPMC is a health care provider and insurer based in Pittsburgh, PA.
12. UPMC operates more than thirty (30) academic, community, and specialty hospitals across Pennsylvania.
13. UPMC runs a program known as “Medcall” a/k/a “PARC” (“PARC”).
14. PARC is an ambulance brokerage service for all UPMC-run facilities.
15. PARC receives incoming calls from patients in need of emergency transportation services, and assigns the call to one of several EMT companies it has partnered with.
16. Based on information and belief, UPMC, through PARC, receives a brokerage fee for every call they assign to an EMT provider.
17. Medevac Ambulance Company (“MAC”) is an ambulance company hired by UPMC to perform services as staff/paramedics, at the VA hospitals in Pittsburgh, PA and the surrounding areas.

18. In that regard, based on information and belief, MAC serves as the staffing agent for the Department of VA at the VA hospitals in Pittsburgh, PA and the surrounding areas.

19. The Bureau of Emergency Medical Services of the PA Department of Health is responsible for the statewide development and coordination of a comprehensive system to prevent and reduce premature death and disability.

20. Under Pennsylvania law, the Bureau of Emergency Medical Services has the responsibility for licensing all emergency medical service agencies and all prehospital care providers in the Commonwealth.

21. The Emergency Medical Services Division of the PA Department of Health is known as Emergency Medical Services West (“EMSW”).

22. The PA Department of Health appointed EMSW as the regional emergency medical services (“EMS”) council for the greater Pittsburgh area, pursuant to 35 Pa.C.S. § 8109 and 28 Pa. Code § 1021.101.

23. As the regional EMS council, EMSW’s duties include, but are not limited to “carry[ing] out, to the extent feasible, the Statewide and regional EMS system plans” and ensuring that EMS providers met the “licensure, certification, registration and continuing education requirements established under the act.”

24. EMSW is governed by its Board of Directors.

25. Based on information and belief, at or around the time of the incidents at issue, the Board of Directors of EMSW consisted, in part, of individuals who were employed by UPMC and/or MAC.

THE CONTRACT AND METRO-HEALTH'S PRE AND POST CONTRACT CONCERNS RELATED TO ITS REQUEST FOR RECORDS

26. In December 2016, the Department of VA awarded a contract to the plaintiff Metro-Health, to provide ambulance services to Veterans Hospitals in Pittsburgh, PA (the "Contract").

27. Before the Department of VA awarded the Contract to Metro-Health, Metro-Health experienced unreasonable and unnecessary delays in the bidding process.

28. Based on information and belief, the aforementioned unreasonable and unnecessary delays were occasioned by officials, employees and/or representatives of EMSW.

29. Based on information and belief, the unreasonable and unnecessary delays were occasioned by officials, employees and/or representatives of EMSW because of their racial bias against Metro-Health.

30. After Metro-Health secured the Contract, it experienced unreasonable, unnecessary and unprecedented delays in the licensure and/or inspection of its vehicles and/or equipment.

31. Based on information and belief, the unreasonable, unnecessary and unprecedented delays experienced by Metro-Health were occasioned by officials, employees and/or representatives of EMSW and/or the Department of the VA.

32. Based on information and belief, employees and/or representatives of EMSW also imposed unreasonable, unwarranted and/or unprecedented requirements on Metro-Health for the licensure and/or inspection of vehicles and/or equipment.

33. Based on information and belief, the aforementioned unreasonable, unwarranted and/or unprecedented delays stemmed from the racial bias against Metro-Health of officials, employees and/or representatives of EMSW, UPMC and/or the Department of VA.

34. Once the Contract was awarded, the defendant Department of VA scheduled an initial meeting with the plaintiff Metro-Health, presumably to discuss Metro-Health's duties and responsibilities under the Contract.

35. Unbeknownst to Metro-Health, the defendant Department of VA invited and/or permitted representatives of UPMC/PARC to attend the meeting.

36. Based on information and belief, the Department of VA's invitation and/or permission allowing UPMC/PARC to attend this meeting constituted a conflict of interest against Metro-Health.

37. Further, based on information and belief, the Department of VA's invitation and/or permission allowing UPMC/PARC to attend this meeting gave UPMC the opportunity to interfere with and/or attempt to interfere with the Department of VA's administration of the Contract, against the interests of the plaintiff Metro-Health.

38. Based on information and belief, the Department of VA's invitation and/or permission allowing UPMC/PARC to attend this meeting gave UPMC the opportunity to interfere with and/or attempt to interfere with the Department of VA's administration of the Contract, against the interests of the plaintiff Metro-Health stemmed from the racial bias against Metro-Health of officials, employees and/or representatives of UPMC and/or the Department of VA.

39. Based on information and belief, after the plaintiff Metro-Health began performing under the Contract, officials, employees and/or representatives of MAC, apparently

in their capacity as the staffing agent for the Department of VA, sent multiple email messages to UPMC and/or MAC employees directing them to impose unprecedented and heightened checks and/or requirements on Metro-Health, when Metro-Health presented to transport patients.

40. In addition, based on information and belief, officials, employees and/or representatives of MAC, in their capacity as the staffing agent for the Department of VA, instructed their employees to (a) delay calling the plaintiff Metro-Health for transportation services, (b) alter Metro-Health's logged response times and (c) upgrade the call levels, in order to ensure that the plaintiff Metro-Health did not respond to calls timely and/or did not present at the VA hospital with the proper equipment.

41. Based on information and belief, officials, employees and/or representatives of MAC, in their capacity as the staffing agent for the Department of VA, employed other tactics designed to assure that Metro-Health did not receive calls timely and/or would fail to respond to calls in a timely fashion.

42. Further, based on information and belief, officials, employees and/or representatives of MAC, in their capacity as the staffing agent for the Department of VA, conducted multiple unprecedented, random and unannounced inspections of Metro-Health vehicles at various locations in the Pittsburgh, PA area.

43. Based on information and belief, the aforementioned conduct constitutes attempts by officials, employees and/or representatives the Department of VA, EMSW, UPMC and/or MAC to: (a) sabotage and/or interfere with the plaintiff's performance under the Contract; (b) damage the plaintiff's reputation; and/or (b) cause the plaintiff to suffer lost income and profits, all because of the race of the owners and/or operators of the plaintiff business.

44. Based on the above mentioned conduct and the plaintiff's belief that the above referenced conduct stemmed from and/or was based on the collective racial bias against Metro-Health by certain officials, employees and/or representatives of the Department of VA, EMSW, UPMC and/or MAC, Metro-Health lodged a complaint with the Department of VA.

45. Based on information and belief, in response to the complaint lodged by Metro-Health, a representative of Department of VA instituted an investigation into Metro-Health's complaints.

**THE DEPARTMENT OF VA'S INVESTIGATION INTO
THE COMPLAINTS LODGED BY METRO-HEALTH**

46. Based on information and belief, in response to and/or as a result of the complaint lodged by the plaintiff Metro-Health, the Department of VA Administrative Investigation Board (the "AIB"), conducted an investigation of Metro-Health's complaint.

47. Based on information and belief, the information collected by the AIB in response to the complaint lodged by the plaintiff Metro-Health, supports and/or substantiates the allegations asserted by the plaintiff Metro-Health in the complaint served on the Department of VA and in this complaint for injunctive relief.

**THE PLAINTIFF'S FOIA REQUEST AND
THE DEFEDANT'S FAILURE TO RESPOND**

48. Pursuant to the Freedom of Information Act ("FOIA") on October 2, 2017, the plaintiff Metro-Health sought copies of all documents and information gathered by the AIB as a part of its investigation into Metro-Health's claim (the "Request"). A copy of the Request is attached hereto, as Exhibit "1".

49. Between October 2, 2017 and December 27, 2017, the VA transferred the plaintiff's Request to multiple departments and locations at the Department of the VA.

50. On or about December 27, 2017, Jeffrey Adamson, (Acting) VA Healthcare VISN 4 FOIA Officer, advised the plaintiff that the VHA had assigned the Request to him.

51. Four (4) months later, Mr. Adamson forwarded a letter to the plaintiff, a copy of which is attached hereto as Exhibit “2”, and a CD containing 1385 pages of documents, replete with redactions (collectively referred to as the “Response”).

52. The Response is insufficient and contrary to the obligations of the Department of the VA under the applicable provisions of the FOIA.

53. By letter dated June 8, 2018, the plaintiff Metro-Health served the Office of General Counsel of the Department of VA, with its appeal of the Response under the FOIA. A copy of the package is attached hereto as Exhibit “3”.

54. Via letter dated June 15, 2018, the Department of VA acknowledged receipt of the appeal filed by Metro-Health, but did not produce unblemished copies of the records requested. A copy of the letter is attached hereto as Exhibit “4”.

55. To date, the defendant Department of the VA has not provided the records requested by the plaintiff Metro-Health in its FOIA Request, notwithstanding the FOIA requirement that any agency respond within twenty (20) working days of the Request.

56. The plaintiff Metro-Health has exhausted the applicable administrative remedies with to its FOIA Request to the defendant Department of VA.

57. The defendant Department of VA has wrongfully withheld the records requested by the plaintiff Metro-Health.

WHEREFORE, the plaintiff Western-Star Hospital Authority, Inc. t/d/b/a Metro-Health, EMS, prays that this Court:

- A. Order the defendant Department of VA to disclose the requested records in their entirety and make copies available to the plaintiff;
- B. Provide for expeditious proceedings in this action;
- C. Award the plaintiff its costs and reasonable attorneys' fees incurred in this action;
and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

FINEMAN KREKSTEIN & HARRIS, P.C.

/s/ Richard J. Perr

BY: _____

Richard J. Perr, Esquire
Attorney I.D. No. 72883
Phinorice J. Boldin, Esquire
Attorney I.D. No.: 68027
Laura A. Seider, Esquire
Attorney I.D. No.: 308971
Ten Penn Center
1801 Market Street – Suite 1100
Philadelphia, PA 19103
215-893-9300

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