

Exhibit 5



Anthony Calamunci, Esq.
Partner

6800 W. Central Ave., Suite E
Toledo, OH 43617

Direct: (567) 455-5257

Office: (419) 214-1050

Cell: (419) 376-1776

Fax: (484) 251-7797

anthony.calamunci@fisherbroyles.com

www.FisherBroyles.com

May 1, 2018

Defense Health Agency Office of
General Counsel
National Capital Region Medical
Directorate
Attn: Mr. Paul T. Cygnarowicz
8901 Wisconsin Avenue (Building 27)
Bethesda, MD 20889

Re: CONTROL #2018-160, FREEDOM OF INFORMATION ACT APPEAL

Dear Defense Health Agency Office of General Counsel:

On January 29, 2018, my office submitted a Freedom of Information Act (FOIA) request. On April 20, 2018, DHA responded with a determination under FOIA exemption (b)(7). Noticeably absent is any reference to the specific section of Exemption (b)(7) that the DHA believes is applicable and a basis to ignore the FOIA request. Regardless, review of this blanket defense by DHA shows that the exemption is not properly asserted in this case and the requested documents should be identified and produced.

Exemption **(b)(7)** pertains to records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

Exemptions (b)(7)(A)(B)(C) are not applicable. Specifically, there is no possibility that the information requested by the Requestors - SP2, LLC d/b/a Smart Pharmacy and/or Smart Pharmacy II Business Entities, William C. Scrogins, and Gregory H. Balotin – about themselves would trigger the applicability of Exemptions (b)(7)(A)(B)(C). Disclosure of the requested information cannot and will not interfere with any “potential” enforcement hearings, deprive Respondents of a fair trial; or be an invasion into personal privacy. As such, Exemptions (b)(7)(A)(B)(C) do not apply.

Next, implementation of Exemption (B)(7)(D), even if applicable, does not warrant the DHA’s complete non-compliance with the FOIA request. The DHA can redact any confidential source and turn the remainder of the public documents over. Claiming the existence of a confidential source in documents is not a basis to simply refuse a response. Likewise, Exemptions (b)(7)(E)(F) do not apply as a basis to substantiate DHA’s refusal to provide documentation pursuant to the FOIA. Review of the information requested does not include any documentation for techniques or procedures. Moreover, there is no justification for a claim that lives or physical safety of others would be endanger.

The FOIA request dated January 29, 2018 was proper and needs to be answered. Requestors ask that the Defense Health Agency Office of General Counsel review this appeal and order DHA to respond to the prior FOIA request immediately.

Very truly yours,

FisherBroyles, LLP



Anthony Calamunci, Esq.

Partner

cc Amy L. Butler, Esq.

AJC/bms