

EXHIBIT C



February 19, 2019

VIA Electronic Delivery

CMS FOIA Officer
Centers for Medicare & Medicaid Services
Mailstop N2-20-16
7500 Security Boulevard
Baltimore, MD 21244
FOIA_Request@cms.hhs.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the CMS FOIA regulations at 45 C.F.R. Part 5, Democracy Forward Foundation makes the following request for records.

I. Background

According to an August 30, 2017 press release, the pharmaceutical company Novartis reported that it was working with CMS to improve the efficiency of regulatory requirements. They also expressed an interest in continuing to work with CMS on outcomes-based pricing, also known as value-based and indications-based pricing, for a variety of pharmaceutical products.¹

In January 2018, Novartis CEO Vas Narasimhan dined with President Donald Trump, just three weeks after the company reportedly made the last of 12 monthly payments to Michael Cohen’s company, Essential Consultants LLC, payments that were made for the stated purpose of influencing government policy decisions.² In January 2017, Joe Jimenez, a chief executive at Novartis and chairman-elect of PhRMA, met with President Trump. Following that meeting, several pharmaceutical companies wrote that they were encouraged by Trump’s focus on a value-driven health care system.³

II. Records Requested

In an effort to better understand, and explain to the public, CMS’s dealings with Novartis over

¹<https://www.novartis.com/news/media-releases/novartis-receives-first-ever-fda-approval-car-t-cell-therapy-kymriahtm-ctl019>

²<https://news.yahoo.com/untangling-trump-lawyer-ties-novartis-161220369.html>

³<https://finance.yahoo.com/news/trump-meet-novartis-ceo-other-121249594.html>

potential value-based pricing agreements and other drug pricing issues, Democracy Forward Foundation requests that CMS produce the following within twenty (20) business days:

1. Any and all records than contain any of the following key terms: CAR-T, Michael Cohen, Essential Consultants, Novartis, @novartis.com, Jimenez, Narasimhan, Alston & Bird, @alston.com, Brownstein Hyatt, @bhfs.com, Capitol Counsel, @capitolcounsel.com, Capitol Hill Consulting Group, @caphillgrp.com, East End Group, @eastendgrp.com, McManus, @mcmanusgrp.com, Monument Policy Group, @monumentpolicy.com, Scully, Roskey & Missmar, @wileyrein.com, Thorn Run Partners, @thornrun.com, Tiber Creek Health Strategies, @pmj-dc.com, Williams & Jensen, @wms-jen.com, Peck Madigan Jones, @pmj-dc.com, Trimpa Group, @trimpagroup.com, Daniel Casserly, dan.casserly@novartis.com, Shawn O’Neil, Leo Farber, Sarah Haller, Wendy Sussman, Candie Phipps, Joseph McGowan, or Shelly Mui-Lipnik.
2. Any and all records sent to or from Joseph.J.Grogan@omb.eop.gov, [Sophia M. Wright@omb.eop.gov](mailto:Sophia.M.Wright@omb.eop.gov), or [Thomas M. Reilly@omb.eop.gov](mailto:Thomas.M.Reilly@omb.eop.gov).
3. Any and all records relating to a January 2018 meeting between President Donald Trump and Novartis CEO Vas Narasimhan.
4. Any and all records relating to any January 2017 meeting between President Donald Trump and Pharmaceutical executives, including Novartis CEO Joe Jimenez. This includes communications following up on discussions that occurred at the meeting.
5. Any and all records relating to any May 2017 meeting between Novartis representatives and administration officials, as reported by Novartis executive Joe Jimenez.⁴ This includes communications following up on discussions that occurred at the meeting.

III. Scope of Search

The time period for this search should be from January 20, 2017, to the time the search is conducted.

Please include copies of attachments in all correspondence that qualify as responsive records.

Please limit the search to the following CMS offices: Office of Administrator, Principal Deputy Administrator for Operations, Principal Deputy Administrator for Medicare & Director Center for Medicare, Deputy Chief of Staff, Deputy Chief Operating Officer, Center for Medicare & Medicaid Innovation (“CMMI”)

For responsive records, please disregard news clips that do not include commentary added by sender or recipient.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive

⁴ <https://www.thepharmaletter.com/article/joe-jimenez-optimistic-on-outcome-of-us-drug-pricing-debate>

records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation, or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

IV. Request for Fee Waiver

Democracy Forward requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Democracy Forward also requests a waiver of search fees on the ground that they qualify as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because the information sought through this request will illuminate the nature of CMS’s decision-making role in value-based pricing agreement negotiations, an issue of public concern with a clear and logical connection to operations or activities of the Federal Government. Because these records will shed light on the

reasons for this decision in a manner that has not already been made public, they also will be meaningfully informative and will contribute to public understanding “significantly.” 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, Democracy Forward is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and is dedicated to promoting policy engagement and civic education. As a non-profit organization Democracy Forward does not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

Democracy Forward also requests a waiver of search fees because each is a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Democracy Forward meets the definition of “representative[s] of the news media” because it gathers information, exercises editorial discretion in selecting and organizing documents, and “distributes the resulting work to the public.” *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). A core mission of Democracy Forward is to educate the public about improper government activity, and it intends to use the materials gathered to educate the public through its website, press releases, and social media outlets.⁵ It is therefore a “representative of the news media” for the same reasons it is “primarily engaged in disseminating information.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(6)(E)(v)(II).

Accordingly, Democracy Forward qualifies for a fee waiver.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

V. Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Ben Seel as soon as possible at foia@democracyforward.org or 202-448-9090. We appreciate your assistance and look forward to your prompt response.

Sincerely,
/s/ Ben Seel
Ben Seel
Democracy Forward Foundation

⁵ See, e.g. Vera Bergengruen, New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump, BuzzFeed News (July 25, 2018), <https://www.buzzfeednews.com/article/verabergengruen/these-emailshow-what-happens-when-the-white-house-keeps>(citing to emails obtained through a request for documents made by Democracy Forward under the FOIA); see also Democracy Forward (@DemocracyFwd), Twitter (July 27, 2018, 8:45 AM), <https://twitter.com/DemocracyFwd/status/1022870550769754112>.