

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, N2-20-16
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs/ Openness, Transparency & Accountability Group

Via Electronic Mail and Published Notice

DATE: **June 2, 2011**

RE: Pre-disclosure Notification:
FOIA Request for Source Data: <http://finder.healthcare.gov>

Dear Sir or Madam:

The Centers for Medicare & Medicaid Services (CMS) has received a number of Freedom of Information Act (FOIA) requests for information relating to an element of our nation's recently enacted health care reform law. Specifically, our office has received requests for the source data underlying the March 2, 2011, plan finder refresh to the Department of Health & Human Services' (DHHS) newly created health insurance web portal, <http://finder.healthcare.gov>. This online consumer resource was created by Section 1103(a) of the Patient Protection and Affordable Care Act (PPACA). As evidenced by the attached request letters, there is significant public interest in this material, including certain data elements that, while required for submission by DHHS regulations, have not yet been made public on the web portal. As a result, the CMS FOIA office is currently working to address a number of source data-related information requests.

You are listed as the contact person for a health benefit plan provider that is required to periodically submit certain data in accordance with Section 1103(a). The data submitted by your organization in response to the attached [January 12, 2011, memo](#) from the Center for Consumer Information & Insurance Oversight (CCIIO) (formerly the Office of Consumer Information & Insurance Oversight (OCIIO)), is directly responsive to certain of these FOIA requests and will be reviewed for disclosure concerns by this office pursuant to the Act. The purpose of this letter is to provide your organization with an opportunity to participate in our decision-making process. Please note that this letter does not impact your organization's responsibilities under the PPACA, but merely serves to provide you with the chance to voice any concerns that you might have with the public disclosure of your data submissions.

Under the FOIA, government agencies must disclose all materials responsive to an information request unless an exemption to the Act calls for the records (or a reasonably segregable portion thereof) to be withheld. When responsive materials may contain proprietary information, we consider whether some or all of such information might be withheld under FOIA Exemption 4 (5 U.S.C. § 552(b)(4)). This exemption permits a federal agency to withhold information that is in the nature of "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." If it is determined that all, or some portion of, the responsive materials qualify for withholding under the exemption, we will redact this information. We will, however, disclose all information to which the exemption does not apply.

Accordingly, this notice serves to provide your organization with the opportunity to take part in our review process by identifying information within your organization's data submissions that you believe should be withheld under FOIA Exemption 4. This invitation is extended in compliance with Executive Order No. 12600 and agency FOIA regulations.

To this end, we ask that you please review your data submissions for any information that you believe should be withheld under FOIA Exemption 4 and advise us to that effect pursuant to the following guidelines:

1. Identify potential Exemption 4 information clearly and specifically. To do so, please identify specific data/fields within your submissions for which you believe disclosure would pose a competitive disadvantage to your organization.
2. Furnish written comments, along with any other pertinent information you may wish to offer, to demonstrate that: (A.) the designated data/field contains confidential commercial information (i.e. information protected by Exemption 4), and (B.) the disclosure of this information would cause your organization substantial competitive harm.
3. In expressing your position regarding any particular information you want us to withhold under Exemption 4, it is important to state the specific, reasonably foreseeable, and substantial competitive harm that would be likely to result from the release of such information. Generalized conclusions of competitive harm are not a sufficient basis for us to invoke the exemption (and thereby protect your interests).
4. It is also important that you identify only that information for which you can demonstrate that disclosure would result in substantial competitive injury. Broad designations of an entire data submission are not useful to assist our analysis because, by law, we must disclose any reasonably segregable portion of a record that contains non-exempt information. Therefore, you should tailor your recommendations accordingly.
5. **Your reply must be received in this office within five (5) business days of the date of this letter.** The time constraints set forth in the FOIA require Federal agencies to promptly respond to requests; therefore we are unable to offer you additional time to provide a response. Please send any comments you wish to make directly to:

FOIASourceData@cms.hhs.gov

Although we will reach an independent disclosure decision regarding these materials, your comments will ensure that your position is considered during the agency's deliberative process. In addition, even if you should have no disclosure concerns regarding the release of this information, we ask that you provide our office with a response to this notice. Your cooperation in this regard is greatly appreciated.

Questions concerning this matter may be directed to Mr. Brandon Lancey at (410) 786-5358. Thank you for your cooperation in this matter.

Sincerely,

/s/

Michael S. Marquis
Director
Division of Freedom of Information

Attachments (3): FOIA Request from Anthony Damico, Kaiser Family Foundation
FOIA Request from Frederic Blavin, The Urban Institute
[January 12, 2011 Plan Finder Refresh Memo from CCIIO](#)