

Exhibit B

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/Freedom Information Group

Refer to: Control Number 110720147009 & PIN 97KS

September 10, 2015

Mr. Brain Hauss
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, New York 10004

Dear Mr. Hauss:

This letter is in response to your November 5, 2014 Freedom of Information Act (FOIA) (5 U.S.C. § 552) request for a copy of the following:

1. All materials, within the last five years, related to allegations of improper care, violations of the Emergency Medical Treatment and Active Labor Act (EMTALA), or violations of any Centers for Medicare & Medicaid Services (CMS) regulation related to pregnancy-related treatment, including, but not limited to, treatment for miscarriage, abortion, or sterilization at hospitals receiving federal funds. Such materials may include, but are not limited to activity logs, incident reports, complaint forms, memoranda, correspondence, plans of correction, etc.;
2. All materials that memorialize rules, guidelines, policies, practices, standards, instructions, reporting requirements, qualifications, and certifications concerning the proper treatment of, and/or standard of care for, pregnancy-related conditions or treatment at hospitals receiving federal funds that are in effect now or were in effect in the last five years.

After careful review of the 150 pages of records forwarded to my office, I have decided to release 139 pages of them to you. However, I am denying you access to 11 pages in full and portions of four pages pursuant to Exemptions 5 and 6 of the FOIA (5 U.S.C. § 552 (b)(5) & (b)(6)).

Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” Among the privileges incorporated into Exemption 5 is the deliberative process privilege, which protects the “decision making processes of government agencies.”

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Also, I am denying portions of pages are Exemption 6 permits a federal agency to withhold information about individuals in “personnel and medical files and similar files” when disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.”

In making my determination, I have weighed the public interest in disclosure (which the Supreme Court has held is to be limited in this context to the public interest that would be served by shedding light on the agency’s performance of its statutory duties) against the harm to the privacy interests of the individuals identified in these records. In this case, I have concluded that the disclosure of this information would reveal little or nothing about the conduct of the agency itself and, therefore, that the privacy interests of the subject individuals in the redacted information far outweigh the public interest in disclosure.

There are no charges assessed for the processing of this request.

You have the right to appeal this decision. To do so, you must put your appeal in writing and send it within 30 days to: The Deputy Administrator and Chief Operating Officer, CMS, Room C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Please mark the envelope containing your letter of appeal “Freedom of Information Act Appeal” and enclose a copy of this letter with your appeal.

Sincerely yours,

A handwritten signature in black ink that reads "Jay Olin". The signature is written in a cursive, flowing style.

Jay Olin
Director, Division of FOIA Analysis – C
Freedom of Information Group

Enclosure (139 pages)