

Matt Ehling
Public Record Media, LLC
2375 University Ave. W.
Ste 200
Saint Paul, MN 55114



April 23, 2012

Centers for Medicaid and Medicare Services
Attn: Principal Deputy Administrator
Room C5-16-03
7500 Security Boulevard
Baltimore, Maryland 21244

RE: Administrative appeal - FOIA request control number 030720127082, PIN W767

Dear Deputy Principal Administrator,

On February 22 of 2012, I submitted a Freedom of Information Act (5 U.S.C. § 552) request to your office. The request was sent via certified mail, and it sought the following information:

“Any and all memoranda, correspondence, or communications - in paper or electronic form – between employees or officials of CMS, and Minnesota State Senator John Marty;

Any and all memoranda, correspondence, or communications – in paper or electronic form – between employees and/or officials of CMS related to Minnesota State Senator John Marty;

Any and all memoranda, correspondence, or communications – in paper or electronic form – between employees and/or officials of CMS, produced between January 1, 2011, and February 1, 2012, related to determinations made by your agency about Minnesota’s 1115 Medicaid waiver status.”

The request was submitted as a part of news gathering. In it, I requested a waiver of fees, since disclosure of the requested information would contribute significantly to the public’s understanding of the federal government’s role relative to Minnesota’s public health care programs. In addition, I set a limit on the amount of fees that I would be willing to pay without prior notice, if my waiver was denied.

For reference, a copy of the original request is attached to this correspondence.

Response letter of March 8, 2012

On March 8th, your agency responded to my initial request, and assigned it control number 030720127082, PIN number W767. In the letter, Michael Marquis, Director of the Division of Freedom of Information, noted that my request had been received, and detailed your agency's procedures for making requests for expedited processing, as well as for providing additional information related to requests for the waiver of fees.

For reference, a copy of that letter is attached to this correspondence.

Expiration of twenty-day statutory response time

As you are aware, 5 U.S.C. § 552(6)(A)(i) requires federal agencies to make a determination about the release of information requested via the FOIA within twenty business days, and also to notify the requester of that determination.

Over twenty business days have elapsed since I received your agency's letter of March 8, 2012.

Notice of unusual circumstances impacting response time

In his letter of March 8, Director Michael Marquis noted that certain "unusual and exceptional circumstances" would impact your agency's response time, including the need to collect material from field offices, as well as your agency's heavy volume of FOIA requests.

5 U.S.C. § 552(6)(B)(i) allows for an up to ten-day extension of the normal twenty-day response time due to "unusual circumstances" as described in 5 U.S.C. § 552(6)(B)(iii). Such an extension requires the agency to provide written notification of the extension.

Director Marquis' written notice of the "unusual and exceptional circumstances" that would impact your agency's response time could be interpreted as an implicit notification of the ten-day maximum extension to the statutory FOIA response time, since such an extension is the only one available under 5 U.S.C. § 552.

Expiration of ten-day extension period

As of the date of this writing, the ten-day maximum extension period that began after the expiration of the twenty-day statutory response time has elapsed.

Administrative review sought

I am seeking administrative review of your agency's failure to respond to my FOIA request of February 22, 2012. My right to administrative review is established by the FOIA, and by your agency's appeals procedures as set out in the CMS Freedom of Information Act (FOIA) Policy and Procedural Instructions (the "Instructions"). According to section 30.11 of the Instructions, a requestor can file an administrative appeal based upon "constructive denial" of a request. "Constructive denial" is defined as "when the agency has not responded to a FOIA request within statutory timelines."

Constructive denial is basis for administrative review

As of the date of this writing, your agency has not provided a determination related to my request during either the twenty-day statutory response period, or during the ten-day extension period that followed it. As such, your agency has engaged in constructive denial of my request, as defined by the Instructions. This action by your agency forms the basis for my administrative appeal.

Time frame for administrative appeal

As noted in section 30.11 of the Instructions, a requestor may file an administrative appeal within 30 calendar days of the date of the agency's decision letter. At the time of this writing, your agency has provided me with no such decision letter.

I have filed this administrative appeal two days after the expiration of all applicable statutory time frames.

Result sought

Through the administrative appeal process, I am seeking to receive copies of all documents responsive to the categories outlined in my original FOIA request of February 22, 2012.

Additional information

I can be contacted with any questions related to this request at 651-335-2037, or at info@publicrecordmedia.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Ehling', with a long horizontal stroke extending to the right.

Matt Ehling
President, Public Record Media, LLC