VIA EMAIL

Tom Flavin
Freedom of Information Officer
Health Resources and Services Administration
5600 Fishers Lane, Room 13-N82
Rockville, MD 20857
foia@hrsa.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:


In early April 2020, HHS contracted with UnitedHealthcare to administer a $30 billion coronavirus recovery program under the CARES Act, disbursing funds to health care providers across the country.¹ This choice drew scrutiny both because HHS, through its administration of the Medicare program, had pre-existing mechanisms to distribute payments to health care providers, and because one of the three administration officials charged with making decisions regarding the disbursement of funds, economist Stephen Parente of the Council of Economic Advisers (CEA), has significant financial ties to United Healthcare.² CEA has denied that Parente played any role in HHS’s contracting decision.

American Oversight seeks records that may shed light on the decision to contract with UnitedHealth.

Requested Records

American Oversight requests that your agency produce the following records within twenty business days:

² Id.
The final decision memoranda or other records memorializing the decision to award the contracts under PIIDs 75R60220C00005 and 75R60220C00006 to UnitedHealthcare Services, Inc., including the basis, justification, or rationale for that decision.

Please search for responsive records from April 1, 2020, through April 16, 2020.

Given that this request seeks specific, recent, and readily identifiable document(s), American Oversight expects that this request can be processed on the Simple processing track and result in a prompt agency response.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." The public has a significant interest in the federal government's efficient and effective distribution of CARES Act recovery funding to health care providers, who have faced significant disruptions in their practices during the coronavirus pandemic. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including why the federal government contracted with a private insurer to disburse these funds. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American

---

5 See Severns & Lippman, supra note 1.
Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.7

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.8 Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;9 posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;10 posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;11 posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;12 and posting records and analysis regarding the Department of Justice’s decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President’s

political opponents and allegations of misconduct by the Department of Justice itself and
the Federal Bureau of Investigation.\textsuperscript{13}

Accordingly, American Oversight qualifies for a fee waiver.

**Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following
guidance regarding the scope of the records sought and the search and processing of
records:

- Please search all locations and systems likely to have responsive records,
  regardless of format, medium, or physical characteristics.

- Our request for records includes any attachments to those records or other
  materials enclosed with those records when they were previously transmitted. To
  the extent that an email is responsive to our request, our request includes all prior
  messages sent or received in that email chain, as well as any attachments to the
  email.

- Please search all relevant records or systems containing records regarding agency
  business. Do not exclude records regarding agency business contained in files,
  email accounts, or devices in the personal custody of your officials, such as
  personal email accounts or text messages. Records of official business conducted
  using unofficial systems or stored outside of official files are subject to the Federal
  Records Act and FOIA.\textsuperscript{14} It is not adequate to rely on policies and procedures that
  require officials to move such information to official systems within a certain
  period of time; American Oversight has a right to records contained in those files
  even if material has not yet been moved to official systems or if officials have, by
  intent or through negligence, failed to meet their obligations.\textsuperscript{15}

- Please use all tools available to your agency to conduct a complete and efficient
  search for potentially responsive records. Agencies are subject to government-wide
  requirements to manage agency information electronically,\textsuperscript{16} and many agencies

\textsuperscript{13} Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton,
\textsuperscript{14} See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy, 827 F.3d 145, 149–50
\textsuperscript{15} See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy, No. 14-cv-765, slip op. at 8
\textsuperscript{16} Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423
Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive
have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

**Conclusion**

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Christine H. Monahan at foia@americanoversight.org

or (202) 869-5244. Also, if American Oversight’s request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

[Signature]

Austin R. Evers
Executive Director
American Oversight