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State Services Section

August 09, 2018

Via email only to james.valvo@causeofaction.org

R. James Valvo, III
Counsel & Senior Policy Advisor
Cause of Action Institute
1875 Eye Street NW, Suite 800
Washington DC 20006

RE: July 24, 2018 Colorado Open Records Act Request

Dear James:

As you know, this office represents the Colorado Department of Health Care Policy and Financing (HCPF) and the Colorado Healthcare Affordability and Sustainability Enterprise (CHASE). Part of that representation involves *TABOR Foundation v. HCPF*, Denver District Court case number 15CV32305 where you also represent the Plaintiffs.

Your Colorado Open Records Act (CORA) Request, dated July 24, 2018, seeks “records approving, denying (including provisional approvals or denials), or seeking further information from [HCPF] and /or [CHASE] seeking a waiver from CMS of any requirement under the broad based, uniformity, or hold harmless provisions of Section 1903 of the Social Security Act, and any records submitted by any governmental entity in Colorado to CMS in support of any [such] waiver request.” A copy of that request is attached to this letter.

This office is responding to that request only on behalf of HCPF and CHASE. Neither HCPF nor CHASE have records for “any governmental entity in Colorado” other than themselves. If you have requests for other governmental entities in Colorado, please direct any such requests to the records custodians at those entities.

As a general matter, to the extent that you are seeking to supplement discovery in the TABOR Foundation case, the use of CORA is not an appropriate means to achieve that goal. The Colorado Supreme Court has stated that the “legislature did not intend that the open records laws would supplant discovery practice in civil litigation.” *Martinelli v. Dist. Ct.*, 612 P.2d 1083, 1093 (Colo. 1980). Similarly, our court of appeals has held in an unpublished decision that it is not appropriate to use

CORA to supplant the discovery process. *Paglut v. City of Colo. Springs*, 2007CA2302 (Colo. App. 2009) (unpublished).

To the extent you are not seeking to supplement discovery, the documents responsive to your request have already been produced to you. The TABOR Foundation's prior counsel in this case issued discovery requests, including request for production number 1 on December 18, 2017. That request, as limited by counsel, encompasses all of your July 24, 2018 CORA request to the extent that it covers HCPF or CHASE. Therefore, HCPF and CHASE have previously produced all the records you request in discovery. Please see Defendants' First Supplemental Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, dated January 30, 2018, response to Request for Production Number 1, and the documents produced therewith.

If you have any questions about discovery in the TABOR Foundation case, this CORA request, or any other matters regarding HCPF or CHASE and the Hospital Provider Fee or CHASE Fee programs, please address them to my attention so that we may discuss them. Please note that you do not have our consent to communicate with our clients regarding the above referenced litigation and matters related to that litigation. Colo. RPC 4.2. Both we and our clients prefer that you work through this office with any CORA requests related to the subject matter of the litigation. If you have any doubt, please direct your questions to my attention.

Sincerely,

FOR THE ATTORNEY GENERAL



W. ERIC KUHN
Senior Assistant Attorney General
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CAUSE *of* ACTION

INSTITUTE

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

July 24, 2018

Via Electronic Mail

Colorado Department of Health Care Policy & Financing
Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203
E-mail: kathy.snow@state.co.us

Re: Colorado Open Records Act Request

Dear CORA Coordinator:

I am writing on behalf of Cause of Action Institute (“CoA Institute”), a 501(c)(3) nonpartisan government oversight organization that uses investigative, legal, and communications tools to educate the public about how government accountability, transparency, and the rule of law protect individual liberty and economic opportunity.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

CoA Institute is researching the federal Centers for Medicare & Medicaid Services (“CMS”) practice of granting waivers for state provider taxes under Section 1903 of the Social Security Act.² Pursuant to the Colorado Open Records Act (“CORA”), Colo. Rev. Stat. § 24-72-201, *et seq.*, CoA Institute requests access to the following records:³

1. All records approving, denying (including provisional approvals or denials), or seeking further information from the Colorado Department of Health Care Policy & Financing (“HCPF”) and/or the Colorado Healthcare Affordability and Sustainability Enterprise (“CHASE”) seeking a waiver from CMS of any requirement under the broad based, uniformity, or hold harmless provisions of Section 1903 of the Social Security Act.

¹ See CAUSE OF ACTION INST., *About*, www.causeofaction.org/about/.

² See 42 U.S.C. § 1396b.

³ The term “record” means the entirety of the record any portion of which contains responsive information. As it relates to all Items of this request, if the agency uncovers responsive email records, CoA Institute’s request specifically seeks the entirety of any email chain, any portion of which contains an individual email message responsive to this request, *i.e.*, the entire email chain is responsive to the request.

CORA Coordinator

July 24, 2018

Page 2

2. All records submitted by any governmental entity in Colorado to CMS in support of any waiver request identified by Item 1.

The time period for this request is January 1, 2009 until the present. To the extent that HCPF has any questions about the scope of this request, CoA Institute is happy to discuss the matter with the CORA coordinator processing this request.

CoA Institute elects to receive electronic copies of the requested documents. Please advise us when the records will be available and the total cost of any applicable fees being charged.

If HCPF does not have custody or control of such records please provide written notification, to the best of your knowledge and belief, regarding the reason for the absence of the records, their location, and who has custody or control of the records, as required by Colo. Rev. Stat. § 24-72-203(2)(a).

If you have any questions, please contact me by telephone at (202) 499-4232 or james.valvo@causeofaction.org. Thank you for your attention to this matter.



R. JAMES VALVO, III
COUNSEL & SENIOR POLICY ADVISOR