

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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SEVERINA RIVERA-DREW,)	
)	
	Plaintiff,)	
)	
v.)	Civil Action No.: 09-296 (RBW)
)	
DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES,)	
)	
	Defendant.)	
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JOINT STATUS REPORT AND PROPOSED SCHEDULE

The parties, by undersigned counsel, submit for the Court’s consideration this joint status report with attached proposed scheduling order.

Plaintiff Severina Rivera-Drew brought this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against the defendant Department of Health and Human Services (“HHS”) with respect to a FOIA request that plaintiff submitted to HHS by letter dated January 22, 2008. The FOIA request seeks “any and all documents filed by or on behalf of HCA Inc in compliance with reporting requirements under the Corporate Integrity Agreement of December 2000.” Plaintiff limited her request to documents “for the reporting periods April 2005 to the most recent.” Plaintiff filed her complaint on February 13, 2009 and defendant filed its answer on April 15, 2009.

HHS has completed its search for responsive records and has identified approximately 72,000 pages of documents responsive to plaintiff’s request. During January and February, 2009, HHS made three releases of documents to plaintiff. According to the transmittal letters that accompanied

the documents, HHS processed a total of 5,908 pages of responsive documents and released them in their entirety. Plaintiff is currently reviewing those documents.

With the exception of a few hundred pages of documents, the remaining documents, totaling approximately 66,000 pages, are contained in 17 boxes. According to HHS, with limited exception, these documents were submitted to HHS by a third party, HCA, Inc., in connection with HCA's reporting requirements under a Corporate Integrity Agreement. Pursuant to 45 CFR § 5.65(c), HCA designated certain information in the records as exempt from disclosure under FOIA exemption 4. As a result, these documents are subject to the predisclosure notification process set forth in 45 CFR § 5.65. HHS is in the process of reviewing the documents to determine to what extent, if any, HHS agrees with HCA's assertions with respect to exemption 4, and also to determine the extent to which other FOIA exemptions may be applicable.

HHS has processed the first box of documents, as well as the additional few hundred pages referenced above, and released what it described as the non-exempt portions thereof on April 28, 2009 and May 27, 2009. According to the transmittal letter that accompanied the April 28, 2009 release of documents, HHS produced 438 pages in their entirety, produced 405 pages with portions withheld under FOIA exemptions 4 and 6, and withheld 153 pages entirely under FOIA exemption 5. According to the transmittal letter that accompanied the May 27, 2009 release of documents, HHS produced 1,815 pages with portions withheld under FOIA exemptions (b)(4) and (b)(6). Plaintiff is currently reviewing the documents produced in connection with the April 28, 2009 transmittal letter, and will review the documents produced in connection with the May 27, 2009 transmittal letter upon receipt. Although the transmittal letter of April 28, 2009 advised plaintiff that she could pursue an administrative appeal to challenge the exemption claims, and the May 27,

2009 letter also made reference to appeal rights, the parties agree that plaintiff need not file an administrative appeal and may challenge the exemption claims within the context of this litigation.

HHS will continue to process documents, and release the non-exempt portions thereof, on a monthly basis. Based on information presently available, HHS anticipates that it will complete the processing of the first 5 boxes of remaining documents, and release the non-exempt portions thereof, by August 31, 2009. Those five boxes contain on average approximately 2,200 pages per box. Based on information presently available, HHS anticipates that it will complete the processing of the other 12 boxes, and release the non-exempt portions thereof, by April 30, 2010. Based on the foregoing, the parties have conferred and have agreed to entry of the attached proposed scheduling order to govern the processing and production of the non-exempt portions of the remaining records.

Respectfully submitted,

/s/ Michael T. Kirkpatrick

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