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----- Original Message -----

Subject: FOIA appeal

Date: 2020-09-15 21:46

From: [mkaszuba@publicrecordmedia.org](mailto:mkaszuba@publicrecordmedia.org)

To: [vaoigfoia-appeals@\[REDACTED\]](mailto:vaoigfoia-appeals@[REDACTED]), [mkaszuba@publicrecordmedia.org](mailto:mkaszuba@publicrecordmedia.org)

Mike Kaszuba  
Executive Director  
Public Record Media  
P.O Box 8205  
St. Paul, MN 55108

September 14, 2020

Department of Veterans Affairs  
Office of the Inspector General (OIG)  
Office of Counselor (50)  
810 Vermont Avenue, NW  
Washington, DC 20420

Via Electronic Mail

RE: Freedom of Information Act appeal; FOIA tracking number  
20-00507-FOIA

Dear OIG staff,

On July 16, 2020, Public Record Media (PRM) submitted a Freedom of Information Act (5 U.S.C. § 552) request (the "Request") to the Office of the Inspector General of the Department of Veterans Affairs. The Request sought copies of all documents and correspondence related to the investigation of Sterling Medical Associates, Inc.

In a letter dated August 24, 2020, Ruthlee G. Bellamy of the VA OIG Release of Information Office denied my Request in its entirety, citing FOIA Exemption 7A, 5 U.S.C. § 552(b)(7)(A).

FOIA Exemption 7A pertains to records compiled for law enforcement purposes, but only to the extent that the production of such records "could reasonably be expected to interfere with enforcement proceedings."

On the same day that PRM submitted its Request to your agency, PRM also submitted a FOIA request to the U.S. Department of Justice (DOJ) seeking records related to the investigation of Sterling Medical Associates, Inc. On August 27, 2020, DOJ produced documents responsive to PRM's request, inclusive of a settlement agreement between the United States and Sterling Medical Associates, Inc; as well as a press release from the U.S. Attorney's Office for the District of Minnesota related to the settlement of the Sterling matter.

In the settlement agreement, dated March 11, 2020, Sterling denied the allegations raised by DOJ, but stipulated to a settlement payment of \$1,850,000.00. DOJ also released Sterling "from any civil or administrative monetary claim" or "the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud."

While paragraph 3 of the settlement agreement reserves "any criminal" liability, it appears unlikely that Sterling would have settled its civil claims if it reasonably expected to litigate other, criminal claims in the immediate future. Thus, it seems that - in all likelihood - DOJ's investigation of Sterling Medical Associates has terminated.

If that is the case, then your agency is unable to assert FOIA Exemption 7A as a reason to withhold documents responsive to PRM's Request. If "enforcement actions" (which trigger the application of FOIA Exemption 7A) have been completed, then FOIA Exemption 7A is no longer a colorable reasons for the withholding of records.

#### Administrative review sought

Through this letter, PRM is seeking administrative review of your agency's withholding of records pursuant to FOIA Exemption 7A. PRM's right to administrative review is established by the FOIA, and is recognized by appeals procedures as set out in VHA Directive 1935, dated February 5, 2018.

#### Result sought

Through the administrative appeal process, PRM is seeking to receive copies of all records responsive to the items described in its Request dated July 16, 2020.

#### Additional information

I can be contacted with any questions related to this appeal or the underlying Request by telephone at 651-556-1381; by e-mail at [mkaszuba@publicrecordmedia.org](mailto:mkaszuba@publicrecordmedia.org), or by U.S. post.

Thank you for your attention to this matter.

Sincerely,

/s/Mike Kaszuba  
Executive Director

Public Record Media