

3/30/94

TO: Janice Enright

FROM: Steve Neuwirth

For your information and files.

THE WHITE HOUSE

WASHINGTON

March 24, 1994

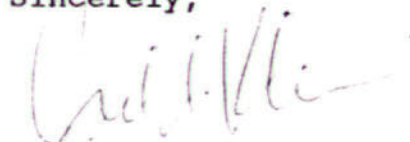
Andrew J. Glass
Bureau Chief, Washington Bureau
Cox Newspapers
2000 Pennsylvania Avenue, N.W.
Suite 10000
Washington, D.C. 20006

Dear Mr. Glass:

I am writing in response to your letter to the First Lady, dated March 9, 1994, concerning access to Medicare payment information under the Freedom of Information Act.

Because your letter addresses application of the FOIA by the Department of Health and Human Services, as well as related litigation, this office is forwarding copies of your letter to the General Counsel of the Department of Health and Human Services, and the Acting Associate Attorney General at the Department of Justice, for any appropriate action.

Sincerely,



Joel I. Klein
Deputy Counsel to the President

March 9, 1994

The First Lady
The White House
Washington, D.C. 20500

Dear Mrs. Clinton:

At a time when you and your husband are deeply engaged in an arduous struggle to reform the nation's health care laws, we have run into a strong legal effort by the federal government to block our bid to make public Medicare payments to doctors. I am writing in the hope that you will agree it is in the public interest to reveal such factual data. This step, I believe, would be wholly in keeping with this Administration's oft-expressed desire to "reinvent government" in ways to better serve all Americans.

In reviewing this matter last week, U.S. District Court Judge Thomas Penfield Jackson said these records should be made public. If the government joins us now in asking the federal court of original jurisdiction to release the data, then that court could quickly resolve this vital issue in keeping with the public interest.

In 1977, under the Carter Administration, the then Department of Health Education and Welfare issued rules aimed at complying with the Freedom of Information Act. At the time, HEW found that Treasury checks written to physicians, in payment for their Medicare fees, should be a matter of public record, as are, normally, payments to federal contractors.

Since the need to hold government programs accountable to the citizenry outweighs any possible privacy interest of physicians, the Administration held at the time that payments to individual doctors under taxpayer-financed programs should be made public.

But some Florida doctors filed suit to bar disclosure and the American Medical Association backed them. In 1979, the U.S. District Court for the Middle District of Florida issued a permanent injunction that barred HEW from disclosing this information. The Florida judge who issued that injunction, who has since died, ruled that Medicare fees should be withheld, citing the personal privacy exemption to the FOIA. At the time, the government chose not to appeal his ruling -- a decision that Judge Jackson criticized from the bench last week.

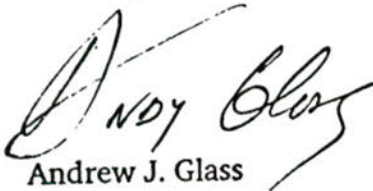
In 1982, the Department of Health and Human Services asked the originating judge to modify his injunction since it also kept HHS from sending data to Justice in its efforts to prosecute medical crooks. Accordingly, the judge clarified his original order and said that disclosure for

law enforcement purposes or any other disclosure not prohibited by the Privacy Act was not barred by his original injunction.

The Privacy Act specifically provides that disclosures required under FOIA are not to be prohibited by the Privacy Act. So the injunction does not forbid HHS from releasing data that *must* be released under FOIA. Accordingly, I would hope HHS and Justice decide to end their case [*CEI Washington Bureau et al. v. Health Care Financing Administration et al.*] before more litigation on our part.

Under the Attorney General's new FOIA policies, the Justice Department defends FOIA exemptions "only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." I have written to General Reno and to Secretary Shalala to make this point. In keeping with those policies, I wonder whether you might be interested in sharing with the parties at interest your views with regard to an Administration policy that is effectively aimed at barring this vital information from much-needed public scrutiny.

Sincerely,



Andrew J. Glass
Bureau Chief

cc: Mr. Harold Ickes Jr.

MEMORANDUM

TO: Steve Neuwirth
FROM: Janice Enright
DATE: 21 March 1994
RE: Cox Newspapers - release of Medicare payment to doctors
information

Steve, can we get a response drafted to Cox's bureau chief,
Andrew J. Glass regarding the attached?

3/21
Send to Steve
in Counsel's
office - keep
entire pg for
us. ✓ 3/22 —



WASHINGTON BUREAU

2000 Pennsylvania Avenue, N.W., Suite 10000
Washington, D.C. 20006-1894
Tel: 202 331-0900, Telex: 440135 COXBU UI
Fax: 202 331-1055

Atlanta Constitution
Atlanta Journal
Austin American-Statesman
Chandler Arizona
Dayton Daily News
Gilbert Tribune
Grand Junction Daily Sentinel
Longview News-Journal
Lufkin Daily News
Mesa Tribune
Nacogdoches Daily Sentinel
Palm Beach Daily News
Palm Beach Post
Springfield News-Sun
Tempe Daily News
Waco Tribune-Herald
Yuma Daily Sun

New York Times News Service

March 9, 1994

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The White House
Washington, D.C. 20500

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Sincerely,



Andrew J. Glass
Bureau Chief

cc: Mr. Harold Ickes Jr.

From
ANDY GLASS

Harold:

This is a copy of my fax to the
First Lady.

I'd like to meet you. Personal
note: I went to Bronx Science
with Tommy Baer.

Andy