



National Archives and Records Administration

Office of Government Information Services

8601 Adelphi Road
College Park, Maryland 20740-6001

November 24, 2010 – Sent via e-mail

Dr. Eric Suba
Eric.Suba@kp.org

In Re: Case No. 2011-0059
MN: KM

Dear Dr. Suba,

This responds to your request for assistance, which the Office of Government Information Services (OGIS) received on November 5, 2010, regarding your interest in obtaining information about royalties the National Institutes of Health (NIH) receives from the sales of human papillomavirus (HPV) vaccines.

After carefully reviewing the correspondence you submitted to OGIS with your request for assistance, it appears that NIH's finding that information regarding royalties is protected from disclosure under the Freedom of Information Act (FOIA) is proper. Specifically, the U.S. District Court for the District of Columbia ruled in 2002 that information regarding NIH revenues from royalties based on NIH inventions and concerning the percentage of sales that NIH receives as royalties is exempt from disclosure under two exemptions to FOIA. (Public Citizen Health Research Group v. National Institutes of Health and Johnson & Johnson, 209 F. Supp. 2d 37 (D.D.C. 2002))

President Barack Obama's January 21, 2010 memorandum was directed at the 94 Federal agencies and departments that processed more than 550,000 FOIA requests in the year ending September 30, 2009. Although as noted in your letter to OGIS, the President's memorandum asserted that "In the face of doubt, openness prevails," the memorandum does not overturn or in any other way affect court rulings.

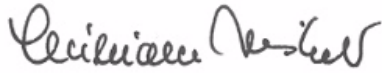
In the above-mentioned ruling, which is still applicable to NIH records, the U.S. District Court ruled that information about NIH royalties satisfies the requirements of Exemption 3, regarding information specifically exempted from disclosure by a statute other than FOIA itself, and Exemption 4, regarding trade secrets and commercial or financial information.

The Court ruled that the Federal Transfer and Technology Act, 15 U.S.C. § 3710a(c)(7)(A) is a proper Exemption 3 statute and protects from disclosure under FOIA trade secrets or commercial or financial information that is privileged or confidential "which is obtained in the conduct of research or as a result of activities under this chapter from a non-Federal party participating in a cooperative research and development agreement." The Court also ruled that commercial or financial information obtained from a person outside the government is exempt from disclosure under FOIA by Exemption 4.

A copy of the Court's ruling on this issue can be obtained at
<http://www.ott.nih.gov/foia/PCHRGopinon.pdf>.

Although I understand that this is not the answer that you sought, I hope you find this information useful. We consider your case closed. If you would like to contact us again, please refer to case no. 2011-0059.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Nisbet". The signature is written in a cursive style with a large initial "M".

Miriam Nisbet, Director
Office of Government Information Services (OGIS)