



November 21, 2013

Mr. William F. Marshall  
Judicial Watch, Inc.  
425 Third St. S.W., Suite 800  
Washington, DC 20024

Re: RTKL-00710

Dear Mr. Marshall:

On 11/18/2013, the Pennsylvania Insurance Department (Department) received your request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, *et seq.* (RTKL), wherein you asked for the number of group and non-group comprehensive (major medical) health insurance policies for which the Pennsylvania Insurance Department has received notice or report of the carrier canceling or non-renewing, or intending to cancel or non-renew, such policies, and for which the coverage termination date is after June 3, 2013, along with the number of individuals covered by such policies as of the policy termination dates.

Because your request was sent to the RTKL mailbox and references the RTKL, we are required to treat it as a RTKL request. However, as the Office of Open Records has repeatedly noted, under the RTKL, agencies are not required to answer questions posed in RTKL requests, but only to provide public records. See 65 P.S. § 67.703, *DiPerna v. Churchill Borough*, OOR No. AP 2009-0112 and *Cohen v. Pennsylvania Department of Labor and Industry*, OOR No. AP 2009-0099. As your RTKL request seeks answers to questions, rather than public records, it is denied.

However, outside of the RTKL, we are providing the answer to your question. Insurers are permitted under federal law (HIPAA Title I) to withdraw a product, or withdraw from a market. While there is no requirement to notify us of their plans, the Department asks for information regarding withdrawals so we can assure good consumer communications. However, those plans would be exempted from the RTKL under §§ 67.708(b)(11) which states “a record that constitutes or reveals a trade secret or confidential proprietary information”. It is possible that some insurers have withdrawn products without informing the Department. It is not known how many policies have terminated, cancelled, or been discontinued since June 2, 2013. However, while the Department does not have precise numbers from what we have seen in plans submitted prior to the President’s 11/14/13 announcement, it appears that approximately 250,000 Pennsylvanians (total lives, not simply the number of policies) are finding their current coverage is scheduled to be discontinued as of December 31, 2013.

You have a right to appeal this denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR: 1)

**Bureau of Administration**

1326 Strawberry Square | Harrisburg, Pennsylvania 17120 | Phone: 717.787.4298 | Fax: 717.705.3873 | [www.insurance.pa.gov](http://www.insurance.pa.gov)



this response; 2) your request; and 3) the reason why you think the agency is incorrect in its response.

Also, the OOR has an appeal form available on the OOR website at: <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Sincerely,

A handwritten signature in blue ink that reads "Peter J. Salvatore".

Peter J. Salvatore  
Agency Opens Records Officer  
1326 Strawberry Square  
Harrisburg, PA 17120  
717.787.4429

Attachment: RTKL request



**Judicial  
Watch®**  
*Because no one  
is above the law!*

Rec'd 11/18/13  
RTKL-00710  
Due 11/25/13

November 18, 2013

**VIA CERTIFIED MAIL AND FACSIMILE**

State of Pennsylvania  
Insurance Department, Chief Counsel's Office  
Room 1341  
Strawberry Square  
Harrisburg, Pennsylvania 17120

**Re: Pennsylvania Right-to-Know Law Request**

Dear Sir/Madam:

Pursuant to the provisions of the Right-to-Know Law 65 P.S. § 67.101 et seq., Judicial Watch, Inc. ("Judicial Watch") requests from the Pennsylvania Insurance Department, within five (5) business days, access to and a copy of records related to, concerning or regarding:

- 1.) The number of group and non-group comprehensive (major medical) health insurance policies for which the Pennsylvania Insurance Department has received notice or report of the carrier canceling or non-renewing, or intending to cancel or non-renew, such policies, and for which the coverage termination date is after June 3, 2013, along with the number of individuals covered by such policies as of the policy termination dates.

A record, as defined by 65 P.S. § 67.102, is, "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image- processed document."

Please provide copies of the requested records to us at 425 Third Street, S.W., Suite 800, Washington DC 20024, within five (5) business days of your receipt of this request. 65 P.S. § 67.707(b). If the requested records cannot be produced within five (5) business days, please notify us in writing of the reason for the delay and the date by which the requested records will be available

**Pennsylvania Insurance Department**  
**Chief Counsel's Office**  
**November 18, 2013**  
**Page 2 of 2**

If any responsive record or portion thereof is claimed to be exempt from production, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. Additionally, any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law. 65 P.S. § 67.706.

Finally, Judicial Watch requests a waiver of any direct costs of duplication or statutory fees pursuant to 65 P.S. § 67.1307(b)(4)(ii)(B) as the request is for noncommercial purposes. Judicial Watch is a non-profit, tax-exempt 501(c)(3) educational organization dedicated to increasing public understanding of the operations of government as well as the importance of ethics and the rule of law. Judicial Watch regularly requests information from public agencies about their operations and activities and disseminates this information to the public in furtherance of its educational mission. However, if any fee is to be charged for copying the requested records, please notify us in advance if the expected cost is likely to exceed \$350.00.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5170 or [bmarshall@judicialwatch.org](mailto:bmarshall@judicialwatch.org).

Sincerely,



William F. Marshall  
Judicial Watch, Inc.