

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

BCBSVT 2021 Large Group Rate Filing)	GMCB-002-20rr
TVHP Large Group Rate Filing)	GMCB-003-20rr
)	

OBJECTION TO CONFIDENTIALITY REQUEST OF APRIL 23, 2020

The Office of the Health Care Advocate (HCA) objects to Blue Cross Blue Shield of Vermont's (BCBSVT) and The Vermont Health Plan's (TVHP) April 23, 2020, request for confidential treatment of various portions of the BCBSVT 2021 Large Group Rate Filing Actuarial Memorandum and the TVHP 2021 Large Group Rate Filing Actuarial Memorandum (hereinafter "the Request"). The Request is overly broad and the information it seeks confidential treatment of do not meet the standard for a trade secret exemption under the Public Records Act (PRA). 1 V.S.A. §317.

Requests for confidential treatment of information are strictly construed in favor of disclosure. E.g. Springfield Terminal Ry. Co. v. Agency of Transp., 2002, 174 Vt. 341, 345 (2002); GMCB Rule 2.305. Further, the requesting party must show why a specific piece of information is exempt from disclosure E.g. Long v. City of Burlington, 208 Vt. 418, 427 (2018); GMCB Rule 2.305. To not disclose information under the trade secret exemption, the requester must prove (1) that the information gives its owner commercial advantage and (2) that the owner takes reasonable efforts to keep the information secret. 1 V.S.A. §317(c)(9); Long v. City of Burlington, 208 Vt. at 430.

The Request is deficient for two reasons. First, it seeks the confidential treatment of broad swaths of information and in so doing runs counter to the goal of ensuring public access to information except in a narrow set of circumstances. While specific numbers or formulae might

be exempt from disclosure in some circumstances, the Request asks for blanket redactions to entire portions of the BCBSVT and TVHP rate filings including to generic words such as “yearly”, “percent”, and “regression.” Such blanket redactions run against the fundamental principles of GMCB Rule 2 and the PRA, namely, that they favor disclosure. E.g. Springfield Terminal Ry. Co., 341 Vt. at 345; GMCB Rule 2.305 (stating that blanket confidentiality requests are disfavored). Further, such blanket redactions place the burden on the Board and the HCA to parse through paragraphs of verbiage to respond to or rule on the Request.

Second, BCBSVT and TVHP have not made reasonable efforts to keep the information for which it requests confidential treatment secret as evidenced by the fact that much of the information is already publicly available. The Court, in Long, elucidated a two-pronged test for information sought to be withheld from disclosure under PRA trade secret exemption. Long, 208 Vt. at 430. The second prong is that the owner of the information has undertaken reasonable efforts to keep the information secret. Id. In Long, the owner of the information took substantial steps to keep the information secret including not releasing the information to third-parties and executing a non-disclosure agreement with the City of Burlington before providing the information to them. Id. at 431-32. In the present case, unlike in Long, the information is already publicly available. Specifically, BCBSVT and TVHP have provided substantial portions of the information it seeks confidential treatment of verbatim or slightly reworded in public portions of previous years’ filings. E.g. GMCB-003-19rr, TVHP Actuarial Mem.; GMCB-004-18rr, TVHP Actuarial Mem.; GMCB-005-17rr, TVHP Actuarial Mem.; GMCB-004-16rr, TVHP Actuarial Mem. As such, the information that the Request seeks confidential treatment of fail the second prong of the trade secrets exemption.

In conclusion, for the reasons state above, the HCA asks the Board to reject the Request.

We thank the Board for its attention to this matter.

Dated at Montpelier, Vermont this 30th day of April, 2020.

s/ Eric Schultheis

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CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above OBJECTION TO CONFIDENTIALITY REQUEST OF APRIL 23, 2020 on Michael Barber, Green Mountain Care Board General Counsel; Amerin Aborjaily, Green Mountain Care Board Staff Attorney; and Michael Donofrio and Bridget Asay, Stris & Maher LLP, representatives of BCBSVT and TVHP, by electronic mail, return receipt requested, this 30th day of April, 2020.

s/ Eric Schultheis

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