



Case No. 2020-01704-FOIA-OS

May 17, 2023

Sent via email:

Austin Evers
American Oversight
1030 15th Street, N.W., Suite B255
Washington, DC 20005
foia@americanoversight.org

Dear Mr. Evers:

This letter is the final response to your August 21, 2020, Freedom of Information Act (FOIA) request. Specifically, you requested the following records:

“Requested Records American Oversight requests that HHS produce the following records within twenty business days: The non-disclosure agreement (NDA) between TeleTracking Technologies Inc. and the Department of Health and Human Services. This NDA was reportedly executed in connection with ASPR BARDA contract no. 75A50120C00042.3 Please provide all responsive records from March 1, 2020, through the date of the search.”

The Office of Assistant Secretary for Preparedness and Response (ASPR) conducted a search and located 10 pages of responsive records. After a careful review of these pages, I am releasing nine pages to you in their entirety. I have found that it is reasonably foreseeable that disclosure would harm an interest protected by one or more of the exemptions to the FOIA’s general rule of disclosure and/or that disclosure is prohibited by law; therefore, I am further withholding one page in part, with portions redacted, pursuant to exemption (b)(6) of the FOIA (5 U.S.C. §552).

FOIA exemption (b)(6) permits a Federal agency to withhold information and records about individuals in “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The definition of “similar files” has historically been broadly interpreted to include a wide variety of files, and the United States Supreme Court has held that Congress intended the term “similar files” to be interpreted broadly, rather than narrowly. I have analyzed these records and find they meet the threshold requirement of this exemption. Additionally, I have reviewed and weighed the public interest in disclosure of this information against the privacy interest in nondisclosure, and found that the privacy interest outweighs the public’s interest in disclosure.

If you believe the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency’s decision.

Please mark the correspondence, "Freedom of Information Act Appeal." Your appeal must be transmitted within 90 days from the date of receipt of this letter to:

William H. Holzerland
Deputy Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
HHS.ACFO@hhs.gov

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact the HHS FOIA Public Liaison for assistance at:

HHS FOIA/PA Public Liaison
FOI/Privacy Acts Division
Assistant Secretary for Public Affairs (ASPA)
Office of the Secretary (OS)
U.S. Department of Health and Human Services (HHS)
Telephone: (202) 690-7453
E-mail: HHS_FOIA_Public_Liaison@hhs.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov

There are no charges in this instance because the billable costs are less than our threshold of \$25.

Sincerely yours,

Kris Zadrovitz for
Arianne Perkins
Director, Initial FOIA Requests
FOI/Privacy Acts Division

Enclosure(s)

- (e) The Contractor shall prepare and maintain a current list of employees working under NDAs and submit to the Contracting Officer upon request during the contract period of performance. The list should at a minimum include: contract number, employee's name, position, date of hire and NDA requirement.

EXHIBIT I

HHS/ASPR

Contractor Non-Disclosure Agreement

I. Non-public Information

[Name of Contractor] understands that in order to fulfill the responsibilities pursuant to **[Contract name and number]** between the Centers for Disease Control and Prevention and **[Name of Contractor]** dated **[date]**, employees of **[Contractor]** will have access to non-public information, including confidential and privileged information contained in Government-owned information technology systems. For purposes of this agreement, confidential information means Government information that is not or will not be generally available to the public. Privileged information means information which cannot be disclosed without the prior written consent of the HHS/ASPR.

In order to properly safeguard non-public information, **[Contractor]** agrees to ensure that prior to being granted access to Government information or the commencement of work for the HHS/ASPR, whichever is applicable, all employees will sign a Non-Disclosure Agreement (NDA) provided by the HHS/ASPR prior to beginning work for the HHS/ASPR. Contractor agrees to submit to the contracting official the original signed copies of NDAs signed by the Contractor's employees in accordance with the instructions provided by the contracting official. Failure to provide signed NDAs in accordance with this agreement and instructions provided by the contracting official could delay or prevent the employee from commencing or continuing work at the HHS/ASPR until such agreement is signed and returned to the contracting official.

Contractor further agrees that it will not cause or encourage any employee to disclose, publish, divulge, release, or make known in any manner or to any extent, to any individual other than an authorized Government employee any non-public information that the employee may obtain in connection with the performance of the employee's responsibilities to the HHS/ASPR.

II. Procurement-Sensitive Information

Contractor further agrees that it will not cause or encourage any employee to disclose, publish, divulge, release, or make known in any manner or to any extent, to any individual, other than an authorized Government employee, any procurement-sensitive information gained while in connection with fulfilling the employee's responsibilities at the HHS/ASPR. For purposes of this agreement, procurement-sensitive information includes, but is not limited to, all information in Statements of Work (SOW), Requests for Contract (RFC), and Requests for Quote (RFP); Responses to RFPs, including questions from potential Offerors; non-public information regarding procurements; all documents, conversations, discussions, data, correspondence, electronic mail (e-mail), presentations, or any other written or verbal communications relating to, concerning, or affecting proposed or pending solicitations or awards; procurement data; contract information plans; strategies; source selection information and

documentation; Offerors identities; technical and cost data; the identity of Government personal involved in the solicitation; the schedule of key technical and procurement events in the award determination process; and any other information that may provide an unfair competitive advantage to a Contractor or potential Contractor if improperly disclosed to them, or any of their employees.

Contractor understands and agrees that employee access to any procurement-sensitive information may create a conflict of interest which will preclude Contractor from becoming a competitor for any acquisition(s) resulting from this information. Therefore, if an employee participates in any discussions relating to procurement-sensitive information, assists in developing any procurement-sensitive information, or otherwise obtains any procurement-sensitive information during the course of performing duties at the HHS/ASPR, Contractor understands and agrees that Contractor are be excluded from competing for any acquisition(s) resulting from this information.

III. Identification of Non-Government Employees

Contractor understands that its employees are not agents of the Government. Therefore, unless otherwise directed in writing by the HHS/ASPR, Contractor agrees to assist and monitor employee compliance with the following identification procedures:

- A. At the beginning of interactions with HHS/ASPR employees, employees of other Governmental entities, members of the public, or the media (when such communication or interaction relates to the Contractor's work with the HHS/ASPR), Contractors employees will identify themselves as an employee of a Contractor.
- B. Contractors employees will include the following disclosures in all written communications, including outgoing electronic mail (e-mail) messages, in connection with contractual duties to the HHS/ASPR:
 - Employee's name*
 - Name of Contractor*
 - Center or office affiliation*
 - Centers for Disease Control and Prevention
- C. At the beginning of telephone conversations or conference calls, Contractors employees will identify themselves as an employee of a Contractor.
- D. Contractors shall not wear any HHS/ASPR logo on clothing, except for an HHS/ASPR issued security badge while carrying out work for HHS/ASPR or on HHS/ASPR premises. The only other exception is when an HHS/ASPR management official has granted permission to use the HHS/ASPR logo.
- E. Contractors employees will program HHS/ASPR voice mail message to identify themselves as an employee of a Contractor.

I understand that federal laws including, 18 U.S.C. 641 and 18 U.S.C. 2071, provide criminal penalties for, among other things, unlawfully removing, destroying or converting to personal use, or use of another, any public records. Contractor acknowledges that Contractor has read and fully understands this agreement.

Name of Contractor: _____

Signature of Authorized Representative of Contractor: _____

Date: _____

Copies retained by: contracting official and Contractor

EXHIBIT II

Centers for Disease Control and Prevention (HHS/ASPR) Contractors Employee Non-Disclosure Agreement

I. Non-Public Information

I understand that in order to fulfill my responsibilities as an employee of **[Name of HHS/ASPR Contractor]**, I will have access to non-public information, including confidential and privileged information contained in Government-owned information technology systems. For purposes of this agreement, confidential information means Government information that is not or will not be generally available to the public. Privileged information means information which cannot be disclosed without the prior written consent of the HHS/ASPR.

I **[Name of Employee]**, agree to use non-public information only in performance of my responsibilities to the HHS/ASPR. I agree further that I will not disclose, publish, divulge, release, or make known in any manner or to any extent, to any individual other than an authorized Government employee, any non-public information that I may obtain in connection with the performance of my responsibilities to the HHS/ASPR.

II. Procurement-Sensitive Information

I further agree that unless I have prior written permission from the HHS/ASPR, I will not disclose, publish, divulge, release, or make known in any manner or to any extent, to any individual other than an authorized Government employee, any procurement-sensitive information gained in connection with the performance of my responsibilities to the HHS/ASPR. I specifically agree not to disclose any non-public, procurement-sensitive information to employees of my company or any other organization unless so authorized in writing by the HHS/ASPR. For purposes of this agreement, procurement-sensitive information includes, but is not limited to, all information in Statements of Work (SOW), Requests for Contract (RFC), and Requests for Quote (RFP); Responses to RFPs, including questions from potential Offerors; non-public information regarding procurements; all documents, conversations, discussions, data, correspondence, electronic mail (e-mail), presentations, or any other written or verbal communications relating to, concerning, or affecting proposed or pending solicitations or awards; procurement data; contract information plans; strategies; source selection information and documentation; Offerors identities; technical and cost data; the identity of Government personnel involved in the acquisition; the schedule of key technical and procurement events in the award determination process; and any other information that may provide an unfair competitive advantage to a Contractor or potential Contractor if improperly disclosed to them, or any of their employees.

I understand and agree that my access to any procurement-sensitive information may create a conflict of interest which will preclude me, my current employer, or a future employer from becoming a competitor for any resulting Government acquisition derived from this information. Therefore, if I participate in any discussions relating to procurement-sensitive information, assist in developing any procurement-sensitive information, or otherwise obtain any procurement-sensitive information during

the course of performing my duties at the HHS/ASPR, I understand and agree that I, my current employer, and any future employer(s) are excluded from competing for any resulting acquisitions.

III. Special Non-Disclosure Clause for Contractors with Access to HHS/ASPR Grants Management and Procurement-Related Information Technology Systems

In addition to complying with the non-disclosure requirements and safeguards stated above, I understand that my authorization to use HHS/ASPR's grants management and procurement systems is strictly limited to the access and functions necessary for the performance of my responsibilities to the HHS/ASPR and which have been approved in advance by the HHS/ASPR. I understand that I am not authorized to enter procurement requests for any requirements pertaining to contracts or subcontracts held by me or my employer.

IV. Identification as a Non-Government Employee

I understand that as an employee of a Government Contractor, I represent an independent organization and I am not an agent of the Government. Therefore, I agree that unless I have prior written authorization from the HHS/ASPR, I will, at the beginning of interactions with HHS/ASPR employees, employees of other Governmental entities, members of the public, or the media (when such communication or interaction relates to the Contractor's work with the HHS/ASPR), identify myself as an employee of a Contractor. I further agree to use the following identification procedures in connection with my work at the HHS/ASPR:

A. I will include the following disclosures in all written communications, including outgoing electronic mail (e-mail) messages:

Employee's name
Name of Contractor
Center or office Affiliation
 Centers for Disease Control and Prevention

B. I will identify myself as an employee of a Contractor at the beginning of telephone conversations or conference calls.

C. I will not wear any HHS/ASPR logo on clothing, except for a HHS/ASPR issued security badge while carrying out work for HHS/ASPR or on HHS/ASPR premises; the only other exception is when a HHS/ASPR management official has granted permission to use the HHS/ASPR logo.

D. I will program my HHS/ASPR voice mail message to identify myself as a Contractor's employee.

I understand that federal laws including, 18 U.S.C. 641 and 18 U.S.C. 2071, provide criminal penalties for, among other things, unlawfully removing, destroying or converting to personal use, or use of another, any public records. I acknowledge that I have read and fully understand this agreement.

Name of Contractor: _____

Name of Employee: _____

Signature of Employee: _____

Date: _____

Copies retained by: contracting official, Contractor, and Employee

(End of Clause)

H.12 Observance of Legal Holidays and Facility Closure (Government Facilities Performance)

(a) Holidays

Government personnel observe the following listed days as holidays:

Washington's Birthday

Memorial Day

Independence Day

Labor Day

Veterans' Day

Thanksgiving Day

Christmas Day

New Year's Day

Columbus Day

Birthday of Martin Luther King, Jr.

Any other day designated by Federal Statute

Any other day designated by Executive Order

Any other day designated by Presidential proclamation

For purposes of contract performance, the Contractor shall observe the above holidays on the date observed by the Government. Observance of such days shall not be cause for an additional period of performance or entitlement to compensation except as otherwise set forth in the contract. No form of holiday or other premium compensation will be reimbursed, however this does not preclude reimbursement for overtime work authorized in writing by the Contracting Officer.

(b) Unscheduled Facility Closures

In the event Government facilities are closed due to inclement weather, potentially hazardous or unsafe conditions, or other special circumstances, contractor personnel assigned to work within those facilities are automatically dismissed. Notwithstanding the terms of this clause, the contractor shall comply with any specific contract terms that require a level of ongoing support for critical operations during times of facility closure. The contractor may also continue to provide support under a scheduled telework arrangement in accordance with the terms of the contract if the contract expressly authorizes telework in writing.

(c) Cost Impact

Accounting for costs associated with an unscheduled facility closure is unique to each contract and depends upon a number of factors such as:

- i) Contract type, e.g. Fixed Price, Time and Materials, or Cost Reimbursement.
- ii) Contractor's established management and accounting practices for unproductive time.
- iii) The inclusion and applicability of other contract clauses.
- iv) The ability of the contractor to mitigate costs by reassigning employees to work on other contracts, to work from a different facility, or to work remotely from home in accordance with contract telework provisions.

(End of Clause)

H.13 HHS CISO DISCLAIMER

You are accessing a U.S. Government computer system intended to be solely accessed by individual users expressly authorized to access the system by the U.S. Department of Health and Human Services (the "HHS"). Usage may be monitored, recorded, and/or subject to audit. For security purposes and in order to ensure that the system remains available to all expressly authorized users, the Contractor will monitor the system to identify unauthorized users. Access or use of this system by any person constitutes consent to these terms. Unauthorized use of this system is prohibited and subject to criminal and civil penalties. Except as expressly authorized by HHS, unauthorized attempts to access, obtain, upload, modify, change, and/or delete information on this system are strictly prohibited.

SECTION I - CONTRACT CLAUSES

I.1 52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acqnet.gov>

<http://farsite.hill.af.mil/>

(End of Clause)

FAR SOURCE	TITLE AND DATE
52.202-1	Definitions (Over the Simplified Acquisition Threshold) (Nov 2013)
52.203-3	Gratuities (Over the Simplified Acquisition Threshold) (Apr 1984)
52.203-5	Covenant Against Contingent Fees (Over the Simplified Acquisition Threshold) (May 2014)
52.203-7	Anti-Kickback Procedures (Over the Simplified Acquisition Threshold) (May 2014)
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Over the Simplified Acquisition) (May 2014)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (Over the Simplified Acquisition Threshold) (May 2014)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Over \$150,000) (Oct 2010)
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (Over the Simplified Acquisition Threshold) (Apr 2014)

52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (Over the Simplified Acquisition Threshold) (May 2011)
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (\$30,000 or more) (Oct 2016)
52.204-13	System for Award Management Maintenance (Oct 2016)
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Over \$35,000) (Oct 2015)
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)
52.215-19	Notification of Ownership Changes (Oct 1997)
52.219-8	Utilization of Small Business Concerns (Over the Simplified Acquisition Threshold) (Nov 2016)
52.222-3	Convict Labor (Jun 2003)
52.222-21	Prohibition of Segregated Facilities (Apr 2015)
52.222-26	Equal Opportunity (Sep 2016)
52.222-35	Equal Opportunity for Veterans (\$150,000 or more) (Oct 2015)
52.222-36	Equal Opportunity for Workers with Disabilities (Jul 2014)
52.222-37	Employment Reports on Veterans (\$150,000 or more) (Feb 2016)
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Over the Simplified Acquisition Threshold) (Dec 2010)
52.222-50	Combating Trafficking in Persons (Mar 2015)
52.222-54	Employment Eligibility Verification (Over the Simplified Acquisition Threshold) (Oct 2015)
52.223-6	Drug-Free Workplace (May 2001)
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
52.227-1	Authorization and Consent, (Dec 2007) Alternate I (Apr 1984)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)
52.227-19	Commercial Computer Software License (Dec 2007)
52.227-11	Patent Rights – Ownership by the Contractor (May 2014)
52.227-14	Rights in Data – General (May 2014) Alternate II (Dec 2007) and IV (Dec 2007)
52.229-3	Federal, State and Local Taxes (Over the Simplified Acquisition Threshold) Feb 2013)
52.232-1	Payments (Apr 1984)
52.232-17	Interest (Over the Simplified Acquisition Threshold) (May 2014)
52.232-23	Assignment of Claims (May 2014)
52.232-25	Prompt Payment (Jan 2017)
52.232-33	Payment by Electronic Funds Transfer—System for Award Management (Jul 2013)
52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)

52.233-1	Disputes (May 2014)
52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)
52.237-3	Continuity of Services (Jan 1991)
52.242-13	Bankruptcy (Over the Simplified Acquisition Threshold) (Jul 1995)
52.243-1	Changes – Fixed-Price (Aug 1987); Alternate I (Apr 1984)
52.249-2	Termination for the Convenience of the Government (Fixed Price) (Apr 2012)
52.249-8	Default (Fixed-Price Supply and Service) (Apr 1984)
HHSAR SOURCE	TITLE AND DATE
352.202-1	Definitions - with Alternate paragraph (h) (Jan 2006)
352.203-70	Anti Lobbying (Dec 2015)

352.222-70	Contractor Cooperation in Equal Employment Opportunity Investigations (Dec 2015)
352.224-70	Privacy Act (Dec 2015)
352.227-70	Publications and Publicity (Dec 2015)

I-2 CLAUSES INCORPORATED IN FULL TEXT

I-3 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- (1) When no longer needed for contract performance.
- (2) Upon completion of the Contractor employee's employment.
- (3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

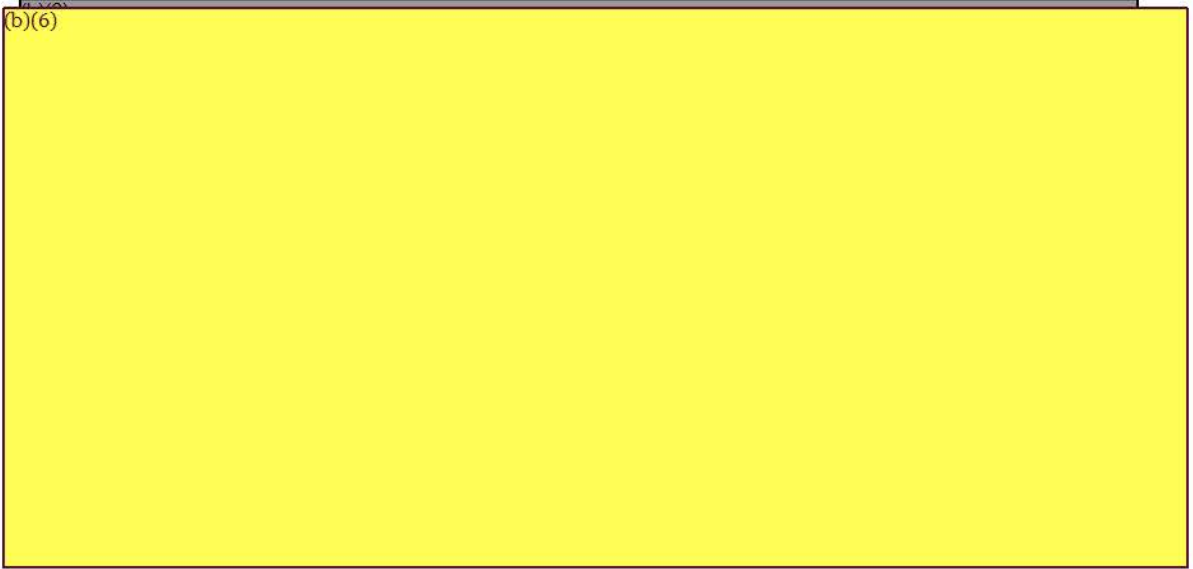
(End of clause)

(End of Clause)

I.5 HHSAR 352.237-75 Key Personnel (Dec 2015)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Contractor), the Contractor shall notify the Contracting Officer and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the Government of the impact on performance under this contract. **The Contractor shall not divert or otherwise replace any key personnel without the written consent of the Contracting Officer.** The Government may modify the contract to add or delete key personnel at the request of the contractor or Government.

(b)(6)



SECTION J – LIST OF ATTACHMENTS

None