



**VIA FACSIMILE**

May 13, 2015

Dennis J. Haase  
Franchise Tax Board  
Legal Division  
P.O. Box 1720  
Rancho Cordova, CA 95741

**RE: Public Records Request**

Dear Mr. Haase:

Consumer Watchdog is deeply concerned by the Franchise Tax Board's ("FTB") summary dismissal of our Public Records Act ("PRA") request for records related to FTB's audit of California Physicians' Service (dba Blue Shield of California), and FTB's decision to revoke Blue Shield's tax-exempt status.

Blue Shield calls itself a non-profit and claims it is "dedicated to providing Californians with access to high-quality health care at an affordable price" but has \$4 billion in financial reserves, ever-rising premiums and multimillion-dollar executive salaries. Blue Shield has purchased an executive skybox at the 49ers' new Santa Clara stadium that cost \$2.5 million. This skybox is just one example of Blue Shield's abuse of its non-profit status at the expense of California taxpayers and patients.

In response to our demand for an explanation of FTB's denial of our records request, FTB merely cited to Revenue and Taxation Code (R&TC) sections 19542 and 19543, and Government Code sections 6276.06, 6276.34, and 6254(k). However, FTB's reliance on these sections as the basis for its claimed exemption from the PRA is misplaced for several reasons, as explained below.

R&TC section 19542 and Government Code section 6254(k) make it a misdemeanor to produce records that disclose the *amount of income or business affairs* of a corporation. FTB cannot use these provisions as a basis for denying Consumer Watchdog's PRA request. First, Consumer Watchdog requested FTB's audit papers that presumably focused on the *activities* of Blue Shield and on facts determinative of the propriety of its charitable exemption, not Blue Shield's *tax returns* that R&TC section 19542 addresses. Second, Blue Shield is already obligated to provide comprehensive public financial statements on a quarterly and annual basis to the Department of Managed Health Care ("DMHC"). *See e.g.* Cal.Code Regs. Title 28 §§ 1300.84, 1300.84.06, 1300.84.2, 1300.84.3, 1300.84.6, and 1300.84.7. Therefore, if the audit and related records discuss or rely on any financial information already made public in the DMHC filings, such information cannot be shielded from production under R&TC section 19542 or Government Code section 6254(k). Third, if the audit and related records discuss or rely on

any financial information *not included in* the DMHC filings but that should have been reported to the DMHC, such information is not exempt from production – how could it be but for a “fraud exemption.”

Blue Shield is not a family run business whose financial records rely on the protection of R&TC section 19542 and Government Code section 6254(k). In fact, Blue Shield has publicly trumpeted its “non-profit” status, including during the Obamacare opening enrollment season in late 2014 after FTB had already revoked its tax-exempt status. Blue Shield’s PR campaign also includes claims about a so-called “2%” profit cap. Blue Shield should not be allowed to claim it is a “non-profit” organization that limits its overhead while shielding its true nature from the public. The requested records are necessary to determine whether Blue Shield employed “Hollywood” accounting in its public statements and financial filings with the DMHC.

Moreover, FTB incorrectly states that the records requested are “expressly exempt” from disclosure relying on Government Code sections 6276.06 and 6276.34. Both Government Code sections provide a list of irrelevant exemptions, including “birth defects,” “blood tests,” “blood-alcohol percentage test results,” “parole revocation proceedings,” “passenger fishing boats licenses,” and “penitential communication between penitent and clergy.” The Franchise Tax Board does not explain why the requested records could possibly be exempt under these sections. Consumer Watchdog can only conclude that there is no rational reason for withholding the requested records.

Therefore, the FTB has failed to meet its burden to demonstrate that the withheld records are covered under an exemption. Gov. Code § 6255(a). The FTB cannot refuse to produce the requested records without demonstrating that such evidence falls within a specific exemption. *Id.*

Furthermore, even if any of the exemptions cited by FTB were applicable to our PRA request, which they are not, any records withheld from production for inspection must be *separately identified* and accompanied by the claimed justification for withholding those records. *Id.* The justification must state the nature of the record withheld, the specific exemption under which the record is being withheld, and provide an explanation of why the public interest is served by withholding the record. *Id.* The FTB has failed to do so. Lastly, should you contend that a portion of a particular record is exempt from disclosure, the correct procedure pursuant to Government Code section 6253(a) is to produce the record with the exempt portion redacted.

Consistent with Government Code section 6253(c), we expect to hear from the Franchise Tax Board within ten days. If you have any questions, please contact me at (310) 392-0522, ext. 321 or [mai@consumerwatchdog.org](mailto:mai@consumerwatchdog.org). Thank you.

Respectfully submitted,



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