DEPARTMENT OF HEALTH & HUMAN SERVICES Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201

September 27, 2022

Appeal No.: 19-0067-AA CDC
Original Case No: CDC/ATSDR Request No. 19-00465-FOIA

Aaron Siri
Siri & Glimstad
200 Park Ave, 17th Floor
New York, NY 10166
Via email: foia@sirillp.com

Dear Mr. Siri:

This responds to Allison Lucas's Freedom of Information Act (FOIA) administrative appeal submitted to the Office of the Secretary (OS), FOIA Office, dated May 21, 2019. On behalf of your clients Dr. Christopher A. Shaw, PhD, and Mary Holland, you submitted a FOIA request to the Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) on February 19, 2019. Your clients requested:

> Copies of any human or animal studies involving the subcutaneous or intramuscular injection of aluminum adjuvant relied upon by the CDC to establish the safety of injecting infants and children with aluminum hydroxide, aluminum phosphate or amorphous aluminum hydroxyphosphate sulfate.

CDC assigned the request tracking number 19-00465-FOIA. On March 14, 2019, the agency informed you that:

> A search of [the agency's] records failed to reveal any documents pertaining to your request. Specifically, CDC's Immunization Safety Office (ISO) states that "[t]his request is outside of ISO purview and should be referred to the U.S. Food and Drug Administration. [FDA]."

The agency provided you with contact information for FDA's Freedom of Information Officer. Representing your clients, Ms. Lucas appealed on May 21, 2019. She wrote, "There is no indication that a reasonable effort was ever made to locate the records as required by FOIA." OS FOIA assigned the appeal tracking number 19-0067-AA and interpreted it as a challenge to the adequacy of the agency's search for records responsive to the initial request.

Discussion

Adequacy of Search

I find that the agency's search for responsive records was legally adequate. Upon receiving your request and clarifying its scope, CDC "focused its search in the instant case on the program most likely to have the records being sought. The Immunization Safety Office (ISO) within the National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) was asked to look for agency records responsive to Mr. Siri's request." The Office found no responsive *agency* records, but it indicated that the FDA Division of Freedom of Information would be responsible for such records. (Other non-CDC records relevant to your initial request can also be found via the link that was included in Ms. Lucas's appeal.)

The fact that CDC's search did not reveal agency records responsive to your request does not mean that their search was legally inadequate. When a requester challenges the adequacy of an agency's search for records responsive to a FOIA request, the agency must show that it has conducted a search "reasonably calculated to uncover all relevant documents."[1] The standard of reasonableness that is applied "to agency search procedures does not require absolute exhaustion of the files;"[2] instead, an agency only needs to show that it made "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested."[3] An agency's inability to locate every single responsive record, however, does not undermine an otherwise reasonable search.[4] This is because "the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search."[5]

Ultimately, I find that CDC made a good-faith effort to locate responsive records using methods that could reasonably be expected to produce the information you requested.

Decision

For the reasons stated above, your appeal is denied.

Conclusion

My letter constitutes the final decision of the Department in this matter. If you wish, you may seek judicial review in the district court of the United States in the district where you reside or have your principal place of business, in which the agency records are located, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services for resolving disputes between FOIA requesters and federal agencies as

[1] *See Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).
[2] *Miller v. U.S. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *see also Physicians for Human Rights v. United States DOD*, 778 F. Supp. 2d 28, 32 (D.D.C. 2011).
[3] *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (quoting *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)).
[4] *See e.g.*, *Meerpol v. Meese*, 790 F.2d 942, 952-53 (D.C. Cir. 1986); *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).
[5] *Jennings v. U.S. Dep't of Justice*, 230 Fed. Appx. 1, 1 (D.C. Cir. 2007) (quoting *Iturralde*, 315 F.3d at 315); *Delorme v. Exec. Office for United States Attys.*, No. 12-0535, 2012 LEXIS 163961, at *3-4 (D.D.C. Nov. 16, 2012).

a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. To ensure a timely response from OGIS, please contact them via email at ogis@nara.gov.

Sincerely,

Carol Maloney

Carol Maloney
Deputy Agency Chief FOIA Officer
Department of Health and Human Services

Copy to:
CDC/ATSDR FOIA Officer