

## **CDC FREEDOM OF INFORMATION ACT APPEAL**

**SUBMITTED VIA EMAIL**

**October 17, 2022**

Deputy Agency Chief FOIA Officer  
Office of the Assistant Secretary for Public Affairs  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue  
Suite 729H  
Washington, D.C. 20201  
[FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov)

Re: **Appeal of FOIA Request** #22-00517-FOIA (IR#0533A)

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“ICAN”). On behalf of ICAN, on July 19, 2021, we submitted a request for records (“**FOIA Request**”) from the files of the Centers for Disease Control and Prevention (“**CDC**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”). On July 20, 2022, Roger Andoh, CDC/ATSDR FOIA Officer, responded to the FOIA Request (“**Final Response**”). ICAN writes now to appeal the Final Response.

**A. FOIA Request #22-00517-FOIA (IR#0533A)**

On July 19, 2021, ICAN submitted a request to the CDC for the following documents:

**All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.**

(Exhibit 1.)<sup>1</sup>

The request was originally assigned FOIA Request #22-01584-FOIA and CDC denied the request stating:

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<sup>1</sup> All “Exhibits” referenced herein are appended to this letter.

**The CDC has a Data Use Agreement with California and other states. The agreement precludes CDC from providing state data that is voluntarily reported to CDC.**

(**Exhibit 2.**) It should be noted, however, that when ICAN sought this Data Use Agreement in another FOIA request (#22-00096-FOIA), CDC responded stating it “failed to reveal any documents pertaining to [our] request.” (**Exhibit 3.**)

After CDC closed the original request (#22-01584-FOIA), on October 19, 2021, we appealed the decision, and HHS ultimately remanded the request back to CDC which re-assigned it FOIA Request #22-00517-FOIA. (**See Exhibit 4 & 5.**)

**B. CDC’s Final Response**

On July 20, 2022, CDC issued a Final Response letter. The letter stated in part,

**After several extensive rounds of program searching, our records failed to reveal any documents pertaining to your request. The CDC Emergency Operations Center (EOC) did not locate any records responsive to your request.**

(**Exhibit 5.**)

**C. Argument**

CDC has failed to conduct an adequate search of the requested records. An agency’s search is adequate only if it is “reasonably calculated to uncover all relevant documents.” *Zemansky v. E.P.A.*, 767 F.2d 569, 571 (9th Cir. 1985) (quoting *Weisberg v. U.S. Dep’t. of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (internal quotation marks omitted). “An agency fulfills its obligations under FOIA if it can demonstrate *beyond material doubt* that its search was reasonably calculated to uncover all relevant documents.” *Def’s. of Wildlife v. United States Border Patrol*, 623 F. Supp. 2d 83, 91 (D.D.C. 2009) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)) (emphasis added). To satisfy its FOIA obligations, an agency needs to adequately describe the scope and methods of its searches, which can reasonably be expected to uncover the records sought and demonstrate that the places most likely to contain responsive materials were searched. *Davidson v. E.P.A.*, 121 F. Supp. 2d 38, 39 (D.D.C. 2000). At minimum, the agency must specify “what records were searched, by whom, and through what process.” *Steinberg v. U.S. Dep’t. of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994).

Finally, technical precision is not required in FOIA requests, and a request certainly should not fail where the agency knew or should have known what the requester was seeking all along. *Institute for Justice v. Internal Revenue Service*, 941 F.3d 567, 572 (D.C. Cir. 2019). FOIA obligates agencies to conduct searches in good faith and in a manner “reasonably calculated to uncover all relevant documents” sought through a FOIA request. *Steinberg*, 23 F.3d at 551 (quoting *Weisberg*, 745 F.2d at 1485). “Agencies declaration attesting to a fruitless search for a request must be ‘relatively detailed and non-conclusionary, and . . . submitted in good faith.’”

*Eddington v. United States DOD*, 35 F.4th 833, 837 (D.C. Cir. 2022) (quoting *SafeCard Servs., Inc. v SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991)).

CDC's search was inadequate because its Final Response failed to specify what records were searched, by whom, and through what process. *Steinberg*, 23 F.3d 552. Therefore, CDC did not fulfill its obligations under FOIA of demonstrating beyond material doubt that its search was reasonably calculated to uncover all relevant documents. *Valencia-Lucena*, 180 F.3d at 325.

Lastly, although courts presume agency declarations detailing a fruitless search are provided in good faith, CDC's history in this case provides evidence of bad faith searches for responsive records. This was demonstrated by CDC's denial of this FOIA Request (original request #22-01584-FOIA), which was based on unsubstantiated claims of a "Data Use Agreement," which CDC ultimately could not find despite a FOIA request for it. (**See Exhibits 1-3.**) Therefore, like the courts, ICAN cannot not reasonably presume an adequate search was conducted until CDC specifies what records were searched, by whom, and through what process. *Eddington v. United States DOD*, 35 F.4th 833, 837; *Valencia-Lucena*, 180 F.3d at 325; *Steinberg*, 23 F.3d 552.

#### **D. Appellate Request**

Given the foregoing, ICAN hereby appeals and requests that the documents responsive to the FOIA Requests be produced within 20 days of this appeal. Thank you for your time and attention to this matter. If you require any additional information, please contact us at **(212) 532-1091** or through email at **foia@sirillp.com**.

Very truly yours,

/s/ Aaron Siri

Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

Colin Farnsworth, Esq.

Enclosures

# Exhibit 1

**FREEDOM OF INFORMATION ACT REQUEST**  
**EXPEDITED PROCESSING REQUESTED**

VIA ONLINE PORTAL

July 19, 2021

Roger Andoh  
Freedom of Information Officer  
Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Building 57, Room MS D-54  
Atlanta, Georgia 30333  
Fax: (404) 235-1852  
Email: [FOIARequests@cdc.gov](mailto:FOIARequests@cdc.gov)

*Re: Documents Concerning Cases of COVID-19 Re-infections in California (IR#0533)*

Dear Mr. Andoh:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, we are requesting records pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“FOIA”). Please provide the records in your possession via email to [foia@sirillp.com](mailto:foia@sirillp.com):

**All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.**

**Request For Expedited Processing**

ICAN requests expedited processing for this request. ICAN is “primarily engaged in disseminating information to the general public” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

ICAN’s mission is to raise public awareness about public health safety and to provide the public with information to give informed consent regarding related health interventions. The SARS-CoV-2, also known as COVID-19, pandemic has affected myriad aspects of every American’s life.

After one year of the pandemic, three major vaccines are being widely used across the country pursuant to Emergency Use Authorizations granted by the FDA. Many employers, now mandating that their employees be fully vaccinated to retain their employment. Similarly, many schools and universities are mandating that pupils be vaccinated to attend in-person classes. These mandates come in light of the highly publicized protection rates of the vaccines. Yet, COVID-19

breakthrough cases are being reported in large numbers. Further, the CDC and the FDA appear to recognize immunity from the virus only when it is vaccine-induced and not through natural-infection. Therefore, there is urgent need for ICAN to gather and disseminate additional information regarding CDC's actions in investigating the causes and impacts of the re-infection cases.

ICAN certifies that the information in the request is true and correct to the best of ICAN's knowledge and belief.

Fees and charges for this search are to be waived pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) since ICAN is a not-for-profit 501(c)(3) organization and its mission is to raise public awareness about vaccine safety and provide the public with information to give informed consent. As part of its mission, ICAN investigates and disseminates information regarding vaccine safety, including through their website, and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government's vaccine safety programs, including the government's efforts to promote vaccine safety. The information requested in this FOIA request will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We, therefore, request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately file an administrative appeal.

If you would like to discuss our requests or any issues raised in this letter, please feel free to contact me at (212) 532-1091 or via email at [foia@sirillp.com](mailto:foia@sirillp.com) during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

/s/ Elizabeth A. Brehm  
Elizabeth A. Brehm, Esq.

# Exhibit 2



September 08, 2021

***SENT VIA EMAIL***

Elizabeth Brehm  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

Dear Ms. Brehm:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your clarified July 19, 2021, Freedom of Information Act (FOIA) request on July 19, 2021, seeking:

“All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.”

The CDC Emergency Operations Center (EOC) relayed the following:

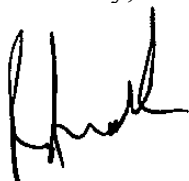
*The CDC has a Data Use Agreement with California and other states. The agreement precludes CDC from providing state data that is voluntarily reported to CDC. If information exists regarding the subject of this request, we suggest you contact the California Department of Public Health directly using <https://www.cdph.ca.gov/>. To obtain other state data, you can use this link <https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html> to access state public health websites.*

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.



If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to FOIARequest@psc.hhs.gov. Please mark both your appeal letter and envelope “FOIA Appeal.” Your appeal must be postmarked or electronically transmitted by December 07, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Andoh', written in a cursive style.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

#21-01584-FOIA

# Exhibit 3

**SENT VIA EMAIL**

July 20, 2022

Aaron Siri  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

***2<sup>nd</sup> Letter Subject: Final Response Letter***

Dear Mr. Siri:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your October 15, 2021, Freedom of Information Act (FOIA) request on October 15, 2021, seeking:

“An unredacted copy of the “Data Use Agreement” between the Centers for Disease Control and Prevention and the State of California referenced in the letter dated September 8, 2021 from Roger Andoh to Elizabeth Brehm, a copy of which is attached hereto as Exhibit A.”

A search of our records failed to reveal any documents pertaining to your request. The CDC Emergency Operations Center (EOC) does not have an official *Data Use Agreement between the Centers for Disease Control and Prevention and the State of California* on record.

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/app/index.aspx?aspxerrorpath=/App/Index.aspx>, or via e-mail at [FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov) or via mail at Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. Please mark both your appeal letter and envelope “FOIA Appeal.” Your appeal must be postmarked or electronically transmitted by October 18, 2022.

Sincerely,

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

# Exhibit 4

## **FREEDOM OF INFORMATION ACT APPEAL**

**SUBMITTED VIA ONLINE PORTAL**

October 19, 2021

Deputy Agency Chief FOIA Officer  
Office of the Assistant Secretary for Public Affairs  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue  
Suite 729H  
Washington, D.C. 20201

*Re: FOIA Appeal (21-01574-FOIA and 21-01584-FOIA) – Documents Concerning Cases of COVID-19 Vaccine Breakthrough Infections and Reinfections in California (IR#0532A, IR#0533A)*

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“**ICAN**”). On behalf of our client, on July 16, 2021 and July 19, 2021, we submitted two separate requests for records (the “**FOIA Requests**”) from the files of the Centers for Disease Control and Prevention (“**CDC**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”). On September 8, 2021, Roger Andoh, CDC/ATSDR FOIA Officer (the “**CDC Officer**”), issued final responses to each request (the “**Final Responses**”). ICAN writes now to appeal the Final Responses.

**A. The July 16, 2021 FOIA Request (IR#0532A)**

On July 16, 2021, ICAN submitted the following request to the CDC (the “**First Request**”):

**All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 Vaccine breakthrough infections.<sup>1</sup>**

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<sup>1</sup> The CDC defines the phrase “Vaccine Breakthrough Infection” as “the detection of SARS-CoV-2 RNA or antigen in a respiratory specimen collected from a person  $\geq$ 14 days after they have completed all recommended doses of a U.S. Food and Drug Administration (FDA)-authorized COVID-19 vaccine.” <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>.

**(Exhibit A.)<sup>2</sup>**

On July 23, 2021, CDC issued an acknowledgment and assigned FOIA request number 21-01574-FOIA to the First Request. **(Exhibit B.)**

On September 8, 2021, the CDC Officer issued a final response to the First Request and stated in relevant part:

**The CDC Emergency Operations Center (EOC) relayed the following:**

**The CDC has a Data Use Agreement with California and other states. The agreement precludes CDC from providing state data that is voluntarily reported to CDC. If information exists regarding the subject of this request, we suggest you contact the California Department of Public Health directly using <https://www.cdph.ca.gov/>. To obtain other state data, you can use this link <https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html> to access state public health websites.**

**(Exhibit C.)**

The CDC did not produce any documents responsive to the First Request.

**B. The July 19, 2021 FOIA Request (IR#0533A)**

On July 19, 2021, ICAN submitted the following request to the CDC (the “**Second Request**”):

**All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.**

**(Exhibit D.)**

On July 23, 2021, CDC issued an acknowledgment and assigned FOIA request number 21-01584-FOIA to the Second Request. **(Exhibit E.)**

On September 8, 2021, the CDC Officer issued a final response to the Second Request (with the final response to the First Request, the “**Final Responses**”) and stated in relevant part:

**The CDC Emergency Operations Center (EOC) relayed the following:**

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<sup>2</sup> All “Exhibits” referenced herein are appended to this letter.

**The CDC has a Data Use Agreement with California and other states. The agreement precludes CDC from providing state data that is voluntarily reported to CDC. If information exists regarding the subject of this request, we suggest you contact the California Department of Public Health directly using <https://www.cdph.ca.gov/>. To obtain other state data, you can use this link <https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html> to access state public health websites.**

(Exhibit F.)

The CDC Officer did not produce any documents in response to the Second Request.

### C. Argument

“FOIA is a far-reaching statute.” *N.Y. Times Co. v. United States DOJ*, 939 F.3d 479, 488 (2nd Cir. 2019). Under FOIA, the public may access “‘virtually every document generated by an agency,’ unless an exception applies.” *Id.* The statute sets forth 9 specific exemptions that may exempt material from disclosure under FOIA. 5 U.S.C. § 552(b). If the agency does not meet its burden of proving the applicability of one of these specific exemptions, the requested information must be disclosed. *See* 5 U.S.C. § 552(d); *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 395 U.S. App. D.C. 138, 143 (D.C. Cir. 2011) (citing *American Civil Liberties Union v. U.S. Dept. of Defense*, 628 F.3d 612, 619 (D.C. Cir. 2011)).

In the Final Responses, CDC did not identify which specific statutory exemption it asserts prohibits disclosure of the documents requested in the FOIA Request. As such, CDC has failed to meet its burden of proving the applicability of any alleged exemption.

Further, CDC cannot circumvent the purpose of FOIA by relying on an alleged “Data Use Agreement” to avoid disclosure of the documents ICAN seeks. *See, e.g., Pharm. Mfrs. Assn. v. Weinberger*, 411 F. Supp. 576, 579 (D. D.C. 1976) (“promises of confidentiality do not transcend the disclosure principals of the FOIA.”); *Petkas v. Staats*, 163 U.S. App. D.C. 327, 501 F.2d 887, 889-90 (1974) (“Nor can a promise of confidentiality in and of itself defeat the right of disclosure.”); *Robles v. Env’tl. Prot. Agency*, 484 F.2d 843, 846 (4th Cir. 1973) (“it is not enough to defeat the right of disclosure that the agency ‘received the file under a pledge of confidentiality to the one who supplied it. Undertakings of that nature cannot, in and of themselves, override the Act.’”) (quoting *Ackerly v. Ley*, 420 F.2d 1336, 1339-40 n.3 (1969) (D.C. Ct. App. 1969)). *See also Legal Aid Soc’y v. Shultz*, 349 F. Supp. 771, 776 (N.D. Cal. 1972) (“administrative promises of confidentiality cannot extend the command of the Freedom of Information Act that only matters ‘specifically exempted from disclosure by statute’ are protected under § 552(b) (3)”); *Save the Dolphins v. United States Dep’t of Commerce*, 404 F. Supp. 407, 408-409, 411 (N.D. Cal. 1975) ((b)(4) exemption did not apply to a film made by the National Marine Fisheries Service under a promise that the film would not be made publicly available).

Given the foregoing, ICAN hereby appeals and requests that the documents responsive to the FOIA Requests be produced within 20 days of this appeal. Thank you for your time and attention to this matter. If you require any additional information, please contact me at **(212) 532-1091** or through email at **foia@sirillp.com**.

Very truly yours,

/s/ Gabrielle G. Palmer  
Gabrielle G. Palmer, Esq.

Enclosures



# Exhibit A

**FREEDOM OF INFORMATION ACT REQUEST**  
**EXPEDITED PROCESSING REQUESTED**

VIA ONLINE PORTAL

July 16, 2021

Roger Andoh  
Freedom of Information Officer  
Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Building 57, Room MS D-54  
Atlanta, Georgia 30333  
Fax: (404) 235-1852  
Email: [FOIARequests@cdc.gov](mailto:FOIARequests@cdc.gov)

*Re: Documents Concerning Cases of COVID-19 Vaccine Breakthrough Infections in California (IR#0532)*

Dear Mr. Andoh:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, we are requesting records pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“FOIA”). Please provide the records in your possession via email to [foia@sirillp.com](mailto:foia@sirillp.com):

**All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 Vaccine breakthrough infections.<sup>1</sup>**

**Request For Expedited Processing**

ICAN requests expedited processing for this request. ICAN is “primarily engaged in disseminating information to the general public” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

ICAN’s mission is to raise public awareness about public health safety and to provide the public with information to give informed consent regarding related health interventions. The

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<sup>1</sup> The CDC defines the phrase “Vaccine Breakthrough Infection” as “the detection of SARS-CoV-2 RNA or antigen in a respiratory specimen collected from a person ≥14 days after they have completed all recommended doses of a U.S. Food and Drug Administration (FDA)-authorized COVID-19 vaccine.” <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>

SARS-CoV-2, also known as COVID-19, pandemic has affected myriad aspects of every American's life.

After one year of the pandemic, three major vaccines are being widely used across the country pursuant to Emergency Use Authorizations granted by the FDA. Many employers, now mandating that their employees be fully vaccinated to retain their employment. Similarly, many schools and universities are mandating that pupils be vaccinated to attend in-person classes. These mandates come in light of the highly publicized protection rates of the vaccines. Yet, COVID-19 breakthrough cases are being reported in large numbers. Further, the CDC and the FDA appear to recognize immunity from the virus only when it is vaccine-induced and not through natural-infection. Therefore, there is urgent need for ICAN to gather and disseminate additional information regarding CDC's actions in investigating the causes and impacts of the breakthrough infection cases.

ICAN certifies that the information in the request is true and correct to the best of ICAN's knowledge and belief.

Fees and charges for this search are to be waived pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) since ICAN is a not-for-profit 501(c)(3) organization and its mission is to raise public awareness about vaccine safety and provide the public with information to give informed consent. As part of its mission, ICAN investigates and disseminates information regarding vaccine safety, including through their website, and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government's vaccine safety programs, including the government's efforts to promote vaccine safety. The information requested in this FOIA request will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We, therefore, request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately file an administrative appeal.

If you would like to discuss our requests or any issues raised in this letter, please feel free to contact me at (212) 532-1091 or via email at [foia@sirillp.com](mailto:foia@sirillp.com) during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

*/s/ Elizabeth A. Brehm*  
Elizabeth A. Brehm, Esq.

# Exhibit B



July 23, 2021

***SENT VIA EMAIL***

Elizabeth Brehm  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

Dear Ms. Brehm:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your clarified July 16, 2021, Freedom of Information Act (FOIA) request on July 16, 2021, seeking:

“All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 Vaccine breakthrough infections.”

Your FOIA request number is #21-01574-FOIA, and it has been placed in our complex processing queue.

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request. We will require more than thirty working days to respond to your request because:

- We reasonably expect that two or more CDC centers, institutes, and offices (C/I/Os) may have responsive records.
- We reasonably expect to consult with two or more C/I/O/s, or another HHS operating division or another federal agency about your request.

To process your request promptly, please consider narrowing the scope of your request to limit the number of responsive records. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request, Carolyn Okpewho, at 770-488-6332 or our FOIA Public Liaison, Roger Andoh, at 770-488-6277. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You requested that we expedite processing your request. Your request is denied because:

- You have failed to show that there is an imminent threat to the life or physical safety of an individual.
- You have not demonstrated that you are a person primarily engaged in disseminating information.

You requested that we waive fees associated with processing your request, your request is denied because it doesn't meet the following criteria:

- The disclosure of the records will not contribute significantly to public understanding of the operations or activities of the government.
- You have failed to demonstrate that you disseminate information to the public.
- You have failed to provide enough information to warrant a waiver of fees.

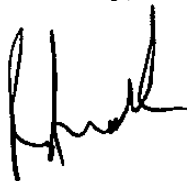
Because Informed Consent Action Network (ICAN) is considered an "All Other requester" you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

Since you did not provide us with a date range for your request, the cut-off date for your request will be the date the search for responsive records starts.

You have the right to appeal the agency's fee waiver response to your request. You may mail your appeal to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to [FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov). Your appeal must be postmarked or electronically transmitted by December 03, 2021.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number.

Sincerely,



Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

# Exhibit C



September 08, 2021

***SENT VIA EMAIL***

Elizabeth Brehm  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

Dear Ms. Brehm:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your clarified July 16, 2021, Freedom of Information Act (FOIA) request on July 16, 2021, seeking:

“All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 Vaccine breakthrough infections.”

The CDC Emergency Operations Center (EOC) relayed the following:

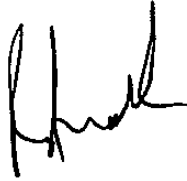
*The CDC has a Data Use Agreement with California and other states. The agreement precludes CDC from providing state data that is voluntarily reported to CDC. If information exists regarding the subject of this request, we suggest you contact the California Department of Public Health directly using <https://www.cdph.ca.gov/>. To obtain other state data, you can use this link <https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html> to access state public health websites.*

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.



If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to FOIARequest@psc.hhs.gov. Please mark both your appeal letter and envelope “FOIA Appeal.” Your appeal must be postmarked or electronically transmitted by December 07, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Andoh', written in a cursive style.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

#21-01574-FOIA

# Exhibit D

**FREEDOM OF INFORMATION ACT REQUEST**  
**EXPEDITED PROCESSING REQUESTED**

VIA ONLINE PORTAL

July 19, 2021

Roger Andoh  
Freedom of Information Officer  
Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Building 57, Room MS D-54  
Atlanta, Georgia 30333  
Fax: (404) 235-1852  
Email: [FOIARequests@cdc.gov](mailto:FOIARequests@cdc.gov)

*Re: Documents Concerning Cases of COVID-19 Re-infections in California (IR#0533)*

Dear Mr. Andoh:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, we are requesting records pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“FOIA”). Please provide the records in your possession via email to [foia@sirillp.com](mailto:foia@sirillp.com):

**All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.**

**Request For Expedited Processing**

ICAN requests expedited processing for this request. ICAN is “primarily engaged in disseminating information to the general public” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

ICAN’s mission is to raise public awareness about public health safety and to provide the public with information to give informed consent regarding related health interventions. The SARS-CoV-2, also known as COVID-19, pandemic has affected myriad aspects of every American’s life.

After one year of the pandemic, three major vaccines are being widely used across the country pursuant to Emergency Use Authorizations granted by the FDA. Many employers, now mandating that their employees be fully vaccinated to retain their employment. Similarly, many schools and universities are mandating that pupils be vaccinated to attend in-person classes. These mandates come in light of the highly publicized protection rates of the vaccines. Yet, COVID-19

breakthrough cases are being reported in large numbers. Further, the CDC and the FDA appear to recognize immunity from the virus only when it is vaccine-induced and not through natural-infection. Therefore, there is urgent need for ICAN to gather and disseminate additional information regarding CDC's actions in investigating the causes and impacts of the re-infection cases.

ICAN certifies that the information in the request is true and correct to the best of ICAN's knowledge and belief.

Fees and charges for this search are to be waived pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) since ICAN is a not-for-profit 501(c)(3) organization and its mission is to raise public awareness about vaccine safety and provide the public with information to give informed consent. As part of its mission, ICAN investigates and disseminates information regarding vaccine safety, including through their website, and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government's vaccine safety programs, including the government's efforts to promote vaccine safety. The information requested in this FOIA request will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We, therefore, request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately file an administrative appeal.

If you would like to discuss our requests or any issues raised in this letter, please feel free to contact me at (212) 532-1091 or via email at [foia@sirillp.com](mailto:foia@sirillp.com) during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

/s/ Elizabeth A. Brehm  
Elizabeth A. Brehm, Esq.

# Exhibit E



July 23, 2021

***SENT VIA EMAIL***

Elizabeth Brehm  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

Dear Ms. Brehm:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your clarified July 19, 2021, Freedom of Information Act (FOIA) request on July 19, 2021, seeking:

“All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections..”

Your FOIA request number is #21-01584-FOIA, and it has been placed in our complex processing queue.

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request. We will require more than thirty working days to respond to your request because:

- We reasonably expect that two or more CDC centers, institutes, and offices (C/I/Os) may have responsive records.
- We reasonably expect to consult with two or more C/I/O/s, or another HHS operating division or another federal agency about your request.

To process your request promptly, please consider narrowing the scope of your request to limit the number of responsive records. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request, Carolyn Okpewho, at 770-488-6332 or our FOIA Public Liaison, Roger Andoh, at 770-488-6277. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You requested that we expedite processing your request. Your request is denied because:

- You have failed to show that there is an imminent threat to the life or physical safety of an individual.
- You have not demonstrated that you are a person primarily engaged in disseminating information.

You requested that we waive fees associated with processing your request, your request is denied because it doesn't meet the following criteria:

- The disclosure of the records will not contribute significantly to public understanding of the operations or activities of the government.
- You have failed to demonstrate that you disseminate information to the public.
- You have failed to provide enough information to warrant a waiver of fees.

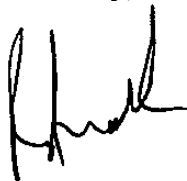
Because Informed Consent Action Network (ICAN) is considered an "All Other requester" you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

Since you did not provide us with a date range for your request, the cut-off date for your request will be the date the search for responsive records starts.

You have the right to appeal the agency's fee waiver response to your request. You may mail your appeal to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to [FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov). Your appeal must be postmarked or electronically transmitted by December 03, 2021.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number.

Sincerely,



Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

# Exhibit F





September 08, 2021

***SENT VIA EMAIL***

Elizabeth Brehm  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

Dear Ms. Brehm:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your clarified July 19, 2021, Freedom of Information Act (FOIA) request on July 19, 2021, seeking:

“All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.”

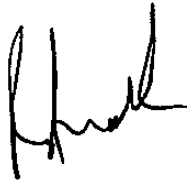
The CDC Emergency Operations Center (EOC) relayed the following:

*The CDC has a Data Use Agreement with California and other states. The agreement precludes CDC from providing state data that is voluntarily reported to CDC. If information exists regarding the subject of this request, we suggest you contact the California Department of Public Health directly using <https://www.cdph.ca.gov/>. To obtain other state data, you can use this link <https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html> to access state public health websites.*

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. You may also transmit your appeal via email to [FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov). Please mark both your appeal letter and envelope “FOIA Appeal.” Your appeal must be postmarked or electronically transmitted by December 07, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Andoh', written in a cursive style.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

#21-01584-FOIA

# Exhibit 5

**SENT VIA EMAIL**

July 20, 2022

Aaron Siri  
Attorney  
Siri & Glimstad  
200 Park Avenue, 17<sup>th</sup> Floor  
New York, New York 10166  
foia@sirillp.com

Dear Mr. Siri:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your clarified July 19, 2021, Freedom of Information Act (FOIA) request on July 19, 2021, seeking:

“All de-identified documents received by the CDC from the California Department of Public Health, or from any other California entity, relating to cases of COVID-19 re-infections.”

Your request number was originally assigned #21-01584-FOIA and closed with a No Records disposition. As a result of your appeal, a new request number, #22-00517-FOIA, was assigned to this scope and a second round of search began.

After several extensive rounds of program searching, our records failed to reveal any documents pertaining to your request. The CDC Emergency Operations Center (EOC) did not locate any records responsive to your request.

You may contact our FOIA Public Liaison at 770-488-6277 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/app/index.aspx?aspxerrorpath=/App/Index.aspx>. or via e-mail at [FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov) or via mail at Hubert H. Humphrey Building, 200 Independence Avenue, Suite 729H, Washington, D.C. 20201. Please mark both your appeal letter and envelope “FOIA Appeal.” Your appeal must be postmarked or electronically transmitted by October 18, 2022.

Sincerely,

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852