

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

INFORMED CONSENT ACTION NETWORK,
2025 Guadalupe Street, Suite 260
Austin, Texas 78705

Plaintiff,

-against-

CENTERS FOR DISEASE CONTROL AND
PREVENTION
200 Independence Avenue SW
Washington, DC 20201

-and-

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

Defendants.

Civil Action No. 1:24-cv-798

COMPLAINT

Plaintiff Informed Consent Action Network (“**ICAN**” or “**Plaintiff**”) brings this action against defendants Centers for Disease Control and Prevention (“**CDC**”) and the United States Department of Health and Human Services (“**HHS**” together with CDC “**Defendants**”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“**FOIA**”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant 5 U.S.C. § 522(a)(4)(B) and 28 U.S.C. § 1331.

PARTIES

3. Plaintiff ICAN is a not-for-profit organization formed and existing under the laws of the state of Texas with its principal office located at 2025 Guadalupe Street, Suite 260, Austin, Texas 78705. Plaintiff is in good standing with the Texas Secretary of State.

4. Defendant CDC is an agency within the Executive Branch of the United States Government, organized within HHS. CDC is an agency within the meaning of 5 U.S.C. § 552(f) and has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant HHS is an agency within the Executive Branch of the United States Government. HHS is an agency within the meaning of 5 U.S.C. § 552(f) and has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. On December 7, 2023, Plaintiff sent a FOIA request to CDC seeking copies of the following records:

Records containing the names of the subject matter experts (SMEs) who informed CDC's December 5, 2023 response¹ to FOIA Request #22-00860.

(Exhibit 1.)

7. Defendant CDC acknowledged Plaintiff's FOIA request on December 8, 2023 and the request was assigned 24-00312-FOIA. **(Exhibit 2.)**

8. On December 8, 2023, CDC sent Plaintiff its final determination letter which stated in relevant part:

We located 5 pages of responsive records (5 pages released in full or part). After a careful review of these pages, some information was withheld from release pursuant to 5 U.S.C. §552 Exemptions 5 and 6. The foreseeable harm standard was considered when applying these redactions. . . .

Information withheld under [Exemption 5] was protected under the deliberative process privilege. . . . The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative, and do not contain or represent formal or informal agency policies or decisions. Examples of information withheld include details on internal predecisional forms. . . .

The information that has been withheld under Exemption 6 consists of personal information, such as names of CDC personnel. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it.

(Exhibit 3.)

9. Plaintiff submitted its appeal to CDC's final determination on December 29, 2023, challenging the CDC's application of exemption 5 and 6. **(Exhibit 4.)**

10. On January 4, 2024, the appeal was received and assigned 2024-00078-A-PHS. **(Exhibit 5.)**

11. As of the date of this Complaint, Defendants have failed to: (i) notify Plaintiff of the determination of its appeal.

COUNT I
FAILURE TO MAKE DETERMINATION BY REQUIRED DEADLINE
(VIOLATION OF FOIA, 5 U.S.C. § 552)

12. Plaintiff realleges the previous paragraphs as if fully stated herein.

13. Defendants are in violation of FOIA.

14. Defendants were required to make a final determination on Plaintiff's appeal no later than twenty (20) business days from acknowledgement of the appeal. Because Defendants failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

15. Plaintiff is being irreparably harmed by reason of Defendants' violation of FOIA and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with the law.

16. Plaintiff has no adequate remedy at law.

COUNT II
IMPROPER WITHHOLDING OF INFORMATION AND DATA
(VIOLATION OF FOIA, 5 U.S.C. § 552)

17. Plaintiff realleges the previous paragraphs as if fully stated herein.

18. Defendants have failed to establish that they adequately applied an exemption to the withheld information and data.

19. Defendants are in violation of FOIA.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

a. Order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under any claimed exemption;

b. Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;

c. Maintain jurisdiction over this action until Defendants comply with FOIA and all orders of this Court;

- d. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);
- e. Grant Plaintiff a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(viii); and
- f. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 19, 2024

SIRI & GLIMSTAD LLP

/s/ Elizabeth A. Brehm
Elizabeth A. Brehm, DC Bar No. NY0532
R. Scott Pietrowski, MS Bar No. 99387
(*pro hac vice to be filed*)

Siri & Glimstad LLP
745 Fifth Avenue, Suite 500
New York, New York 10151
Tel: (212) 532-1091
ebrehm@sirillp.com
spietrowski@sirillp.com