

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

-against-

Civil Action No. 1:24-cv-332

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.

COMPLAINT

Plaintiff Informed Consent Action Network (“**ICAN**” or “**Plaintiff**”) brings this action against Defendants Centers for Disease Control and Prevention (“**CDC**”) and U.S. 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:

INTRODUCTION

On October 29, 2021, the Centers for Disease Control and Prevention (“**CDC**”) published a non-peer reviewed paper entitled *Laboratory-Confirmed COVID-19 Among Adults Hospitalized with COVID-19–Like Illness with Infection-Induced or mRNA Vaccine-Induced SARS-CoV-2*

Immunity — Nine States, January–September 2021, dated October 29, 2021 (the “**Paper**”).¹

The Paper, which appears in the CDC’s *Morbidity and Mortality Weekly Report* (“**MMWR**”), purports to compare the risk of infection between those previously infected with SARS-CoV-2 and those vaccinated for COVID-19. The Paper misleadingly concludes that vaccinated individuals are 5.49 times more protected than unvaccinated individuals. Numerous and serious issues have been raised by academics regarding the way the study was conducted, and the Paper’s conclusion stands in stark contrast to a myriad of peer-reviewed scientific studies that show that natural immunity provides far greater protection than vaccine-induced immunity.²

The questionable Paper forms the basis, at least in part, for the CDC’s recommendation that every person, even those who have been infected, have fully recovered, and now have natural immunity, get vaccinated for COVID-19. This recommendation, in turn, has resulted in federal, state, and local governments, along with private entities, impinging on the civil liberties of naturally immune individuals who have declined the COVID-19 vaccine.³

Plaintiff Informed Consent Action Network (“**Plaintiff**”) is a non-profit organization that advocates for informed consent and disseminates information necessary for same with regard to all medical interventions.

In furtherance of its mission, and in an effort to obtain and disseminate information that may inform those questioning the Paper and the CDC’s recommendations regarding COVID-19

¹ The Paper is available at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7044e1.htm> (last visited January 29, 2024).

² See https://www.icandecide.org/wp-content/uploads/2022/01/Letter-to-CDC-authors_2021_12_29.pdf (last visited January 29, 2024); <https://www.icandecide.org/wp-content/uploads/2021/10/Legal-update-July-6-petition.pdf> (last visited January 29, 2024); https://www.icandecide.org/wp-content/uploads/2021/10/Legal-update-Supplement-to-Petition-re-convalesced_FINAL.pdf (last visited January 29, 2024).

³ See, e.g., <https://www.nbcchicago.com/news/local/chicago-to-require-vaccine-proof-for-indoor-spaces-like-restaurants-bars-gyms/2712739/> (last visited January 29, 2024); <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/04/fact-sheet-biden-administration-announces-details-of-two-major-vaccination-policies/> (last visited January 29, 2024).

for those with naturally immunity, Plaintiff issued three requests (the “**FOIA Requests**”) to the CDC pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”) for communications sent or received by the authors of the Paper regarding the Paper or containing at least one of the following terms: “reinfection,” “reinfected,” “vaccine,” “vaccinated,” “unvaccinated,” “MMWR,” “previously infected”, “Pfizer,” “Moderna,” and/or “Janssen.”

Plaintiff submitted its appeal to CDC’s final determination on September 22, 2022, challenging CDC’s withholding of information and data pursuant to Exemption 5 and Exemption 6, and challenging the adequacy of the agency’s search. In violation of the time limits prescribed by 5 U.S.C. § 552(a)(6)(A)(ii) and 5 U.S.C. § 552(a)(6)(B)(i), as of the date of this Complaint, CDC has failed to make a determination with respect to Plaintiff’s appeal.

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 to 5 U.S.C. § 522(a)(4)(B).

PARTIES

3. Plaintiff ICAN is a not-for-profit organization with an office located at 2025 Guadalupe Street, Suite 260, Austin, Texas 78705, and 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 November 8, 2021, Plaintiff sent a FOIA request to CDC seeking copies of the following records:

All communications regarding the study titled “Laboratory-Confirmed COVID-19 Among Adults Hospitalized with COVID-19-Like Illness with Infection-Induced or mRNA Vaccine-Induced SARS-CoV-2 Immunity – Nine States, January – September 2021” published in the Morbidity and Mortality Weekly Report dated October 29, 2021, available at https://www.cdc.gov/mmwr/volumes/70/wr/mm7044e1.htm?s_cid=mm7044e1_w and attached hereto as Exhibit A that were sent or received by the following individuals:

Catherine H. Bozio, PhD
Sue Reynolds, PhD
Jill Ferdinands, PhD
Palak Patel, MBBS
Eric P. Griggs, MPH
Rachael M. Porter, MPH
Lenee Blanton, MPH
Andrea Steffens, MPH
Natalie Olson, MPH
Jeremiah Williams, MPH
Monica Dickerson, MPH
Meredith McMorrow, MD
Stephanie J. Schrag, DPhil
Jennifer R. Verani, MD
Alicia M. Fry, MD
Eduardo Azziz-Baumgartner, MD
Mark G. Thompson, PhD

(Exhibit 1)

7. On November 9, 2021, the request was received and assigned #22-00310-FOIA.

(Exhibit 2)

8. On August 25, 2022, CDC sent Plaintiff its final determination letter, which stated in relevant part:

We located 417 pages of responsive records (200 pages released in full, 45 pages released in part, and 172 pages

withheld in full). The records can be downloaded at the link below.

<https://centersfordiseasecontrol.sharefile.com/d-sec7f081c8dcf4835bdf678b8fb31f804>

After a careful review of these pages, some information was withheld from release pursuant to 5 U.S.C. §552 Exemption(s) (b)(5) and (b)(6). The foreseeable harm standard was considered when applying these redactions.

(Exhibit 3)

9. Plaintiff submitted its appeal to CDC's final determination on September 22, 2022, challenging CDC's withholding of information and data pursuant to Exemption 5 and Exemption 6, and challenging the adequacy of the agency's search. **(Exhibit 4)**

10. On September 22, 2022, the appeal was received and assigned Case No. 2022-00256-A-PHS. **(Exhibit 5)**

11. In violation of the time limits prescribed by 5 U.S.C. § 552(a)(6)(A)(ii) and 5 U.S.C. § 552(a)(6)(B)(i), as of the date of this Complaint, CDC has failed to make a determination with respect to Plaintiff's 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 were required to make a final determination on Plaintiff's appeal no later than November 4, 2022.

14. Defendants failed to make a final determination on Plaintiff's appeal within the time limits set by FOIA; therefore, Plaintiff is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(A)(ii); 5 U.S.C. § 552(a)(6)(B)(i); and 5 U.S.C. § 552(a)(6)(C)(i).

15. Defendants are in violation of FOIA.

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

16. Plaintiff realleges the previous paragraphs as if fully stated herein.
17. Defendants have failed to establish that they adequately applied Exemptions 5 and 6 to the withheld information and data.
18. Defendants are in violation of FOIA.

COUNT III
FAILURE TO ESTABLISH AN ADEQUATE SEARCH
(VIOLATION OF FOIA, 5 U.S.C. § 552)

19. Plaintiff realleges the previous paragraphs as if fully stated herein.
20. For appeal Case No. 2022-00256-A-PHS, Defendants have failed to establish that they adequately searched for responsive records despite Plaintiff's challenge to same in Plaintiff's appeal.
21. Defendants are in violation of FOIA.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Declare that Defendants' current and continued delay in processing Plaintiff's FOIA appeal is unlawful under FOIA;
- b. 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;
- c. Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- d. Maintain jurisdiction over this action until Defendants comply with FOIA and all orders of this Court;

e. 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); and

f. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: February 2, 2024

SIRI & GLIMSTAD LLP

/s/ Elizabeth A. Brehm

Elizabeth A. Brehm, DC Bar No. NY0532

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