

**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-1060

HEALTH RESOURCES AND SERVICES
ADMINISTRATION
c/o U.S. Department of Health, General Counsel
200 Independence Avenue, S.W.
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 Health Resources and Services Administration (“**HRSA**”) and the United States Department of Health and Human Services (“**HHS**”) (collectively, “**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 HRSA is an agency within the Executive Branch of the United States Government and is a part of HHS. HRSA is an agency within the meaning of 5 U.S.C. § 552(f). HRSA 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 April 12, 2023, Plaintiff sent a FOIA request to HRSA seeking copies of the following records:

Documents sufficient to identify all members of the qualified, independent panel tasked with reexamining Countermeasures Injury Compensation Program's (CICP) initial determination following a request for reconsideration, as described in 42 C.F.R. § 110.90(c).¹

¹ 42 C.F.R. § 110.90(c) ("When the Associate Administrator of the Healthcare Systems Bureau [], receives a request for reconsideration, a qualified panel, independent of the Program, will be convened to review the Secretary's determination. . . .").

(Exhibit 1.)

7. Defendant HRSA acknowledged Plaintiff's FOIA request on April 17, 2023, and the request was assigned tracking number 04122023F212. **(Exhibit 2.)**

8. As of the date of this Complaint, Defendants have failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination other than denial of expedited processing; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

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

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

10. Defendants are in violation of FOIA.

11. Defendants were required to make a final determination on Plaintiff's request no later than twenty (20) business days from acknowledgement of the request. 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.

12. 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.

13. Plaintiff has no adequate remedy at law.

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

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

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

16. Defendants are in violation of FOIA.

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

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

18. For request tracking number 04122023F212, Defendants have failed to establish that they adequately searched for responsive records despite Plaintiff's challenge to same in Plaintiff's appeal.

19. Defendants are in violation of FOIA.

COUNT IV
ENTITLEMENT TO WAIVER OF SEARCH FEES
(VIOLATION OF FOIA, 5 U.S.C. § 552)

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

21. Defendants are in violation of FOIA.

22. Plaintiff sought a waiver of fees. Defendants failed, within 20 days, to produce the requested records and otherwise failed to comply with the statutory requirements of 5 U.S.C. § 552 within the time limits set forth therein.

23. Plaintiff is entitled to a waiver of fees pursuant to 5 U.S.C. § 552(a)(4)(A)(viii).

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

a. Declare that Defendants' current and continued delay in processing Plaintiff's FOIA Request is unlawful under FOIA;

b. Order Defendants to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;

- c. 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;
- d. Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- e. Maintain jurisdiction over this action until Defendants comply with FOIA and all orders of this Court;
- f. 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);
- g. Grant Plaintiff a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(viii); and
- h. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: April 12, 2024

SIRI & GLIMSTAD LLP

/s/ Allison R. Lucas

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