

**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-549

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**” together with HRSA “**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 December 12, 2023, Plaintiff sent a FOIA request to Health Resources and Services Administration seeking copies of the following records:

All records sufficient to identify all agency personnel involved with the Countermeasures Injury Compensation Program (“CICP”).

(Exhibit 1)

7. Defendant Health Resources and Services Administration acknowledged Plaintiff’s FOIA request on December 15, 2023 and assigned it 12122024F109. **(Exhibit 2)**

8. On December 27, 2023, Health Resources and Services Administration sent Plaintiff its final determination letter which stated in relevant part:

A records search was conducted in HRSA’s Division of Injury Compensation Programs (DICP), and we located one page. We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of

disclosure. We withheld portions of the one page under FOIA exemption, 5 U.S.C. § 552(b)(6)(Exemption 6).

Exemption 6 protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information would constitute a clearly unwarranted invasion of privacy. Due to credible threats and harassment against the DICP staff and to protect the safety and well-being of the DICP staff, we withheld the identities and contact information of DICP staff members below the Deputy Director-level.

(Exhibit 3)

9. Plaintiff submitted its appeal to United States Department of Health and Human Services’s final determination on January 6, 2024, challenging the Health Resources and Services Administration’s application of exemption 6. **(Exhibit 4)**

10. On January 10, 2024, the appeal was received and assigned 2024-00085-A-PHS. **(Exhibit 5)**

11. On February 9, 2024, Plaintiff requested an estimated date of a final determination. **(Exhibit 6)** On February 13, 2024, Defendant HHS responded without providing an estimated date of response. *Id.*

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

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

14. Defendants are in violation of FOIA.

15. 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 appeal within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

16. 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.

17. Plaintiff has no adequate remedy at law.

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

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

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

20. 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 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: February 27, 2024

SIRI & GLIMSTAD LLP

/s/ Elizabeth A. Brehm

Elizabeth A. Brehm, DC Bar No. NY0532

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