IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20024,

Plaintiff,

v.

U.S. FOOD AND DRUG ADMINISTRATION
5600 Fishers Lane
Rockville, MD 20857,

Defendant.

Case: 1:07-cv-01776
Assigned To : Sullivan, Emmet G.
Assign. Date : 10/3/2007
Description: FOIA/PA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Food and Drug Administration ("FDA") 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 to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024.

4. Defendant FDA is an agency of the United States Government. Defendant FDA has its principal place of business at 5600 Fishers Lane, Rockville, MD 20857. Defendant FDA has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On May 9, 2007, Plaintiff sent a FOIA request to Defendant FDA seeking access to the following records:

1. Correspondence between Merck and the FDA regarding the vaccine Gardasil.

2. Correspondence between GlaxoSmithKline (GSK) and the FDA regarding approval for the vaccine Cervarix.

3. Correspondence regarding any new drug application seeking approval for the prevention of human papillomavirus (HPV) and/or cervical cancer.

4. Reports to the FDA by consumers, health professionals and FDA regulated companies made to the Vaccine Adverse Event Reporting System regarding problems with the HPV vaccine.

5. Third party communications encouraging approval of any or all vaccines for HPV.

The time frame of the request was identified as January 2004 to the present.

6. Defendant FDA acknowledged receipt of Plaintiff's FOIA request by letter dated May 10, 2007.

7. On May 14, 2007, Defendant FDA provided a "partial response" to the Plaintiff's request by producing a compact disc containing records purportedly responsive to item 4 of the request. The cover letter accompanying this production expressly noted that the production was only a "partial response."

8. Defendant FDA was required by 5 U.S.C. § 552(a)(6)(A)(i) to respond fully to Plaintiff's FOIA request within twenty (20) business days, or on or about June 7, 2007.

9. As of October 3, 2007, Defendant FDA has failed to complete its production of records responsive to Plaintiff's request or otherwise invoke FOIA's provisions allowing for an extension of the twenty (20) business day response period.

COUNT 1
(Violation of FOIA)

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant FDA has violated FOIA by failing to produce all non-exempt records responsive to Plaintiff's May 9, 2007 FOIA request within the twenty (20) day time period required by 5 U.S.C. § 552(a)(6)(A)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce by a date certain any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of responsive records subject to a claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: October 3, 2007

Respectfully submitted,

JUDICIAL WATCH, INC.

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