

state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant U.S. Department of Health and Human Services is an agency of the U.S. Government and is headquartered at 200 Independence Avenue, S.W., Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On December 20, 2013, Plaintiff sent a FOIA request to the Centers for Medicare & Medicaid Services, a component of Defendant U.S. Department of Health and Human Services, seeking access to:

Any and all records of communications including, but not limited to, electronic communications (e-mails), between any officer or employee of the Centers for Medicare & Medicaid Services (including, but not limited to, the Center for Consumer Information and Insurance Oversight (CCIIO)), and any other employee or officer of CMS, the Department of Health and Human Services, and/or the Executive Office of the President, regarding the December 19, 2013 policy guidance issued by the CCIIO. For purposes of clarification, this policy guidance establishes a hardship exemption for consumers whose health insurance policies have been cancelled and allows those consumers to purchase "catastrophic" health insurance policies.

6. Defendant acknowledged receipt of Plaintiff's request on December 27, 2013, and assigned the request "Control Number 122020137051."

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to Plaintiff's request within twenty (20) working days of December 23, 2013, or by January 23, 2014.

8. As of the date of this Complaint, Defendant has failed to produce any records responsive to Plaintiff's requests or demonstrate that responsive records are exempt from production. Nor have they indicated whether or when any responsive records will be produced.

9. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its requests. 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

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

11. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

12. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) 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 (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 18, 2014

Respectfully Submitted,

/s/ Jason B. Aldrich
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