

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR MEDICAL PROGRESS,)
 15333 Culver Drive, Suite 340-819)
 Irvine, CA 92604,)
)
 Plaintiff,)
)
 v.)
)
 U.S. DEPARTMENT OF HEALTH)
 AND HUMAN SERVICES,)
 200 Independence Avenue, SW)
 Washington, DC 20201,)
)
 Defendant.)
 _____)

Civil Action No.

COMPLAINT

Plaintiff Center for Medical Progress brings this action against Defendant U.S. Department of Health and Human Services 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 Center for Medical Progress is a 501(c)(3) not-for-profit organization incorporated under the laws of the State of California and headquartered at 15333 Culver Drive, Suite 340-819, Irvine, CA 92604. Plaintiff is a group of citizen journalists dedicated to monitoring and reporting on medical ethics and advances, particularly relating to bioethical issues that impact human dignity.

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, SW, Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On April 28, 2020, Plaintiff sent a FOIA request to the National Institutes of Health (“NIH”), a component of Defendant U.S. Department of Health and Human Services, seeking access to the following grant applications:

1. NIMH, NICHD, and NINDS Brain and Tissue Repository, Project Nos. 271201300031C-9-0-1, 271201300031C-06-0-1, and 271201300031C-4-0-1, PI: Vahram Haroutunian

https://projectreporter.nih.gov/project_info_description.cfm?aid=9332244&map=y

2. NIMH, NICDH, and NINDS Brain and Tissue Repository, Project Nos. 271201300032C-6-0-1 and 271201300032C-2-0-1, PI: David Lewis

https://projectreporter.nih.gov/project_info_details.cmf?aid=8882066&icdc=0

The request identified each grant application by project name and by project number and included both the name of the Project Investigator (PI) and a hyperlink to the location on NIH’s website where an abstract of the project could be found.

6. NIH acknowledged receipt of the request and advised Plaintiff that the request had been assigned tracking number FOIA Case No. 54522.

7. On August 20, 2020, NIH provided Plaintiff with what it asserted was its “final response” to the request, which consisted of 214 pages of responsive records. NIH’s “final

response” did not indicate that any additional responsive records were being withheld or the reason(s) for any withholdings.

8. Over the course of the following several months, Plaintiff inquired at NIH about additional responsive materials that should have been but were not produced in response to the request. In a September 15, 2020 email, NIH asserted that these materials, the existence of which had not been acknowledged in the August 2020 “final response,” were exempt from production under FOIA.

9. As of the date of this Complaint, NIH has failed to (i) notify Plaintiff of the specific reasons for its withholdings and demonstrate that the requested records are exempt from production; or (ii) advise Plaintiff of the right to appeal the withholdings.

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

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

11. Defendant is in violation of FOIA.

12. Plaintiff is being irreparably harmed by Defendant’s violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

13. Plaintiff has no adequate remedy at law.

14. To trigger FOIA’s administrative exhaustion requirement, Defendant was required to notify Plaintiff of the specific reasons for its withholdings, demonstrate that the requested records are exempt from production, and advise Plaintiff of the right to appeal the withholdings. Because Defendant failed to provide the required notification, make the required showing, or advise Plaintiff of its right to appeal, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant 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 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 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 10, 2021

Respectfully submitted,

/s/ Meredith L. Di Liberto

MEREDITH L. DI LIBERTO

D.C. Bar No. 487733

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