

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

JUDICIAL WATCH, INC.,)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
U.S. DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES,)	
200 Independence Avenue SW)	
Washington, DC 20201,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. 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. 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. Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests

records from federal agencies, analyzes the responses it receives, and disseminates its findings to the American public to inform them about “what their government is up to.”

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 March 11, 2021, Plaintiff sent a FOIA request to the Centers for Disease Control and Prevention (“CDC”), a component of Defendant U.S. Department of Health and Human Services, seeking access to “all emails sent to and from CDC Director Robert Redfield regarding the numbers of deaths reported by New York State government officials due to Covid 19 (also known as SARS-Cov-2 or the novel coronavirus).” The time frame of the request was identified as “September 1, 2020 to March 11, 2021.” The request was served by email via the CDC’s FOIA email portal, foia.cdc.gov.

6. The CDC acknowledged receipt of the request the same day, March 11, 2021 and advised Plaintiff that the request had been assigned case number 21-00849-FOIA.

7. By letter dated March 15, 2021, the CDC asserted that Plaintiff’s request was insufficiently specific and requested Plaintiff provide additional information about the records being sought.

8. Later that same day, March 15, 2021, Plaintiff revised and resubmitted its request, this time seeking access to the following records:

[A]ll emails between CDC Director Robert Redfield and other federal and state government officials with accounts ending in @cdc.gov and/or @exec.ny.gov, regarding the veracity of official

numbers of deaths reported by New York State government officials due to Covid 19/SARS-Cov-2.

As with the March 11, 2021 request, the time frame of the request was identified as “September 1, 2020 to March 11, 2021.”

9. The CDC acknowledged receipt of Plaintiff’s revised request on March 15, 2021. The CDC’s acknowledgement asserted that it was invoking FOIA’s 10-day extension of time provision due to “unusual circumstances.”

10. As of the date of this Complaint, the CDC has 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; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

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

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

12. Defendant is in violation of FOIA.

13. 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.

14. Plaintiff has no adequate remedy at law.

15. To trigger FOIA’s administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff’s request by April 26, 2021 at the latest. Because Defendant 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.

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: May 4, 2021

Respectfully submitted,

/s/ Lauren M. Burke
Lauren M. Burke
DC Bar No. 1028811
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199
Email: lburke@judicialwatch.org

Counsel for Plaintiff