IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

COMPLAINT

Plaintiff Judicial Watch, Inc. ("Plaintiff") brings this action against Defendant U.S. Department of Health and Human Services ("Defendant") 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 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, integrity, and accountability 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 and the records 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 SW, Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On June 7, 2021, Plaintiff sent the following FOIA request to the Food and Drug Administration ("FDA"), Centers for Disease Control and Prevention ("CDC"), and National Institute for Allergy and Infectious Disease ("NIAID"), components of Defendant, seeking access to biodistribution studies and related data for the Pfizer, Moderna, and Johnson & Johnson vaccines used to treat and/or prevent SARS-CoV-2 and/or COVID-19. All three requests were submitted electronically.

6. Receipt of the FDA request was acknowledged on June 7, 2021. Plaintiff subsequently was advised that the FDA request had been assigned FOIA Control Number 2021-4379.

7. Receipt of the CDC request was acknowledged on June 8, 2021, and Plaintiff was advised that the CDC request had been assigned case number 21-01423-FOIA.

8. Receipt of the NIAID request was acknowledged on June 8, 2021, and Plaintiff was advised that the NIAID request had been assigned case number 56469.

9. On June 24, 2021, NIAID advised Plaintiff that it did not possess records responsive to Plaintiff's request. NIAID's determination letter also advised Plaintiff that, if the

requested distribution studies and data exist, the Biomedical Advanced Research and Development Authority ("BARDA"), another component of Defendant, "would be the appropriate federal agency to submit a request." NIAID also informed Plaintiff that it could appeal the "no records" response to Defendant.

10. Plaintiff appealed NIAID's "no records" response on July 1, 2021.

11. Defendant acknowledged receipt of Plaintiff's appeal on July 2, 2021 and advised Plaintiff that the request had been assigned case number 2021-00207-A-PHS.

12. On July 15, 2021, Plaintiff sent BARDA the same FOIA request Plaintiff had sent to CDC, FDA, and NIAID on June 7, 2021. Like the earlier requests, the BARDA request was sent electronically.

13. Receipt of the BARDA request was acknowledged on July 15, 2021, and Plaintiff was advised that the BARDA request had been assigned case number 2021-01434-FOIA-OS.

14. As of the date of this Complaint, the CDC, the FDA, and BARDA have failed to: (i) determine whether to comply with the requests; (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.

15. As of the date of this Complaint, NIAID has not issued a determination regarding Plaintiff's appeal of its "no records" response.

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

16. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.

17. Defendant is in violation of FOIA.

18. 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.

19. Plaintiff has no adequate remedy at law.

20. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make final determinations on Plaintiff's requests/appeal by August 12, 2021, at the latest. Because Defendant failed to make final determinations on Plaintiff's requests/appeal 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 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 *Vaughn* indices 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: September 14, 2021

Respectfully submitted,

/s/ Paul J. Orfanedes

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