

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

AMERICAN TRANSPARENCY, d/b/a/)	
OpenTheBooks.com,)	
200 S. Frontage Road, Suite 106)	
Burr Ridge, IL 60527,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
U.S. DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES,)	
200 Independence Avenue SW)	
Washington, DC 20201,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff American Transparency, d/b/a/ OpenTheBooks.com, 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”), and as grounds therefor 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 American Transparency, d/b/a OpenTheBooks.com, (“OpenTheBooks.com” or “Plaintiff”) is a 501(c)(3) public charity. OpenTheBooks.com is the largest private repository of United States public-sector spending. Its mission is to post online all

publicly available government spending: “every dime, online, in real time.”

OpenTheBooks.com has captured \$6 trillion in FY2020 government expenditures, including nearly all disclosed federal government spending since 2000, 49 of 50 state checkbooks, and 25 million public employee salary and pension records from 50,000 public bodies across America. In support of its mission, OpenTheBooks.com maintains a unique, online database of government spending, which is freely accessible by regular citizens, reporters, academics, and others. The organization’s aggressive transparency, forensic auditing, and oversight reporting has led to the assembly of grand juries, indictments, and successful prosecutions; congressional briefings, hearings, subpoenas, investigations, and legislation; policy changes in U.S. government agencies and the White House; and much more. OpenTheBooks.com is incorporated under the laws of the State of Illinois and is headquartered at 200 S. Frontage Road, Suite 106, Burr Ridge, IL 60527. OpenTheBooks.com seeks access to records in the possession, custody, and control of Defendant.

4. Defendant U.S. Department of Health and Human Services (“Defendant”) 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 January 28, 2021, Plaintiff submitted a FOIA request to the National Institutes for Health (“NIH”), a component of Defendant, seeking the following records about National Institute of Allergy and Infectious Diseases Director Anthony S. Fauci, M.D.:

- i. All employment contracts, modifications and addendums since hiring as Director of National Institute for Health, National Institute of Allergy and Infectious Diseases.
- ii. Daily calendar from 1/1/2019 to the present time.

- iii. Any confidentiality documents, conflict documents, and economic interest disclosure documents.
- iv. Current job description.

6. NIH acknowledged receipt of the request in a telephone call with Plaintiff on January 28, 2021, and, in an email later that same day, Plaintiff agreed to omit Dr. Fauci's calendar from the request.

7. At some point, the request was assigned FOIA Case No. 55847.

8. On May 21, 2021, NIH made a partial production of 51 pages of records responsive to Plaintiff's request. The letter accompanying the production did not advise Plaintiff of any administrative appeal rights and did not state when future productions or a final production would be made.

9. On May 27, 2021, Plaintiff submitted a second FOIA request to NIH for records about Dr. Fauci. The second request sought the following:

- i. Any confidentiality agreements, conflict of interest documents, and economic interest disclosure documents pertaining to calendar year 2020 to the present. These include but are not limited to the OGE Form 278e and accompanying paperwork filed for 2020 with a May 2021 deadline.

10. On June 11, 2021, NIH advised Plaintiff that Plaintiff's second request was being combined with the first request.

11. On September 15, 2021, Plaintiff submitted a third FOIA request to NIH. The third request sought the following:

A complete list/database of all personal royalties paid (including, but not limited to, FY2020) to *current and former* National Institutes of Health employees for work done while they were federally employed. The list/database should include, but not be limited to, the royalty recipient's name, the amount of the royalty, the reason for the royalty, the date the royalty was paid, and the name of the entity paying the royalty.

12. On September 17, 2021, Plaintiff inquired by email about the status of the first and second requests. NIH responded that same day, advising Plaintiff that it was working on the requests. Plaintiff has received no further communication from NIH about the first and second requests.

13. By letter dated September 30, 2021, NIH acknowledged receipt of Plaintiff's third request on September 15, 2021. The letter also indicated that the request had been assigned FOIA Case No. 57048.

14. Plaintiff has received no further communication from NIH about the third request.

15. As of the date of this Complaint, NIH has failed to: (i) issue a final determination on Plaintiff's 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 all of the requested records or otherwise demonstrate that the requested records are exempt from production.

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 (1) make a final determination on Plaintiff's first request by February 26, 2021; (2)

make a final determination on Plaintiff's second request by July 12, 2021; and (3) make a final determination on Plaintiff's third request by October 14, 2021. 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: October 25, 2021

Respectfully submitted,

/s/ Paul J. Orfanedes
PAUL J. ORFANEDES
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