

**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,)

and)

JUDICIAL WATCH, INC.,)
425 Third Street SW, Suite 800)
Washington, DC 20024,)

Plaintiffs,)

Civil Action No.

v.)

U.S. DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)
200 Independence Avenue SW)
Washington, DC 20201,)

Defendant.)

_____)

COMPLAINT

Plaintiffs American Transparency, d/b/a/ OpenTheBooks.com, and Judicial Watch, Inc. (“Plaintiffs”) bring 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, Plaintiffs allege 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”) 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. Plaintiff Judicial Watch, Inc. (“Judicial Watch”) 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. Judicial Watch seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. As part of its mission, Judicial Watch 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.”

5. 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 Plaintiffs seek access.

STATEMENT OF FACTS

6. On November 5, 2021, Plaintiffs submitted a FOIA request to the National Institutes of Health, a component of the U.S. Department of Health and Human Services, via the National Institutes of Health electronic submission system seeking access to the following:

- 1. All calendars or calendar entries for Dr. Anthony Fauci, including calendars maintained on Dr. Fauci’s behalf. For calendars or calendar entries created electronically, the records should include the names of invitees, notes, and other attachments for a given entry.**

The time frame of the request was identified as “November 1, 2019 to March 31, 2020.”

7. By letter dated November 18, 2021, Defendant U.S. Health and Human Services acknowledged receipt of Plaintiffs’ request on November 12, 2021. Plaintiffs also were advised that the request had been assigned FOIA Case Number 57351.

8. Defendant was required to make a final determination whether to comply with the request by December 13, 2021 at the latest.

9. As of the date of this Complaint, Defendant U.S. Health and Human Services has failed to: (i) determine whether to comply with the request; (ii) notify Plaintiffs of any such determination or the reasons therefor; (iii) advise Plaintiffs 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)

10. Plaintiffs reallege paragraphs 1 through 9 as if fully stated herein.

11. Defendant is in violation of FOIA.

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

13. Plaintiffs have no adequate remedy at law.

14. Because Defendant failed to make a final determination on Plaintiffs' request and otherwise comply with FOIA's time limits, Plaintiffs have exhausted administrative appeal remedies.

WHEREFORE, Plaintiffs respectfully request that the Court: (1) order Defendant to conduct a search for any and all records responsive to Plaintiffs' FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiffs' FOIA request 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 Plaintiffs' FOIA request; (4) grant Plaintiffs 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 Plaintiffs such other relief as the Court deems just and proper.

Dated: January 7, 2022

Respectfully submitted,

/s/ Paul J. Orfanedes
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