

**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. 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 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 pursuant to FOIA. Plaintiff analyzes the

agencies' responses and disseminates both its findings and the requested 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 ("HHS") is an agency of the U.S. Government headquartered at 200 Independence Avenue, SW, Washington, DC 20201. HHS has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On September 3, 2021, Plaintiff sent a FOIA request to the Center for Biologics Evaluation and Research ("CBER"), a component of Defendant HHS via email, seeking access to the following:

1. All emails sent to and from Center for Biologics Evaluation and Research Director Marion Gruber regarding the Centers for Disease Control and Prevention/CDC, the Advisory Committee on Immunization (ACIP), and/or "booster vaccines" for the prevention and/or treatment of SARS-CoV-2 and/or COVID-19.

2. All emails sent to and from Center for Biologics Evaluation and Research Deputy Director Phil Krause regarding the Centers for Disease Control and Prevention/CDC, the Advisory Committee on Immunization (ACIP), and/or "booster vaccines" for the prevention and/or treatment of SARS-CoV-2 and/or COVID-19.

The time frame was identified as being from "August 1, 2021 to September 3, 2021."

6. By letter dated September 9, 2021, the Food & Drug Administration ("FDA") acknowledged receipt of the request and assigned Plaintiff's FOIA request the reference number 2021-5961.

7. As of the date of this Complaint, Defendant 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)

8. Plaintiff realleges paragraphs 1 through 7 as if fully stated herein.

9. Defendant is in violation of FOIA.

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

11. Plaintiff has no adequate remedy at law.

12. To trigger FOIA's administrative exhaustion requirement, Defendant HHS was required to make a final determination on Plaintiff's request by October 7, 2021. 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 searches 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: February 4, 2022

Respectfully submitted,

/s/ Meredith Di Liberto

Meredith Di Liberto

D.C. Bar No. 487733

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