

**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. (“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 (“HHS”) 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 October 18, 2021, Plaintiff served a FOIA request via email to the Indian Health Service, a division of Defendant HHS, seeking access to the following:

- i. Any and all records of communications, received by the Office of Community Relations, including but not limited to those communications received by the email address constance.james@ihs.gov, in response to a letter sent to Phoenix Indian Medical Center (PIMC) Staff from Acting CEO Holly Elliot on or around September 21, 2021.
- ii. Any and all records of communications, from September 16, 2021 to present, between PIMC officials and/or employees with USA Today reporter Daniel Funke.
- iii. Any and all records of communications, from September 16, 2021 to present, between PIMC officials and/or employees regarding, concerning, or relating to Jodi O’Malley, James O’Keefe and/or Project Veritas.
- iv. Any and all records of communications, from September 16, 2021 to present, between PIMC officials and U.S. Health and Human Services officials and/or employees regarding, concerning, or relating to Jodi O’Malley, James O’Keefe, and/or Project Veritas.
- v. Any and all records of communications, from September 16, 2021 to present, between PIMC officials and/or employees and employees, agents, and/or representatives of Google, Facebook, Twitter, Instagram, and YouTube

concerning, regarding, or relating to Jodi O'Malley, James O'Keefe, Project Veritas and/or PIMC's COVID-19 response and treatments.

- vi. Any and all records of communications, from September 16 to present, between PIMC officials and White House officials and/or employees regarding, concerning, or relating to Jodi O'Malley, James O'Keefe, and/or Project Veritas.
- vii. Any and all records, including communications, from September 16, 2021 to present, between PIMC officials and/or employees regarding placing Jodi O'Malley on administrative leave.
- viii. Any and all records, including communications, from September 16, 2021 to present, between PIMC officials and/or employees regarding, concerning, or relating to U.S. Representative Paul Gosar's September 23, 2021 letter to U.S. Department of Health and Human Services officials about PIMC's duty to report adverse events to the VAERS system and HIS Safety Tracking and Response (I-STAR) portal.

6. By email dated October 19, 2021, Defendant acknowledged receiving Plaintiff's request and advised Plaintiff that the request had been assigned file number "22-010."

7. On November 17, 2021, by email, Defendant requested Plaintiff narrow its request and provided narrowing suggestions for Plaintiff's approval.

8. On November 18, 2021, Plaintiff agreed to all narrowing suggestions except those provided for request (i). Plaintiff advised the FOIA officer that the request should include all responses to the letter sent to Phoenix Indian Medical Center (PIMC) Staff from Acting CEO Holly Elliot on or around September 21, 2021.

9. 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)**

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is in violation of FOIA.

12. 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.

13. Plaintiff has no adequate remedy at law.

14. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by December 17, 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: April 13, 2022

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

JUDICIAL WATCH, INC.

425 Third Street, S.W., Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Fax: (202) 646-5199

Email: [porfanedes@judicialwatch.org](mailto:porfanedes@judicialwatch.org)

*Counsel for Plaintiff*