

**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. 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. (“Plaintiff”) 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 (“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 September 9, 2021, Plaintiff served a FOIA request to the National Institutes of Health (“NIH”), a component of Defendant, seeking access to the following:

1. All emails sent to and from NIH Clinical Center/Department of Bioethics Director Christine Grady regarding vaccines for the prevention and/or treatment of SARS-CoV-2 and/or COVID-19.
2. All emails sent to and from Ms. Grady referencing the terms “Antibody Dependent Enhancement,” “ADE” (when used to represent Antibody Dependent Enhancement), “pathological priming,” “pre-priming,” “paradoxical immune enhancement,” and/or “disease enhancement.”
3. All emails sent between Ms. Grady and [National Institute of Allergy and Infectious Disease] Director Anthony Fauci.

The time frame of the request was identified as “Nov. 1, 2019 to Sept. 9, 2021.” The request was submitted via NIH’s FOIA web portal.

6. In emails dated September 9, 2021, NIH acknowledged receiving Plaintiff’s request and advised Plaintiff that the request had been assigned file number 57018.

7. On or about October 6, 2021, NIH advised Plaintiff that it had recently processed a third-party’s FOIA request similar to part three of Plaintiff’s request and asked Plaintiff if it

would be willing to limit its request to mirror the third-party request. Plaintiff declined to limit its request but stated that it was willing to accept a rolling production of responsive records.

8. As of the date of this Complaint, NIH 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)

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

10. Defendant is in violation of FOIA.

11. 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.

12. Plaintiff has no adequate remedy at law.

13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's request by October 8, 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: July 18, 2022

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes

D.C. Bar No. 429716

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