

the responses and disseminates 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 is an agency of the U.S. Government and is headquartered at 200 Independence Avenue, S.W., Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On July 6, 2023, Plaintiff sent a FOIA request to the Centers for Disease Control and Prevention (“CDC”), a component of Defendant, seeking access to:

1. All records reviewed, referenced, or relied upon in the drafting and publishing of updated guidance pertaining to breastfeeding by transgender individuals on the CDC’s web site. For purposes of clarification, this guidance is published at <https://www.cdc.gov/breastfeeding/breastfeeding-special-circumstances/maternal-or-infant-illnesses/breast-surgery.html> and <https://www.cdc.gov/nutrition/emergencies-infant-feeding/health-equity.html>.
2. All records of communication between any official or employee of the CDC and any other individual or entity regarding the updated guidance described in part one of this request.

The time frame for this request was identified as “January 1, 2021 to the present.”

6. By a letter dated July 7, 2023, the CDC acknowledged receipt of the request and advised Plaintiff that the request had been assigned case number 23-01423-FOIA. The CDC’s acknowledgement invoked FOIA’s 10-day extension of time provision due to “unusual circumstances,” asserting that it would require more than thirty working days to respond to Plaintiff’s request due to its need to “consult with two or more Centers/ Institutes/ Offices.”

7. As of the date of this Complaint, the CDC 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 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 was required to make a final determination on Plaintiff's request by August 18, 2023, 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: October 10, 2023

Respectfully submitted,

/s/ Kathryn Blankenberg

Kathryn Blankenberg

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