

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN TRANSPARENCY, d/b/a/)	
OpenTheBooks.com,)	
2518 Burnsed Blvd., #609)	
The Villages, FL 32163,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
U.S. DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES,)	
200 Independence Avenue SW)	
Washington, DC 20201,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff American Transparency, d/b/a/ OpenTheBooks.com, 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”), and as grounds therefor 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 American Transparency, d/b/a OpenTheBooks.com, (“OpenTheBooks.com” or “Plaintiff”) 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.” In 2022, OpenTheBooks.com filed 55,000 Freedom of Information Act (FOIA) requests and captured nearly all government spending at every level for the first time in American history—including nearly all disclosed federal government spending since 2001; 50 of 50 state checkbooks; 15,000 municipal level vendor-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 2518 Burnsed Blvd., #609, The Villages, FL 321613. OpenTheBooks.com seeks access to records in the possession, custody, and control of Defendant.

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. For several years, Plaintiff has been investigating and reporting on payments by the National Institutes of Health (“NIH”), a component of Defendant, to NIH scientists and employees who, in the course of their employment, invent biomedical technologies that NIH patents and licenses. According to NIH, royalties received under a license allow the agency to

provide incentives to inventors and other laboratory employees who increased the value of the licensed invention. As part of this ongoing project, Plaintiff has submitted multiple FOIA requests to NIH, including those at issue in this litigation.

a. July 17, 2024 Request – Dr. Rogers Emails.

6. On July 17, 2024, Plaintiff submitted a FOIA request to NIH seeking “all emails from or to Karen Rogers (rogersk@mail.nih.com) containing the terms ‘\$150,000’ or ‘statutory cap.’” The request was submitted via NIH’s online FOIA portal. The date range of the request was identified as January 1, 2020 to July 17, 2024. On information and belief, at that time Dr. Rogers served as the chief of the NIH Office of Technology Transfer’s Licensing Compliance and Administration Unit.

7. Later that same day, NIH sent Plaintiff an email acknowledging receipt of the request and advising Plaintiff that the request had been assigned tracking number 62158.

8. As of the date of this Complaint, NIH has failed to: (i) issue a final determination on 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 all of the requested records or otherwise demonstrate that the requested records are exempt from production.

b. July 17, 2024 Request – General Procedures 1 and 2.

9. Also on July 17, 2024, Plaintiff submitted a FOIA request to NIH, via NIH’s online FOIA Portal, seeking “General Procedures 1” and “General Procedures 2” of Chapter 700 of the United States Public Health Service Technology Transfer Policy Manual. On information and belief, “General Procedures 1” is denominated Chapter 700.1 and “General Procedures 2” is denominated Chapter 700.2. “General Procedures 1” and “General Procedures 2” are referenced but not publicly available on NIH’s website at <https://www.techtransfer.nih.gov/policy/phs->

technology-transfer-

policies?_gl=1*qfwivg*_ga*MTkyMjM0MTEzNC4xNzY5NjQyNzgz*_ga_XZNXZRDNKK*c

zE3Njk2NDI3ODIkbzEkZzEkdDE3Njk2NDI3ODIkajYwJGwwJGgw

10. Later that same day, NIH sent Plaintiff an email acknowledging receipt of the request and advising Plaintiff that the request had been assigned tracking number 62159.

11. As of the date of this Complaint, NIH has failed to: (i) issue a final determination on 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 all of the requested records or otherwise demonstrate that the requested records are exempt from production.

c. December 11, 2025 Request.

12. On December 11, 2025, Plaintiff submitted a FOIA request to NIH via NIH's online FOIA portal, seeking the following:

According to [the NIH's Office of Technology Transfer's] website, "Inventors receive the first \$2,000 collected from a licensee. Next, they receive 15 percent of royalties above \$2,000 and up to \$50,000. Finally, they receive 25 percent of royalties in excess of the first \$50,000 collected each year. Each inventor cannot receive more than \$150,000 in royalty payments for a calendar year."

<https://www.techtransfer.nih.gov/royalties/information-nih-inventors#1>

However, it is my understanding funds in excess of \$150,000 are directed to individual accounts held in trust for employee-inventors, which then themselves pay out when the \$150,000 statutory cap is no longer being reached from direct royalty payments.

Please provide records about any royalty payments received by NIH from NIH patent licensees held in reserve or for the benefit of NIH employee-inventors when payment to an employee-inventor would otherwise exceed \$150,000 in a calendar year. Please also include any relevant policies governing the creation of the financial vehicles holding these funds in reserve

The date range of the request was identified as January 1, 2020 to December 11, 2025.

13. Later that same day, NIH sent Plaintiff an email acknowledging receipt of the request and advising Plaintiff that the request had been assigned tracking number 64976.

14. As of the date of this Complaint, NIH has failed to: (i) issue a final determination on 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 all of the requested records or otherwise demonstrate that the requested records are exempt from production.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

15. Plaintiff realleges paragraphs 1 through 14 as if fully stated herein.

16. Defendant is in violation of FOIA.

17. 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.

18. Plaintiff has no adequate remedy at law.

19. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff's July 17, 2024 requests by August 14, 2024, and on Plaintiff's December 11, 2025 request by January 12, 2026. Because Defendant failed to make final determination on Plaintiff's requests 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 requests 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 Plaintiff's requests 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 requests; (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 11, 2026

Respectfully submitted,

/s/ Paul J. Orfanedes

PAUL J. ORFANEDES

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