

**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 (“HHS”) 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 November 16, 2021, Plaintiff sent a FOIA request to HHS, via the Web Portal, seeking access to the following:

All records of communications, including emails and text messages, regarding the September 21, 2021 letter co-authored by Sen. James Lankford and other congressmen to Secretary Xavier Becerra, demanding an investigation into the University of Pittsburgh's program of fetal body parts procurement and experimentation (copy attached), sent to and from the following HHS officials: Secretary Becerra, Deputy Secretary Andrea Palm, Acting General Counsel Dan Berry, and Assistant Secretary Sarah Lovenheim.

The time frame for the requested records was identified as "September 21, 2021 through the present."

6. By email dated November 16, 2021, HHS acknowledged receipt of the request and assigned Plaintiff's FOIA request the reference number 2022-00160-FOIA-OS. It also invoked FOIA's 10-day extension of time provision due to "unusual circumstances."

7. On November 16, 2021, Plaintiff sent a FOIA request to the National Institutes of Health ("NIH"), a component of Defendant, via the Web Portal, seeking access to the following:

All records of communication, including emails and text messages, regarding the September 21, 2021 letter co-authored by Sen. James Lankford and other congressmen to Director Francis Collins, demanding an investigation into the University of Pittsburgh's program of fetal body parts procurement and experimentation (copy attached), sent to and from the following NIH officials: Director Collins, Principal Deputy Director Lawrence A. Tabak, Acting Chief of Staff John T. Burklow, and Acting Associate Director Renate H. Myles.

The time frame for the requested records was identified as “September 21, 2021 through the present.”

8. By email dated November 16, 2021, NIH acknowledged receipt of the request and assigned Plaintiff’s FOIA request the reference number 57376.

9. As of the date of this Complaint, Defendant HHS has failed to: (i) determine whether to comply with the requests; (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 reason of 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 HHS was required to make a final determination on Plaintiff’s requests by December 30, 2021. Because Defendant failed to make a 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 searches 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 Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and *Vaughn* indices 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 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 4, 2022

Respectfully submitted,

/s/ Meredith Di Liberto

Meredith Di Liberto

D.C. Bar No. 487733

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