

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN TRANSPARENCY, d/b/a/)
OpenTheBooks.com,)
200 S. Frontage Road, Suite 106)
Burr Ridge, IL 60527,)

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.”

OpenTheBooks.com has captured \$6 trillion in FY2020 government expenditures, including nearly all disclosed federal government spending since 2000, 49 of 50 state 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 200 S. Frontage Road, Suite 106, Burr Ridge, IL 60527. 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. On April 8, 2022, Plaintiff submitted a FOIA request to the National Institutes for Health (“NIH”), a component of Defendant, seeking the following records about NIH’s Chief of the Department of Bioethics, Christine Grady, MSN, PhD.:

- i. All employment contracts, modifications and addendums regarding Christine Grady, MSN, PhD, since her hiring as Chief of the Department of Bioethics.

- ii. Any confidentiality agreements/documents, conflict of interest waivers or documents, ethics disclosures, and financial and/or economic interest disclosure documents.
- iii. Grady's current job description.

6. By email dated April 28, 2022, NIH acknowledged receiving Plaintiff's request.

NIH also indicated that the request had been assigned FOIA Case No. 58225.

7. As of the date of this Complaint, Defendant 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)

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 May 26, 2022, 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 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: July 12, 2022

Respectfully submitted,

/s/ Paul J. Orfanedes
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