

# Exhibit A

**CDC FREEDOM OF INFORMATION ACT APPEAL**

**SUBMITTED VIA EMAIL**

June 20, 2022

Deputy Agency Chief FOIA Officer  
Office of the Assistant Secretary for Public Affairs  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue  
Suite 729H  
Washington, D.C. 20201  
[FOIARequest@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov)

***Re: Appeal of FOIA Request Case No. 22-00972-FOIA (IR#0709B)***

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“**ICAN**”). On behalf of ICAN, on February 17, 2022, we submitted a request for records (“**FOIA Request**”) from the files of the Centers for Disease Control and Prevention (“**CDC**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”). On March 23, 2022, Roger Andoh, CDC/ATSDR FOIA Officer (“**CDC Officer**”) responded to the FOIA Request (“**Final Response**”). ICAN writes now to appeal the Final Response.

**A. FOIA Request – 22-00972-FOIA (IR#0709B)**

On February 17, 2022, ICAN submitted a request to the CDC for the following documents:

**All records concerning any meeting held regarding whether natural COVID- 19 infections, or natural immunity, should count, qualify, or suffice in situations where the COVID-19 vaccine is mandated and where the meeting was attended by at least the following people: Vivek Murthy (U.S. Surgeon General), Francis Collins (Former Director of the National Institutes of Health), Anthony Fauci (Chief Medical Advisor to the President, Director of the National Institute of Allergy and Infectious Diseases), Rochelle Walensky (Director of the Centers for Disease Control and Prevention), and Paul Offit (Director of the Vaccine Education Center at Children’s Hospital of Philadelphia).**

- a. **Records sought include, but should not be limited to, any recordings, transcripts, minutes, and notes taking during the meeting, as well as any reports or records used or shared with meeting participants prior to or during the meeting.**
- b. **The timeframe of this request is for records created, modified, sent, received, or shared between January 1, 2021, and December 19, 2021.**

(Exhibit 1.)<sup>1</sup>

On February 23, 2022, CDC acknowledged the FOIA request and assigned it case number 22-00972-FOIA. (Exhibit 2.)

## **B. CDC's Final Response**

On March 23, 2022, the CDC issued a final response letter. The letter stated in part,

**A search of our records failed to reveal any documents pertaining to your request. Specifically, we searched the records for the CDC employee, Rochelle Walensky, and containing any of your specified topics/names listed and within the targeted time frame but found no records.**

(Exhibit 3.)

## **C. Argument**

CDC has failed to conduct an adequate search of the requested records. An agency's search is adequate only if it is "reasonably calculated to uncover all relevant documents." *Zemansky v. E.P.A.*, 767 F.2d 569, 571 (9th Cir. 1985) (quoting *Weisberg v. U.S. Dep't. of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (internal quotation marks omitted). "An agency fulfills its obligations under FOIA if it can demonstrate *beyond material doubt* that its search was reasonably calculated to uncover all relevant documents." *Def. of Wildlife v. United States Border Patrol*, 623 F. Supp. 2d 83, 91 (D.D.C. 2009) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)) (emphasis added). To satisfy its FOIA obligations, an agency needs to adequately describe the scope and methods of its searches, which can reasonably be expected to uncover the records sought and demonstrate the places most likely to contain responsive materials were searched. *Davidson v. E.P.A.*, 121 F. Supp. 2d 38, 39 (D.D.C. 2000). At minimum, the agency must specify "what records were searched, by whom, and through what process." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994).

Furthermore, in order to determine whether a search for responsive records was adequate, a court must first determine the scope of the documents the plaintiff requested. *Wallick v. Agric.*

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<sup>1</sup> All "Exhibits" referenced herein are appended to this letter.

*Mktg. Serv.*, 281 F. Supp. 3d 56, 66 (D.D.C. 2017). It has been long established that an agency has a duty to construe FOIA requests liberally. *Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985); *Conservation Force v. Ashe*, 979 F. Supp. 2d 90, 100-104 (D.D.C. 2013); *Rodriguez v. DOD*, 236 F. Supp. 3d 26, 36-38 (D.D.C. 2017). This means an agency is compelled to interpret requests broadly, even if a narrower reading is also reasonable. *Id.* An agency has a duty under the FOIA to select the interpretation that would likely yield the greatest number of responsive documents. *Conservation Force*, 979 F. Supp. 2d at 102; *Nat'l Sec. Counselors v. CIA*, 849 F. Supp. 2d 6, 12 (D.D.C. 2012). A court can conclude a search is inadequate when the facts reveal a “positive indication of overlooked materials.” *Valencia-Lucena*, 180 F.3d at 326.

Finally, technical precision is not required in FOIA requests, and a request certainly should not fail where the agency knew or should have known what the requester was seeking all along. *Institute for Justice v. Internal Revenue Service*, 941 F.3d 567, 572 (D.C. Cir. 2019). FOIA obligates agencies to conduct searches in good faith and in a manner “reasonably calculated to uncover all relevant documents” sought through a FOIA request. *Steinberg*, 23 F.3d at 551 (quoting *Weisberg*, 745 F.2d at 1485).

CDC did not specify what records were searched, by whom, and through what process. *Steinberg*, 23 F.3d at 552. Therefore, CDC did not fulfill its obligations under FOIA of demonstrating beyond material doubt that its search was reasonably calculated to uncover all relevant documents. *Valencia-Lucena*, 180 F.3d at 325. In CDC Final Response it simply stated,

**we searched the records for the CDC employee, Rochelle Walensky, and containing any of your specified topics/names listed and within the targeted time frame but found no records.**

It remains unclear from this description what records were searched and through what process. ICAN does not know if CDC searched both the digital and physical records of CDC employee, Rochelle Walensky. Further, uncertainty remains on whether the agency conducted a search in good faith and in a manner reasonably calculated to uncover all relevant documents. *Steinberg*, 23 F.3d at 551. While CDC indicates it searched records containing “any of [ICAN’s] specified topic/names listed”, it did not explain its process for doing so. Without further explanation, there is no way for ICAN – or the courts – to know whether the scope of the FOIA request was liberally construed in ways likely to yield the greatest number of responsive documents. *Hemenway*, 601 F. Supp. at 1005; *Conservation Force*, 979 F. Supp. 2d at 102.

Moreover, without further explanation, it remains unclear whether CDC failed to follow leads, such as reviewing the records of meetings that officially or unofficially contained all the individuals listed in the FOIA request (or nearly all the individuals officially, but all unofficially) to see if the topics of concern had been discussed and responsive records generated. For example, around minute thirty-nine (00:39:30 - 00:41:00) of this interview<sup>2</sup> with Paul Offit, Director of the Vaccine Education Center at Children’s Hospital of Philadelphia, Mr. Offit details a meeting he had with Rochelle Walensky and the others listed in the FOIA request.

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<sup>2</sup> <https://zdoggm.com/paul-offit-8/> (last visited 6/17/2022).

Since CDC has not adequately described its search, and the facts indicate the presence of overlooked materials, CDC has failed to demonstrate *beyond material doubt* that its search was reasonably calculated to uncover all relevant documents. *Valencia-Lucena*, 180 F.3d at 325.

**D. Appellate Request**

Given the foregoing, ICAN hereby appeals and requests that the documents responsive to the FOIA Requests be produced within 20 days of this appeal. Thank you for your time and attention to this matter. If you require any additional information, please contact us at **(212) 532-1091** or through email at **foia@sirillp.com**.

Very truly yours,

/s/ Aaron Siri

Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

Colin Farnsworth, Esq.

Enclosures

# Exhibit 1



NEW YORK | LOS ANGELES | MIAMI  
PHOENIX | DETROIT | DENVER

200 Park Avenue, 17th Floor, New York, NY 10166  
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

## **CDC FREEDOM OF INFORMATION ACT REQUEST**

**VIA ONLINE PORTAL**

February 17, 2022

Roger Andoh  
Freedom of Information Officer  
Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Building 57, Room MS D-54  
Atlanta, Georgia 30333

*Re: Meeting Records Regarding Qualifying Natural Immunity for Federal Vaccine Mandates (IR#0709B)*

Dear Sir or Madam:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, please provide the following records to [foia@sirillp.com](mailto:foia@sirillp.com) in electronic form:

**All records concerning any meeting held regarding whether natural COVID-19 infections, or natural immunity, should count, qualify, or suffice in situations where the COVID-19 vaccine is mandated and where the meeting was attended by at least the following people: Vivek Murthy (U.S. Surgeon General), Francis Collins (Former Director of the National Institutes of Health), Anthony Fauci (Chief Medical Advisor to the President, Director of the National Institute of Allergy and Infectious Diseases), Rochelle Walensky (Director of the Centers for Disease Control and Prevention), and Paul Offit (Director of the Vaccine Education Center at Children’s Hospital of Philadelphia).**

- a. Records sought include, but should not be limited to, any recordings, transcripts, minutes, and notes taken during the meeting, as well as any reports or records used or shared with meeting participants prior to or during the meeting.**
- b. The timeframe of this request is for records created, modified, sent, received, or shared between January 1, 2021, and December 19, 2021.**

We ask that you waive any and all fees or charges pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). ICAN is a not-for-profit news media organization whose mission is to raise public awareness about vaccine safety and to provide the public with information to give informed consent. As part of its mission, ICAN actively investigates and disseminates information regarding vaccine safety issues for free, including through its website,<sup>1</sup> a weekly health news and talk show,<sup>2</sup> and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government's vaccine safety programs, including the government's efforts to promote vaccine safety. The information ICAN is requesting will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We therefore request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately take further action.

Furthermore, we specifically request that the agency provide us with an estimated date of completion for this request.

If you would like to discuss our request or any issues raised in this letter, please feel free to contact us at (212) 532-1091 or [foia@sirillp.com](mailto:foia@sirillp.com) during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

*/s/ Aaron Siri*

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Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

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<sup>1</sup> <https://www.icandecide.org/>.

<sup>2</sup> <https://thehighwire.com/>.



# Exhibit 2



Centers for Disease Control  
and Prevention (CDC)  
Atlanta GA 30333

February 23, 2022

Aaron Siri  
Siri & Glimstad LLP  
200 Park Avenue  
17th Floor  
New York, NY 10166  
foia@sirillp.com

Dear Mr. Siri:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated February 17, 2022, for

*[IR#0709B] All records concerning any meeting held regarding whether natural COVID19 infections, or natural immunity, should count, qualify, or suffice in situations where the COVID-19 vaccine is mandated and where the meeting was attended by at least the following people:*

*Vivek Murthy (U.S. Surgeon General);  
Francis Collins (Former Director of the National Institutes of Health);  
Anthony Fauci (Chief Medical Advisor to the President; Director of the National Institute of Allergy and Infectious Diseases);  
Rochelle Walensky (Director of the Centers for Disease Control and Prevention); and  
Paul Offit (Director of the Vaccine Education Center at Children's Hospital of Philadelphia).*

*a. Records sought include, but should not be limited to, any recordings, transcripts, minutes, and notes taking during the meeting, as well as any reports or records used or shared with meeting participants prior to or during the meeting.*

*b. The timeframe of this request is for records created, modified, sent, received, or shared between January 1, 2021, and December 19, 2021*

Your request assigned number is 22-00972-FOIA, and it has been placed in our complex processing queue.

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request.

We will require more than thirty working days to respond to your request because:

1. We reasonably expect that two or more CDC centers, institutes, and offices (C/I/Os) may have responsive records; and
2. We reasonably expect to consult with two or more C/I/O/s, or another HHS operating division or another federal agency about your request.

To process your request promptly, please consider narrowing the scope of your request to limit the number of responsive records. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request Leigh Davidi at 770-488-6298 or our FOIA Public Liaison, Roger Andoh at 770-488-6277.

Page 2— Aaron Siri

Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You requested that we waive fees associated with processing your request, your request is granted, however we may charge reduced fees instead of waiving all fees. If we decide to charge reduced fees you will be notified.

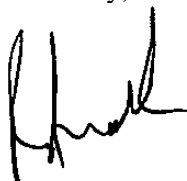
If we decide to charge reduced fees, please know you are considered an “Other requester.”

For an “Other requester” you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

If you don’t provide us with a date range for your request, the cut-off date for your request will be the date the search for responsive records starts.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number. If you have any questions regarding your request, please contact me at 770-488-6298 or via email at [ldavidi@cdc.gov](mailto:ldavidi@cdc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', written in a cursive style.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

22-00972-FOIA

# Exhibit 3



Centers for Disease Control  
and Prevention (CDC)  
Atlanta GA 30333  
March 23, 2022

***SENT VIA EMAIL***

Aaron Siri  
Attorney  
Siri & Glimstad LLP  
200 Park Avenue  
17th Floor  
New York, 10166  
foia@sirillp.com

Dear Mr. Siri:

This letter is our final response to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of February 17, 2022, for

*[IR#0709B] All records concerning any meeting held regarding whether natural COVID19 infections, or natural immunity, should count, qualify, or suffice in situations where the COVID-19 vaccine is mandated and where the meeting was attended by at least the following people:*

*Vivek Murthy (U.S. Surgeon General);  
Francis Collins (Former Director of the National Institutes of Health);  
Anthony Fauci (Chief Medical Advisor to the President; Director of the National Institute of Allergy and Infectious Diseases);  
Rochelle Walensky (Director of the Centers for Disease Control and Prevention); and  
Paul Offit (Director of the Vaccine Education Center at Children's Hospital of Philadelphia).*

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*b. The timeframe of this request is for records created, modified, sent, received, or shared between January 1, 2021, and December 19, 2021.*

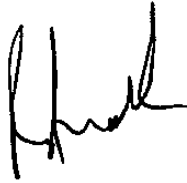
A search of our records failed to reveal any documents pertaining to your request. Specifically, we searched the records for the CDC employee, Rochelle Walensky, and containing any of your specified topics/names listed and within the targeted time frame but found no records.

Page 2— Aaron Siri

You may contact our FOIA Public Liaison at 770-488-6246 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Please mark both your appeal letter and envelope “FOIA Appeal.” Your appeal must be electronically transmitted by Tuesday, June 21, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', is positioned above the typed name.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
Phone: (770) 488-6399  
Fax: (404) 235-1852

#22-00972-FOIA