

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

INFORMED CONSENT ACTION NETWORK,
2025 Guadalupe Street, Suite 260
Austin, Texas 78705

Plaintiff,

-against-

CENTERS FOR DISEASE CONTROL AND
PREVENTION,
200 Independence Avenue SW
Washington, DC 20201,

Defendant.

Civil Action No. 1:23-cv-2802

COMPLAINT

Plaintiff Informed Consent Action Network (“**ICAN**” or “**Plaintiff**”) brings this action against Defendant Centers for Disease Control and Prevention (“**CDC**” or “**Defendant**”) 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 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff ICAN is a not-for-profit organization formed and existing under the laws of the state of Texas with its principal office located at 2025 Guadalupe Street, Suite 260, Austin, Texas 78705. Plaintiff is in good standing with the Texas Secretary of State.

4. Defendant CDC is an agency within the Executive Branch of the United States Government within the meaning of 5 U.S.C. § 552(f). CDC has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On April 27, 2023, Plaintiff sent a FOIA request to the CDC seeking copies of the following records:

All data submitted to v-safe,¹ from November 1, 2022 through the date of the search, concerning the smallpox and/or Mpox (monkeypox) vaccines in response to survey/health check-in questions with pre-populated response options.

Information helpful to fulfilling the request: CDC's response may exclude the names, phone numbers, and email addresses that users provided to register for v-safe. ICAN seeks only the "pre-populated" data and not any free-text data received by v-safe.

(Exhibit A.)

6. On May 1, 2023, Defendant acknowledged receipt of Plaintiff's request and assigned number 23-01084-FOIA to the matter. In its responsive correspondence, Defendant went on to state that "[w]e will require more than thirty working days to respond to your request" and "[w]e reasonably anticipate that you should receive documents by August 28, 2023." **(Exhibit B.)**

¹ <https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/v-safe/index.html>.

7. On May 11, 2023, Defendant wrote Plaintiff advising that “[a] search of our records failed to reveal any documents pertaining to your request.” The Defendant concluded its May 11, 2023 correspondence by advising Plaintiff of its right to appeal. (**Exhibit C.**)

8. On June 23, 2023, Plaintiff timely appealed alleging that Defendant failed to conduct an adequate search of the requested records. In its appeal, Plaintiff further alleged that Defendant failed to adequately describe the scope and methods of its searches or even specify what records were searched, by whom, and through what process. (**Exhibit D.**)

9. Plaintiff posits that the facts reveal a positive indication of overlooked materials. Defendant first claimed that there are no responsive records, but subsequently states that “V-safe subject matter experts (SMEs) are currently working through the process to make relevant data available on the CDC data web site.” (Exhibit C.) That “relevant data” is precisely what Plaintiff’s FOIA request seeks and so Defendant’s response is self-contradicting.

10. As of the date of this Complaint, Defendant has failed to timely respond to Plaintiff’s appeal making the matter subject to judicial review.

COUNT I
FAILURE TO TIMELY RESPOND TO APPEAL
(VIOLATION OF FOIA, 5 U.S.C. § 552)

11. Plaintiff realleges the above paragraphs as if fully stated herein.

12. Defendant is in violation of FOIA.

13. Defendant failed to timely respond to Plaintiff’s appeal within twenty business days. Because Defendant failed to respond to an appeal within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative remedies.

14. 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.

15. Defendant made no good faith attempt to discuss with Plaintiff how it could effectively limit the scope of the request.

16. Plaintiff has no adequate remedy at law.

COUNT II
FAILURE TO PRODUCE RESPONSIVE RECORDS BY REQUIRED DEADLINE
(VIOLATION OF FOIA, 5 U.S.C. § 552)

17. Plaintiff realleges the above paragraphs as if fully stated herein.

18. Defendant failed to produce records it acknowledged exists.

19. Because Defendant failed to make required disclosures within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative remedies.

20. Defendant is in violation of FOIA.

21. 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.

22. Defendant made no good faith attempt to discuss with Plaintiff how it could effectively limit the scope of the request.

23. Plaintiff has no adequate remedy at law.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Declare that Defendant's existing and continued delay in processing Plaintiff's FOIA Request is unlawful under FOIA;

- b. Order Defendant to conduct searches 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;
- c. 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 any claimed exemption;
- d. Order Defendant to waive any fees or charges pursuant to 5 U.S.C. § 552(a)(4)(A)(iii);
- e. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- f. Maintain jurisdiction over this action until Defendant complies with FOIA and all orders of this Court;
- g. 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
- h. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: September 23, 2023

SIRI & GLIMSTAD LLP

/s/ Elizabeth A. Brehm

Elizabeth A. Brehm, DC Bar No. NY0532

R. Scott Pietrowski, MS Bar No. 99387

(pro hac vice to be filed)

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