

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

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

Plaintiff,

-against-

NATIONAL INSTITUTES OF HEALTH,
c/o U.S. Department of Health, General Counsel
200 Independence Avenue, S.W.
Washington, D.C. 20201,

Defendant.

Civil Action No. 1:23-cv-2801

COMPLAINT

Plaintiff, Informed Consent Action Network (“**ICAN**” or “**Plaintiff**”), brings this action against Defendant, National Institutes of Health (“**NIH**” or “**Defendant**”), to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“**FOIA**”). As grounds for its Complaint against the Defendant, Plaintiff would respectfully state and show unto this Honorable Court the following, to-wit:

JURISDICTION AND VENUE

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

STATEMENT OF FACTS

5. On October 7, 2021, Plaintiff sent a FOIA request to the NIH seeking copies of the following records:

Each and every email communication between October 1, 2019 and the date of search which includes Francis Collins and/or his email address on the “To”, “From”, “Cc” or “Bcc” line and includes “ivermectin” in the body or any other part of the email.

(Exhibit A)

6. In its request for records, Plaintiff also sought a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii). **(Exhibit A.)**

7. On October 7, 2021, Defendant acknowledged receipt of Plaintiff’s request and assigned number 57160 to the matter. In its responsive correspondence, Defendant stated only the following: “Case Number 57160 has been assigned to the request you submitted. In all future correspondence regarding this request please reference case number 57160.” **(Exhibit B.)** Defendant’s response otherwise wholly failed to comply with 5 U.S.C. § 552(a)(6).

8. Over five months later, on March 18, 2022, Plaintiff wrote Defendant requesting “an estimated completion date for Request #57160.” **(Exhibit C.)** In response, Defendant advised that “[t]he search for records responsive to your request is still ongoing. Once any/all records have

been collected, they will be placed in the queue for review, and once review begins, an estimated completion date will be assessed.” (Exhibit D.)

9. As of the date of this Complaint, Defendant has failed to timely respond to Plaintiff’s request making the matter subject to judicial review. 5 U.S.C. § 552(a)(6)(C).

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

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

11. Defendant failed, within 20 business days, to produce the requested records and failed to notify Plaintiff of its right to seek assistance from the FOIA Public Liaison of the agency.

12. Defendant failed to make required disclosures or otherwise comply with the statutory requirements of 5 U.S.C. § 552 within the time limits set forth therein, and so Plaintiff is deemed to have exhausted its administrative remedies and is entitled to relief.

13. Defendant is in violation of FOIA.

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
ENTITLEMENT TO WAIVER OF SEARCH FEES

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

18. Defendant is in violation of FOIA.

19. Plaintiff sought a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii). Defendant failed, within 20 days, to produce the requested records and otherwise failed to comply with the statutory requirements of 5 U.S.C. § 552 within the time limits set forth therein.

20. Plaintiff is entitled to a waiver of fees pursuant to 5 U.S.C. § 552(a)(4)(A)(viii).

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. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- e. Maintain jurisdiction over this action until Defendant complies with FOIA and all orders of this Court;
- f. Grant Plaintiff a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(viii);
- g. Order Defendant to waive any fees or charges pursuant to 5 U.S.C. § 552(a)(4)(A)(iii);

h. 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

i. 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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