

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

AMERICA FIRST LEGAL
FOUNDATION,
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003

Plaintiff,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION
1093 New Hampshire Ave.,
Silver Spring, MD 20993

and

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Ave SW
Washington, DC 20201,

Defendants.

Civil Action No.: 23-3680

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against the United States Food and Drug Administration (“FDA”) and the United States Department of Health and Human Services (“HHS”), to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

3. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. The Plaintiff, AFL, is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

5. The Defendant FDA is an agency under 5 U.S.C. § 552(f), with its headquarters at 1093 New Hampshire Ave., Silver Spring, MD 20993.

6. The Defendant HHS is an agency under 5 U.S.C. § 552(f), with its headquarters at 200 Independence Ave SW, Washington, DC 20201.

7. The Defendants have possession, custody, and control of the requested records.

BACKGROUND

8. The Biden Administration has stated that it is committed to a transparent, open, and ethical government.¹

9. “Timely disclosure of records is also essential to the core purpose of FOIA.” U.S. DEPT JUST., Freedom of Information Act Guidelines (Mar. 15, 2022), <https://tinyurl.com/2yd463dv>.

AFL’S FOIA REQUESTS

Hydroxychloroquine Request to HHS

10. On August 8, 2022, AFL submitted a FOIA request to HHS seeking information related to Hydroxychloroquine over a specific time period. *Ex. A*.

11. This request sought a fee waiver. *Id.*

12. On August 9, 2022, AFL received a letter from HHS acknowledging the request and assigned it tracking number 2022-01072-FOIA-OS. *Ex. B*.

13. That email invoked an extension of ten days, for “unusual circumstances” and assigned the request to the complex processing track *Id.*

14. As of the date of this filing, Defendant HHS has not provided any records under this request.

¹ *FACT SHEET: Biden-Harris Administration Prioritizes Effectiveness, Accountability, and Transparency in Bipartisan Infrastructure Law Implementation*, THE WHITE HOUSE (Apr. 29, 2022), <https://tinyurl.com/bdhrccyk>; *Biden White House Pledges Data, Transparency, Respect for Free Press*, REUTERS (Jan. 20, 2021), <https://tinyurl.com/3fzz25mf>; *Mark Joyella, Biden’s White House Press Secretary Promises ‘Trust and Transparency,’* FORBES (Jan. 20, 2021), <https://tinyurl.com/2p8729wz>.

Hydroxychloroquine Request to FDA

15. On August 8, 2022, AFL submitted a FOIA request to FDA seeking information related to Hydroxychloroquine over a specific time period. *Ex. C.*

16. This request sought a fee waiver. *Id.*

17. On August 11, 2022, AFL received a letter from the FDA acknowledging the request and assigned it tracking number 2022-5862. *Ex. D.*

18. As of the date of this filing, Defendant FDA has not provided any records under this request.

Ivermectin Request to HHS

19. On September 14, 2022, AFL submitted a FOIA request to HHS seeking information related to Ivermectin over a specific time period. *Ex. E.*

20. This request sought a fee waiver. *Id.*

21. On September 16, 2022, AFL received a letter from HHS acknowledging the request and assigned it tracking number 2022-01186-FOIA-OS. *Ex. F.*

22. As of the date of this filing, Defendant HHS has not provided any records under this request.

CLAIM FOR RELIEF

Violation of the FOIA, 5 U.S.C. § 552

23. AFL incorporates paragraphs 1–22 by reference.

24. AFL properly requested records within the possession, custody, and control of the Defendants.

25. The Defendants failed to conduct searches for responsive records.

26. Moreover, because Defendants failed to conduct searches, they have failed to disclose any segregable, non-exempt portions of responsive records. *See* 5 U.S.C. § 552(b).

27. The Defendants have failed to respond to AFL's requests within the statutory time period. *See* 5 U.S.C. § 552(a)(6).

28. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

29. The Defendants have violated the FOIA by failing, within the prescribed time limit, to reasonably search for records responsive to AFL's FOIA request and release nonexempt records.

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL's requests must be disclosed pursuant to 5 U.S.C. § 552;
- ii. Order the Defendants to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;
- iii. Order the Defendants to produce by a date certain all non-exempt records responsive to AFL's FOIA requests, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under a claim of exemption;
- iv. Order the Defendants to grant AFL's requests for fee waivers;

v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

vi. Grant AFL such other and further relief as this Court deems proper.

Date: December 11, 2023

Respectfully Submitted

/s/ Jacob Meckler

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