

**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,

-and-

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,  
200 Independence Avenue SW  
Washington, DC 20201,

Defendants.

Civil Action No. 1:23-cv-03676

**COMPLAINT**

1. Plaintiff Informed Consent Action Network (“ICAN” or “Plaintiff”) brings this action against Defendants Centers for Disease Control and Prevention (“CDC”) and U.S. Department of Health and Human Services (“HHS,” together with CDC, “Defendants”) 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**

2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 5 U.S.C. § 522(a)(4)(B).

**PARTIES**

4. Plaintiff ICAN is a not-for-profit organization with an office located at 2025 Guadalupe Street, Suite 260, Austin, Texas 78705 and is in good standing with the Texas Secretary of State.

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

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

**STATEMENT OF FACTS**

7. On November 15, 2022, Plaintiff sent a FOIA request to CDC seeking copies of the following records:

All records in the possession of any of the individuals listed below, dated from December 1, 2020 to December 31, 2021, that include the term “covid” within 100 words of any of the following terms: “signal”, “blood clot”, “heart inflammation”, and/or “pericarditis”.

1. Anne M. Hause, PhD
2. James Baggs, PhD
3. Paige Marquez, MSPH
4. Winston E. Abara, MD
5. Babatunde Olubajo, MS
6. Tanya R. Myers, PhD
7. John R. Su, MD
8. Julianne Gee, MPH
9. David K. Shay, MD
10. Chris Martin-Otto
11. Sandra Amouzou, MPH
12. Ruth Gallego
13. Penina Haber
14. Charles Licata
15. Elaine Miller

16. Pedro Moro

The agency can exclude any SPAM or subscription newsletters.

**(Exhibit A.)**

8. On November 16, 2022, the request was acknowledged and CDC assigned number 23-00264-FOIA to Plaintiff's FOIA request. **(Exhibit B.)**

9. In response to a request from the agency for Plaintiff to narrow its request, on March 20, 2023, Plaintiff agreed to narrow the FOIA Request to the following:

All emails sent or received by an of the individuals listed below, dated from December 1, 2020 to December 31, 2021, that include the term "covid" within 100 words of any of the following terms: "signal", "blood clot", "heart inflammation", and/or "pericarditis."

1. Anne M. Hause, PhD
2. James Baggs, PhD
3. Paige Marquez, MSPH
4. Tanya R. Myers, PhD
5. John R. Su, MD
6. Julianne Gee, MPH
7. David K. Shay, MD
8. Ruth Gallego
9. Elaine Miller

The agency can exclude any SPAM or subscription newsletters.

**(Exhibit C.)**

10. In response to another request from the agency for Plaintiff to narrow its request, on April 18, 2023, Plaintiff again agreed to narrow the FOIA Request to the following:

All emails sent or received by any of the individuals listed below, dated from December 1, 2020 to December 31, 2021, that include the term "covid" and "vaccin\*" within 50 words of any of the following terms: "signal", "blood clot", "heart inflammation", and/or "pericarditis".

1. Anne M. Hause, PhD
2. James Baggs, PhD
3. Paige Marquez, MSPH

4. Tanya R. Myers, PhD
5. John R. Su, MD
6. Julianne Gee, MPH
7. David K. Shay, MD
8. Ruth Gallego
9. Elaine Miller

**(Exhibit D.)**

11. On June 15, 2023, in response to another request from CDC, Plaintiff provided the following additional explanation of its request: “The “topic or subject” is any potentially adverse events (“blood clot”, heart inflammation”, and/or “pericarditis”) following covid vaccination or covid and whether there was a “signal” for same.” **(Exhibit E.)**

12. On July 6, 2023, CDC yet again requested that ICAN narrow the FOIA Request. Plaintiff responded to CDC’s request as follows:

Our client’s position is that [it] has submitted a proper FOIA request. It is reasonably described, narrowed to within one year, provides a limited and identified list of custodians, and is a simple Boolean search. Simply because the resulting volume of responsive documents is large does not render the search improper. As a last attempt, the client will agree to the following search:

December 1, 2020 to December 31, 2021 for (vaccin\* and signal\*)  
W/100 (“blood clot” OR “heart inflammation” OR pericarditis) for these names:

1. Anne M. Hause, PhD
2. James Baggs, PhD
3. Paige Marquez, MSPH
4. Tanya R. Myers, PhD
5. John R. Su, MD
6. Julianne Gee, MPH
7. David K. Shay, MD
8. Ruth Gallego
9. Elaine Miller

**(Exhibit F.)**

13. On July 7, 2023, CDC acknowledged receipt of ICAN's response and advised that it was "assessing [the response] and [. . . would] let [ICAN] know early next week." (*Id.*)

14. On August 15, 2023, after receiving no further correspondence from CDC following Plaintiff's multiple attempts to narrow its request, CDC finally responded to the FOIA Request ("Final Response") by closing it. The letter stated in relevant part: "We have administratively closed your request because, despite discussions with you, the agency has not received additional information that sufficiently clarified the request." (**Exhibit G.**)

15. Plaintiff appealed CDC's final determination letter on August 29, 2023, challenging the closure of the request. (**Exhibit H.**)

16. On September 12, 2023, HHS acknowledged receipt of Plaintiff's appeal and assigned it Case No. 2023-00264-A-PHS. In HHS' acknowledgment letter, it stated in relevant part:

Pursuant to 5 U.S.C. § 552(a)(6)(B)(i) and 5 U.S.C. § 552(a)(6)(B)(iii) of the FOIA and 45 C.F.R. § 5.24(f) of the HHS FOIA regulations, your appeal falls under "unusual circumstances" in that our office will need to consult with another office or agency that has substantial interest in the determination of the appeal. The actual processing time will depend on the complexity of the issues presented in the appeal and consultation with other U.S. Department of Health and Human Services (HHS) components involved.

(**Exhibit I.**)

17. In violation of the time limits prescribed by 5 U.S.C. § 552(a)(6)(A)(ii) and 5 U.S.C. § 552(a)(6)(B)(i), as of the date of this Complaint, HHS has failed to make a determination with respect to Plaintiff's appeal.

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

18. Plaintiff realleges the previous paragraphs as if fully stated herein.

19. Defendants were required to make a final determination on Plaintiff's appeal no later than October 12, 2023.

20. Defendants failed to make a final determination on Plaintiff's appeal within the time limits set by FOIA; therefore, Plaintiff is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(A)(ii); 5 U.S.C. § 552(a)(6)(B)(i); and 5 U.S.C. § 552(a)(6)(C)(i). Defendants are in violation of FOIA.

**COUNT II**  
**FAILURE TO ESTABLISH AN ADEQUATE SEARCH**  
**(VIOLATION OF FOIA, 5 U.S.C. § 552)**

21. Plaintiff realleges the previous paragraphs as if fully stated herein.

22. For appeal Case No. 2023-00264-A-PHS, Defendants have failed to establish that they adequately searched for responsive records despite Plaintiff's challenge to same in Plaintiff's appeal.

23. Defendants are in violation of FOIA.

**REQUESTED RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

a. Declare that Defendants' current and continued delay in processing Plaintiff's FOIA appeal is unlawful under FOIA;

b. Order Defendants to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;

c. Order Defendants 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 Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- e. Maintain jurisdiction over this action until Defendants comply with FOIA and all orders of this Court;
- f. 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
- g. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: December 13, 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*)  
Siri & Glimstad LLP  
745 Fifth Avenue, Suite 500  
New York, New York 10151  
Tel: (212) 532-1091  
[ebrehm@sirillp.com](mailto:ebrehm@sirillp.com)  
[spietrowski@sirillp.com](mailto:spietrowski@sirillp.com)