

Exhibit 4



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HRSA FREEDOM OF INFORMATION ACT APPEAL

SUBMITTED VIA EMAIL

January 6, 2024

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@hhs.gov

Re: *Appeal of FOIA Request #12122024F109 (IR#1103)*

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“**ICAN**”). On behalf of ICAN, on December 12, 2023, we submitted the following request for records (“**FOIA Request**”) from the files of the Health Resources and Services Administration (the “**Agency**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”):

All records sufficient to identify all agency personnel involved with the Countermeasures Injury Compensation Program (“**CICP**”).

(Attachment 1.)

The request was acknowledged and assigned FOIA Request #12122024F109 on December 15, 2023. **(Attachment 2.)**

On December 27, 2023, the Agency responded to the FOIA Request (“**Final Response**”). The letter stated in relevant part:

A records search was conducted in HRSA’s Division of Injury Compensation Programs (DICP), and we located one page. We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure. We withheld portions of the one page under FOIA exemption, 5 U.S.C. § 552(b)(6)(Exemption 6).

Exemption 6 protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information would constitute a clearly unwarranted invasion of privacy. Due to credible threats and harassment against the DICP staff and to protect the safety and well-being of the DICP staff, we withheld the identities and contact information of DICP staff members below the Deputy Director-level.

(Attachment 3.)

ICAN writes now to appeal the Final Response.

A. Argument

For the reasons set forth below, ICAN appeals the Agency’s Final Response:

1. Legal Standard

The Agency has not properly demonstrated that the withheld records fall under the scope of Exemption 6. “An agency withholding responsive documents from a FOIA request bears the burden of proving the applicability of the claimed exemptions.” *American Civil Liberties Union v. DOD*, 628 F.3d 612, 619 (D.C. Cir. 2011). Exemption 6 applies to prevent disclosure of “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). When evaluating withholdings under Exemption 6, there is a “presumption in favor of disclosure [that] is as strong as can be found anywhere in the Act.” *Multi AG Media LLC v. U.S. Dep’t of Agric.*, 515 F.3d 1224, 1227 (D.C. Cir. 2008) (quoting *Nat’l Ass’n of Homebuilders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002)) (internal quotation marks omitted). Therefore, an agency may withhold personal information only if “disclosure would compromise a substantial, as opposed to a *de minimis*, privacy interest.” *Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989).

“The disclosure of names and contact information ‘is not inherently and always a significant threat to ... privacy.’” *Sai v. Transp. Sec. Admin.*, 315 F. Supp. 3d 218, 262 (D.D.C. 2018) (quoting *Horner*, 879 F.2d at 877). “A ‘bare conclusory assessment’ that public disclosure of an employee's name would constitute an invasion of personal privacy is insufficient to support the existence of a privacy interest.” *United Am. Fin., Inc. v. Potter*, 531 F. Supp. 2d 29, 47 (D.D.C. 2008). An agency asserting a substantial privacy risk in the disclosure of the contact information of a federal employee must explain “how the release of contact information for the . . . employee[] . . . would constitute a ‘clearly unwarranted’ invasion of their privacy. *Sai*, 315 F. Supp. 3d at 263.

Furthermore, even when a privacy interest exists, courts must “weigh the privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of privacy.” *Lepelletier v. FDIC*, 164 F.3d 37, 46 (D.C. Cir. 1999) (internal quotation marks omitted); *see also U.S. Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 598 (1982).

2. Application of Legal Standard

The Agency has failed to prove the applicability of Exemption 6 for two reasons. First, the Agency did not demonstrate the release of the withheld names would compromise a substantial privacy interest. *Horner*, 879 F.2d at 875. The Agency's Final Response stated in relevant part:

Due to credible threats and harassment against the DICP staff and to protect the safety and well-being of the DICP staff, we withheld the identities and contact information of DICP staff members below the Deputy Director-level.

(Attachment 3.)

The Agency's conclusory statement that the release of the remaining names would implicate a substantial privacy interest "[d]ue to credible threats and harassment against the DICP staff and to protect the safety and well-being of the DICP staff" does not adequately explain how the release of the names would compromise a substantial privacy interest. *Potter*, 531 F. Supp. 2d at 47.

Second, the Agency's Final Response failed to establish whether, on balance, the release of the names would be an *unwarranted* invasion of privacy when considering the public's interest in the records. *Lepelletier*, 164 F.3d at 46. (Attachment 3.) When considering the significance of the largest public vaccination campaign under FDA's Emergency Use Authorization, and ever, the subsequent federal mandates requiring COVID-19 vaccination, and the Government's reassurance that individuals who experienced injuries from such vaccination would be eligible for compensation under the Countermeasures Injury Compensation Program ("CICP"), the identities of the CICP staff who decide whether an individual is eligible for compensation surely weighs heavily in favor of the public's interest in disclosure. The disclosure of the identities of the remaining CICP staff would reassure the public that the individuals reviewing requests for compensation are not conflicted in any manner and have the requisite qualifications to properly determine whether an individual is eligible for benefits under CICP. In this case, any invasion of privacy would not be clearly unwarranted; therefore, the names of the CICP staff should not have been withheld under Exemption 6.

For these reasons, the Agency has failed to prove the applicability of Exemption 6. ICAN requests the Agency either prove the applicability of Exemption 6 or provide an unredacted copy of the withheld records.

B. Appellate Request

Given the foregoing, ICAN hereby appeals and requests that the documents responsive to the FOIA Request 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.

Enclosures

Attachment 1



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

745 Fifth Ave, Suite 500, New York, NY 10151
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

HRSA FREEDOM OF INFORMATION ACT REQUEST

VIA ONLINE PORTAL

December 12, 2023

Brian May
Freedom of Information Officer
HRSA Freedom of Information Act Office
5600 Fishers Lane, Room 13N82
Rockville, Maryland 20857

Re: *Countermeasures Injury Compensation Program Personnel (IR#1103)*

Dear Sir or Madam:

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

All records sufficient to identify all agency personnel involved with the Countermeasures Injury Compensation Program (“CICP”).

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 other medical treatments, and to provide the public with information to give informed consent. As part of its mission, ICAN actively investigates and disseminates scientifically based health information regarding the safety of vaccines and other medical treatments, for free through its website,¹ a weekly health news and talk show,² and through press events and releases. The HighWire website has approximately 3.4 million weekly visitors. On Twitter, The High Wire has approximately 190,000 followers and 1 to 2.5 million impressions in a 28-day period. On Rumble, The HighWire has approximately 83,000 followers and growing. The size of ICAN's audience and subscribers continues to grow and is illustrative of the wide public interest in the subject of health and medical safety. Critical to ICAN's mission is its proven ability to find and review critical scientific and governmental records and meaningfully report about their social impacts. One of the tools ICAN uses to gather the raw material it uses in its popular investigative reporting is the Freedom of Information Act (FOIA). 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

¹ <https://www.icandecide.org/>.

² <https://thehighwire.com/>.

safety. The information ICAN is requesting will not contribute to any commercial activities. Therefore, ICAN should be properly categorized as a media requester, and it is entitled to the search and processing privileges associated with such a category designation. Accordingly, ICAN will be forced to challenge any agency decision that categorizes it as any other category of requester.

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 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 administrative or legal 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 during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

/s/ Aaron Siri

Aaron Siri, Esq.

Attachment 2



5600 Fishers Lane
Rockville, MD 20857

December 15, 2023

Sent via Email

Aaron Siri
Siri & Glimstad LLP
745 Fifth Avenue, Suite 500
New York, NY 10151
foia@sirillp.com

Dear Aaron Siri:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request received by this office on December 12, 2023. Your request has been assigned tracking number [12122024F109](#). In summary, you request all records sufficient to identify all agency personnel involved with the Countermeasures Injury Compensation Program (“CICP”).

Please note that the records you seek are maintained outside of this office and our staff has not yet been able to complete a search to determine whether the Health Resources and Services Administration (HRSA) possesses records that are responsive to your request. Accordingly, we may be unable to comply with the 20 working-day time limit in this case. We anticipate a total of 120 days needed to process and respond to your request.

The actual processing time will depend on the complexity of your request and whether it involves sensitive records, voluminous records, extensive search, and/or consultation with other U.S. Department of Health and Human Services (HHS) components or other agencies. We anticipate responding to your request by the close of business on June 5, 2023. You can track the status of your request by entering the tracking number and PIN number [A4Z8](#) into our portal.¹

The FOIA and HHS’s FOIA regulations allow agencies to recover part of the costs of processing FOIA requests. You have been classified in the following manner:

- Category 1 – Commercial Use Requester. Category 1 requesters are charged for search time, documents review, and duplication.
- Category 2 – Media, Educational, and Scientific Requester. Category 2 requesters are charged for duplication only after the first 100 pages.
- Category 3 – Other Requester. Category 3 requesters are charged for search time (after 2 hours) and duplication (after 100 pages).

¹ <https://foia.hrsa.gov/check-status>

You requested that we waive FOIA processing fees. The U.S. Department of Health and Human Services (HHS) FOIA regulation, Section 5.54(a)² states that requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is:

- (1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and
- (2) Not primarily in the requester's commercial interest.

We determined that your fee waiver request meets the criteria and agree to waive the FOIA processing fees.

The FOIA and HHS's FOIA regulations are available at the following web addresses:

- FOIA regulations: <http://www.justice.gov/oip/foia-resources>
- HHS's FOIA regulations: <https://www.hhs.gov/foia/statutes-and-resources/index.html>

It is your responsibility to notify our office of any changes in your contact information (i.e., mailing address, telephone numbers, and/or email address). Any returned correspondence due to "unknown address" is considered sufficient reason to close your request.

You may contact this office 20 working days from the date of this letter to inquire the status of your request. When making an inquiry, please refer to your case number.

If you are not satisfied with any aspect of the processing and handling of this request, please contact HRSA's FOIA Public Liaison:

Brian A. May
Freedom of Information Act Officer
Telephone: 301-443-1467
Email: FOIA@hrsa.gov

and/or:

Office of Government Information Services
National Archives and Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
Fax: 202-741-5769
Email: ogis@nara.gov

² [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.54\(a\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.54(a))

If you have any questions, please do not hesitate to contact me at 301-443-8222 or at FOIA@hrsa.gov.

Sincerely,

 Digitally signed by
BRION McCONVILLE
Date: 2023.12.20
12:13:42 -05'00'

Brion McConville
Government Information Specialist

Attachment 3



5600 Fishers Lane
Rockville, MD 20857

December 27, 2023

Sent via Email

Aaron Siri
Siri & Glimstad LLP
745 Fifth Avenue, Suite 500
New York, NY 10151
foia@sirillp.com

Re: Health Resources and Services Administration (HRSA) Freedom of Information Act (FOIA)
Request Case Number 24F109

Dear Aaron Siri:

This is the final response to your FOIA request received by this office on December 12, 2023. In summary, you requested all records sufficient to identify all agency personnel involved with the Countermeasures Injury Compensation Program (“CICP”).

A records search was conducted in HRSA’s Division of Injury Compensation Programs (DICP), and we located one page. We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA’s general rule of disclosure. We withheld portions of the one page under FOIA exemption, 5 U.S.C. § 552(b)(6)(Exemption 6).

Exemption 6 protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information would constitute a clearly unwarranted invasion of privacy. Due to credible threats and harassment against the DICP staff and to protect the safety and well-being of the DICP staff, we withheld the identities and contact information of DICP staff members below the Deputy Director-level.

The U.S. Department of Health and Human Services’ (HHS) policy calls for the fullest responsible disclosure consistent with the requirements of administrative necessity and confidentiality as recognized by the FOIA, 5 U.S.C. § 552 and HHS’s FOIA regulations at 45 C.F.R. Part 5.

If you believe that the information withheld should not be exempt from disclosure or that this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency’s decision.

Your appeal can be submitted by email or in the HHS FOIA and Appeal Portal within 90 days from the date of this letter to:

William Holzerland
Deputy Agency Chief FOIA Officer

U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Email: FOIARequest@hhs.gov
Portal: <https://requests.publiclink.hhs.gov/App/Index.aspx>

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process or if you are not satisfied with any aspect of the processing and handling of this request, please contact HRSA's FOIA Public Liaison:

Brian A. May
Freedom of Information Act Officer
Telephone: 301-443-1467
Email: FOIA@hrsa.gov

If we are unable to resolve your FOIA dispute the Office of Government Information Services (OGIS), the federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
Fax: 202-741-5769
Email: ogis@nara.gov

On December 15, 2023, we classified you as a "Media" category requester and approved your request for a fee waiver.

If you have any questions, please do not hesitate to contact our office at 301-443-1467 or FOIA@hrsa.gov.

Sincerely,

Brian A. May -S

Digitally signed by Brian A.
May -S
Date: 2023.12.27 09:07:26
-05'00'

Brian A. May
Freedom of Information Act Officer

Enclosure
24F109Records-redacted.pdf (one page)