

**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. 1:24-cv-802

**COMPLAINT**

Plaintiff Informed Consent Action Network (“**ICAN**” or “**Plaintiff**”) brings this action against defendants Centers for Disease Control and Prevention (“**CDC**”) and the United States 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**

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 5 U.S.C. § 522(a)(4)(B) and 28 U.S.C. § 1331.

### **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, 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.

5. 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**

6. On March 6, 2023, Plaintiff sent a FOIA request to CDC seeking copies of the following records:

All deliverables submitted by General Dynamics Information Technology, Inc. to Contracting Officer Representative, Traci Sinetta Roberts, from September 26, 2022 through the date of the search, as required by “SECTION 6 – Deliverable schedule” on page 10 of Contract GS35F080CA Task Order 75D30122F15339 (Attachment A).

**(Exhibit 1.)**

7. Defendant CDC acknowledged Plaintiff’s FOIA request on March 13, 2023 and the request was assigned number 23-00863-FOIA. **(Exhibit 2.)**

8. On November 22, 2023, CDC sent Plaintiff its final determination letter which stated in relevant part:

We located 123 pages of responsive records (110 pages released in full or part; 13 pages withheld in full). After a careful review of these pages, some information was withheld from release pursuant to 5 U.S.C. §552 Exemption(s) (b)(4). The foreseeable harm standard was considered when applying these redactions.

**(Exhibit 3.)**

9. Plaintiff submitted its appeal to CDC's final determination on January 6, 2024, challenging the CDC's adequacy of search and application of Exemption 4. **(Exhibit 4.)**

10. On January 8, 2024, the appeal was received and assigned case number 2024-00083-A-PHS. **(Exhibit 5.)**

11. On February 9, 2024, Plaintiff requested a date of final determination of the appeal. **(Exhibit 6.)**

12. On February 20, 2024, Defendant HHS provided an estimated answer date of the end of the calendar year. (*Id.*)

13. As of the date of this Complaint, Defendants have failed to: (i) notify Plaintiff of the determination of its appeal; or (ii) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

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

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

15. Defendants are in violation of FOIA.

16. Defendants were required to make a final determination on Plaintiff's appeal no later than twenty (20) business days from acknowledgement of the appeal. Because Defendants failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

17. Plaintiff is being irreparably harmed by reason of Defendants' violation of FOIA and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with the law.

18. Plaintiff has no adequate remedy at law.

**COUNT II**  
**IMPROPER WITHHOLDING OF INFORMATION AND DATA**  
**(VIOLATION OF FOIA, 5 U.S.C. § 552)**

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

20. Defendants have failed to establish that they adequately applied an exemption to the withheld information and data.

21. Defendants are in violation of FOIA.

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

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

23. For case number 2024-00083-A-PHS, Defendants have failed to establish that they adequately searched for responsive records despite Plaintiff's challenge to same in Plaintiff's appeal.

24. Defendants are in violation of FOIA.

**COUNT IV**  
**ENTITLEMENT TO WAIVER OF SEARCH FEES**

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

26. Defendants are in violation of FOIA.

27. Plaintiff sought a waiver of fees. Defendants failed, within 20 days, to produce the requested records and otherwise failed to comply with the statutory requirements of 5 U.S.C. § 522 within the time limits set forth therein.

28. 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 Defendants' current and continued delay in processing Plaintiff's FOIA Request 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);

- g. Grant Plaintiff a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(viii); and
- h. Grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 19, 2024

SIRI & GLIMSTAD LLP

/s/ Elizabeth A. Brehm  
Elizabeth A. Brehm, DC Bar No. NY0532

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