

# Exhibit 4

**CDC FREEDOM OF INFORMATION ACT APPEAL**

**SUBMITTED VIA EMAIL**

December 29, 2023

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@psc.hhs.gov](mailto:FOIARequest@psc.hhs.gov)

Re: *Appeal of FOIA Request #24-00312-FOIA (IR#0963C)*

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“**ICAN**”). On behalf of ICAN, on December 7, 2023, we submitted the following request for records (“**FOIA Request**”) from the files of the Centers for Disease Control and Prevention (the “**Agency**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”):

Records containing the names of the subject matter experts (SMEs) who informed CDC’s December 5, 2023 response to FOIA Request #22-00860.

**(Attachment 1.)**

The request was acknowledged and assigned FOIA Request #24-00312-FOIA on December 8, 2023. **(Attachment 2.)**

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

We located 5 pages of responsive records (5 pages released in full or part). After a careful review of these pages, some information was withheld from release pursuant to 5 U.S.C. §552 Exemptions 5 and 6. The foreseeable harm standard was considered when applying these redactions. . . .

Information withheld under [Exemption 5] was protected under the deliberative process privilege. . . . The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative, and do not contain or represent formal or informal agency policies or decisions. Examples of information withheld include details on internal predecisional forms. . . .

The information that has been withheld under Exemption 6 consists of personal information, such as names of CDC personnel. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it.

**(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. The Agency Improperly Withheld Records Under FOIA Exemption 5**

**a. Legal Standard**

The Agency has not properly demonstrated that the withheld records fall under the scope of Exemption 5. “Exemption 5 claims must be supported with specificity and [in] detail.” *Judge Rotenberg Educ. Ctr., Inc. v. United States FDA*, 376 F. Supp. 3d 47, 65 (D.D.C. 2019) (citations omitted). The document must be: (1) an inter-agency or intra-agency document; (2) “predecisional”; and (3) deliberative. *Tigue v. United States DOJ*, 312 F.3d 70, 76 (2nd Cir. 2002). The Supreme Court has defined ‘predecisional’ records as those records “prepared in order to assist an agency decision maker in arriving at his decision.” *Renegotiation Bd. v. Grumman Aircraft Eng’g Corp.*, 421 U.S. 168, 184 (1975). Documents are deemed to be deliberative if “they were prepared to help the agency formulate its position.” *Fish & Wildlife Serv.*, 141 S. Ct. 777, 786, 209 L. Ed. 2d 78 (2021). “This standard requires the agency to explain (i) “the nature of the specific deliberative process involved,” (ii) “the function and significance of the documents in that process,” and (iii) “the nature of the decisionmaking authority vested in the document’s author and recipient.” *Brennan Ctr. for Justice at NY Univ. Sch. of Law v. Dep’t of Homeland Sec.*, 331 F. Supp. 3d 74, 93-94 (S.D.N.Y. 2018).

Additionally, to carry its burden, the agency must demonstrate that “it is reasonably foreseeable that release of those materials would cause harm to an interest protected by that privilege.” *Reporters Comm. for Freedom of the Press v. FBI*, 3 F.4th 350, 361 (D.C. Cir. 2021) (citing *Machado Amadis v. U.S. Dep’t of State*, 971 F.3d 364, 370 (D.C. Cir. 2020) (emphasis added); 5 U.S.C. § 552(a)(8)(A)(i)(I)). “In the context of withholdings made under the deliberative process privilege, the foreseeability requirement means that agencies must concretely explain how

disclosure ‘would’– not ‘could’– adversely impair internal deliberations.” *Reporters Comm. for Freedom of the Press*, 3 F.4th. at 369-70 (quoting *Machado Amadis*, 971 F.3d at 371).

Even if the deliberative process privilege applies, it “does not protect documents in their entirety; if the government can segregate and disclose non-privileged factual information within a document, it must.” *Nat’l Day Laborer Org. Network v. United States Immigration & Customs Enf’t*, 486 F. Supp. 3d 669, 689 (S.D.N.Y. 2020) (quoting *Loving v. Dep’t of Def.*, 550 F.3d 32, 38 (D.C. Cir. 2008)). “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b). Only factual material that is “inextricably intertwined with exempted portions” of the documents need not be disclosed. *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002). The government has the “burden of demonstrating that no reasonably segregable information exists within . . . documents withheld.” *Loving v. Dep’t of Defense*, 550 F.3d 32, 41 (D.C. Cir. 2008). “[T]he ultimate objective of exemption 5 is to safeguard the deliberative process of agencies, not the paperwork generated in the course of that process.” *Nat’l Wildlife Fed’n v. U.S. Forest Serv.*, 861 F.2d 1114, 1119 (9th Cir. 1988).

#### **b. Application of Legal Standard**

The Agency has failed to prove the applicability of Exemption 5 for three reasons. First, the Agency’s Final Response did not demonstrate how the withheld information qualifies as predecisional and deliberative. *Tigue*, 312 F.3d at 76. The Agency’s Final Response stated that the withheld information “include[s] details on internal predecisional forms;” however, simply stating that a document is “predecisional” does not demonstrate that the information withheld is actually predecisional and deliberative. (**Attachment 3**.) In this case, the Agency did not explain the nature of the specific deliberative process involved, the function and significance of the documents in that process, or the nature of the decision making authority vested in the documents’ author(s) and recipient(s). *Brennan Ctr. for Justice*, 331 F. Supp. 3d at 93-94. The Agency’s failure to demonstrate how the withheld information qualifies as predecisional and deliberative indicates the information withheld is not predecisional or deliberative and, therefore, should not have been withheld under Exemption 5.

Second, the Agency’s Final Response did not explain how it is reasonably foreseeable that the release of the withheld information would adversely impair the Agency’s internal deliberations. *Reporters Comm. for Freedom of the Press*, 3 F.4th. at 369-70. The Agency’s Final Response only stated that, “The foreseeable harm standard was considered when applying [the] redactions.” (**Attachment 3**.) Stating that the Agency considered foreseeable harm does not adequately explain *how* the release of the withheld information would adversely impair the Agency’s internal deliberations.

Lastly, the Agency did not demonstrate that there is no reasonably segregable information within the production. *Loving*, 550 F.3d at 41. The Agency employed Exemption 5 in combination with Exemption 6 to withhold three pages of the production in their entirety. The Agency’s Final Response did not mention the segregability of these 3 pages. (**Attachment 3**.) The Agency’s failure to indicate whether all segregable portions have been disclosed combined with its use of Exemption 5 to withhold all information in the production suggests segregable information exists

within the withheld portions. If the names of the SMEs appear within the redactions, they should be unredacted.

For these reasons, the Agency has not met its burden of proving the applicability of Exemption 5. ICAN requests the Agency either prove the applicability of Exemption 5 and indicate whether all reasonably segregable information has been disclosed or provide an unredacted copy of the withheld records.

## 2. Agency Improperly Withheld Records Under FOIA Exemption 6

### a. 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).

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).

### b. 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 information would compromise a substantial privacy interest. *Nat’l Ass’n of Retired Fed. Emps.*, 879 F.2d at 875. The Agency’s Final Response stated that “[The Agency] determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it.” (**Attachment 3.**) Simply asserting that a substantial privacy interest exists does not properly establish how the release of the withheld information would compromise a substantial privacy interest.

Second, the Agency did not demonstrate that there is no reasonably segregable information within the production. *Loving*, 550 F.3d at 41. The Agency employed Exemption 6 in combination with Exemption 5 to withhold three pages of the production in their entirety. The Agency’s Final Response did not mention the segregability of these 3 pages. (**Attachment 3.**) The Agency’s failure to indicate whether all segregable portions have been disclosed combined with its use of

Exemption 6 to withhold all information in the production suggests segregable information exists within the withheld portions. If the names of the SMEs appear within the redactions, they should be unredacted.

For these reasons, the Agency has not met its burden of proving the applicability of Exemption 6. ICAN requests the Agency either prove the applicability of Exemption 6 and indicate whether all reasonably segregable information has been disclosed 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](mailto:foia@sirillp.com).

Very truly yours,

*/s/ Aaron Siri*

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Aaron Siri, Esq.

Enclosures

# Attachment 1



NEW YORK | MIAMI | LOS ANGELES | PHOENIX  
DETROIT | AUSTIN | MINNEAPOLIS | WASHINGTON D.C.

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

## **CDC FREEDOM OF INFORMATION ACT REQUEST**

**VIA ONLINE PORTAL**

December 7, 2023

Roger Andoh  
Freedom of Information Officer  
Centers for Disease Control and Prevention  
1600 Clifton Road, N.E., Building 57, Room MS D-54  
Atlanta, Georgia 30333

*Re: FOIA Request #22-00860 Subject Matter Experts (IR#0693C)*

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](mailto:foia@sirillp.com) in electronic form:

**Records containing the names of the subject matter experts (SMEs) who informed CDC’s December 5, 2023 response<sup>1</sup> to FOIA Request #22-00860.**

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,<sup>2</sup> a weekly health news and talk show,<sup>3</sup> 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

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<sup>1</sup> See Attachment A.

<sup>2</sup> <https://www.icandecide.org/>.

<sup>3</sup> <https://thehighwire.com/>.



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 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](mailto: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 A



Centers for Disease Control  
and Prevention (CDC)  
Atlanta GA 30333  
December 5, 2023

Aaron Siri  
Siri & Glimstad LLP  
745 Fifth Ave.  
Suite 500  
New York, NY 10151  
Via email: foia@sirillp.com

Dear Mr. Siri:

This letter is in response to your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of October 6, 2023, for "All documents sufficient to support that COVID-19 vaccines do not change or interact with a vaccine recipient's DNA in any way." This request was opened upon remand of your prior FOIA request #22-00860.

Subject matter experts have informed us that it is not biologically possible for the vaccines to change or interact with an individual's DNA, but nevertheless conducted a search for records. Neither the National Center for Emerging and Infectious Diseases, nor the National Center for Immunization and Respiratory Diseases located records.

You may contact our FOIA Public Liaison at 770-488-6246 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Please mark both your appeal letter and envelope "FOIA Appeal." Your appeal must be electronically transmitted by March 4, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Andoh".

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
(770) 488-6399  
Fax: (404) 235-1852

# Attachment 2



Centers for Disease Control  
and Prevention (CDC)  
Atlanta GA 30333

December 8, 2023

Aaron Siri  
Attorney  
Siri & Glimstad LLP  
745 Fifth Ave.  
Suite 500  
New York, NY 10151  
Via email: [foia@sirillp.com](mailto:foia@sirillp.com)

Dear Aaron Siri:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated December 7, 2023 on December 8, 2023 (request attached). Your request assigned number is 24-00312-FOIA, and it has been placed in our simple processing queue.

**Fees and Fee Waivers**

You requested that we waive fees associated with processing your request, your request is granted, however we may charge reduced fees instead of waiving all fees. If we decide to charge reduced fees you will be notified.

**Fee Category**

Because you are considered an “Other requester” you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

**Cut-off-date**

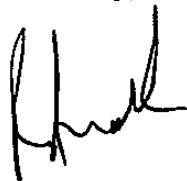
If you don’t provide us with a date range for your request, the cutoff date for your request will be the date the search for responsive records is initiated.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> by entering your assigned request number. If you have any questions regarding your request, please contact Zachary Roberts at [ltk2@cdc.gov](mailto:ltk2@cdc.gov) or 770-488-3929.

Page 2 – Aaron Siri

We reasonably anticipate that you should receive documents by January 22, 2024. Please know that this date roughly estimates how long it will take the agency to close requests ahead of your request in the queue and complete work on your request. The actual date of completion might be before or after this estimated date.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', with a stylized flourish at the end.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
(770) 488-6399  
Fax: (404) 235-1852

24-00312-FOIA

# Attachment 3



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control  
and Prevention (CDC)  
Atlanta GA 30333

December 8, 2023

Aaron Siri  
Attorney  
Siri & Glimstad LLP  
745 Fifth Ave.  
Suite 500  
New York, NY 10151  
Via email: [foia@sirillp.com](mailto:foia@sirillp.com)

Dear Aaron Siri:

This letter is regarding your Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Freedom of Information Act (FOIA) request of December 7, 2023, assigned #24-00312-FOIA (request attached).

We located 5 pages of responsive records (5 pages released in full or part). After a careful review of these pages, some information was withheld from release pursuant to 5 U.S.C. §552 Exemptions 5 and 6. The foreseeable harm standard was considered when applying these redactions.

The documents released in response to this FOIA can be accessed here:

<https://centersfordiseasecontrol.sharefile.com/d-s4eac4c12a1224fd6874544921f53d13a>

#### **EXEMPTION 5**

Exemption 5 protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, and attorney-client privileges. Information withheld under this exemption was protected under the deliberative process privilege. The deliberative process privilege protects the decision-making process of government agencies. The deliberative process privilege protects materials that are both predecisional and deliberative. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative, and do not contain or represent formal or informal agency policies or decisions. Examples of information withheld include details on internal predecisional forms.

#### **EXEMPTION 6**

Exemption 6 protects information in personnel and medical files and similar files when disclosure would constitute a clearly unwarranted invasion of personal privacy. The information that has been withheld under Exemption 6 consists of personal information, such as names of CDC personnel. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it.

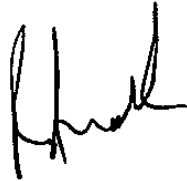


Page 2 – Aaron Siri

You may contact our FOIA Public Liaison at 770-488-6246 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal to the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Your appeal must be electronically transmitted by March 7, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger Andoh', written in a cursive style.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
(770) 488-6399  
Fax: (404) 235-1852

24-00312-FOIA