

# Exhibit 4

Siri | Glimstad

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**HRSA FREEDOM OF INFORMATION ACT APPEAL**

**SUBMITTED VIA EMAIL**

January 5, 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](mailto:FOIARequest@hhs.gov)

Re: *Appeal of FOIA Request #04032023F200 (IR#10004C)*

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“**ICAN**”). On behalf of ICAN, on April 3, 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 demonstrating how requests for benefits submitted to Countermeasures Injury Compensation Program (CICP) for COVID-19 vaccination are evaluated and determined.

**(Attachment 1.)**

The request was acknowledged and assigned FOIA Request #04032023F200 on April 13, 2023. **(Attachment 2.)**

On November 28, 2023, the Agency responded to the FOIA Request (“**Final Response**”). The letter stated in relevant part:

HRSA’s Division of Injury Compensation Programs searched and provided the following details and links to the published references. . . . In evaluating claims, the CICP takes into consideration relevant medical and scientific evidence, including relevant medical records of requesters. . . . The medical and scientific evidence used by the

CICP includes peer-reviewed published literature which is available on PubMed or other searchable databases.

**(Attachment 3.)**

ICAN writes now to appeal the Final Response.

**A. Argument**

For the reason set forth below, ICAN appeals the Agency's Final Response:

**1. Legal Standard**

The Agency has failed to conduct an adequate search of the requested records. An agency's search is adequate only if it is "reasonably calculated to uncover all relevant documents." *Zemansky v. E.P.A.*, 767 F.2d 569, 571 (9th Cir. 1985) (quoting *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (internal quotation marks omitted). "An agency fulfills its obligations under FOIA if it can demonstrate *beyond material doubt* that its search was 'reasonably calculated to uncover all relevant documents.'" *Def. of Wildlife v. United States Border Patrol*, 623 F. Supp. 2d 83, 91 (D.D.C. 2009) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)) (citation omitted) (emphasis added).

FOIA obligates agencies to conduct searches in good faith. *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) ) (quoting *Weisberg*, 745 F.2d at 1485. To determine whether a search for responsive records was adequate, a court must first determine the scope of the documents the plaintiff requested. *Wallick v. Agric. Mktg. Serv.*, 281 F. Supp. 3d 56, 66 (D.D.C. 2017). ). It has been long established that an agency has a duty to construe FOIA requests liberally. *See Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985); *Conservation Force v. Ashe*, 979 F. Supp. 2d 90, 101-102 (D.D.C. 2013); *Rodriguez v. DOD*, 236 F. Supp. 3d 26, 36-38 (D.D.C. 2017). An agency has a duty under FOIA to select the interpretation that would likely yield the greatest number of responsive documents. *Conservation Force*, 979 F. Supp. 2d at 102-03; *Nat'l Sec. Counselors v. CIA*, 849 F. Supp. 2d 6, 12 (D.D.C. 2012). Technical precision is not required in FOIA requests, and a request certainly should not fail where the agency knew or should have known what the requester was seeking all along. *Inst. for Justice v. IRS*, 941 F.3d 567, 572 (D.C. Cir. 2019).

**2. Application of Legal Standard**

The Agency's search was inadequate because the Agency did not properly interpret the scope of the FOIA Request. The FOIA Request sought:

All records demonstrating how requests for benefits submitted to Countermeasures Injury Compensation Program (CICP) for COVID-19 vaccination are evaluated and determined.

**(Attachments 1.)**

The FOIA Request sought all records demonstrating how requests for compensation submitted to Countermeasures Injury Compensation Program (CICP) are evaluated. The term “[a]ll records” includes the specific scientific literature the Countermeasures Injury Compensation Program (“CICP”) takes into consideration when evaluating requests for compensation. However, instead of providing the specific scientific literature, the Agency’s Final Response stated that:

In evaluating claims, the CICP takes into consideration relevant medical and scientific evidence, including relevant medical records of requesters. . . . The medical and scientific evidence used by the CICP includes peer-reviewed published literature which is available on PubMed or other searchable databases.

**(Attachment 3.)**

The Agency’s Final Response indicates that CICP takes “peer-reviewed published literature which is available on PubMed or other searchable databases” into consideration when evaluating requests for benefits under CICP; however, the Agency failed to identify what specific peer-reviewed literature is used. **(Attachment 3.)** Stating that the literature is publicly available on PubMed does not identify the literature used by CICP. In addition, the Final Response indicates that the evidence “includes” the peer-reviewed literature” but does not state it is limited to the peer-reviewed literature. It fails to otherwise identify any other evidence used by CICP. The Agency’s vague and illusory response indicates that it failed to properly interpret the scope of the FOIA Request. ICAN requests the Agency provide the specific literature relied upon by CICP when evaluating requests for benefits.

For this reason, the Agency has not demonstrated beyond a material doubt that its search was reasonably calculated to uncover all relevant documents. *Def. of Wildlife*, 623 F. Supp. 2d at 91. ICAN requests the Agency conduct an adequate search and produce all records responsive to the FOIA Request.

**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  
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## **HRSA FREEDOM OF INFORMATION ACT REQUEST**

**VIA ONLINE PORTAL**

April 3, 2023

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

*Re: CICP Benefits Guidelines (IR#1028C)*

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:

**All records demonstrating how requests for benefits submitted to Countermeasures Injury Compensation Program (CICP) for COVID-19 vaccination are evaluated and determined.**

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. (**Attachment A.**) 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>1</sup> a weekly health news and talk show,<sup>2</sup> and through press events and releases. 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 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

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<sup>1</sup> <https://www.icandecide.org/>.

<sup>2</sup> <https://thehighwire.com/>.

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*

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Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

Colin M. Farnsworth Esq.

# Attachment A



DECLARATION OF CATHARINE LAYTON

STATE OF TEXAS

COUNTY OF Hays

I, Catharine Layton, being duly sworn on oath do say:

1. I am the Chief Operating Officer of the Informed Consent Action Network (ICAN), a not-for-profit 501(c)(3) organization whose mission is to disseminate scientific health information to the public.

2. I have been an officer of ICAN since its founding in 2016. I oversee all day-to-day operations of the organization and all ICAN's programs. Together with our CEO and Board, I ensure that all efforts are focused on our mission statement and ensure that ICAN stays in compliance with all required rules and regulations.

3. In pursuit of its mission, ICAN relies primarily on its own investigative reporting. ICAN is both instrumental in orchestrating cutting edge investigations into the safety of various medical products, as well as widely disseminating its findings through various media channels. Most notably, ICAN's popular website hosts the organization's largest education program, The HighWire with Del Bigtree. Utilizing its media teams' 40+ years of experience in TV production and investigative journalism, The HighWire provides hours of new video content to the public each week for free.

4. The HighWire website has approximately 3.4 million weekly visitors. On Twitter, The HighWire has approximately 140,000 followers and 1 to 2.5 million impressions in a 28-day period. Between Rumble and Bitchute, The HighWire has approximately 60,000 followers and growing. Additionally, ICAN has 29,000 text subscribers and 194,245 email subscribers.

5. 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. Moreover, 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.

6. 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).

7. ICAN uses records it obtains from its FOIA requests to carry out its public mission and support its role as a non-profit news-media organization in the field of health and medical safety, but as a non-profit, ICAN does not have a commercial interest in the records it seeks through FOIA.

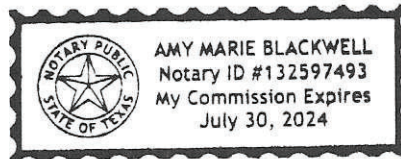
8. Based on what I know as the Chief Operating Officer, as well what has been demonstrated by ICAN's past and current investigative reporting, for purposes of FOIA's Fee Waiver provisions, ICAN certainly qualifies as a "representative of the news media."

Signed 3 day of May 2022

  
Signature of Catharine Layton

I, Amy Blackwell Notary public for the state of Texas witnessed  
said Catharine Layton sign the above statement this 3 day of May, 2022  
(month)

Notary Public for 



# Attachment 2



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services  
Administration

Rockville, MD 20857

April 13, 2023

***Sent via Email***

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

Dear Aaron Siri:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request received by this office on April 3, 2023. Your request has been assigned tracking number 04032023F200. In summary, you request records that demonstrate how requests for benefits submitted to Countermeasures Injury Compensation Program (CICP) for COVID-19 vaccinations are evaluated and determined.

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).

You requested that we waive FOIA processing fees. The U.S. Department of Health and Human Services (HHS) FOIA regulation, Section 5.54(a)<sup>1</sup> 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.

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<sup>1</sup> [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))

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, as well as the 10 additional days provided by the statute.

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 HHS components or other agencies. We anticipate responding to your request by the close of business on July 10, 2023. You can track the status of your request by entering the tracking number and PIN number ETSB into our portal.<sup>2</sup>

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](mailto: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](mailto:ogis@nara.gov)

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<sup>2</sup> <https://foia.hrsa.gov/check-status>

If you have any questions, please do not hesitate to contact me at 301-443-3650 or at [FOIA@hrsa.gov](mailto:FOIA@hrsa.gov).

Sincerely,

*Alexis Chancellor*

Alexis Chancellor  
Deputy Freedom of Information Act Officer

# Attachment 3





5600 Fishers Lane  
Rockville, MD 20857

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November 28, 2023

***Sent via Email***

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

Re: Health Resources and Services Administration (HRSA) Freedom of Information Act (FOIA)  
Request Case Number 23F200

Dear Aaron Siri:

This is the final response to your FOIA request dated records that demonstrate how requests for benefits submitted to Countermeasures Injury Compensation Program (CICP) for COVID-19 vaccinations are evaluated and determined.

HRSA's Division of Injury Compensation Programs searched and provided the following details and links to the published references. The Secretary of the Department of Health and Human Services has issued federal declarations under the Public Readiness and Emergency Preparedness Act (PREP Act) that list the countermeasures covered by the CICP. Please review the "Covered Countermeasures" section of a Medical Countermeasures against COVID-19 declaration and its ten subsequent amendments, to determine the types of medical countermeasures that are covered by the CICP.

For more detailed information regarding how the CICP works and its requirements, such as the standard of proof for causation, see the CICP Administrative Implementation Interim Final Rule; and Final Rule. In evaluating claims, the CICP takes into consideration relevant medical and scientific evidence, including relevant medical records of requesters. Since medical records that requesters submit to the CICP contain personally identifiable information and personal health information, the CICP is unable to provide this information to you. The medical and scientific evidence used by the CICP includes peer-reviewed published literature which is available on PubMed or other searchable databases.

For more information about the CICP, including the most recent data, visit the CICP website.

On April 13, 2023, we classified you as "Media" category requester and we approved your fee waiver.



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

Sincerely,

**Brian A. May** -

**S**

Brian A. May

Freedom of Information Act Officer

Digitally signed by Brian A.  
May -S  
Date: 2023.11.28 08:21:16  
-05'00'