

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EHSAN ZANDIFAR
3051 Brighton 3rd Street, Apt #313,
Brooklyn, New York 11235

Plaintiff,

v.

Civil Action No. 24-1132

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Avenue, S.W.
Washington, D.C. 20201

Defendant.

COMPLAINT

Plaintiff, Dr. Ehsan Zandifar (“Plaintiff” or “Dr. Zandifar”), brings this judicial review and action against Defendant, the United States Department of Health and Human Services (“Defendant” or “HHS” or “agency”). In support thereof, Plaintiff states as follows:

INTRODUCTION

1. This is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief.
2. Through FOIA, Plaintiff seeks the production of all responsive records involving Dr. Ehsan Zandifar, and his work at the University of Washington School of Medicine. The best representation of Plaintiff’s request is the properly submitted request, dated December 4, 2023, attached to and made part of this Complaint as Exhibit 101.

3. Defendant HHS has violated the Freedom of Information Act by failing to issue a determination within the statutory period, by failing to conduct a reasonable search, and by failing to release all responsive, non-exempt records according to law.

PARTIES

4. Plaintiff, Ehsan Zandifar, is an internal medicine resident physician who currently works in Brooklyn, New York. Dr. Zandifar has conducted medical research on three projects at the University of Washington School of Medicine in Seattle, Washington, a public university that is granted funds for research by Defendant. Plaintiff made the request at issue in this judicial review on December 4, 2023.
5. Defendant, the United States Department of Health and Human Services, is an agency within the meaning of 5 U.S.C. § 552(f)(1). Plaintiff, upon knowledge and belief, alleges that Defendant HHS has possession and control of the records responsive to these requests.

JURISDICTION AND VENUE

6. This action arises under FOIA. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) & (a)(6)(C)(i). This case presents a federal question that confers jurisdiction on this Court. *See* 28 U.S.C. § 1331 and 28 U.S.C. § 1346.
7. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

FACTUAL ALLEGATIONS

8. Plaintiff is a medical resident physician and seeks records concerning, *inter alia*, Plaintiff's participation in medical research projects through the University of Washington School of Medicine. *See* Exhibit 101.

9. Dr. Zandifar participated in conducting research projects conducted between February 2017 and July 2017 at the University of Washington Medical Center. The research was conducted after approval and agreement between the Program Director of Body Imaging at that time, Dr. Dighe, who is the current Vice Chair of the Department of Radiology at the University of Washington Medical Center, and his mentors. The research included the study of differentiation of gallbladder polyps, and cancer from gallbladder stones, based on imaging and ultrasonographic findings. A second research project was titled A Nomogram of Lateral Abdominal Wall Fat Thickness in Normal Third Trimester Fetuses. Dr. Zandifar is of the belief that this second research project was the origin for more than 10 medical articles. Finally, Dr. Zandifar developed the idea of kidney elastography for differentiating various stages of kidney failure. All research projects were approved by the Institutional Review Board (“IRB”) of the University of Washington.
10. Dr. Zandifar reached out to two different offices of the University of Washington – the Diversity, Equity, and Inclusion Office (“DEI”), and the University Complaint Investigation and Resolution Office (“UCIRO”) – after he noticed that one of his research activities was published without respect to his authorship rights. After much delay, the investigation of his claim at the DEI office – which by this time had been issued a ticket on the University Bias Incident Reporting Tool System – was discontinued by the President Provost Office. Likewise, the UCIRO Office failed to investigate his claim in a fair and unbiased manner. Dr. Zandifar made frequent calls to the office of the President of the University and was told by office staff that the President of the University was aware of Dr. Zandifar’s complaint. Dr. Zandifar exhausted all means of communication with the University of Washington, to no avail.

11. Dr. Zandifar finally had no other recourse but to file a complaint with the HHS Office of Civil Rights. The confirmation number for the complaint is 28087335 and was accepted by the HHS Office of Civil Rights on December 5, 2022.
12. Dr. Zandifar now seeks records related to his work at the University of Washington. The purpose for requesting the records is for public interest, news gathering, and ultimately journalism, and not for commercial use.

FOIA REQUEST NO. 2024-00297-FOIA-PHS

13. On December 4, 2023, Plaintiff submitted a FOIA request for records to the HHS via the HHS FOIA portal. Exhibit 101. The time period of the request is “for all records created or received between July 1, 2016 until an adequate search for responsive records occurs.”

Id. Plaintiff made a request for the following records:

- a. All records which discuss or describe Dr. Ehsan Zandifar’s work at the University of Washington School of Medicine;
- b. All records discussing or describing IRB Number: HSD49496 mentioning Dr. Zandifar;
- c. All records discussing or describing Dr. Zandifar on two other IRB approved projects;
- d. All records discussing or describing Ehsan Zandifar;
- e. All records which discuss or describe Dr. Ehsan Zandifar’s efforts to learn more about the fact that his name was left off a research paper;
- f. All records discussing or describing his participation in another project named gallbladder polyps vs cancer vs stone;

- g. All records [sic] discussing or describing his participation in renal elastography [sic] a project at the University of Washington;
- h. All records discussing or describing any communication about Dr. Zandifar's complaint to the ombudsman office;
- i. All records discussing or describing any communication about Dr. Zandifar's complaint to the office of vice dean of research Dr. John Slattery;
- j. All records discussing or describing any communication about Dr. Zandifar's complaint to Ms. Gail Gray;
- k. All records discussing or describing any communication about Dr. Zandifar's complaint to Dr. Dighe, director of body imaging;
- l. All records discussing or describing any communications inside University of Washington or HHS after Dr. Zandifar became aware that his research was published without respect to his authorship right;
- m. All records discussing or describing any communications inside UW or HHS with the Diversity, Equity and Inclusion office, DEI office and the office of President of UW, president provost, UW medical school, director of personal policy, human resources, department of radiology including but not limited to Ms. Northquist, Ms. Barbara Van Ess, Ms. Gail Gray, BRIT and UCIRO officers, Ms. Alina Mc Lauchlan;
- n. All records discussing or including his complaint to HHS filled office;
- o. All records discussing or describing in the DHHS about his previous FOIA request No. 2023-00104-FOPA-OS/ which has been withdrawn by him.

Id.

14. On December 5, 2023, Defendant acknowledged receipt of Plaintiff's FOIA request. Defendant assigned tracking number 2024-00297-FOIA-PHS and placed the request to the "complex track." Defendant stated that it was "extending the time limit to respond to your request for ten additional days." Exhibit 102 is the HHS Acknowledgement Letter and it is attached and made part of this Complaint.
15. On December 8, 2023, Plaintiff received an email from the agency requesting a Proof of Identity and Consent form and stating that the "request will be placed on hold until this information is received." Exhibit 103 is the HHS Email Requesting Proof of Identity and Consent and it is attached and made part of this Complaint.
16. On December 18, 2023, Plaintiff, via email, submitted a completed Proof of Identity and Consent form to the agency. Exhibit 104 is Plaintiff's Email Providing the Proof of Identity and Consent Form and it is attached and made part of this Complaint.
17. On February 10, 2024, Plaintiff sent an Estimated Completion Date ("ECD") demand to Defendant. Exhibit 105 is the Plaintiff's First ECD Demand and it is attached and made part of this Complaint.
18. On February 12, 2024, the Defendant responded to the ECD demand and stated that it had "not yet received any responsive records from the program office pertaining to your request," and was unable to provide an ECD, "absent knowing the record volume yielded by the search." Exhibit 106 is the HHS Response to Plaintiff's First ECD Demand and it is attached and made part of this Complaint.
19. On March 11, 2024, Plaintiff sent a second ECD demand to Defendant. Exhibit 107 is Plaintiff's Second ECD Demand and it is attached and made part of this Complaint.

20. On April 10, 2024, Plaintiff sent a third ECD demand to Defendant. Exhibit 108 is Plaintiff's Third ECD Demand and it is attached and made part of this Complaint.
21. 20 working days passed on January 12, 2024. An additional 10 working days passed on January 29, 2024. Defendant has not issued a final determination on Plaintiff's request. Defendant has not released any records responsive to Plaintiff's FOIA request.
22. Plaintiff has constructively exhausted all administrative remedies and this matter is ripe for de novo judicial review.

LEGAL FRAMEWORK OF FOIA

23. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).
24. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. 5 U.S.C. §552(a)(4)(B).
25. Under FOIA, a federal agency has the burden to sustain its actions. *Id.*
26. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

COUNT I – DEFENDANT'S FAILURE TO ISSUE A DETERMINATION WITHIN THE STATUTORY PERIOD

27. Plaintiff realleges paragraphs 1 through 26 above as if fully set forth herein.

28. The request in this matter seeks the disclosure of all agency records responsive to Plaintiff's request and was properly made.
29. Defendant HHS is a federal agency subject to the FOIA.
30. Included within the scope of the request is one or more records or portions thereof that are not exempt under FOIA.
31. Defendant HHS failed to issue a determination within the statutory deadline.

COUNT II – DEFENDANT'S FAILURE TO CONDUCT A REASONABLE SEARCH

32. Plaintiff realleges paragraphs 1 through 31 above as if fully set forth herein.
33. Defendant HHS has failed to conduct a reasonable search for all records responsive to the request.

COUNT III – DEFENDANT'S FAILURE TO RELEASE RECORDS

34. Plaintiff realleges paragraphs 1 through 33 above as if fully set forth herein.
35. Defendant HHS has failed to promptly release all records, or portions of records, responsive to the Plaintiff's request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

- i. Declare that Defendant violated FOIA;
- ii. Order Defendant to conduct a reasonable search for records;
- iii. Order Defendant to issue a determination;
- iv. Order Defendant to make all non-exempt records or portions of records promptly available to Plaintiff;
- v. Enjoin Defendant from withholding all non-exempt public records under FOIA;
- vi. Award Plaintiff's attorney fees and costs; and,

vii. Award such other relief the Court considers appropriate.

Dated: April 18, 2024

RESPECTFULLY SUBMITTED,

/s/ C. Peter Sorenson

C. Peter Sorenson, DC Bar #438089

Sorenson Law LLC

PO Box 10836

Eugene, OR 97440

(541) 606-9173

peter@sorensonfoialaw.com

Lead attorney for Plaintiff