Exhibit 3

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DARPA FREEDOM OF INFORMATION ACT APPEAL
EXPEDITED PROCESSING

VIA EMAIL August 3, 2022

Ms. Joo Chung
Assistant to the Secretary of Defense (PCLT)
Office of the Secretary of Defense
4800 Mark Center Drive
ATTN: PCLFD, FOIA Appeals, Mailbox #24
Alexandria, VA 22350-1700
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Re: ***Expedited Processing Appeal of FOIA Case #22-F-0905 (IR#0761B)***

Dear Sir or Madam:

This firm represents the Informed Consent Action Network ("**ICAN**"). On behalf of ICAN, on May 6, 2022, we requested records on an expedited basis from the files of the Defense Advanced Research Projects Agency ("**DARPA**") pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) ("**FOIA**"). DARPA designated the request as FOIA Case #22-F-0905 (the "**FOIA Request**"). In a letter dated May 10, 2022, DARPA denied ICAN's request for expedited processing (the "**Denial Letter**"). ICAN writes now to appeal that determination.

A. The FOIA Request and Denial of Expedited Processing

On May 6, 2022, ICAN submitted the FOIA Request to DARPA for the following documents:

> **All contracts and binding agreements (including liability protections and waivers), between the U.S. government and MODERNA or MODERNATX Inc. relating to COVID-19 vaccines.**

(**Exhibit 1**.)[1]

[1] All "Exhibits" referenced herein are appended to this letter.

In the FOIA Request, ICAN requested that DARPA provide expedited processing for the request pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II) and provided a detailed explanation for why the request should be granted. (**Exhibit 1**.)

On May 10, 2022, DARPA acknowledged the FOIA Request and assigned it FOIA Case #22-F-0905. (**Exhibit 2**.) In its acknowledgment letter, DARPA denied ICAN's request for expedited processing. The denial letter stated in relevant part:

> **After carefully considering your request, this Office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For this reason, your request for expedited processing is denied.**

(**Exhibit 3**).

B. Argument

ICAN's request for expedited processing should be granted because it thoroughly demonstrated every requirement of the "compelling need" analysis, as defined by both FOIA and the DOD's FOIA regulations. FOIA provides for "expedited processing of requests for records" upon a showing of a "compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(I). A requestor shows a "compelling need" when it is "primarily engaged in disseminating information," and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). This standard of "compelling need" is reiterated in the Department of Defense's FOIA regulations. Its regulations state:

> **Expedited processing is granted to a requester upon a specific request for such and when the requester demonstrates a compelling need for the information. A compelling need exists when:**
> **. . . The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity.**

32 CFR 286.8(e)(1)(i)(B).

First, DARPA does not challenge ICAN's status as an entity "primarily engaged in disseminating information." This is because ICAN clearly demonstrated this in its request and signed declaration, that it is instrumental in orchestrating cutting edge investigations into the safety of various medical products, as well as widely disseminating its findings through various media channels. (**Exhibit 1**.) Thus, this appeal focuses on whether there is an "urgency to inform."

When determining whether there is an "urgency to inform," and hence a "compelling need," courts must consider at least three factors: (i) whether the request concerns a matter of current exigency to the American public; (ii) whether the consequences of delaying a response would compromise a significant recognized interest; and (iii) whether the request concerns federal

government activity. *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). All three factors are present here and weigh in favor of granting expedited processing of ICAN's FOIA Request.

(i) ICAN's request concerns a matter of current exigency to the American public

ICAN's request concerns a matter of current exigency to the American public because the requested records would significantly contribute to the public's understanding of the terms of government contracts with Covid-19 vaccine manufacturers, including the liability protections the manufacturers have when their products cause injuries to consumers. In general, the public's knowledge of a manufacturer's liability is important in gauging the thoroughness and reliability of the manufacturer's claims of its product's safety and effectiveness. Nearly all industries are subject to manufacturing or product liability claims. It has been long recognized through the laws of torts that imposing liabilities on manufacturers for the harm their products cause is instrumental in encouraging greater investment in product safety.[2] Therefore, the level of liability a manufacture faces for harms caused by their product is an important factor consumers need to know to appropriately assess the risks of using the product. Unfortunately, when it comes to the manufacturers of the Covid-19 vaccines, including the Moderna Covid-19 Vaccine ("**Moderna Vaccine**" or "**Covid-19 vaccine**"), the public does not know the manufacturers level, and thus, the public is unable to fully assess the risks involved in using the vaccines.

The American public has an immediate need to know the level of liability Moderna faces for harms caused by their vaccines, and ICAN's FOIA Request seeks to have that information immediately disclosed. Because of the well-known link between levels of liability and levels of innate risk, people around the world want to know the level of liability manufactures of Covid-19 vaccines face when their products cause consumers harm. For example, on July 7, 2022, "Uruguay stopped administering coronavirus vaccines to children under age 13 after a judge ordered . . . that all inoculations in that age group halt until officials present documents relating to contracts signed with vaccine manufacturers."[3] This is because "the judge [was] seeking, among other things, to know whether there are clauses in the contract that provide civil and criminal immunity due to any adverse effect from vaccines."

Furthermore, during Brazil's negotiation process over the procurement of Pfizer Covid-19 vaccines, CNN reported the "[t]he Minister of Health, Eduardo Pazuello, has reservations about the Pfizer vaccine – among them the [company's] non-accountability for any side effects."[4] The report also indicated that Pfizer "guarantees that the terms of the agreement offered to the Brazilian government are the same as contracts with other countries, including some that are already vaccinating . . . such as the United States." Thus, the American public are equally affected by these contracts with Covid-19 vaccine manufactures, including Moderna's Vaccine.

The level of liability described in the contracts sought by this FOIA Request concern matters of current exigency to the American public for at least three reasons. First, there is an ongoing public debate regarding the safety and effectiveness of the Covid-19 vaccines. For

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[2] *See generally* Restat 3d of Torts: Products Liability, §2.

[3] https://abcnews.go.com/International/wireStory/uruguay-suspends-covid-vaccination-children-13-86409875.

[4] https://www.cnnbrasil.com.br/saude/pfizer-diz-que-ofereceu-proposta-para-brasil-comprar-vacinas-em-agosto/.

example, on one side of the debate, the CDC and others following CDC recommendations, believe it's safe and effective for everyone ages 6 months and older get a Covid-19 vaccine to help protect against Covid-19, and for everyone 5 years and older to get 1 booster shot. [5] Adult over 50 are recommended to get two booster shots after their initial Covid-19 vaccination.[6] The CDC's website also advocates for the implementation of Covid-19 Workplace Vaccination Programs and policies for private employers, and outlines the benefits of having employees vaccinated for Covid-19.[7]

On the other side of the debate, there are numerous public health officials, media outlets, journalists, scientists, politicians, public figures, and others with large social or media platforms who question the universal safety and effectiveness of the Covid-19 vaccines for all demographics. Proponents on this side of the debate have publicly raised questions regarding the sufficiency of the data and information used to determine the vaccines' safety and effectiveness for all eligible recipients. For example, Florida's Surgeon General, Joseph Ladapo, announced on March 7, 2022, that "based on currently available data, the risk of administering Covid-19 vaccination among healthy children may outweigh the benefits."[8]

In July 2021, a group of 27 clinicians, scientists, and patient advocates, including Peter Doshi, Ph.D., Senior Editor for The BMJ and Associate Professor of Pharmaceutical Health Services Research at the University of Maryland School of Pharmacy,[9] and Peter A. McCullough, M.D. filed an amended Citizen Petition[10] with the FDA, claiming that the available evidence for licensure of the Moderna Vaccine "is simply not mature enough at this point to adequately judge whether clinical benefits outweigh the *risks in all populations*"[11] (emphasis added). ICAN's request concerns matters of current exigency to the American public because it would contribute to this public debate regarding the safety and effectiveness of the Covid-19 vaccines and liabilities manufactures face when consumers are harmed by their products.

The second reason this FOIA Request concerns matters of current exigency to the American public is that Covid-19 vaccines have been and continue to be mandated on the American public. These mandates have been implemented by the federal government,[12] local

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[5] https://www.cdc.gov/vaccines/covid-19/planning/children/equity.html.

[6] https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html.

[7] https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html.

[8] https://www.floridahealth.gov/newsroom/2022/03/20220308-FDOH-covid19-vaccination-recommendations-children.pr.html.

[9] https://www.bmj.com/about-bmj/editorial-staff/peter-doshi.

[10] https://www.regulations.gov/document/FDA-2021-P-0521-0001.

[11] *See* https://blogs.bmj.com/bmj/2021/06/08/why-we-petitioned-the-fda-to-refrain-from-fully-approving-any-covid-19-vaccine-this-year/.

[12] *See, e.g.*, https://www.natlawreview.com/article/covid-19-vaccine-added-to-requirements-green-card-processing-effective-oct-1; https://apnews.com/article/business-health-coronavirus-pandemic-coronavirus-vaccine-4cf7451267919302de4a7b591508e80c; https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF; https://www.whitehouse.gov/briefing-

governments, [13] public and private employers,[14] universities, [15] schools,[16] and various other institutions.[17] At the federal level, legislation was introduced that would require Covid-19 vaccines for air travel into or out of the United States,[18] and the Pentagon has mandated the Covid-19 vaccines for all military personnel.[19] At the state level, legislation has been introduced to require Covid-19 vaccines for all post-secondary students,[20] all state employees, [21] and even for all citizens of various states.[22] For those affected by mandates, in order to appropriately assess risks of using

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room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/.

[13] *See, e.g.*, https://www.cnn.com/2021/08/12/us/san-francisco-vaccine-requirement/index.html; https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page; https://news.yahoo.com/orleans-now-requires-proof-vaccination-230433492.html.

[14] *See, e.g.*, https://www.cnbc.com/2021/08/06/united-airlines-vaccine-mandate-employees.html; https://sanfrancisco.cbslocal.com/2021/08/02/covid-kaiser-permanente-makes-vaccination-mandatory-for-all-employees/; https://abcnews.go.com/Health/wireStory/walmart-mandates-vaccines-workers-headquarters-79177220; https://www.kpbs.org/news/2021/aug/17/encinitas-covid-19-vaccine-negative-test-employees/; https://www.cnbc.com/2021/08/09/covid-vaccine-mandates-sweep-across-corporate-america-as-delta-surges.html; https://www.reuters.com/business/energy/chevron-begins-covid-19-vaccination-mandates-wsj-2021-08-23/; https://thehill.com/policy/healthcare/569051-Pfizers-full-approval-triggers-new-vaccine-mandates; https://cvshealth.com/news-and-insights/statements/cvs-health-will-require-covid-19-vaccinations-for-clinical-and-corporate-employees.

[15] *See e.g.*, https://www.nbcnews.com/health/health-news/colleges-universities-covid-vaccination-mandates-facing-pushback-n1273916; https://www.colorado.edu/covid-19-updates/covid-19-vaccination ; https://uhs.berkeley.edu/requirements/covid19; https://huhs.harvard.edu/covid-19-vaccine-requirement-faqs; https://www2.gmu.edu/safe-return-campus/vaccination-requirements.

[16] *See, e.g.*, https://abcnews.go.com/US/dc-require-students-12-older-vaccinated-covid-19/story?id=87130087; https://www.npr.org/sections/back-to-school-live-updates/2021/08/20/1029837338/a-california-school-district-mandates-vaccines-for-eligible-students; https://patch.com/massachusetts/salem/salem-school-committee-approves-vaccine-mandate-sports-band; https://www.nbcnewyork.com/news/coronavirus/nyc-will-require-vaccination-for-high-risk-school-sports/3232745/; https://www.nj.com/hudson/2021/08/hoboken-believed-to-be-first-in-state-to-issue-mandate-for-students-12-and-up-get-vaccine-or-face-weekly-testing.html; https://www.mercurynews.com/2021/08/19/la-county-school-district-mandates-covid-vaccines-for-k12-kids-others-soon-may-follow/.

[17] *See, e.g.*, https://www.reuters.com/world/us/new-york-city-mandates-covid-19-vaccine-public-school-teachers-staff-mayor-2021-08-23/; https://www.cbsnews.com/news/california-covid-vaccine-teachers-mandate/; https://www.nytimes.com/2021/08/18/us/washington-state-teacher-vaccine-mandate.html; https://www.governor.ny.gov/news/governor-cuomo-announces-covid-19-vaccination-mandate-healthcare-workers; https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/FAQ-Health-Care-Worker-Vaccine-Requirement.aspx; https://www.nytimes.com/2021/08/09/us/washington-state-workers-vaccine-mandate.html; https://www.denvergov.org/Government/COVID-19-Information/Public-Health-Orders-Response/News-Updates/2021/Mayor-Hancock-Announces-COVID-19-Vaccine-Requirement-for-Employees; *See* https://www.bostonherald.com/2021/08/19/baker-issues-vaccine-mandate-for-42000-state-employees/.

[18] https://www.congress.gov/bill/117th-congress/house-bill/4980?q=%7B%22search%22:%5b%224980%252.

[19] https://thehill.com/policy/defense/568996-pentagon-to-mandate-covid-19-vaccine-for-military.

[20] *See* New York bill S6495, available at https://www.nysenate.gov/legislation/bills/2021/S6495.

[21] *See, e.g.*, https://www.nj.com/coronavirus/2021/08/murphy-orders-vaccination-requirement-for-all-nj-state-workers-including-at-public-colleges.html.

[22] *See* New York bill A11179, available at https://www.nysenate.gov/legislation/bills/2019/A11179. *See generally* https://eastcountytoday.net/buffy-wicks-transportation-bill-could-become-california-vaccine-passport-bill/.

these products the American public deserves to immediately see the level of liability the manufactures face if their products cause harm.

While the presence of these mandates continues to fluctuate over the course of the various stages of the Covid-19 pandemic, at the federal level, the Pentagon has continued to mandate Covid-19 vaccines for all military personnel.[23] Despite these mandates, tens of thousands of active-duty service members have refused to get the Covid-19 vaccines.[24] Without question, the public's hesitancy over the safety and effectiveness of the Covid-19 vaccines is contributing to loss of military personnel, and the military's serious problem meeting its recruitment goals in 2022.[25]

Most recently, the Army announced that roughly 40,000 National Guardsmen and 22,000 reservists will be barred from service for refusing to get vaccinated against Covid-19. This decision effectively cuts off the pay and benefits for more than 60,000 service members and prohibits them from participating in training.[26] These losses of service members come at a time when the military faces serious recruiting challenges.[27] For example, after the first five months of 2022, the Army reached only 23 percent of its active-duty goal for new recruits, and the Air Force obtained 2,300 fewer recruits in the first fiscal quarter than it did in 2021.[28] Army Gen. Joseph Martin, Vice Chief of Staff for the Army, stated that, if these short falls continue, they may have an impact on the military's readiness.[29]

This legitimate and immediate public concern over the military's readiness has also been recently expressed by members of Congress. Ranking Member of the Subcommittee on Readiness, U.S. Congressman Mike Waltz (FL-6), and forty-nine other representatives sent a letter to Secretary of Defense Lloyd Austin requesting the Department of Defense reconsider the Department's Covid-19 vaccine mandate and issue guidance that considers natural immunity, citing the crippling nature the mandate will have on National Guard readiness.[30]

A once-reliable third of all new Army recruits entered from just five southern states: Texas, Florida, Georgia, North Carolina, and Virginia.[31] However, four out of these five states are ranked

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[23] https://thehill.com/policy/defense/568996-pentagon-to-mandate-covid-19-vaccine-for-military/; *see also* https://www.nbcnews.com/news/military/deadline-passes-one-10-army-national-guard-soldiers-still-unvaccinated-rcna36269.

[24] https://www.forbes.com/sites/teakvetenadze/2021/12/15/military-starts-ejecting-unvaccinated-service-members/?sh=7981d3146ed0.

[25] https://www.politico.com/news/2022/07/27/lawmakers-pentagon-military-recruiting-00048286.

[26] https://nypost.com/2022/07/08/army-cuts-pay-from-over-60k-unvaccinated-national-guard-reserves/.

[27] https://thehill.com/opinion/national-security/3527921-the-military-has-a-serious-recruiting-problem-congress-must-fix-it/;; *see also* https://www.military.com/daily-news/2022/07/06/army-cuts-off-more-60k-unvaccinated-guard-and-reserve-soldiers-pay-and-benefits.html.

[28] *Id.*

[29] https://www.pbs.org/newshour/politics/army-cuts-expected-force-size-amid-unprecedented-shortfall-of-recruits.

[30] https://waltz.house.gov/uploadedfiles/2022-7-26-_ng_vax_mandate.pdf.

[31] https://recruiting.army.mil/pao/facts_figures/.

in the top 25 states with the lowest vaccination rates.[32] Moreover, vaccination rates within the prime recruitment ages (17-25) are traditionally significantly lower than the overall percentage reflected by a state's Covid-19 vaccination rate. Thus, the number of able and willing recruits has significantly decreased.

The uncertainty and skepticism in the safety and effectiveness behind the FDA's unprecedented "warp speed" approval process for the COVID-19 vaccines,[33] combined with unknown scope of liability protections provided to the manufactures, has undoubtably contributed to the Military's recruiting challenges and potential readiness. These issues are amplified by the military's general refusal to grant vaccine exemptions.[34]

During a time when world superpowers, like Russia[35] and China,[36] are using threatening rhetoric against the United States, any policies that contribute to issues surrounding the military's readiness, is a matter of current exigency to the American public. Thus, the disclosure of Moderna's level of liability would provide some of the information necessary for the public and policy makers to appropriately assess the risks and benefits of the Covid-19 mandates, and the products use generally.

Lastly, with the ongoing debate regarding the Covid-19 vaccines safety and effectiveness, the innate risk that is created when corporations are provided liability protections, and the public and private policies mandating Covid-19 vaccines, has made these topics critically important political issues. Providing the public and their political leaders with the knowledge to understand the liability protections, and the potential risks that come with those protections is a matter of current exigency to the American public.

For all of these reasons, ICAN has demonstrated its request significantly concerns matters of current exigency to the American public. Therefore, the first factor in FOIA's "compelling need" analysis weighs heavily in favor of granting expedited processing.

(ii) Consequences in delaying a response would compromise significant recognized interests

Delaying a response to ICAN's request for the terms of Moderna's government contract, which included the level liability the company faces when its products cause harm to consumers, compromises significant recognized interests. The American public have a significant recognized interest in understanding the level of liability to which Covid-19 manufacturers are exposed before choosing to use their products. Conversely, the American taxpayer has a significant recognized interest in understanding the level of liability the U.S. government – and thus the taxpayer – is

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[32] https://www.beckershospitalreview.com/public-health/states-ranked-by-percentage-of-population-vaccinated-march-15.html.

[33] https://www.defense.gov/News/Releases/Release/Article/2452865/hhs-and-dod-statements-on-fda-authorization-of-moderna-vaccine/.

[34] https://www.cnn.com/2022/02/17/politics/us-military-religious-exemptions-covid-vaccine/index.html.

[35] https://news.yahoo.com/putin-says-russian-navy-hypersonic-084124580.html.

[36] https://www.cbsnews.com/news/pelosi-taiwan-asia-tour-china-warnings-military-action/.

responsible for in cases where the manufacturers' products cause harm to American consumers. Lastly, the government's separation of powers may be compromised when the executive branch, through the use of contracts and liability provisions, limits the oversight and the public's accessibility of the judiciary.

The American public has a significant recognized interest in understanding the level of liability from which Covid-19 manufacturers are protected because it provides consumers insight into the thoroughness of the manufacturers' data supporting the drug's safety and effectiveness. Without the threat of liability for harms cause by products, manufacturers have less incentives to prioritize greater investment into product safety.[37] If the public does not know the manufacturers level of liability, the public is unable to fully assess the risks involved in using the vaccines. Therefore, delaying a response to ICAN's request would compromise Americans' significant recognized interest in providing informed consent to government recommended medical procedures.

Notions of informed consent have been codified in jurisdictions across the United States. For example, in Texas, a "recovery may be obtained [when there is] negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent."[38] In New York, "informed consent shall include as a minimum, the specific procedure or treatment or both, their reasons for it, the reasonably foreseeable risks and benefits involved, and the alternatives for care or treatment, if any . . . ."[39] These risks also include financial risks associated with the difficulty in being compensated if injuries do occur. Consumers of a product have a significant recognized interest in knowing the level of liability a manufacture faces when a consumer is harmed by their product. This is especially true in cases where manufactures are provided special liability protections that are extremely unusual for most other products.

Every day, Americans decide whether the Covid-19 vaccine or its booster is the right medical procedure for them. As explained in the section above, in many cases, this decision is provoked by private or public policies that mandate Covid-19 vaccination which have been enabled by the government's contracts with the Covid-19 manufacturers. Whether a person chooses a medical procedure through self-realization, or provoked by the threat of losing their job, occupational benefits, access to medical procedures[40] or educational opportunities,[41] fully understanding the risks and benefits is a significant recognized interest. The denial or delay of ICAN's request for the terms of Moderna's Vaccine contract, and the liability protections contained within would therefore compromise Americans' significant recognized interest in

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[37] *See generally* Restat 3d of Torts: Products Liability, §2.

[38] Tex. Civ. Prac. & Rem. Code § 74.101.

[39] 10 NYCRR § 405.7 (b)(9).

[40] https://www.bbc.com/news/world-us-canada-60132765; https://www.wsoctv.com/news/local/i-will-die-free-unvaccinated-burke-county-man-denied-kidney-transplant-by-hospital/OJGAFURR4FGERJB7VT24P5RED4/; https://www.nbc11news.com/2021/10/08/colorado-hospital-denies-unvaccinated-patient-transplant/; https://www.foxnews.com/us/uva-hospital-refused-unvaccinated-transplant; https://www.businessinsider.com/ohio-woman-liver-disease-denied-transplant-vaccine-cleveland-clinic-2021-10.

[41] *See* New York bill S6495, available at https://www.nysenate.gov/legislation/bills/2021/S6495.

informed consent. For each day that lapses between the submission of ICAN's FOIA Request and the disclosure of responsive records, more people's interests will be compromised.

The American taxpayer also has a significant recognized interest in understanding the level of liability the U.S. government has, and thus the taxpayer is responsible for in cases where the manufacturers' products cause harm to American consumers. In similar circumstances, where liability protections have been offered to vaccine manufacturers, the U.S. government has created a Vaccine Injury Compensation Trust Fund.[42] Traditionally, the trust fund provides funding for the government's National Vaccine Injury Compensation Program (VICP) to compensate vaccine-related injury or death petitions. The trust fund is funded by excise taxes placed on each vaccine that is administered.

However, in the case of Covid-19 vaccines, compensations for vaccine-related injuries are funded by the Countermeasures Injury Compensation Program (CICP).[43] Unlike the compensation provided under VICP, the burden on taxpayers is not relieved by an excise tax on each vaccine administered. Under, CICP the American taxpayer is directly responsible for compensation for those who suffer vaccine-related injuries. Therefore, the American taxpayer has a significant recognized interest in understanding the level of liability Covid-19 vaccine manufactures face when their products cause injuries to consumers. The more time that lapses before DARPA discloses responsive records to ICAN's FOIA request, means the American taxpayer is likely responsible for the compensation of more and more Americans who are, or may become injured by the Moderna Vaccine. With the upcoming mid-term and Presidential elections, American taxpayers have limited time to learn and politically act upon the information regarding the liability protections provided to Moderna for the procurement of its vaccine. Thus, any delay continues to compromise the American taxpayers' significant recognized interest to petition the government for redress of grievances[44] through the democratic process.

Finally, Americans' interest in preserving their government's separation of powers may be compromised if Covid-19 vaccine contracts limit the oversight and the public access to the judiciary. Covid-19 vaccine contracts have been negotiated and finalized by various entities within the United States' executive branch. If these contracts provide liability protections that significantly prohibit proper judicial oversight and access, they can have major constitutional implications. Thus, delaying ICAN's request for these Covid-19 vaccine contracts could compromise significant recognized interests.

For the reasons set forth above, ICAN has demonstrated that a delay of its request would compromise significant recognized interests. Thus, the second factor in FOIA's "compelling need" analysis weighs heavily in favor of granting expedited processing.

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[42] https://www.hrsa.gov/vaccine-compensation/about/index.html.

[43] https://crsreports.congress.gov/product/pdf/LSB/LSB10584.

[44] *See* First Amendment of the United States Constitution.

(iii) ICAN's request concerns federal government activity

ICAN's request concerns federal government activity because the information requested concerns the terms of government contracts with Covid-19 vaccine manufacturers, and the liability protections the manufacturers have when their products cause injuries to American consumers. As part of Operation Warp Speed and other governmental programs, the U.S. government has been intimately involved in the contracting with various Covid-19 manufacturers for the research, procurement, manufacturing, and distribution of the Covid-19 vaccines.[45]

ICAN's FOIA Request significantly concerns the federal government's activity since the federal government was not only involved in the licensure and contracting the procurement of the Moderna Vaccine but, crucially, the federal government was also heavily involved in the vaccine's research and development. According to the National Institutes of Health's (NIH) website:

> **[B]ecause of [the] work that NIH was already doing when the COVID-19 pandemic began, researchers were able to come up with a vaccine for this new virus much faster . . .Years before the COVID-19 pandemic began, experts at the NIH Vaccine Research Center (VRC) were studying coronaviruses to find out how to protect against them . . . The VRC worked with a company called Moderna to use this information to quickly customize their prototypes approach to the SARS-CoV-2 spike protein. By early February [2020], a COVID-19 vaccine candidate had been designed and manufactured. This Vaccine is called mRNA 1273 . . . *the NIH- Moderna vaccine was authorized by the U.S. Food and Drug Administration (FDA) for emergency use.* (emphasis added)**[46]

The federal government's activities in designing and manufacturing the "NIH-Moderna vaccine" is particularly significant since the federal employees that were involved in its development are potential co-owners of the patents involved in the Moderna Vaccine.[47] Pursuant to 15 U.S.C. § 3710c, which regulates the "distribution of royalties received by Federal agencies," federal agencies and their employees are authorized to profit from the licensing and assignment of inventions, such as the Moderna Vaccine.

Furthermore, the federal government has already spent $6 billion dollars helping develop, test, and manufacture the "NIH-Moderna vaccine."[39] The combination of the potential conflicts of interest within the federal government to obtain the FDA's approval of the Moderna Vaccine, the federal governments procurement of Moderna contracts that likely contain generous liability protections, and the considerable amounts of tax-payer money spent in the process, requires

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[45] https://crsreports.congress.gov/product/pdf/IN/IN11560.

[46] https://covid19.nih.gov/news-and-stories/vaccine-development.

[47] *See* U.S. Application No. 62/972,886 & No. 16/344,774; *see also* Research Collaboration Agreement 2017-1179 & "Material Transfer Agreement" executed on 12/16/2019; see also https://patentimages.storage.googleapis.com/a7/b3/70/666f8c5c2ab026/US10960070.pdf (Patent No.: US10,960,070 B2; "Applicants: The United States of America as represented by the Secretary, Department of Health and Human Services . . . ").

immediate transparency into these federal activities. Thus, the third factor in FOIA's "compelling need" analysis weighs heavily in favor of granting expedited processing.

ICAN has demonstrated (i) the request concerns a matter of current exigency to the American public, (ii) the consequences of delaying a response would compromise a significant recognized interest, and (iii) the request concerns federal government activity. Therefore, ICAN has reasonably established under FOIA a "compelling need" for the expedited processing of its request. 5 U.S.C. § 552(a)(6)(E)(v)(II).

Lastly, according to DARPA's Denial Letter, ICAN must specifically demonstrate another factor to the compelling need analysis that is not detailed under FOIA nor the DOD's FOIA regulations. DARPA's denial letter stated:

> **it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly.**

(**Exhibit 2**.) Despite the unknown legitimacy of such a self-pronounced requirement, ICAN has already demonstrated above that the value of the information sought loses value if it's not disseminated quickly.

As described above, the public and the legal community have long understood that manufactures that are not liable for the harm their products cause are less likely to invest in a product's safety.[48] Therefore, the level of liability imposed on Moderna for any harm caused by its vaccines is an important – an identifiable "risk" that consumers and the American taxpayer have a right to know. Each day this information is delayed, the value of the information is lost to:

- Consumers of the product deciding whether to receive the primary vaccine series or additional booster shots;
- Potential consumers of the product currently weighing the risks and benefits;
- People facing Covid-19 vaccine mandates, including children and teachers heading back to school for the 2022-2023 school year;
- American taxpayers and voters preparing to vote based on issues surrounding the Covid-19 vaccines during upcoming mid-term and Presidential elections;
- Elected officials and political candidates preparing for their election campaigns for the upcoming mid-term and Presidential elections;
- Public and private policy makers determining their Covid-19 vaccine policies for the fall and winter flu season of 2022 and 2023;
- U.S. military personnel and our allies around the world who rely on our military readiness;
- All other inferences made throughout this appeal and in ICAN's FOIA Request.

[48] *See generally* Restat 3d of Torts: Products Liability, §2

Thus, great value will be lost if the information sought by ICAN's FOIA Request is not disseminated quickly. Therefore, ICAN's request for expedited processing should be immediately granted.

C. Conclusion

Given the foregoing, ICAN hereby appeals and urges DARPA to grant its request for expedited processing 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.
Elizabeth A. Brehm, Esq.
Colin Farnsworth, Esq.

Enclosures

Exhibit 1

Siri | Glimstad

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

200 Park Avenue, 17th Floor, New York, NY 10166
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

DARPA FREEDOM OF INFORMATION ACT REQUEST
EXPEDITED PROCESSING REQUESTED

VIA EMAIL May 6, 2022

OSD/JS FOIA Requester Service Center
Attn: Defense Advanced Research Projects Agency (DARPA)
Freedom of Information Division
1155 Defense Pentagon
Washington, DC 20301-1155

Re: *Moderna's Government Contracts for COVID-19 Vaccines (IR#0761B)*

Dear Sir or Madam:

This firm represents the Informed Consent Action Network ("**ICAN**"). On behalf of ICAN, we submit this FOIA request to DARPA:

I. The Request

Please provide the following records to foia@sirillp.com in electronic form:

> **All contracts and binding agreements (including liability protections and waivers), between the U.S. government and MODERNA or MODERNATX Inc. relating to COVID-19 vaccines.**

II. Expedited Processing Requested

ICAN's request qualifies for expedited processing because ICAN is "primarily engaged in disseminating information to the general public" and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). FOIA provides for "expedited processing of request for records" upon a showing of "compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(II). A "compelling need" can be established when the requester demonstrates (1) the requester is "primarily engaged in disseminating information," and (2) the request involves an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

1. ICAN is primarily engaged in disseminating information to the general public

ICAN's mission is to disseminate scientific health information to the public. *See* Exhibit 1. 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.

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.

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.

2. ICAN's request involves an urgency to inform the public concerning actual or alleged federal government activity

In determining whether there is an "urgency to inform," and hence a "compelling need," courts must consider at least three factors: (i) whether the request concerns a matter of current exigency to the American public; (ii) whether the consequences of delaying a response would compromise a significant recognized interest; and (iii) whether the request concerns federal government activity. *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). All three factors are present here and weigh in favor of granting expedited processing of ICAN's FOIA request.

(i) ICAN's request concerns a matter of current exigency to the American public

ICAN's request concerns a matter of current exigency to the American public because the requested records would significantly contribute to the public's understanding of the terms of government contracts with Covid-19 vaccine manufacturers, including the liability protections the manufacturers have when their products cause injuries to consumers. In general, the public's knowledge of a manufacturer's liability is important in gauging the thoroughness and reliability of the manufacturer's claims of its product's safety and effectiveness. Nearly all industries are subject to manufacturing or product liability claims. It's been long recognized through the laws of torts, that imposing liabilities on manufacturers for the harm their products cause is instrumental in creating safety incentives to encourage greater investment in product safety. *See generally* Restat 3d of Torts: Products Liability, §2. Unfortunately, when it comes to the manufacturers of the Covid-19 vaccines, it appears these manufacturers have been granted effective immunity for the harms their products may cause.

This issue has been exposed in recent news reports. For example, during Brazil's negotiation process over the procurement of Pfizer Covid-19 vaccines, CNN reported the "[t]he Minister of Health, Eduardo Pazuello, has reservations about the Pfizer vaccine – among them the [company's] non-accountability for any side effects."[1] The report also indicated the Pfizer "guarantees that the terms of the agreement offered to the Brazilian government are the same as contracts with other countries, including some that are already vaccinating…such as the United States . . . ."

The terms of these government contracts continues to concern matters of current exigency to the American public for at least two reasons. First, there is an ongoing public debate regarding the safety and effectiveness of the Covid-19 vaccines. For example, on one side of the debate, the CDC and others recommend everyone ages 5 years and older get a Covid-19 vaccine to help protect against Covid-19 [2] and everyone 12 years and older to get a booster shot if they received the Pfizer-BioNtech Covid-19 vaccine and adults 18 years and older if they received the Moderna Covid-19 vaccine.[3] The CDC's website also advocates for the implementation of Covid-19 Workplace Vaccination Programs and policies for private employers, and outlines the benefits of having employees vaccinated for Covid-19.[4]

On the other side of the debate, there are numerous public health officials, media outlets, journalists, scientists, politicians, public figures, and others with large social or media platforms who question the universal safety and effectiveness of the Covid-19 vaccines for all demographics. Proponents on this side of the debate have publicly raised questions regarding the sufficiency of the data and information used to determine the vaccines' safety and effectiveness for all eligible recipients. For example, most recently, Florida's Surgeon General, Joseph Ladapo, announced on March 7, 2022, "the Florida Department of Health is going to be the first state to officially recommend against the COVID-19 for healthy children."[5] This decision was "based on currently available data, the risk of administering COVID-19 vaccination among healthy children may outweigh the benefits."[6]

In July 2021, a group of 27 clinicians, scientists, and patient advocates, including Peter Doshi, Ph.D., Senior Editor for The BMJ and Associate Professor of Pharmaceutical Health Services Research at the University of Maryland School of Pharmacy,[7] and Peter A. McCullough, M.D. filed an amended Citizen Petition[8] with the FDA, claiming that the available evidence for

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[1] https://www.cnnbrasil.com.br/saude/pfizer-diz-que-ofereceu-proposta-para-brasil-comprar-vacinas-em-agosto/ (last visted 4/13/2022).

[2] https://www.cdc.gov/vaccines/covid-19/planning/children/equity.html (last visited 3/29/22).

[3] https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html (last visited 3/29/22).

[4] https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html (last visited 3/29/22).

[5] https://www.floridahealth.gov/newsroom/2022/03/20220308-FDOH-covid19-vaccination-recommendations-children.pr.html.

[6] *Id*.

[7] https://www.bmj.com/about-bmj/editorial-staff/peter-doshi (last visited 3/29/2022).

[8] https://www.regulations.gov/document/FDA-2021-P-0521-0001 (last visited 3/29/2022).

licensure of the Moderna Vaccine "is simply not mature enough at this point to adequately judge whether clinical benefits outweigh the *risks in all populations*"[9] (emphasis added). ICAN's request concerns matters of current exigency to the American public because it would contribute to this public debate regarding the safety and effectiveness of the Covid-19 vaccines and liabilities manufactures face when consumers are harmed by their products.

Further, Covid-19 vaccines have been mandated upon individuals across the country by the federal government,[10] local governments, [11] public and private employers,[12] universities, [13] schools,[14] and various other institutions.[15] At the federal level, legislation was introduced that

[9] *See* https://blogs.bmj.com/bmj/2021/06/08/why-we-petitioned-the-fda-to-refrain-from-fully-approving-any-covid-19-vaccine-this-year/ (last visited 3/29/2022).

[10] *See, e.g.*, https://www.natlawreview.com/article/covid-19-vaccine-added-to-requirements-green-card-processing-effective-oct-1 (last visited 3/29/22); https://apnews.com/article/business-health-coronavirus-pandemic-coronavirus-vaccine-4cf7451267919302de4a7b591508e80c (last visited 3/29/22); https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF (last visited 3/29/22); https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/ (last visited 3/29/22).

[11] *See, e.g.*, https://www.cnn.com/2021/08/12/us/san-francisco-vaccine-requirement/index.html (last visited 3/29/22); https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page (last visited 3/29/22); https://news.yahoo.com/orleans-now-requires-proof-vaccination-230433492.html (last visited 3/29/22).

[12] *See, e.g.*, https://www.cnbc.com/2021/08/06/united-airlines-vaccine-mandate-employees.html (last visited 3/29/22); https://sanfrancisco.cbslocal.com/2021/08/02/covid-kaiser-permanente-makes-vaccination-mandatory-for-all-employees/ (last visited 3/29/22); https://abcnews.go.com/Health/wireStory/walmart-mandates-vaccines-workers-headquarters-79177220 (last visited 3/29/22); https://www.kpbs.org/news/2021/aug/17/encinitas-covid-19-vaccine-negative-test-employees/ (last visited 3/29/22); https://www.cnbc.com/2021/08/09/covid-vaccine-mandates-sweep-across-corporate-america-as-delta-surges.html (last visited 3/29/22); https://www.reuters.com/business/energy/chevron-begins-covid-19-vaccination-mandates-wsj-2021-08-23/ (last visited 3/29/22); https://thehill.com/policy/healthcare/569051-Pfizers-full-approval-triggers-new-vaccine-mandates (last visited 3/29/22); https://cvshealth.com/news-and-insights/statements/cvs-health-will-require-covid-19-vaccinations-for-clinical-and-corporate-employees (last visited 3/29/22).

[13] *See e.g.*, https://www.nbcnews.com/health/health-news/colleges-universities-covid-vaccination-mandates-facing-pushback-n1273916 (last visited 3/29/2022); https://www.colorado.edu/covid-19-updates/covid-19-vaccination (last visited 3/29/2022); https://uhs.berkeley.edu/requirements/covid19 (last visited 3/29/2022); https://huhs.harvard.edu/covid-19-vaccine-requirement-faqs (last visited 3/29/2022); https://www2.gmu.edu/safe-return-campus/vaccination-requirements (last visited 3/29/2022).

[14] *See, e.g.*, https://www.npr.org/sections/back-to-school-live-updates/2021/08/20/1029837338/a-california-school-district-mandates-vaccines-for-eligible-students (last visited 2/19/2022); https://patch.com/massachusetts/salem/salem-school-committee-approves-vaccine-mandate-sports-band (last visited 2/19/2022); https://www.nbcnewyork.com/news/coronavirus/nyc-will-require-vaccination-for-high-risk-school-sports/3232745/ (last visited 3/29/2022); https://www.nj.com/hudson/2021/08/hoboken-believed-to-be-first-in-state-to-issue-mandate-for-students-12-and-up-get-vaccine-or-face-weekly-testing.html (last visited 3/29/2022); https://www.mercurynews.com/2021/08/19/la-county-school-district-mandates-covid-vaccines-for-k12-kids-others-soon-may-follow/ (last visited 3/29/2022).

[15] *See, e.g.*, https://www.reuters.com/world/us/new-york-city-mandates-covid-19-vaccine-public-school-teachers-staff-mayor-2021-08-23/ (last visited 3/29/2022); https://www.cbsnews.com/news/california-covid-vaccine-teachers-mandate/ (last visited 3/29/2022); https://www.nytimes.com/2021/08/18/us/washington-state-teacher-vaccine-mandate.html (last visited 3/29/2022); https://www.governor.ny.gov/news/governor-cuomo-announces-covid-19-vaccination-mandate-healthcare-workers (last visited 3/29/2022); https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/FAQ-Health-Care-Worker-Vaccine-Requirement.aspx (last visited 3/29/2022); https://www.nytimes.com/2021/08/09/us/washington-state-workers-vaccine-mandate.html (last visited 3/29/2022);

would require Covid-19 vaccines for air travel into or out of the United States,[16] and the Pentagon has mandated the Covid-19 vaccines for all military personnel.[17] At the state level, legislation has been introduced to require Covid-19 vaccines for all post-secondary students,[18] all state employees, [19] and even for all citizens of various states.[20] The American public deserves to immediately see the terms of Covid-19 contracts, and any liability protections manufacturers have been provided, before being forced to receive the products procured by these contracts.

For all of these reasons, ICAN has demonstrated its request significantly concerns matters of current exigency to the American public. Therefore, the first factor in FOIA's "compelling need" analysis weighs heavily in favor of granting expedited processing.

(ii) Consequences in delaying a response would compromise significant recognized interests

Delaying a response to ICAN's request for the terms of government contracts with Covid-19 vaccine manufacturers, and the liability protections the manufacturers have when their products cause injuries to consumers, would compromise significant recognized interests. The American public has a significant recognized interest in understanding the level of liability to which Covid-19 manufacturers are exposed. Conversely, the American taxpayer has a significant recognized interest in understanding the level of liability the U.S. government, and thus the taxpayer, is responsible for in cases where the manufacturers' products cause harm to American consumers. Lastly, the government's separation of powers may be compromised when the executive branch, through the use of contracts, limits the oversight and the publics accessibility of the judiciary.

The American public has a significant recognized interest in understanding the level of liability Covid-19 manufacturers are protected from because it provides consumers insight into the thoroughness of the manufacturers' data supporting the drug's safety and effectiveness. Without the threat of facing liability for harms cause by products, manufacturers have less incentives to prioritize greater investment into product safety. Therefore, delaying a response to ICAN's request

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https://www.denvergov.org/Government/COVID-19-Information/Public-Health-Orders-Response/News-Updates/2021/Mayor-Hancock-Announces-COVID-19-Vaccine-Requirement-for-Employees (last visited 3/29/2022); *See* https://www.bostonherald.com/2021/08/19/baker-issues-vaccine-mandate-for-42000-state-employees/ (last visited 3/29/2022).

[16] https://www.congress.gov/bill/117th-congress/house-bill/4980?q=%7B%22search%22:%5b%224980%252 (last visited 3/29/2022).

[17] https://thehill.com/policy/defense/568996-pentagon-to-mandate-covid-19-vaccine-for-military (last visited 3/29/2022).

[18] *See* New York bill S6495, available at https://www.nysenate.gov/legislation/bills/2021/S6495 (last visited 3/29/2022).

[19] *See, e.g.*, https://www.nj.com/coronavirus/2021/08/murphy-orders-vaccination-requirement-for-all-nj-state-workers-including-at-public-colleges.html (last visited 3/29/2022).

[20] *See* New York bill A11179, available at https://www.nysenate.gov/legislation/bills/2019/A11179. *See generally* https://eastcountytoday.net/buffy-wicks-transportation-bill-could-become-california-vaccine-passport-bill/ (last visited 3/29/2022).

would compromise Americans' significant recognized interest in providing informed consent to government recommended medical procedures.

Notions of informed consent have been codified in jurisdictions across the United States. For example, in Texas, a "recovery may be obtained [when there is] negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent."[21] In New York, "informed consent shall include as a minimum, the specific procedure or treatment or both, their reasons for it, the reasonably foreseeable risks and benefits involved, and the alternatives for care or treatment, if any . . . ."[22] Consumers of a product have a significant recognized interest in knowing the level of liability a manufacture faces if the consumer is harmed by their product. This is especially true in cases where manufactures are provided special liability protections that are extremely unusual for most other products.

Every day, Americans decide whether the Covid-19 vaccine or any booster is the right medical procedure for them. In many cases, this decision is provoked by private or public policies that mandate Covid-19 vaccination which have been enabled by the government's contracts with the Covid-19 manufacturers. Whether a person chooses a medical procedure through self-realization, or provoked by the threat of losing their job, occupational benefits, access to medical procedures[23] or educational opportunities,[24] understanding the risks and benefits is a significant recognized interest. The denial or delay of ICAN's request for the terms of the Covid-19 contracts, and the liability protections the manufacturers have when their products cause injuries. would therefore compromise Americans' significant recognized interest in informed consent.

The American taxpayer also has a significant recognized interest in understanding the level of liability the U.S. government, and thus the taxpayer is responsible for in cases where the manufacturers' products cause harm to American consumers. In similar circumstances, where liability protections have been offered to vaccine manufacturers, the U.S. government has created a Vaccine Injury Compensation Trust Fund.[25] Traditionally, the trust fund provides funding for the government's National Vaccine Injury Compensation Program (VICP) to compensate vaccine-related injury or death petitions. The trust fund is funded by excise taxes placed on each vaccine that is administered.

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[21] Tex. Civ. Prac. & Rem. Code § 74.101.

[22] 10 NYCRR § 405.7 (b)(9).

[23] https://www.bbc.com/news/world-us-canada-60132765 (last visited 3/29/2022); https://www.wsoctv.com/news/local/i-will-die-free-unvaccinated-burke-county-man-denied-kidney-transplant-by-hospital/OJGAFURR4FGERJB7VT24P5RED4/ (last visited 3/29/2022); https://www.nbc11news.com/2021/10/08/colorado-hospital-denies-unvaccinated-patient-transplant/ (last visited 03/16/22); https://www.foxnews.com/us/uva-hospital-refused-unvaccinated-transplant (last visited 3/29/2022); https://www.businessinsider.com/ohio-woman-liver-disease-denied-transplant-vaccine-cleveland-clinic-2021-10.

[24] *See* New York bill S6495, available at https://www.nysenate.gov/legislation/bills/2021/S6495 (last visited 3/29/2022).

[25] https://www.hrsa.gov/vaccine-compensation/about/index.html.

However, in the case of Covid-19 vaccines, compensations for vaccine-related injuries are funded by the Countermeasures Injury Compensation Program (CICP).[26] Unlike the compensation provided under VICP, the burden on taxpayers is not relieved by an excise tax on each vaccine administered. Under, CICP the American taxpayer is directly responsible for compensation for those who suffer vaccine-related injuries. Therefore, the American taxpayer has a significant recognized interest in understanding the terms of the government contracts with Covid-19 vaccine manufacturers, and the liability protections the manufacturers have when their products cause injuries to consumers. These interests would be compromised if ICAN's request for such information was denied or delayed.

Finally, Americans interest in preserving its government's separation of powers may be compromised if Covid-19 vaccine contracts limit the oversight and the public access to the judiciary. Covid-19 vaccine contracts have been negotiated and finalized by various entities within the United States' executive branch. If these contracts provide liability protections that significantly prohibit proper judicial oversight and access, they may have major constitutional implications. Thus, delaying ICAN's request for these Covid-19 vaccine contracts could compromise significant recognized interests.

For the reasons set forth above, ICAN has demonstrated that a delay of its request would compromise significant recognized interests. Thus, the second factor in FOIA's "compelling need" analysis weighs heavily in favor of granting expedited processing.

(iii) ICAN's request concerns federal government activity

ICAN's request concerns federal government activity because the information requested concerns the terms of government contracts with Covid-19 vaccine manufacturers, and the liability protections the manufacturers have when their products cause injuries to consumers. As part of Operation Warp Speed and other governmental programs, the U.S. government has been intimately involved in the contracting with various Covid-19 manufacturers for the research, procurement, manufacturing, and distribution of the Covid-19 vaccines.[27] Therefore, the third factor in FOIA's "compelling need" analysis weighs heavily in favor of granting expedited processing.

ICAN has demonstrated (i) the request concerns a matter of current exigency to the American public, (ii) the consequences of delaying a response would compromise a significant recognized interest, and (iii) the request concerns federal government activity. Therefore, ICAN has reasonably established under FOIA a "compelling need" for the expedited processing of its request. 5 U.S.C. § 552(a)(6)(E)(v)(II).

III. Fee Waiver Requested

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 to provide the public with information to give informed consent. *See* Exhibit 1.

[26] https://crsreports.congress.gov/product/pdf/LSB/LSB10584.

[27] https://crsreports.congress.gov/product/pdf/IN/IN11560.

As part of its mission, ICAN actively investigates and disseminates information regarding vaccine safety issues for free, including through its website,[28] a weekly health news and talk show,[29] 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.

IV. Estimated Date of Completion Requested

Pursuant 5 U.S.C. § 552 (a)(7)(B)(ii), ICAN formally requests DARPA provide an estimated date on which the agency will complete action on this request. The estimated completion date can be emailed foia@sirillp.com when it has been determined.

V. Conclusion

A determination regarding expedited processing should be made within ten (10) days. 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 file an administrative appeal or an action.

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 of course 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 action.

[28] https://www.icandecide.org/.

[29] https://thehighwire.com/.

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.
Elizabeth A. Brehm, Esq.
Colin Farnsworth, Esq.

Exhibit 1

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 (month), 2022

Notary Public for

AMY MARIE BLACKWELL
Notary ID #132597493
My Commission Expires
July 30, 2024

Exhibit 2

DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Ref: 22-F-0905
May 10, 2022

Mr. Aaron Siri
Siri & Glimstad
200 Park Avenue
Seventeenth Floor
New York, New York 10166

Dear Mr. Siri:

This is an interim response to your May 6, 2022 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on May 10, 2022, and assigned it FOIA case number 22-F-0905. We ask that you use this number when referring to your request.

Although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances that impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more, of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for the Office of the Secretary of Defense (OSD), the Joint Staff (JS), and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required record searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination.

Expedited processing may be granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. A key word here is "demonstrates." Therefore, it is incumbent upon you to demonstrate that the requested records will serve an urgency purpose and that they will also be meaningful in the sense that they will provide a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated. Consequently, it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly. After carefully considering your request, this Office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For this reason, your request for expedited processing is denied.

Your request has been placed in our complex processing queue and is being worked based on the order in which the request was received. Our current administrative workload is approximately 3,816 open requests.

If you have requested a fee waiver, please note that decisions to waive or reduce fees are made on a case-by-case basis, and we will make a determination concerning your fee waiver request at the conclusion of the search and assessment of responsive records, should they exist. However, this office will only assess fees if we provide the final response to your FOIA request within the statutory time allotted by the FOIA or if the responsive records total more than 5,000 pages, even after a good faith effort on our part to limit the scope of your request.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you wish to narrow the scope of your request or have questions about the foregoing, please do not hesitate to contact the Action Officer assigned to your request, Torrey Dixon, at torrey.d.dixon.civ@mail.mil or 571-372-0409.

Additionally, if you have concerns about service received by our office, please contact a member of our Leadership Team at 571-372-0498 or Toll Free at 866-574-4970.

Should you wish to inquire about mediation services, you may contact the OSD/JS FOIA Public Liaison, Toni Fuentes, at 571-372-0462 or by email at OSD.FOIALiaison@mail.mil, or the Office of Government Information Services (OGIS) at the National Archives and Records Administration. The contact information for OGIS is as follows:

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

You have the right to appeal to the appellate authority, Ms. Joo Chung, Assistant to the Secretary of Defense for Privacy Civil Liberties, and Transparency (PCLT), Office of the Secretary of Defense, at: 4800 Mark Center Drive, ATTN: PCLFD, FOIA Appeals, Mailbox #24, Alexandria, VA 22350-1700.

Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may email your appeal to osd.foia-appeal@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference FOIA case number 22-F-0905 in any appeal correspondence.

We regret the delay in responding to your request and appreciate your patience. As previously stated, please contact the Action Officer assigned to your request, Torrey Dixon, and reference FOIA case number 22-F-0905, if you have any questions or concerns.

Sincerely,

Madalyn Harper
for Stephanie L. Carr
Chief

Enclosure:
As stated