

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC HEALTH REFORM
ALLIANCE,
c/o Binnall Law Group
717 King Street, Suite 200
Alexandria, Virginia 22314

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
c/o General Counsel
200 Independence Avenue, S.W.,
Washington, D.C. 20201,

Defendant.

Case No.: _____

COMPLAINT

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking the release of records requested by Public Health Reform Alliance (“PHRA”) from the United States Department of Health and Human Services (“HHS”).

PARTIES

2. Plaintiff Public Health Reform Alliance is a nonpartisan organization that educates the public on the public health system and promotes government transparency and accountability in public health agencies. In furtherance of its public education mission, PHRA regularly issues FOIA requests.

3. Defendant United States Department of Health and Human Services is an agency within the meaning of 5 U.S.C. § 552(f)(1). Multiple agency components within HHS have possession, custody, and control of records to which PHRA seeks access and which are the subject of this Complaint, including but not limited to the National Institutes of Health (“NIH”) and the National Institute of Allergy and Infectious Diseases (“NIAID”).

JURISDICTION AND VENUE

4. This Court has personal and subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331, because this action arises under FOIA and PHRA is deemed to have exhausted its administrative remedies.

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

STATEMENT OF FACTS

6. On May 21, 2024, pursuant to FOIA, PHRA sent to NIH and NIAID, components of Defendant, five separate FOIA requests concerning records relating to Dr. Anthony Fauci (collectively, the “Requests”). The Requests included:

- a) From December 1, 2022, to the date the search begins, records of communications to or from staff from the NIAID Technology Transfer and Intellectual Property Office (TTIPO), Office of Integration and Financial Management (OMIFM), Office of the Chief of Staff, and NIAID

Director Jeanne Marrazzo with Dr. Anthony Fauci regarding royalties or royalty payments. Exhibit A.

b) From December 1, 2022, to the date the search begins, records of communications to or from staff from the NIAID Technology Transfer and Intellectual Property Office (TTIPO), Office of Integration and Financial Management (OMIFM), Office of the Chief of Staff, and NIAID Director Jeanne Marrazzo with Dr. Christine Grady of NIH, regarding royalties or royalty payments to Grady's husband, Dr. Anthony Fauci. Exhibit B.

c) From December 1, 2022, to the date the search begins, records of communications regarding royalties or royalty payments for Dr. Anthony Fauci between the listed custodians from the Office of Financial Management (OFM) and the Office of Technology Transfer (OTT): Umesh Kilnagar, Financial Management Analyst (OFM); Deitra Whitehead, Financial Management Analyst (OFM); Jennifer Wilkinson, Financial Management Analyst (OFM); Karen Rogers, Chief of License Compliance and Administration (OTT); Kevin Doran, Royalties Administrator (OTT); Lauren Rhoads, Royalties Coordinator (OTT); Simmone Henry, Royalties Coordinator (OTT); Sindy Cadet, Royalties Coordinator (OTT); Melborne Moon, Royalties Analyst (OTT). (2) From December 1, 2022, to the date the search begins, records of communications regarding royalties or royalty payments for Dr.

Anthony Fauci to or from the custodians listed above, and officials from the NIAID. Exhibit C.

- d) From December 1, 2022, to the date the search begins, records of communications to or from staff from the NIH Office of Financial Management (OFM), the Office of Technology Transfer (OTT), and the Office of Human Resources (OHR) with Dr. Anthony Fauci regarding royalties or royalty payments. Exhibit D.
- e) From December 1, 2022, to the date the search begins, records of Dr. Christine Grady's communications to or from staff from the NIH Office of Financial Management (OFM), Office of Technology Transfer (OTT), and the Office of Human Resources (OHR), regarding royalties or royalty payments to her husband, Dr. Anthony Fauci. Exhibit E.

7. Having not heard a response from Defendant, on September 5, 2024, PHRA sent an email to Defendant, inquiring as to the status of the Requests.

8. Defendant responded on September 6, 2024, providing case numbers for each of the Requests, however, did not provide any update as to the status of the Requests. Exhibit F.

9. To date, Defendant has not issued a final response to the Requests and is in violation of FOIA's timeliness requirements.

10. Defendant continues to improperly withhold the requested information from PHRA.

CAUSES OF ACTION

COUNT I

(Violation of FOIA: Failure to Comply with Statutory Deadlines)

11. PHRA incorporates by reference the above paragraphs as though set forth fully herein.

12. FOIA provides a cause of action for a complainant from whom a federal agency has withheld requested records. 5 U.S.C. § 552(a)(4)(B).

13. On May 21, 2024, PHRA properly issued the Requests.

14. PHRA has a legal right under FOIA to obtain the agency records described in the Requests in a timely manner and in accordance with the requirements set forth in FOIA. Because Defendant is an “agency” subject to FOIA, it must release all non-exempt records and provide legitimate reasons for withholding any records.

15. FOIA requires agencies to respond to requests within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A)–(B). If an agency requires additional time, FOIA mandates that the agency provide requesters “an opportunity to arrange with the agency an alternative time frame for processing the request[.]” 5 U.S.C. § 552(a)(6)(B)(ii).

16. The twenty (20) business day time limit has expired for Requests. Defendant accordingly has improperly denied PHRA’s access to agency records by failing to issue final determinations on the aforementioned Requests filed on May 21, 2024, within the statutory time limit set forth in 5 U.S.C. § 552(a)(6).

17. Defendant has further failed to comply with FOIA, insofar as it has not “arrange[d] . . . an alternative time frame” for responding to these Requests. *Id.* Instead, Defendant has issued acknowledgement letters that contain neither an estimated date of completion nor an invitation to contact the agency for the purposes of negotiating an “alternative” response date. PHRA does not believe it has the ability to arrange for an alternative time frame for Defendant’s final responses.

18. PHRA has exhausted any and all administrative remedies under 5 U.S.C. § 552(a)(6)(C).

19. PHRA has been and is currently being irreparably harmed by Defendant's unlawful withholding of the requested agency information, and PHRA will continue to be irreparably harmed until Defendant is compelled to conform their conduct to the requirements of FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PHRA respectfully requests that the Court enter judgment against Defendant, and provide PHRA with the following relief:

- a. An order declaring that Defendant's actions violated PHRA’s statutory rights under 5 U.S.C. § 552;
- b. An Order that Defendant issue a determination, and that Defendant shall conduct a diligent search for any and all records responsive to the Requests and demonstrate that it employed reasonable search methods most technologically likely to lead to the discovery of records responsive

to the Requests, selected from among those methods available to Defendant;

- c. An Order that Defendant produce, by a date certain, any and all non-exempt records responsive to the Requests and a Vaughn index of any responsive records withheld under claim of exemption;
- d. An Order awarding to PHRA its reasonable attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- e. An Order granting to PHRA all further relief to which PHRA may be entitled.

Dated: November 15, 2024

PUBLIC HEALTH REFORM ALLIANCE
By Counsel

Respectfully submitted,

/s/ Jesse R. Binnall

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