

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

CENTER FOR INQUIRY, INC.
1012 14th Street NW, Suite 205,
Washington, DC 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201,

FOOD AND DRUG ADMINISTRATION
10903 New Hampshire Avenue
Silver Spring, MD 20903,

Defendants.

Case no. 21-cv-3118

COMPLAINT

Plaintiff Center for Inquiry, Inc. brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain wrongfully withheld records from the U.S. Department of Health and Human Services and the Food and Drug Administration. As grounds and in support thereof, Plaintiff alleges the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. This district is the proper venue for the action pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Center for Inquiry, Inc. (“CFI”) is a New York based 501(c)(3) nonprofit organization that operates multiple regional and international branches including an executive office located at 1012 14th Street NW, Suite 205, Washington, DC 20005.

4. CFI is dedicated to fostering a secular society in which evidence, science, and compassion—rather than superstition, pseudoscience, or prejudice—guide public policy. CFI furthers its mission, in part, by holding government officials and other bad actors accountable for unlawful action through the regular production and distribution of publications, in various form of media, to its members and the public as a whole.

5. Defendant Department of Health and Human Services (“HHS”), an executive branch department, is an agency as defined by 5 U.S.C. § 551(f)(1) and has possession, custody and control of the records sought by CFI pursuant to FOIA.

6. Food and Drug Administration (“FDA”), a division of HHS, is an agency as defined by 5 U.S.C. § 551(f)(1) and has possession, custody and control of the records sought by CFI pursuant to FOIA.

STATEMENT OF FACTS

7. On August 19, 2021, CFI utilized HHS’s web portal to submit a request for records pursuant to FOIA seeking specifically the “[t]he complete, current, Homoeopathic Pharmacopoeia of the United States” and “[a]ll communications between HHS and HPCUS for the time period beginning 1/1/2015.” The FOIA request also included a fee waiver request. [Exhibit A]

8. Later that day, CFI received an email with the subject “Request Acknowledgement by U.S. Department of Health & Human Services” indicating the FOIA request was assigned case number 2021-01629-FOIA-OS.

9. On August 20, 2021, an employee of HHS sent an email to CFI indicating that it was referring the FOIA request to FDA. The email stated that CFI's request "will be closed in this office" and did not provide information regarding a right to appeal.

10. In response, CFI informed HHS that other agency divisions, in addition to FDA, likely have possession of records responsive to its FOIA request. CFI has not since received any communication from HHS regarding the FOIA request.

11. By email and letter dated September 2, 2021, FDA informed CFI that the agency received its FOIA request and assigned it control number 2021-5473.

12. In its letter, FDA stated that "[d]ue to an increase in the number of incoming requests, we may be unable to comply with the twenty-working-day time limit in this case, as well as the ten additional days provided by the FOIA." FDA did not provide an estimated date by which it would produce records responsive to the FOIA request.

13. CFI has not since received a determination nor any other communication from FDA regarding the FOIA request.

14. As a result of agency failure to comply with the applicable time limit provisions of the FOIA, CFI is deemed to have exhausted its administrative remedies.

CAUSE OF ACTION

COUNT I - Violation of the Freedom of Information Act (5 U.S.C. § 552)

Failure to Conduct Search for Records and Wrongful Withholding of Agency Records

15. CFI repeats and realleges paragraphs 1-14.

16. HHS and FDA ("Defendants") are agencies subject to the FOIA's requirements.

17. CFI submitted to HHS a proper FOIA request for records within the possession, custody and control of the agency.

18. FDA received CFI's request for records within the possession, custody and control of the agency.

19. In violation of the FOIA, Defendants failed to adequately search for records responsive to CFI's FOIA request.

20. In violation of the FOIA, Defendants failed to grant CFI's fee waiver request.

21. In violation of the FOIA, Defendants failed to promptly produce all non-exempt responsive records.

22. In violation of the FOIA, Defendants failed to identify responsive records withheld under a claim of an exemption to release.

REQUEST FOR RELIEF

WHEREFORE, the Center for Inquiry, Inc. respectfully requests the Court:

- A. Order Defendants to conduct an adequate search reasonably calculated to locate records responsive to CFI's FOIA request;
- B. Order Defendants to produce to CFI, by a date or dates certain, all non-exempt responsive records, an indication or index of any withheld records and the exemption under which any record is being withheld.
- C. Award CFI its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- D. Grant to CFI any other relief the Courts deems just and proper.

Dated:

Respectfully submitted,

/s/ Aaron D. Green
Aaron D. Green (D.C. Bar No. 1015611)
Center for Inquiry, Inc.
1012 14th Street NW, Suite 205

Washington, DC 20005
202-733-5275 x 520
agreeen@centerforinquiry.org

Counsel for Plaintiff