

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

JOHN SOLOMON,
c/o Bentley Media Group
1990 K Street, NW
Washington, DC 20006

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue, SW
Washington, DC 20201

Defendant.

Civil Action No.: 24-572

COMPLAINT

1. The Plaintiff, John Solomon, brings this action against the United States Department of Health and Human Services (HHS) to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

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

PARTIES

4. The Plaintiff, John Solomon, is an award-winning investigative journalist, author, and digital media entrepreneur who serves as Chief Executive Officer and Editor in Chief of *Just the News*, <https://justthenews.com>. Mr. Solomon has reported for *The Associated Press*, *The Washington Post*, *The Washington Times*, *Newsweek*, *The Daily Beast*, and *The Hill*.

5. The Defendant, HHS, is an agency under 5 U.S.C. § 552(f), with its headquarters at 200 Independence Avenue, SW, Washington, DC 20201.

6. The Defendant has possession, custody, and control of the requested records.

BACKGROUND

7. The Vaccine Adverse Event Reporting System (VAERS) “is a national early warning system to detect possible safety problems in U.S.-licensed vaccines.” *About VAERS*, DEPT. OF HEALTH AND HUM. SERVS., <https://vaers.hhs.gov/about.html>.

8. “VAERS is co-managed by the Centers for Disease Control and Prevention (CDC) and the U.S. Food and Drug Administration (FDA).” *Id.*

9. “VAERS accepts and analyzes reports of adverse events (possible side effects) after a person has received a vaccination.” *Id.*

10. According to HHS, VAERS “is especially useful for detecting unusual or unexpected patterns of adverse event reporting that might indicate a possible safety problem with a vaccine.” *Id.*

11. Reportedly, “in stark contrast to the US government’s handling of adverse reaction reports on drugs and devices, the publicly accessible VAERS database on vaccines includes only initial reports, while case updates and corrections are kept on a separate, back end system.” Jennifer Block, *Is the US’s Vaccine Adverse Event Reporting System Broken?*, 2023 BMJ 383, 2582 (available at <https://www.bmj.com/content/383/bmj.p2582>).

12. Narayan Nair, the FDA division director who oversees VAERS, acknowledged that there are “two parts to VAERS, the front-end system and the back end.” *Id.*

13. The public-facing database contains only initial reports, while the private, back-end system contains all updates and corrections—such as a formal diagnosis, recovery, or death. *Id.*

14. For example, the public VAERS database reportedly did not include an autopsy examiner’s conclusion that the death of a 15-year-old boy was caused by “stress cardiomyopathy following [his] second dose of the Pfizer-BioNTech covid-19 vaccine.” *Id.*

15. On February 12, 2024, the *Vaccine* journal published a multinational Global Vaccine Data Network cohort study of 99 million vaccinated individuals “confirm[ed] findings of previously identified rare cases of myocarditis and pericarditis following first and second doses of mRNA vaccines.” K. Faksova et al., *COVID-19 Vaccines and Adverse Events of Special Interest*, *VACCINE*, <https://doi.org/10.1016/j.vaccine.2024.01.100>; see also Jason Gale, *Largest Covid*

Vaccine Study Yet Finds Links to Health Conditions, BLOOMBERG (Feb. 19, 2024), <http://tinyurl.com/yc74x6rt>.

16. Ralph Edwards, who was recently editor-in-chief of the *International Journal of Risk & Safety in Medicine*, stated that VAERS is unlikely to capture long-term adverse outcomes unless reports are regularly updated and reviewers are closely following such cases. Jennifer Block, *supra*.

17. Despite the vaccines' potential for long-term adverse outcomes, one participant in a group of physicians and advocates who have met multiple times to express their concerns about VAERS with FDA officials—including Narayan Nair—warned that most doctors were “only willing to talk about the FDA-recognized vaccine adverse events.” *Id.*

FDA FOIA REQUEST

18. On January 2, 2024, Mr. Solomon submitted a FOIA request to the FDA, an Operating Division of HHS under 45 C.F.R. § 5.3, seeking “all records of updates and corrections relating to COVID-19 Vaccinations—such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database.” Ex. 1.

19. The request sought a fee waiver and expedited processing. *Id.*

20. On January 3, 2024, Mr. Solomon received an acknowledgment letter from the FDA, designating the request with “FOIA Control #: 2024-54.” Ex. 2.

21. In its letter, the FDA did not make a determination regarding Mr. Solomon's request for expedited processing. *Id.*

22. As of the date of this filing, Mr. Solomon has no further updates or communications from the Defendant about this request.

CDC FOIA REQUEST

23. On January 2, 2024, Mr. Solomon submitted a FOIA request to the CDC, an Operating Division of HHS under 45 C.F.R. § 5.3, seeking "all records of updates and corrections relating to COVID-19 Vaccinations—such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database." Ex. 3.

24. The request sought a fee waiver and expedited processing. *Id.*

25. On January 3, 2024, Mr. Solomon received an acknowledgment letter from the CDC, designating the request with "assigned number ... 24-00444-FOIA." Ex. 4 at 9.

26. Notwithstanding the intense public scrutiny paid to the information underlying Mr. Solomon's FOIA request, the CDC denied Mr. Solomon's request for expedited processing because it "failed to show that there is an imminent threat to the life or physical safety of an individual." *Id.*

27. On January 18, 2024, Mr. Solomon, through counsel, appealed the CDC's denial of his request for expedited processing. *Id.* at 1.

28. On January 19, 2024, HHS acknowledged Mr. Solomon’s appeal, designating the appeal “Case No. 2024-00087-A-PHS.” Ex. 5.

29. On February 8, 2024, HHS sent a letter stating that the CDC had determined that Mr. Solomon’s FOIA request “fell under the jurisdiction of the [FDA]” and “referred Mr. Solomon’s initial request to FDA and administratively closed the initial request.” *Id.*

30. HHS further stated that, “[b]ecause the initial request underlying [the] appeal has been administratively closed and referred to FDA, Mr. Solomon’s request for expedited processing by CDC/ATSDR is moot. Accordingly, [the] appeal is also moot, and it is hereby administratively closed.” *Id.*

31. As of the date of this filing, Mr. Solomon has no further updates or communications from the Defendant about this request.

COUNT I

Violation of the FOIA, 5 U.S.C. § 552

32. The Plaintiff repeats paragraphs 1–31.

33. The Defendant, HHS, is an agency of the federal government within the meaning of 5 U.S.C. § 552(f).

34. The Plaintiff properly requested from the FDA and the CDC—Operating Divisions of HHS under 45 C.F.R. § 5.3—records within the Defendant’s possession, custody, and control.

35. The Defendant failed to conduct searches for responsive records.

36. The Defendant has failed to respond to the Plaintiff's requests within the statutory time period. *See* 5 U.S.C. § 552(a)(6).

37. Accordingly, the Plaintiff has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

38. Additionally, each request demonstrated that expedited processing was appropriate under HHS's regulations. *See* 45 C.F.R. § 5.27.

39. Yet, the Defendant failed to comply with FOIA or with its own regulations when it denied or failed to make a determination granting these requests for expedited processing.

40. Accordingly, by denying or failing to make a determination granting the Plaintiff's requests for expedited processing and by failing to release any responsive, non-exempt records, or otherwise offer a reasonable schedule for production, the Defendant has violated FOIA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

- i. Declare that the Defendant unlawfully denied the Plaintiff's requests for expedited processing;
- ii. Declare that the records sought by the Plaintiff's requests must be disclosed pursuant to 5 U.S.C. § 552;
- iii. Order the Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;

- iv. Order the Defendant to produce by a date certain all non-exempt records responsive to the Plaintiff's FOIA requests, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under a claim of exemption;
- v. Order the Defendant to grant Plaintiff's requests for fee waivers;
- vi. Award the Plaintiff's attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vii. Grant the Plaintiff such other and further relief as this Court deems proper.

Date: February 29, 2024

Respectfully Submitted

/s/ Michael Ding

Daniel Z. Epstein (D.C. Bar No. 1009132)

Michael Ding (DC Bar No. 1027252)

AMERICA FIRST LEGAL FOUNDATION

611 Pennsylvania Avenue SE #231

Washington, D.C. 20003

Tel: (202) 964-3721

E-mail: michael.ding@aflegal.org

Counsel for the Plaintiff



Michael Ding <michael.ding@aflegal.org>

FOIA Request - Time sensitive

1 message

John Solomon [REDACTED]

Tue, Jan 2, 2024 at 11:40 AM

To: FDAFOIA@fda.hhs.gov

Cc: John Solomon [REDACTED]

Bcc: michael.ding@aflegal.org

Food and Drug Administration
Division of Freedom of Information
Office of the Executive Secretariat, OC
5630 Fishers Lane, Room 1035
Rockville, MD 20857
via email: FDAFOIA@fda.hhs.gov

Dear FDA FOIA Office:

I request, under the Freedom of Information Act, all records of updates and corrections relating to COVID-19 Vaccinations —such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database.

This is not intended to be a complex request, so I am happy to work with you to refine it if you are unsure what records would be responsive. I have included my cell phone below for convenience

The data we are specifically seeking was discussed publicly by the FDA official Narayan Nair, as quoted by the British Medical Journal in an article published in November 2023. She described the data as belonging in a "back end" system accessible to CDC and FDA officials and not in the publicly available VAERS database.

This data has enormous value to the public's understanding of vaccine safety and efficacy and how the government surveils for safety signals.

The data records constitute public records as defined by law since they were gathered by government agencies as part of their official duties. And the data can be released in anonymized form to protect any medical privacy concerns of individual Americans.

I request a media fee waiver as a journalist with JusttheNews.com, which delivers old-fashioned, honest, and exclusive reporting in a neutral voice but through the modern channels of Rumble, podcasts, e-books, and social media. I make this request in the public interest for the purpose of distilling and disseminating information.

I also request expedited processing of this request because the matter is one of widespread and exceptional media interest, and I am primarily engaged in the dissemination of information to the public. Expedited processing is critical because patients, doctors, and other public users of the VAERS database may have access only to an incomplete and uncorrected version and need the requested information to make informed medical decisions.

I would like to receive the records digitally by email. If it would expedite the processing of records, I consent to the release of responsive records on a rolling basis.

Thank you,

John Solomon
Editor in Chief
Just the News





January 03, 2024

JUST THE NEWS
JOHN SOLOMON

[REDACTED] US

In Reply refer to
FOIA Control #:
2024-54

Requester reference:

Dear Requester:

The Food and Drug Administration (FDA) has received your Freedom of Information Act (FOIA) request for records regarding:

I request, under the Freedom of Information Act, all records of updates and corrections relating to COVID-19 Vaccinations—such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database. The data we are specifically seeking was discussed publicly by the FDA official Narayan Nair, as quoted by the British Medical Journal in an article published in November 2023. She described the data as belonging in a "back end" system accessible to CDC and FDA officials and not in the publicly available VAERS database.

In processing your FOIA request, FDA will apply, as appropriate, the FOIA exemptions in 5 USC 552(b) and the foreseeable harm standard in 5 USC 552(a)(8)(i). We will respond as soon as possible and may charge you a fee for processing your request. If your informational needs change, and you no longer need the requested records, please contact us to cancel your request, as charges may be incurred once processing of your request has begun. For more information on processing fees, please see <http://www.fda.gov/RegulatoryInformation/FOI/FOIAFees/default.htm>. PLEASE NOTE: HOURLY RATES FOR SEARCH AND REVIEW INCREASED FOR ALL REQUESTS RECEIVED ON OR AFTER JUNE 1, 2023.

Due 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. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other executive branch agencies are involved. Please note that requests for medical device approval records (e.g. 510K, PMA, DEN) may take up to 18 to 24 months to process.

If you have any questions about your request, please call Wilson M. Russ, Freedom Of Information Specialist, at (301) 796-8981 or write to us at:

Food and Drug Administration
Division of Freedom of Information
5630 Fishers Lane, Room 1035
Rockville, MD 20857

If you call or write, use the FOIA control number provided above which will help us to answer your questions more quickly.

You also have the right to seek dispute resolution services from:

Office of Government Information Services
National Archives and Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
Email: ogis@nara.gov
Fax: 202-741-5769

and/or

FDA FOIA Public Liaison
Office of the Executive Secretariat
US Food and Drug Administration
5630 Fishers Lane, Room 1050
Rockville, MD 20857
Email: FDAFOIA@fda.hhs.gov

Sincerely,

SARAH KOTLER
Director



Michael Ding <michael.ding@aflegal.org>

FOIA Request - Time Sensitive

1 message

John Solomon [REDACTED]
Cc: John Solomon [REDACTED]
Bcc: michael.ding@aflegal.org

Tue, Jan 2, 2024 at 11:50 AM

Roger Andoh, FOIA Officer
MS-D54
1600 Clifton Road, N.E.
Atlanta, GA 30333
via email: FOIARequests@cdc.gov]

Dear Roger and CDC FOIA Office:

I request, under the Freedom of Information Act, all records of updates and corrections relating to COVID-19 Vaccinations—such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database.

This is not intended to be a complex request, so I am happy to work with you to refine it if you are unsure what records would be responsive. I have included my cell phone below for convenience

The data we are specifically seeking was discussed publicly by the FDA official Narayan Nair, as quoted by the British Medical Journal in an article published in November 2023. She described the data as belonging in a "back end" system accessible to CDC and FDA officials and not in the publicly available VAERS database.

This data has enormous value to the public's understanding of vaccine safety and efficacy and how the government surveils for safety signals.

The data records constitute public records as defined by law since they were gathered by government agencies as part of their official duties. And the data can be released in anonymized form to protect any medical privacy concerns of individual Americans.

I request a media fee waiver as a journalist with JusttheNews.com, which delivers old-fashioned, honest, and exclusive reporting in a neutral voice but through the modern channels of Rumble, podcasts, e-books, and social media. I make this request in the public interest for the purpose of distilling and disseminating information.

I also request expedited processing of this request because the matter is one of widespread and exceptional media interest, and I am primarily engaged in the dissemination of information to the public. Expedited processing is critical because patients, doctors, and other public users of the VAERS database may have access only to an incomplete and uncorrected version and need the requested information to make informed medical decisions.

I would like to receive the records digitally by email. If it would expedite the processing of records, I consent to the release of responsive records on a rolling basis.

Thank you,

John Solomon
Editor in Chief
Just the News
[REDACTED]



January 18, 2024

Via online portal: <https://requests.publiclink.hhs.gov/App/Index.aspx>

Via email: William.Holzerland@hhs.gov

William Holzerland
U.S. Department of Health and Human Services
Deputy Agency Chief FOIA Officer
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue SW
Washington, DC 20201

FOIA Appeal: Denial of Expedited Processing for Request 24-00444-FOIA

Dear Mr. Holzerland:

I am representing John Solomon, Editor in Chief of Just the News relating to his January 2, 2024, Freedom of Information Act (FOIA) request to the Centers for Disease Control (CDC) for all records of updates and corrections relating to COVID-19 Vaccinations that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database, i.e. the “back end” system described by FDA official Narayan Nair, as quoted by the British Medical Journal in an article published in November 2023. Exhibit 1.

On January 3, 2024, the CDC stated that Mr. Solomon “failed to show that there is an imminent threat to the life or physical safety of an individual” and denied his request for expedited processing. Exhibit 2.

Because Mr. Solomon’s request fulfills the statutory and regulatory requirements for expedited processing, he now appeals the CDC’s erroneous determination.

I. Standard of Review

The FOIA mandates expedited processing when a requestor demonstrates a “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). “Compelling need,” is established when “a failure to obtain requested records on an expedited basis ... could reasonably

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

be expected to pose an imminent threat to the life or physical safety of an individual; or,” when the request is “made by a person primarily engaged in disseminating information,” there is “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(I)–(II). The Department’s regulations for evaluating requests for expedited processing mirror the FOIA statute. *See* 45 C.F.R. § 5.27(b).

II. Argument

Because Mr. Solomon is “a person primarily engaged in disseminating information,” the “compelling need” for expedited processing may be established by an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. §§ 552(a)(6)(E)(i)(I), (v)(II); 45 C.F.R. § 5.27(b)(2). The CDC denied expedited processing solely on the grounds that Mr. Solomon “failed to show that there is an imminent threat to the life or physical safety of an individual.” Exhibit 2. This is not the standard. The CDC failed to consider that Mr. Solomon is a “person primarily engaged in disseminating information” and that there was an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 45 C.F.R. § 5.27(b)(2). Because Mr. Solomon’s request met these conditions, expedited processing must be granted.

First, Mr. Solomon is “a person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). As he described in his request, he is a journalist for JusttheNews.com, and he made this request in the public interest for the purpose of distilling and disseminating information. The CDC acknowledged this when it granted his request for a fee waiver. *See* Exhibit 2.

Second, there is “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). FDA official Narayan Nair acknowledged that the requested records concern actual Federal Government activity. *See* Jennifer Block, *Is the US’s Vaccine Adverse Event Reporting System Broken?*, 2023 *BMJ* 383, 2582 (available at <http://tinyurl.com/3tppes4t>). The requested information is critical to the public’s understanding of vaccine safety and efficacy. The request is “urgent” because—without access to the requested information—individuals decide everyday whether to take the COVID-19 Vaccine or additional booster shots with incomplete information about what dangers they unknowingly assume.

For example, the public VAERS database reportedly did not include an autopsy examiner’s conclusion that the death of a 15-year-old boy was caused by “stress cardiomyopathy following [his] second dose of the Pfizer-BioNTech covid-19 vaccine.” *Id.* Accordingly, there is a compelling need for the CDC to disclose the requested information on an expedited basis. Undisclosed risks presented by the vaccines, including the recent discovery of billions of DNA fragments per dose of the Pfizer and

Moderna vaccines, have caused the Florida Surgeon General to call for the halt of their use until more information is disclosed. *Press Release: Florida State Surgeon General Calls for Halt in the Use of COVID-10 mRNA Vaccines*, FLA. DEP'T OF HEALTH (Jan. 3, 2024), <http://tinyurl.com/yc7w6ucp>. Even if the standard applied by the CDC were the only standard, the urgency to expose the requested information is such that there *is* an imminent threat to the life or physical safety of the general public.

III. Conclusion

Accordingly, I request that the CDC's determination be reversed and Mr. Solomon's request for expedited processing be granted. Please contact me at michael.ding@aflegal.org for additional clarification or information.

Sincerely,

/s/ Michael Ding
America First Legal Foundation

CC: John Solomon, Editor in Chief, Just the News

Exhibit 1

Submit New Request

Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

John Solomon

Editor in Chief

Just the News

[Redacted]

None

[Redacted]

Requester Default Category: News Media

General Information

Action Office	HQ
Action Office Instructions	CDC/ATSDR FOIA Office 1600 Clifton Road, N.E., MS D-54 Atlanta, Georgia 30152
Request Type	FOIA
Requester Category	News Media
Delivery Mode	E-mail

Shipping Address

Street1	[Redacted]
Street2	[Redacted]
City	[Redacted]
State	[Redacted]
State (Other)	[Redacted]
Country	United States
Zip Code	[Redacted]

Request Information

I request, under the Freedom of Information Act, all records of updates and corrections relating to COVID-19 Vaccinations—such as formal diagnoses, recovery, or death—that are collected after the initial reports to the Vaccine Adverse Event Reporting System (VAERS), but that are not published in the public VAERS database.

This is not intended to be a complex request, so I am happy to work with you to refine it if you are unsure what records would be responsive. I have included my cell phone below for convenience

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This data has enormous value to the public's understanding of vaccine safety and efficacy and how the government surveils for safety signals.

Description

The data records constitute public records as defined by law since they were gathered by government agencies as part of their official duties. And the data can be released in anonymized form to protect any medical privacy concerns of individual Americans.

I request a media fee waiver as a journalist with JusttheNews.com, which delivers old-fashioned, honest, and exclusive reporting in a neutral voice but through the modern channels of Rumble, podcasts, e-books, and social media. I make this request in the public interest for the purpose of distilling and disseminating information.

I also request expedited processing of this request because the matter is one of widespread and exceptional media interest, and I am primarily engaged in the dissemination of information to the public. Expedited processing is critical because patients, doctors, and other public users of the VAERS database may have access only to an incomplete and uncorrected version and need the requested information to make informed medical decisions.

I would like to receive the records digitally by email. If it would expedite the processing of records, I consent to the release of responsive records on a rolling basis.

Date Range for Record Search:From
Date Range for Record Search:To
Description Document

01/01/2020

01/01/2024

Fee Information

Willing Amount \$25
 Fee Waiver Requested Yes
 Fee Waiver Request Reason I request a media fee waiver as a journalist with JusttheNews.com, which delivers old-fashioned, honest, and exclusive reporting in a neutral voice. I make this request in the public interest for the purpose of distilling and disseminating information.
 Willing to Pay All Fees Yes

Billing Address

Street1 [Redacted]
 Street2 [Redacted]
 City [Redacted]
 State [Redacted]
 State (Other) [Redacted]
 Country United States
 Zip Code [Redacted]

Other Information

Name John Solomon
 Company Just the News
 Phone [Redacted]
 Fax [Redacted]
 Email Address [Redacted]
 Street1 [Redacted]
 Street2 [Redacted]
 City Mansasas
 State Virginia
 State (Other)

Country
Zip Code

United States
20112

Expedite Information

Expedite Reason

I request expedited processing because the matter is one of widespread and exceptional media interest, and I am primarily engaged in the dissemination of information to the public. Expedited processing is critical because public health safety is involved.

Exhibit 2



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

January 3, 2024

Mr. John Solomon
Editor in Chief
Just the News

[REDACTED]
Via email: [REDACTED]

Dear Mr. Solomon:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated January 2, 2024 (request attached). Your request assigned number is 24-00444-FOIA, and it has been placed in our complex processing queue.

Extension of Time

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request.

We will require more than thirty working days to respond to your request because:

- We reasonably expect to consult with two or more Centers/Institutes/Offices, and
- We reasonably expect to consult with other federal Agencies.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, please contact the analyst handling your request Zachary Roberts at ltk2@cdc.gov or our FOIA Public Liaison, Bruno Viana at 770-488-6246. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Expedited Processing

You requested that we expedite processing your request. Your request is denied because:

- You have failed to show that there is an imminent threat to the life or physical safety of an individual.

Fee Category

Because you are considered a "News Media requester," you will not be charged fees unless you choose to receive responsive records in hard copy. (10 cents/page)

Appeal Rights

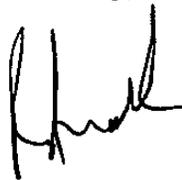
Page 2--John Solomon

You have the right to appeal the agency's expedited processing response to your request. You may file your appeal with the Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, U.S. Department of Health and Human Services, via the online portal at <https://requests.publiclink.hhs.gov/App/Index.aspx>. Your appeal must be electronically transmitted by April 2, 2024.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number. If you have any questions regarding your request, please contact Zachary Roberts at ltk2@cdc.gov.

We reasonably anticipate that you should receive documents by March 25, 2024. Please know that this date roughly estimates how long it will take the Agency to close requests ahead of your request in the queue and complete work on your request. The actual date of completion might be before or after this estimated date.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', is positioned above the typed name.

Roger Andoh
CDC/ATSDR FOIA Officer
Office of the Chief Operating Officer
(770) 488-6399
Fax: (404) 235-1852

24-00444-FOIA



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201

Case No. 2024-00087-A-PHS

January 19, 2024

Michael Ding
America First Legal Foundation
Sent via email: michael.ding@aflegal.org

Dear Mr. Ding:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) appeal, which was submitted to the Department of Health and Human Services (HHS), FOI/Privacy Acts Division. We received your appeal on January 18, 2024. It challenges the Centers for Disease Control and Prevention (CDC) response to John Solomon's initial request, 24-00444-FOIA. We assigned your appeal the tracking number above based on when it was received in this office. Please refer to this number on any future correspondence.

Pursuant to 5 U.S.C. § 552(a)(6)(B)(i) and 5 U.S.C. § 552(a)(6)(B)(iii) of the FOIA and 45 C.F.R. § 5.24(f) of the HHS FOIA regulations, your appeal falls under "unusual circumstances" in that our office will need to consult with another office or agency that has substantial interest in the determination of the appeal. The actual processing time will depend on the complexity of the issues presented in the appeal and consultation with other U.S. Department of Health and Human Services (HHS) components involved.

Each appeal is handled on a first-in, first-out basis in relation to the other open appeals in the processing queue. Currently, there are approximately 500 open appeals in the processing queue. For more information about how your appeal will be processed please refer to the HHS FOIA regulations (<https://www.federalregister.gov/documents/2016/10/28/2016-25684/freedom-of-information-regulations>).

As a final note, if you are not already submitting your appeals through our Public Access Link (PAL), we recommend all future appeals be submitted through PAL - <https://requests.publiclink.hhs.gov/>. Submitting appeals through PAL automatically logs your appeal into our tracking system and provides you with a tracking number. Your PAL account will allow you to track the progress of your appeal, receive your response directly through the portal, and securely submit privacy-sensitive or business-sensitive documents.

If you have any questions, please email us at foiarequest@psc.hhs.gov.

Sincerely yours,

Alesia Y. Williams

Alesia Y. Williams
Director, FOIA Appeals and Litigations
FOI/Privacy Acts Division



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201

Case No. 2024-00087-A-PHS

February 8, 2024

Michael Ding
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003
Via email: michael.ding@aflegal.org

Dear Mr. Ding:

On January 2, 2024, Mr. John Solomon, Editor in Chief of Just the News, submitted a Freedom of Information Act (FOIA) request to the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry (CDC/ATSDR). The CDC/ATSDR FOIA Office assigned the initial request tracking number 24-00444-FOIA. Mr. Solomon asked the agency for expedited processing, but his request was denied.

On Mr. Solomon's behalf, you submitted an administrative appeal of the agency's denial of expedited processing on January 18, 2024. This office (OS FOIA) assigned your appeal tracking number 2024-00087-A-PHS.

On January 17, 2024, however, the CDC/ATSDR FOIA Office determined that Mr. Solomon's initial request fell under the jurisdiction of the Food and Drug Administration (FDA). On January 22, 2024, the CDC/ATSDR FOIA Office informed OS FOIA that the agency had referred Mr. Solomon's initial request to FDA and administratively closed the initial request.

CONCLUSION:

Because the initial request underlying your appeal has been administratively closed and referred to FDA, Mr. Solomon's request for expedited processing by CDC/ATSDR is moot. Accordingly, your appeal is also moot, and it is hereby administratively closed.

Alesia Y. Williams
Director, FOIA Appeals and Litigation
FOI/Privacy Acts Division

Copy to:
CDC/ATSDR FOIA Officer

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Violation of FOIA, 5 U.S.C. § 552, failing to release responsive, non-exempt records

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: <u>02/29/2024</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Michael Ding</u>
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

Civil Action No. 1:24-cv-00572

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. 1:24-cv-00572

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designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

JOHN SOLOMON

Plaintiff

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

Defendant

Civil Action No. 1:24-cv-00572

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Attorney's Office for the District of Columbia
Civil Process Clerk
601 D St., NW
Washington, D.C. 20530
Email Service to: USADC.ServiceCivil@usdoj.gov

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael Ding
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave SE #231
Washington, DC 20003

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-00572

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(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
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I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: