



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Assistant Secretary for Public Affairs
Washington, D.C. 20201

Litigation No: 2023-cv-03680/American First Legal Foundation
HHS Case No. 2022-01186 FOIA-OS

December 2, 2024

Reed D. Rubinstein
America First Legal Foundation

Sent Via Email: FOIA@aflegal.org

Dear Reed Rubinstein:

This letter is the eighth interim response to your Freedom of Information Act (FOIA) request submitted to the U.S. Department of Health and Human Services (HHS) on September 19, 2022. Specifically, you requested the following records for FOIA request number 2022-01186 FOIA-OS:

I. Custodians

- a. Janet Woodcock
- b. Rick Bright
- c. Gary Disbrow
- d. Denise Hinton

II. Requested Records

- A. For all custodians, all records, including but not limited to email, texts, memoranda, and handwritten notes including the words “hydroxychloroquine” or “HCQ,” or “early treatment,” or “early (drug) treatment,” or “remdesivir”.
- B. For all custodians, all calendar items that contain the terms “hydroxychloroquine” or “HCQ,” or “early treatment,” or “early (drug) treatment,” or “remdesivir”.
- C. All communications, including but not limited to emails between Janet Woodcock and Rick Bright.

For this eighth interim response, the Department has reviewed 503 pages of records, potentially responsive to FOIA request 2022-01186-FOIA-OS. Of these 503 pages, we are releasing 40 pages in their entirety, while releasing 42 pages in part, with portions redacted pursuant to Exemption 3 of the FOIA (5 U.S.C. §552 (b)(3)), Exemption 5 of the FOIA (5 U.S.C. §552 (b)(5)), and Exemption 6 of the FOIA (5 U.S.C. §552 (b)(6)). Further, we are withholding 21 pages in full, pursuant to Exemption 3 of the FOIA (5 U.S.C. §552 (b)(3)), while we have also deemed 1 page unresponsive to your request and 20 pages as duplicates. Finally,

we have determined that 379 pages should be sent for consultation to other executive branch agencies, returned to this Department for final disposition and will be released in a future response once returned.

FOIA exemption (b)(3) incorporates into the FOIA certain nondisclosure provisions that are contained in other federal statutes. This exemption allows for the withholding of information prohibited from disclosure by another federal statute provided that one of two disjunctive requirements are met: the statute either "(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (A)(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld." Under this exemption, the records being withheld relate to 42 U.S.C. § 247d-6b, the stockpile statute, which prohibits the release of information about the location of, content of, and quantities of items we keep in the national defense stockpile and 41 U.S.C. § 4702, which prohibits release of contractor proposals when they have not been set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

FOIA exemption (b)(5) protects inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency. This exemption protects documents that would be covered by any privilege an agency could assert in a civil proceeding. These privileges include, among others, the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege. These records have also been considered against the foreseeable harm standard when applying the (b)(5) exemption. Under this exemption, the records being withheld consist of intra-agency emails discussing information covered under the attorney-client privilege and discussing decisions relating to implementing the COVID vaccine.

FOIA exemption (b)(6) permits a Federal agency to withhold information and records about individuals in "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The definition of "similar files" has historically been broadly interpreted to include a wide variety of files, and the United States Supreme Court has held that Congress intended the term "similar files" to be interpreted broadly, rather than narrowly. I have analyzed these records and find they meet the threshold requirement of this exemption. Additionally, I have reviewed and weighed the public interest in disclosure of this information against the privacy interest in nondisclosure, and found that the privacy interest outweighs the public's interest in disclosure. Under this exemption, the records being withheld consist of personal email addresses and phone numbers.

We will continue to review the remaining records as efficiently and expeditiously as possible, consistent with the terms of the joint status report and our available resources. Should you have questions or concerns regarding the Department's response and/or the processing of your request, any such issues should be communicated to your legal counsel and Department of Justice Attorney, Brian Levy at Brian.Levy2@usdoj.gov, representing the Department in this matter.

Sincerely yours,

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

Enclosures: 113 pages