



DEPARTMENT OF HEALTH & HUMAN SERVICES

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

May 16, 2024

HHS Case No. 2023-01072-FOIA-OS/ Litigation No: 2023-cv-03680

Sent Via Email: FOIA@aflegal.org

**Reed D. Rubinstein
America First Legal**

Dear Reed Rubinstein:

This letter is the second 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:

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 first response, the Department has reviewed 504 pages of records, potentially responsive to FOIA request 2022-01186-FOIA-OS. Of these 504 pages, we are releasing 77 pages in their entirety, while we are further releasing 48 pages in part, with portions redacted pursuant to Exemptions 3, 4, 5, and 6 of the FOIA (5 U.S.C. §552 (b)(3), (b)(4), (b)(5) and (b)(6)). Also, we determined that two pages are not relevant to your request. Finally, 139 pages should be sent for consultation to other agencies and returned to this Department for final disposition, while 237 pages require notification to and consultation with the submitting entity 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."

FOIA exemption (b)(4) permits the withholding of trade secrets and commercial or financial information that is privileged or confidential. After conducting a submitter notification process, the private entities who submitted this information to the Department identified the information withheld as commercial or financial information that they customarily keep confidential. I have analyzed the information identified by the submitter and find that the identified information meets the requirements of this exemption.

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.

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.

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,

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