



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

October 1, 2024

Reed D. Rubinstein
America First Legal Foundation

Sent Via Email: FOIA@aflegal.org

Dear Reed Rubinstein:

This letter is the sixth interim response to your Freedom of Information Act (FOIA) request submitted to the U.S. Department of Health and Human Services (HHS), Office of the Secretary FOIA Office 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 sixth response, the Department has reviewed 558 pages of records, potentially responsive to FOIA request 2022-01186-FOIA-OS. Of these 558 pages, we are releasing 102 pages in their entirety, while we are further releasing 39 pages in part, with portions redacted pursuant to Exemptions 5 of the FOIA (5 U.S.C. §552 (b)(5)) and 6 of the FOIA (5 U.S.C. §552 (b)(6)). Furthermore, we have deemed three pages not relevant. Finally, we have determined that 336 pages should be sent for consultation to other executive branch agencies and returned to this Department for final disposition while 78 pages were determined to require notification to and consultation with the submitting entity and will be released in a future

response once returned.

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 pre-decisional and deliberative inter-agency emails.

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 private 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,

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

Enclosures: 141 pages