



DEPARTMENT OF HEALTH & HUMAN SERVICES

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

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

December 31, 2024

Reed D. Rubinstein
America First Legal Foundation

Sent Via Email: FOIA@aflegal.org

Dear Reed Rubinstein:

This letter is the ninth interim response to your Freedom of Information Act (FOIA) request submitted to the U.S. Department of Health and Human Services, 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 ninth interim response, the Department has reviewed 517 pages of records, potentially responsive to FOIA request 2022-01186-FOIA-OS. Of these 517 pages, we are releasing 53 pages in their entirety, while releasing 61 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 277 pages in full, pursuant to Exemption 5 of the FOIA (5 U.S.C. §552 (b)(5)), while we have also deemed 1 pages unresponsive to your request. Finally, we have determined

that 114 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 USC 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 also 41 USC 4702-prohibiting release of contractor proposals when they have not been incorporated into a procurement contract.

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 pre-decisional information 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, phone numbers and signatures.

For all exemptions applied, we have found that it is reasonably foreseeable that disclosure would harm an interest protected by one or more of the exemptions to the FOIA's general rule of disclosure and/or that disclosure is prohibited by law.

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: 391 pages