



April 6, 2023

Sent via Email

James Rogers
America First Legal Foundation
320 South Madison Avenue
Monroe, GA 30655
FOIA@aflegal.org

Dear James Rogers:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request received by this office on April 3, 2023. Your request has been assigned tracking number 04032023F199. In summary, you request the following records, created between January 20, 2021 and the date that we initiate our record search¹, from the eight Health Resources and Services Administration custodians listed below:

- (1) All records using any one of the following terms: “discrimination,” “discriminatory,” “race,” “racial,” “ethnicity,” “color,” “BIPOC,” “Asian,” “Indigenous,” “Black,” “Brown,” or “White” and any one of the following terms: “organ,” “transplant,” “transplantation,” “donor,” “donation,” “Organ Procurement and Transplantation Network,” “OPTN,” “United Network for Organ Sharing,” “UNOS,” “equity”, or “kidney”. The time period for this request is January 20, 2021 to the date this request is processed, excluding news articles, press clippings, listserv items, or forwards of the same without substantive commentary.
- (2) All records of, regarding, mentioning, or discussing updating race and ethnicity labeling in Organ Procurement and Transplantation Network (OPTN) data reports.
- (3) All records regarding the processing of this request.
- (4) Custodians: Carole Johnson, Administrator; Diana Espinosa, Principal Deputy Administrator; Jordan Grossman, Deputy Administrator; Garrett Devenney, Chief of Staff; Nisha Patel, Senior Advisor; Michelle Allender, Director, Office of Health Equity; Christine Ramey, Deputy Director, Office of Health Equity; and Gopal Singh, Senior Health Equity Advisor, Office of Health Equity.

The FOIA and HHS’s FOIA regulations allow agencies to recover part of the costs of processing FOIA requests. You have been classified in the following manner:

- ☐ Category 1 – Commercial Use Requester. Category 1 requesters are charged for search time, documents review, and duplication.

¹ [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.24\(d\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.24(d))

- ☐ Category 2 – Media, Educational, and Scientific Requester. Category 2 requesters are charged for duplication only after the first 100 pages.
- ☒ Category 3 – Other Requester. Category 3 requesters are charged for search time (after 2 hours) and duplication (after 100 pages).

Regarding Item 3, any records created after the cut-off date, April 6, 2023, (the date that we initiated our record search, April 6, 2023) will be considered non-responsive to your request.²

You requested that we waive FOIA processing fees. The U.S. Department of Health and Human Services (HHS) FOIA regulation, Section 5.54(a)³ states that requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is:

- (1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and
- (2) Not primarily in the requester's commercial interest.

We determined that your fee waiver request meets the criteria and agree to waive the FOIA processing fees.

Please note that the records you seek are maintained outside of this office and our staff has not yet been able to complete a search to determine whether the Health Resources and Services Administration (HRSA) possesses records that are responsive to your request. Accordingly, we may be unable to comply with the 20 working-day time limit in this case, as well as the 10 additional days provided by the statute.

The actual processing time will depend on the complexity of your request and whether it involves sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other agencies. We anticipate responding to your request by the close of business on July 5, 2023. You can track the status of your request by entering the tracking number and PIN number WHWW into our portal.⁴

The FOIA and HHS's FOIA regulations are available at the following web addresses:

- FOIA regulations: <http://www.justice.gov/oip/foia-resources>
- HHS's FOIA regulations: <https://www.hhs.gov/foia/statutes-and-resources/index.html>

It is your responsibility to notify our office of any changes in your contact information (i.e., mailing address, telephone numbers, and/or email address). Any returned correspondence due to "unknown address" is considered sufficient reason to close your request.

You may contact this office 20 working-days from the date of this letter to inquire the status of your request. When making an inquiry, please refer to your case number.

² Department of Justice Guide to the FOIA, Procedural Requirements chapter, page 60, Footnote 202

³ [https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.54\(a\)](https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5#p-5.54(a))

⁴ <https://foia.hrsa.gov/check-status>

If you are not satisfied with any aspect of the processing and handling of this request, please contact HRSA's FOIA Public Liaison:

Brian A. May
Freedom of Information Act Officer
Telephone: 301-443-1467
Email: FOIA@hrsa.gov

and/or:

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
Fax: 202-741-5769
Email: ogis@nara.gov

If you have any questions, please do not hesitate to contact me at 301-443-1467 or at FOIA@hrsa.gov.

Sincerely,

Brian A. May
Freedom of Information Act Officer