



August 31, 2022

VIA HHS Online FOIA Public Access Link

HHS FOIA/PA Public Liaison
FOI/Privacy Acts Division
Assistant Secretary for Public Affairs (ASPA)
Office of the Secretary (OS)
U.S. Department of Health and Human Services (HHS)

Freedom of Information Act Appeal - HHS Strategic Voting Plan

Dear FOIA Officer,

This letter responds to your email and letter correspondence of June 13, 2022, related to America First Legal Foundation's ("AFL") Freedom of Information Act request, FOIA control number # 2022-00848-FOIA-OS.

On June 10, 2022, America First Legal Foundation requested documents from the Department of Health and Human Services (HHS) under the Freedom of Information Act. HHS assigned the request identification number # 2022-00848-FOIA-OS ("Request"). On June 13, 2022, we received a response from HHS that stated "The Office of the White House Liaison conducted a search and reports there are no records responsive to your request."

This letter serves as our appeal of HHS's response and asserts that HHS has not shown it conducted an adequate search for records. First, AFL reiterates that nearly all of the information specified in the Request is easily obtainable. We seek a single document, one whose creation was ordered by the President of the United States. This document cannot be difficult to locate, and HHS has provided no explanation of its search methods or its failure to find the document.

The burden is on the agency to show the adequacy of its search. *See e.g., Weisberg v. U.S. Dep't of Just.*, 705 F.2d 1344 (D.C. Cir. 1983); *accord Havemann v. Colvin*, 629 F. App'x 537 (4th Cir. 2015) ("A defendant agency has the burden of establishing the adequacy of its search"). To bear this burden, HHS must explain its search process in a way that is "relatively detailed' and nonconclusory." *Goland v. Cent. Intel. Agency*,

607 F.2d 339, 352 (D.C. Cir. 1978). A one sentence line stating that no responsive records were found does not meet this standard.

HHS's "strategic plan" apparently exists, and it should be located by a reasonably diligent search. The document, which was required by a presidential executive order, appears to have been received by the White House. *See* White House, *FACT SHEET: Biden Administration Promotes Voter Participation with New Agency Steps* (Sep. 28, 2021), <https://bit.ly/3AVf5vw> ("[HHS]'s Administration for Community Living will launch a new voting access hub to connect older adults and people with disabilities to information, tools and resources to help them understand and exercise their right to vote."). Regardless, HHS has failed to carry its legal burden on this issue. The FOIA office's determination should thus be reversed, a new search conducted, and the requested document provided.

Thank you,

/s/ Michael Ding

Michael Ding

America First Legal Foundation