

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

CHILDREN'S HEALTH DEFENSE,
852 Franklin Ave. Suite 511
Franklin Lakes, NJ 07417

Plaintiff,

V.

NATIONAL INSTITUTES OF HEALTH,
9000 Rockville Pike
Bethesda, MD 20892

Defendant.

Case No._____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This Complaint concerns a Freedom of Information Act (FOIA) request that Children’s Health Defense (CHD) submitted to the National Institutes of Health (NIH) in November 2022 seeking records of NIH communications with individuals who suffered adverse health effects after receiving COVID-19 injections.

2. To date, the NIH has not provided a determination on or any records responsive to the request. CHD now brings this action to compel compliance with FOIA, 5 U.S.C. § 552.

PARTIES

3. Plaintiff Children’s Health Defense (CHD) is a not-for-profit organization incorporated under the laws of California and has a mailing address of 852 Franklin Ave., Suite 511, Franklin Lakes, New Jersey 07417.

4. CHD works to end health epidemics by exposing causes, eliminating harmful exposures, holding those responsible accountable, seeking justice for those injured, and establishing safeguards to prevent future harm. CHD is committed to educating the general public in connection with these efforts.¹ As part of its mission, CHD regularly requests records from federal agencies pursuant to FOIA.²

5. Defendant National Institutes of Health (NIH) is an agency within the executive branch of the U.S. Government, headquartered at 9000 Rockville Pike, Bethesda, Maryland 20892. NIH is a federal agency within the meaning of 5 U.S.C. § 552(f), and has possession, custody, and control of records to which Plaintiff seeks access.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

FACTS

A. Background for CHD's FOIA Request

8. For more than two years, the U.S. government has engaged in ongoing efforts to promote COVID-19 injections. These efforts include spending billions of dollars on injections;³

¹ See Children's Health Defense Website at <https://childrenshealthdefense.org/>; *The Defender*, Children's Health Defense News & Views, at <https://childrenshealthdefense.org/defender/>.

² See Children's Health Defense Website at https://childrenshealthdefense.org/legal_justice/foia/.

³ See, e.g., *Biden-Harris Administration secures 105 million doses of Pfizer's latest COVID-19 vaccine for fall vaccination campaign*, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Jun. 29, 2022), <https://www.hhs.gov/about/news/2022/06/29/biden-harris-administration-secures-105-million-doses-of-pfizers-latest-covid-19-vaccine-for-fall-vaccination-campaign.html> (last accessed January 12, 2023).

funding broad-based distribution efforts throughout the United States;⁴ imposing nationwide vaccine mandates;⁵ paying billions of dollars to media sources to promote the injections;⁶ and working with social media companies to ensure positive coverage of the injections and to censor other viewpoints.⁷

9. Numerous scientists, physicians, public health experts, and other concerned individuals have questioned the safety of COVID-19 injections,⁸ and hundreds of thousands of

⁴ See CDC Press Release, *CDC Awards \$3 Billion to Expand COVID-19 Vaccine Programs*, CDC Newsroom, CENTERS FOR DISEASE CONTROL AND PREVENTION (Apr. 6, 2021), <https://www.cdc.gov/media/releases/2021/p0407-covid-19-vaccine-programs.html#:~:text=The%20Centers%20for%20Disease%20Control,virus%20that%20causes%20COVID%2D19>.

⁵ See, e.g., *Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, THE WHITE HOUSE (Sept. 09, 2021), [Executive Order on Covid Safety Protocols for Federal Contractors; Details on OSHA and CMS Vaccination Requirements](#).

⁶ See Text: *H.R. 1319 – American Rescue Plan Act of 2021*, 117th Congress (2021-2022), CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>; see also *Campaign Approach to Reaching General Audiences*, Paid Media, WE CAN DO THIS COVID-19 PUBLIC EDUCATION CAMPAIGN, <https://wecandothis.hhs.gov/resource/campaign-approach-to-reaching-general-audiences#paid-media>.

⁷ See, e.g., Aaron Kheriaty, MD, *Our Lawsuit Uncovers Army of Federal Bureaucrats Coercing Social-Media Companies to Censor Speech*, HUMAN FLOURISHING (Sept. 1, 2022), https://aaronkheriaty.substack.com/p/our-lawsuit-uncovers-army-of-federal?utm_source=brownstone&utm_medium=web; *AFL Lawsuit Reveals Damning CDC Documents Proving Government Collusion With Big Tech to Censor Free Speech and Promote Biden Administration Propaganda*, AMERICA FIRST LEGAL (Jul. 27, 2022), <https://aflegal.org/afl-lawsuit-reveals-damning-cdc-documents-proving-government-collusion-with-big-tech-to-censor-free-speech-and-promote-biden-administration-propaganda/>; Ryan Mills, *Twitter Files: Platform Suppressed Valid Information from Medical Experts about Covid-19*, NATIONAL REVIEW (Dec. 26, 2022), <https://www.nationalreview.com/news/twitter-files-platform-suppressed-valid-information-from-medical-experts-about-covid-19/>; AG Bailey, *Missouri Attorney General Releases More Documents Exposing White House's Social Media Censorship Scheme*, News, Andrew Bailey, Missouri Attorney General (Jan.9, 2023), <https://ago.mo.gov/home/news/2023/01/09/missouri-attorney-general-releases-more-documents-exposing-white-house-s-social-media-censorship-scheme>.

⁸ See, e.g., Kyle A. Beattie, *750+ Studies About the Dangers of the COVID-19 Injections* (Mar. 31, 2022), <https://img1.wsimg.com/blobby/go/058ad340-73c5-4f3d-af4f-8df4795d5196/750-Studies-About-the-Dangers-of-the-COVID-19-.pdf>; *The Pfizer Inoculations for Covid-19: More Harm Than Good*, CANADIAN COVID CARE ALLIANCE,

post-injection adverse events have been reported to the federal government.⁹ There is a vigorous and ongoing public debate about the risks and benefits of COVID-19 vaccines,¹⁰ and the wisdom, legality, morality of COVID-19 vaccine mandates.¹¹

<https://www.canadiancovidcarealliance.org/wp-content/uploads/2021/12/The-COVID-19-Inoculations-More-Harm-Than-Good-REV-Dec-16-2021.pdf>; Video: *Live in D.C.: Expert Panel on Medical Mandates & Vaccine Injuries*, THE HIGHWIRE, <https://thehighwire.com/videos/live-in-d-c-expert-panel-on-medical-mandates-vaccine-injuries/>.

⁹ For example, as of March 24, 2023, the Vaccine Adverse Events Reporting System (“VAERS”) showed 34,965 reports of deaths, 195,415 reports of hospitalization, 26,711 reports of myo- and pericarditis, and 64,573 reports of permanent disability following COVID-19 vaccination. *VAERS COVID Vaccine Adverse Event Reports*, Covid Vaccine Data, OPENVAERS (through March 24, 2023), <https://www.openvaers.com/covid-data>. VAERS is just one of the government’s databases for tracking vaccine injuries but, unlike VAERS, most of these databases are not easily accessible to the public. Notably, the VAERS underreporting factor appears to be significant. *See* Steve Kirsch, *Why won’t the CDC or FDA reveal the VAERS URF?*, TS NEWS (Oct. 25, 2021), <https://www.trialsitenews.com/a/why-wont-the-cdc-or-fda-reveal-the-vaers-urf/>; Steve Kirsch, *Latest VAERS estimate: 388,000 Americans killed by the COVID vaccines*, STEVE KIRSCH’S NEWSLETTER (Dec. 14, 2021), https://stevekirsch.substack.com/p/latest-vaers-estimate-388000-americans?utm_source=%2Fsearch%2Furf&utm_medium=reader2 and report linked thereto by Steve Kirsch, Jessica Rose, Mathew Crawford, *Estimating the number of COVID vaccine deaths in America* (last updated Dec. 24, 2021), <https://www.skirsch.com/covid/Deaths.pdf>; Jessica Rose, *A question and answer document on the subject of VAERS as a pharmacovigilance tool*, UNACCEPTABLE JESSICA (Aug. 9, 2022), <https://jessicar.substack.com/p/a-question-and-answer-document-on#footnote-1>.

¹⁰ For example, an article published on August 31, 2022 in the journal *Vaccine*, using a simple harm-benefit comparison from clinical trial data, finds that the “excess risk of serious AESIs to exceed the reduction in COVID-19 hospitalizations in both Pfizer and Moderna trials,” and urges additional, deeper risk-benefit analysis. *See* Fraiman, et al., *Serious adverse events of special interest following mRNA COVID-19 vaccination in randomized trials in adults*, Discussion section, SCIENCE DIRECT, Volume 40, Issue 40, (Sept. 22, 2022), <https://www.sciencedirect.com/science/article/pii/S0264410X22010283?via%3Dihub>.

¹¹ *See, e.g., State Efforts to Ban or Enforce COVID-19 Vaccine Mandates and Passports*, NATIONAL ACADEMY FOR HEALTH POLICY (NASHP) (updated Apr. 5, 2023), <https://www.nashp.org/state-lawmakers-submit-bills-to-ban-employer-vaccine-mandates/>; Benjamin Oreskes, *Opponents of vaccine requirements gather for ‘Defeat the Mandates’ rally in L.A.*, LOS ANGELES TIMES (Apr. 10, 2022), <https://www.latimes.com/california/story/2022-04-10/hundreds-gather-for-defeat-the-mandates-rally-in-downtown-l-a>. Evidence of the magnitude of the debate is found, among other places, in the numerous lawsuits that have been brought to challenge COVID-19 vaccine mandates. *See, e.g., Class Action Trends Report Fall 2022*,

10. Despite all this, the federal government continues to tout COVID-19 injections as “safe and effective” while assuring the public that federal agencies are vigilantly monitoring their safety.¹²

11. Apart from the Countermeasures Injury Compensation Program,¹³ which has not paid any compensation to those injured, the federal government does not appear to have any program offering support or treatment for individuals injured by the COVID-19 injections it so relentlessly promotes.

12. However, in or about January 2021, National Institutes of Health (NIH) researchers began to hear from individuals who were experiencing severe, lasting health problems after COVID-19 injection, including neurological, cardiovascular, muscular, and other disorders.¹⁴

13. The NIH researchers sought to learn more, even bringing some affected people to NIH headquarters for testing, and sometimes treatment. These efforts have resulted in at least one, publicly-available paper, *Neuropathic symptoms with SARS-CoV-2 vaccination*.¹⁵

COVID-10: A Litigation Update, THE NATIONAL LAW REVIEW, Volume XIII, Number 98 (Oct. 21, 2022), <https://www.natlawreview.com/article/class-action-trends-report-fall-2022>.

¹² See, e.g., *Safety of COVID-19 Vaccines*, CENTERS FOR DISEASE CONTROL AND PREVENTION (updated Jan. 23, 2023), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html>; *COVID-19 Vaccine Safety Surveillance*, Summaries of Monitoring Efforts, U.S. FOOD & DRUG ADMINISTRATION (Dec. 7, 2021), <https://www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/covid-19-vaccine-safety-surveillance#Summaries%20of%20Monitoring%20Efforts>.

¹³ *Countermeasures Injury Compensation Program (CICP)*, HEALTH RESOURCES & SERVICES ADMINISTRATION (HRSA) (Jan. 2023), <https://www.hrsa.gov/cicp>.

¹⁴ See *In Rare cases, coronavirus vaccines may cause Long Covid-like symptoms*, SCIENCE, Vol 375, Issue 6579, online at <https://www.science.org/content/article/rare-cases-coronavirus-vaccines-may-cause-long-covid-symptoms> (“Rare cases”).

¹⁵ *Id.*; see also F. Safavi et al., *Neuropathic symptoms with SARS-CoV-2 vaccination*, medRxiv preprint doi: (May 17, 2022), <https://www.medrxiv.org/content/10.1101/2022.05.16.22274439v1.article-info>.

14. CHD's FOIA request at issue here seeks records in connection with NIH's behind-the-scenes activities with respect to post-COVID-19 injection injuries.

B. The FOIA Request

15. On November 10, 2022, CHD submitted a FOIA request to the NIH seeking communications between ten NIH researchers and the individuals who contacted NIH in connection with health problems experienced after COVID-19 injection. *See Ex. 1, FOIA Request.*

16. The request identified the ten NIH researchers by name. *Id.* It defined "affected individuals" as "any member of the public who experienced a health problem after COVID-19 vaccination, and who contacted NIH to report the problem, or to seek medical assistance or information in connection with the problem, or to inquire about or participate in research about COVID-19 vaccine reactions." *Id.*

17. The request sought the following records, for the time period from November 1, 2020 to the date of the request:

- For each NIH researcher, all emails sent to and received from an affected individual;
- All NIH call logs documenting communications with affected individuals; and
- All internal communications between NIH researchers regarding an affected individual, whether the communication is via email, Teams, or other internal communication system.

Id.

18. The request sought these records on an expedited basis, arguing that in light of ongoing pressure to accept COVID-19 injections, and ongoing medical and policy debates connected with the shots, the public has an urgent need to understand how the federal government is addressing adverse events through the NIH's behind-the-scenes engagement with vaccine-injured individuals. *Id.* Moreover, "[a] lack of transparency about this engagement

deprives people of the information needed to make fully informed medical and political decisions, and erodes confidence in the conclusions reached and guidance promulgated by federal agencies.” *Id.*

19. In a letter dated November 18, 2022, NIH acknowledged the request and assigned it reference #59265. NIH denied the request for expedited processing on the basis of a lack of compelling need, and indicated that the request was overly broad, and the matter would be administratively closed unless CHD clarified the request. *See Ex. 2.*

20. After receiving the November 18 letter, CHD made several unsuccessful efforts to communicate with the NIH FOIA office to clarify the request. *See Ex. 3.*

21. On December 15, 2022, CHD clarified the request in an email, as follows:

[A]t this point we would like to narrow our request by limiting the emails sought in our request to those that contain any of the search terms listed below. The exclamation point (!) following some of the terms indicates that what I've provided is a root, and we seek all variants of the root.

Please let me know whether this information is sufficient to process our request. If it is not, kindly let me know what other information would assist in processing the request. Additionally, would you please provide a telephone number where I can reach out to you if further discussion is necessary.

Here are the search terms:

- vaccin!
- adverse
- neurol!
- autoimmun!
- clot!
- suici!
- vertigo
- heart
- paresthesia
- lymph!

Ex. 3.

22. On December 16, 2022, after additional email correspondence with the FOIA

office, CHD emailed asking NIH to confirm that the clarification provided was sufficient, and asked, “[i]f NIH requires any additional information to process the request, would you please let me know?” *Id.* On the same day, NIH responded, “Yes. Confirmed. We are processing this request and will let you know if any further clarifications are required.” *Id.*

23. On March 15, 2023, the NIH portal still listed the FOIA request as “on hold need clarification.” After inquiry from CHD about the request status, NIH indicated that the request was still being processed and “the hold has been released, backdated to December 15, 2023.” *Id.* In response to inquiry from CHD about an anticipated date for a determination on the request, NIH stated it could not provide a date. *See id.*

24. On March 17, 2023, CHD emailed NIH to inquire about the request status, because the NIH FOIA portal listed the request as “received,” rather than “Assigned for Processing,” or “In Process.” *See id.* NIH did not respond. On March 30, 2023, CHD emailed NIH again about the matter *See id.* NIH did not respond.

25. As of April 10, 2023, the NIH FOIA portal still listed the request as “received,” rather than “Assigned for Processing,” or “In Process.”¹⁶

59265	Request regarding NIH engagement with members of t...	0.00	0.00	Received	-
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COUNT I

26. The previous allegations are incorporated herein by reference as if fully set forth herein.

¹⁶ Request status listed on NIH FOIA dashboard as of April 10, 2023.

27. The FOIA authorizes this Court to provide relief when an agency has improperly withheld agency records. *See Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 150 (1980).

28. Applicable FOIA time limits have long since passed. *See* 5 U.S.C. § 552(a)(3)(A) (requiring that an agency “promptly” make public records available to anyone who submits properly formulated FOIA request); 5 U.S.C. § 552(a)(6)(A)(i) (setting forth time-limits for final determination); 5 U.S.C. § 552(a)(6)(B)(i)-(iii) (setting forth limited circumstances for ten-day extension); 5 U.S.C. § 552(a)(6)(C) (deeming administrative remedies exhausted upon agency’s failure to comply with applicable time limits); 5 U.S.C. § 552(a)(6)(E) (providing for expedited processing upon showing of compelling need).

29. NIH violated the FOIA through its failure to process this request expeditiously, failure to provide a final determination, and failure to provide any of the records to which CHD is entitled.

REQUESTED RELIEF

Pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(4)(E)(i), CHD respectfully requests that the Court provide the following relief:

- (A) Provide for expeditious proceedings in this action;
- (B) Declare NIH’s failure to timely comply with the FOIA unlawful;
- (C) Order NIH to immediately conduct a search for any and all records responsive to CHD’s FOIA request and to demonstrate that it employed search methods reasonably likely to lead to the discovery of responsive records;

- (D) Order NIH to produce all non-exempt records responsive to each request no later than 20 days from the date of the Court's ruling, along with a *Vaughn* index of any responsive records withheld under a claim of exemption;
- (E) Enjoin NIH from continuing to withhold non-exempt records responsive to CHD's FOIA requests;
- (F) Grant CHD an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (G) Grant such other and further relief as the Court deems just and proper.

Dated: April 12, 2023

Respectfully submitted,



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