

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHILDREN’S HEALTH DEFENSE,

Plaintiff,

v.

NATIONAL INSTITUTES OF HEALTH,

Defendant.

Civil Action No. 23-1016 (TJK)

**DEFENDANT’S MOTION TO WITHDRAW ITS PENDING
MOTION TO DISMISS AND FOR ENLARGEMENT OF TIME TO FILE ANSWER**

Defendant, the National Institutes of Health (“Defendant” or “NIH”), respectfully moves to withdraw its pending motion dismiss, ECF No. 9, and for enlargement of time to file an answer to Plaintiff’s complaint, through August 4, 2023, pursuant to Federal Rule of Civil Procedure 60(b)(1). Pursuant to L. Civ. R. 7(m), the undersigned has conferred with Plaintiff’s counsel, who has graciously consented to the relief requested.

Plaintiff filed this suit on April 12, 2023 and served the U.S. Attorney’s Office on or about April 17, 2023. Plaintiff alleges a violation of the Freedom of Information Act (“FOIA”) following Plaintiff’s submission of a FOIA request to NIH for records of NIH communications with individuals who suffered adverse effects after receiving COVID-19 injections. *See* Compl. Defendant’s deadline to respond to the Complaint was May 17, 2023, which Defendant moved to extend through June 16, 2023. *See* ECF No. 1, 8. On May 12, 2023, the Court granted Defendant’s motion for enlargement of time to file its answer or otherwise respond to the Complaint. *See* May 12, 2023, Min. Order. On June 16, 2023, Defendant filed its motion to dismiss. ECF No. 9. Plaintiff filed its opposition on June 30, 2023. *See* ECF No. 10.

There is good cause for the requests. Since the filing of the motion to dismiss and after considering Plaintiff's opposition, Defendant has determined that it will respond to Plaintiff's FOIA request and intends to make a response to Plaintiff on or before July 31, 2023. Since Defendant has determined to make a response, Defendant no longer intends to pursue its motion to dismiss and to file a reply in support of the motion, which is currently due on or before July 7, 2023. *See* L. Civ. R. 7(d). Further, should the Court grant Defendant's motion to withdraw, Defendant will need to file an answer to Plaintiff's complaint. To give the Agency time to make the production and to allow sufficient time for NIH Agency personnel, Agency counsel, and the undersigned to determine the Agency's defenses to Plaintiff's Complaint, taking into consideration the Agency's anticipated response, time is needed through August 4, 2023.

This motion is filed in good faith and not for purposes of gaining any unfair advantage through delay. This is Defendant's second request for an enlargement of time to answer Plaintiff's complaint, though good cause exists for the request, which will obviate the need for the Court to resolve Defendant's pending motion and for the Parties to continue to resolve their disputes through the litigation without a need for the Court to resolve any pending motion. While there is an existing deadline in this matter, including Defendant's reply in support of its motion, which is due July 7, 2023, Defendant's motion to withdraw the pending motion, if granted, will moot that deadline. Further, it is not anticipated that granting this motion will unduly prejudice Plaintiff, nor will the extension sought adversely affect this Court's orderly administration of this matter.

For these reasons, Defendant respectfully requests that the Court withdraw its pending motion to dismiss, ECF No. 9, and extend the deadline for Defendant to file an answer to Plaintiff's complaint, through August 4, 2023.

A proposed order is attached.

Dated: July 5, 2023

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of Defendant's Motion to Withdraw its Motion to Dismiss and for Enlargement of Time to File an Answer, a showing of good cause, and the entire record herein, it is hereby ORDERED that Defendant's Motion, ECF No. 9, is withdrawn; and it is further ORDERED that Defendant shall have and through August 4, 2023, to file an Answer to Plaintiff's Complaint.

SO ORDERED.

Date:

TIMOTHY J. KELLY
United States District Court Judge