

March 10, 2020

Department of Health and Human Services (HHS)
Freedom of Information Officer
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Freedom of Information Act (FOIA) Request

To Whom It May Concern:

I submit this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and 45 C.F.R. § 5.1 *et seq.* I request that a copy of the records detailed below be provided to me. I do not wish to inspect the records first.

I seek any and all records, as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (*see, e.g., Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever, including, but not limited to, written correspondence, email correspondence, records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voice mail messages between January 1, 2020 to the present.

In particular, I request the following:

- Any and all correspondence between Sen. Sheldon Whitehouse and HHS regarding Gilead Sciences including but not limited to emails to and/or from sheldonwhitehouse@yahoo.com as well as emails to and/or from the domains whitehouseforsenate.com and whitehouse.senate.gov;
- Any and all correspondence between Sen. Sheldon Whitehouse’s staff and HHS regarding Gilead Sciences, including but not limited to correspondence to and/or from the domain whitehouse.senate.gov and @judiciary-dem.senate.gov;
- Any and all correspondence between Health Policy Advisor Kristen Donheffner and HHS regarding Gilead Sciences, including but not limited to emails to and/or from kristen_donheffner@whitehouse.senate.gov.

Notice is hereby given that I am requesting these records as an “other requester” within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(III) and 45 C.F.R. §5.53(c).

Notice is hereby given that I am willing to pay the appropriate fees incurred and assessed for the document search and duplication of the agency records responsive to this request. 5 U.S.C. § 552(a)(4)(A)(ii)(III); see also 45 C.F.R. §5.53(c).

Please search for responsive records regardless of format, medium, or physical characteristics. I request that responsive records be produced in native format, or the format most felicitous to an expedited production. Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide a *Vaughn* index of those documents. See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. See 45 C.F.R. § 5.28(c). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record.

Please do not hesitate to contact me by phone at (202) 656-5175 or by email at info@americansforpublictrust.org. If records are available in electronic format please email the documents to info@americansforpublictrust.org. If not, please send the requested documents to:

Americans for Public Trust
107 South West Street, Suite 442
Alexandria, VA 22314

Because of the time-sensitive nature of this request, I ask that you strictly comply with the 20-day time limit established by FOIA and applicable HHS regulations. See 5 U.S.C. § (a)(6)(A); 45 C.F.R. § 5.24(b). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and I will consider the internal appeals process to be constructively exhausted. See, e.g., *Citizens For Ethics And Responsibility In Government v. Fed. Election Comm’n*, 711 F.3d 180 (D.C. Cir. 2013). I also respectfully request that documents be made available as soon as they are located and reviewed via a rolling production. I will undertake to pay any and all reasonable increased costs incurred as part of a rolling production.

Sincerely,



Caitlin Sutherland
Executive Director