

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Informed Consent Action Network v. Food and Drug Administration

Informed Consent Action Network · No. Civil Action No. 24-1905 (JDB) · Decided February 12, 2026

SUMMARY

The court grants in part and denies in part the defendants' request to extend a stay in this FOIA action concerning FDA records related to pertussis. Finding exceptional circumstances and due diligence under 5 U.S.C. § 552(a)(6)(C)(i), the court stays the case until October 14, 2026, and orders the parties to file a joint status report by that date.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	John D. Bates
JURISDICTION	United States District Court for the District of Columbia
DECIDED	February 12, 2026
DOCKET	Civil Action No. 24-1905 (JDB)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought a Freedom of Information Act action after the FDA did not fulfill its October 2020 request for records. Defendants moved to extend an existing stay based on exceptional circumstances and diligence in processing the request. The court granted the extension request in part and denied it in part, continuing the stay until October 14, 2026.
STANDARD OF REVIEW	Whether the agency demonstrated exceptional circumstances and due diligence sufficient to permit the court to retain jurisdiction and allow additional time under 5 U.S.C. § 552(a)(6)(C)(i).
PRECEDENTIAL VALUE	Published memorandum opinion of the United States District Court for the District of Columbia; persuasive authority within the district, subject to applicable federal precedent.

TOPICS

administrative law

judicial review of agency action

civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether 5 U.S.C. § 552(a)(6)(C)(i) authorizes a federal court to stay a FOIA action when exceptional circumstances exist and the agency is exercising due diligence.
2. Whether the FDA demonstrated exceptional circumstances and due diligence sufficient to justify extending the stay of ICAN's FOIA action.
3. Whether the agency was required to demonstrate diligence specifically as to ICAN's request rather than merely showing diligence in addressing its general workload.

HOLDINGS

1. FOIA's authorization for courts to retain jurisdiction and allow an agency additional time to complete its review includes the authority to stay a FOIA action when exceptional circumstances exist and the agency is exercising due diligence.
2. The defendants demonstrated continuing exceptional circumstances and due diligence sufficient to justify a further stay of the action, although the court granted only a partial extension through October 14, 2026.
3. Even assuming that an agency must demonstrate diligence as to the plaintiff's specific request rather than only its general workload, the defendants satisfied that requirement by triaging requests and assigning additional contractors to the complex track containing ICAN's request.

KEY QUOTATIONS

“The Court also finds that Defendants have acted diligently.” (3)

“In sum, the Court concludes that Defendants continue to face exceptional circumstances, are exercising due diligence, and are thus entitled to a stay pursuant to § 552(a)(6)(C)(i).” (4)

FACTUAL BACKGROUND

Since 2019, ICAN submitted more than 350 FOIA requests to CBER, including an October 2020 request for records concerning pertussis. CBER's resources were substantially diverted by Texas federal court orders requiring expedited production of millions of COVID-19 vaccine records, creating a backlog of unfulfilled FOIA requests. CBER triaged requests by volume, complexity, and subject matter, generally processed them on a first-in, first-processed basis, and hired contractors and reassigned personnel to address the backlog, including the complex-track requests containing ICAN's request.

PROCEDURAL HISTORY

ICAN filed suit in June 2024 after the FDA failed to fulfill its request for records concerning pertussis. The court previously granted and then renewed a six-month stay. Defendants sought a further nine-month extension, which ICAN opposed. The court extended the stay only until October 14, 2026 and ordered a joint status report by that date.

DISPOSITION

other

CASES CITED

- Pub. Health & Med. Pros. for Transparency v. Food and Drug Admin., Civ. A. No. 21-1058 (N.D. Tex.)
- Pub. Health & Med. Pros. for Transparency v. Food and Drug Admin., Civ. A. No. 22-0915 (N.D. Tex.)
- Informed Consent Action Network v. Food and Drug Admin., 2025 WL 2938703, at *2-*4 (D.D.C. Oct. 16, 2025)
- Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605, 612-13, 616 (D.C. Cir. 1976)
- Citizens for Responsibility & Ethics in Wash. v. Fed. Elec. Comm'n, 711 F.3d 180, 185 (D.C. Cir. 2013)
- Informed Consent Action Network v. Food and Drug Admin., Civ. A. No. 25-832, 2026 WL 310004, at *2 (D.D.C. Feb. 5, 2026)
- SafeCard Servs., Inc. v. Sec. and Exch. Comm'n, 926 F.2d 1197, 1200 (D.C. Cir. 1991)
- Government Accountability Project v. Health and Human Services, 568 F. Supp. 2d 55 (D.D.C. 2008)
- Informed Consent Action Network v. Food and Drug Admin., Civ. A. No. 25-824, 2026 WL 237594, at *2 (D.D.C. Jan. 29, 2026)

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