

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Informed Consent Action Network v. National Institutes of Health

Informed Consent Action Network · No. Civil Action Nos. 23-3674 (RBW) and 24-813 (RBW) · Decided December 4, 2025

SUMMARY

The United States District Court for the District of Columbia denied Informed Consent Action Network’s motion for attorneys’ fees and costs in consolidated Freedom of Information Act actions against the National Institutes of Health and the Department of Health and Human Services. The court held that the plaintiff failed to show that its lawsuits caused the agencies to release the requested records or substantially accelerated processing under the FOIA catalyst theory. The court therefore did not reach whether the plaintiff was entitled to fees.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Reggie B. Walton
JURISDICTION	United States District Court for the District of Columbia
DECIDED	December 4, 2025
DOCKET	Civil Action Nos. 23-3674 (RBW) and 24-813 (RBW)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought attorneys' fees and costs under the Freedom of Information Act after defendants produced responsive records during consolidated FOIA litigation. The district court denied the motion.
STANDARD OF REVIEW	The court applied the FOIA attorneys'-fees eligibility framework, requiring the plaintiff to show that it substantially prevailed. Whether litigation caused an agency's production is a factual question reviewed on appeal for clear error.
PRECEDENTIAL VALUE	Published district court memorandum opinion; persuasive authority within the District of Columbia Circuit.

TOPICS

- attorney fees
- administrative law
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the plaintiff substantially prevailed and was eligible for attorneys' fees under the FOIA catalyst theory.
2. Whether the plaintiff's lawsuits caused NIH to release the responsive records or caused a sudden acceleration in NIH's processing of the requests.

HOLDINGS

1. The plaintiff was not eligible for attorneys' fees because it failed to establish that its lawsuits substantially caused NIH to release the requested records.
2. The plaintiff did not establish that NIH suddenly accelerated its processing in response to the lawsuits.

KEY QUOTATIONS

"Accordingly, the Court concludes that the plaintiff has not adequately shown that its lawsuits were the catalyst for the defendants' release of records, and it is therefore not eligible for an award of attorneys' fees under the FOIA." (12)

"Thus, because the plaintiff has not shown that it is eligible for an award of attorneys' fees under the FOIA, the Court need not determine whether it is entitled to such an award and must instead deny the motion for an award of such fees." (12)

FACTUAL BACKGROUND

The plaintiff submitted two FOIA requests to NIH on June 17, 2021, seeking emails concerning an article titled "Antibodies to SARS-CoV-2 in All Of Us Research Program Participants, January 2-March 18, 2020." NIH acknowledged both requests, initiated searches and interoffice coordination, and began reviewing at least some responsive records before either lawsuit was filed. NIH later identified 813 potentially responsive pages and made interim productions in October and November 2024, while attributing the delay to the COVID-19 pandemic, increased request volume, and processing complexity.

PROCEDURAL HISTORY

The plaintiff filed two FOIA actions concerning separate requests for emails regarding a SARS-CoV-2 research article, on December 10, 2023, and March 20, 2024. The court consolidated the actions on June 17, 2024. NIH later conducted searches and made interim productions, after which the only remaining dispute was attorneys' fees and costs. Following briefing, the court denied the fee motion.

DISPOSITION

other

CASES CITED

- Informed Action Consent Network v. Nat'l Insts. of Health, No. 23-cv-3674
- Brayton v. Off. of the U.S. Trade Representative, 641 F.3d 521, 524-25 (D.C. Cir. 2011)
- Judicial Watch, Inc. v. U.S. Dep't of Com., 470 F.3d 363, 368-69 (D.C. Cir. 2006)
- Long v. Internal Revenue Serv., 932 F.2d 1309, 1313-14 (9th Cir. 1991)
- Grand Canyon Tr. v. Bernhardt, 947 F.3d 94, 96-98 (D.C. Cir. 2020)
- Church of Scientology of Cal. v. Harris, 653 F.2d 584, 587-88 (D.C. Cir. 1981)
- Pub. Citizen Health Rsch. Grp. v. Young, 909 F.2d 546, 550 (D.C. Cir. 1990)
- Weisberg v. Dep't of Just., 745 F.2d 1476, 1496 (D.C. Cir. 1984)
- Grand Canyon Tr. v. Zinke, 311 F. Supp. 3d 381, 389 (D.D.C. 2018), *aff'd*, 947 F.3d 94 (D.C. Cir. 2020)
- Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec., 811 F. Supp. 2d 216, 232 (D.D.C. 2011)
- Pub. Law Educ. Inst. v. Dep't of Just., 744 F.2d 181, 184 n.5 (D.C. Cir. 1984)
- Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec. (EPIC II), 218 F. Supp. 3d 27, 41-42 (D.D.C. 2016)
- Terris, Pravlik & Millian, LLP v. Ctrs. for Medicare & Medicaid Servs., 794 F. Supp. 2d 29, 38 (D.D.C. 2011)
- Short v. U.S. Army Corps of Eng'rs, 613 F. Supp. 2d 103, 106 (D.D.C. 2009)
- Cox v. U.S. Dep't of Just., 601 F.2d 1, 6 (D.C. Cir. 1979)
- Calypso Cargo Ltd. v. U.S. Coast Guard, 850 F. Supp. 2d 1, 5 (D.D.C. 2011)
- SafeCard Servs., Inc. v. Sec. & Exch. Comm'n, 926 F.2d 1197, 1200 (D.C. Cir. 1991)
- Am. Wild Horse Campaign v. U.S. Bureau of Land Mgmt., No. 22-cv-3061 (CRC), 2024 WL 3967256, at *3 (D.D.C. Aug. 26, 2024)
- First Look Media Works, Inc. v. U.S. Agency for Glob. Media, No. 20-cv-3499 (TJK), 2024 WL 4262773, at *5 (D.D.C. Sept. 23, 2024)
- Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res., 532 U.S. 598 (2001)
- Davis v. U.S. Dep't of Just., 610 F.3d 750, 752 (D.C. Cir. 2010)