



May 20, 2022

Via FOIA Portal

Mr. Brandon Gaylord
Freedom of Information Officer
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201

Freedom of Information Act Request: World Health Organization Reforms

Dear Mr. Gaylord:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we communicate with a national audience through traditional and social media platforms. AFL's email list contains over 30,000 unique addresses, our Facebook page has over 31,000 followers, our Twitter page has over 13,000 followers, the Twitter page of our Founder and President has over 171,000 followers, and we have another 29,000 followers on GETTR.

Pursuant to 5 U.S.C. § 552(a), AFL requests the following records.

I. Custodians

We request relevant records from the following specific U.S. Department of Health and Human Services ("HHS") custodians:

- A. Xavier Becerra
- B. Sean McCluskie
- C. Anne Reid
- D. Kristin Avery
- E. Shannon Myricks

611 Pennsylvania Ave SE #231
Washington, DC 20003

- F. Kathryn Alvarez
- G. AJ Pearlman
- H. Andrea Palm
- I. Angela Botticella
- J. Loyce Pace
- K. Karoun Tcholakian
- L. Stephanie Psaki

If a specific custodian listed above has served in more than one position during the timeframe of the request, we request the relevant records from each of the positions they held during that timeframe.

In addition to the above specific custodians, we request relevant records from all individuals classified as either Schedule A employees, Schedule C employees, or Senior Executive Service employees in the following HHS offices:

- A. Office of the Secretary
- B. Office of the Deputy Secretary
- C. Office of the Assistant Secretary of Global Affairs

II. Records Request

The timeframe for each request is January 20, 2021, to the date this records request is processed.

- A. All records referring to Amendments to the International Health Regulations (IHR) or Provisional agenda item 16.2 at the seventy-fifth World Health Assembly (WHA)
- B. All records referring to the Working Group on Preparedness & Response (WGPR)
- C. All records referring to governance improvements at the World Health Organization (WHO), including a Task Team of Member States
- D. All records referring to the intergovernmental negotiating body (INB) to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response

III. Processing

The Department of Health and Human Services must comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Guidelines.¹ This means, among other things, the following.

- You may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law.

¹ U.S. Dep't Just. (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download>.

- Information that might technically fall within an exemption should not be withheld unless you can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail.
- If you cannot make full disclosure of a requested record, then the FOIA requires that you consider whether partial disclosure of information is possible and take reasonable steps necessary to segregate and release nonexempt information.
- You must properly apply the foreseeable harm standard by confirming for and demonstrating to AFL that you have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.
- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then you must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. AFL's request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please give full effect to all applicable authorities and broadly construe our Item and your obligations to provide responsive records.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration ("NARA") Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive

email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please prevent deletion by instituting a litigation hold or other appropriate measures.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest. This has previously been recognized by the Departments of Defense, Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence.

Second, waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."² The American public has a right to know how its government plans to adopt public health policies, including surveillance measures and travel restrictions, that would clearly impact their constitutional rights and day-to-day lives. The requested records are related to international discussions regarding such public health policies.³

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ See Rep. Chris Smith, Press Release, *On the Biden Administration's Plans to Surrender U.S. Sovereignty to the World Health Organization* (May 18, 2022), <https://bit.ly/39Fb9UB>.

V. Request for Expedited Processing

AFL requests expedited processing for the above-requested items under 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27(b). This section states as follows: “We process requests on an expedited basis whenever we determine that ... [t]here is an urgent need to inform the public about an actual or alleged Federal Government activity.”⁴

As other federal agencies have acknowledged in granting AFL expedited processing, AFL is primarily engaged in disseminating information. Additionally, as reflected by the widespread and exceptional media interest and congressional interest in and attention to the upcoming World Health Assembly taking place from May 22-28, 2022, there is an urgent need to inform the public regarding government’s plans for entering into discussions which could potentially impact the constitutional and legal rights of United States citizens with respect to the public health policies that could be adopted.⁵ There is particular value in this information being disseminated quickly, before such policies are adopted and implemented.

In support of its request for expedited processing, AFL certifies its urgent need for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27(b), and certifies that the contents of this letter are true and correct to the best of AFL’s knowledge and belief, as required by 45 C.F.R. § 5.27(a).

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. Finally, please contact us immediately if AFL’s request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

⁴ 45 C.F.R. § 5.27(b).

⁵ See, e.g., Liberty Counsel, *Biden’s Amendments Hand U.S. Sovereignty to the WHO*, DESERT REV. (May 12, 2022), <https://bit.ly/3MIgkBu>; Melissa Martin, *Editorial: Biden Is Signing Over Healthcare to WHO*, GILA HERALD (May 16, 2022); @RepAndyBiggsAZ, TWITTER (May 13, 2022), <https://bit.ly/38BSvWA>; Rep. Chris Smith, Press Release, *On the Biden Administration’s Plans to Surrender U.S. Sovereignty to the World Health Organization* (May 18, 2022), <https://bit.ly/39Fb9UB>.

Sincerely,

/s/ Michael Ding

Michael Ding

America First Legal Foundation