UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)	
1600 20th Street NW)	
Washington, DC 20009,		
Plaintiff,)))	
V.)	
) Civil Action No.	
DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES,)	
200 Independence Avenue SW)	
Washington, DC 20201	Ó	
D C 1)	
Defendant.)	
)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Department of Health and Human Services (HHS) to produce records responsive to a FOIA request for annual reports submitted to HHS's Office of Inspector General (OIG) pursuant to certain corporate integrity agreements between OIG and pharmaceutical companies.

JURISDICTION

2. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

PARTIES

3. Plaintiff Public Citizen is a nonprofit public interest organization. Since its founding in 1971, Public Citizen has worked before Congress, regulatory agencies, and the

courts to advance the interests of its members and educate the public on a wide range of consumer protection issues. In particular, Public Citizen works to promote openness in government, corporate accountability, and consumer health and safety.

4. Defendant HHS is an agency of the United States and has possession of and control over the records that Plaintiff seeks.

FACTS

- 5. By letter dated November 12, 2009, Plaintiff submitted a FOIA request for "a copy of all annual reports submitted to the Office of Inspector General (OIG) by Purdue Pharma L.P. pursuant to the May 2007 Corporate Integrity Agreement between OIG and Purdue Pharma L.P.," and for "a copy of all annual reports submitted to OIG by Pfizer, Inc. pursuant to the May 2004 Corporate Integrity Agreement between OIG and Pfizer." Plaintiff also requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii).
- 6. On November 16, 2009, HHS denied Plaintiff's request for a fee waiver. Plaintiff appealed this denial on December 3, 2009, and on January 7, 2010, HHS granted the fee waiver.
- 7. By letter dated June 22, 2010, HHS stated that it located 1,177 pages of records responsive to Plaintiff's request regarding the Purdue reports. However, it "determined to withhold 1,093 pages in their entirety under FOIA exemptions (b)(4) and (b)(6) and partially released 84 pages with portions withheld under FOIA exemptions (b)(4) and (b)(6)."
- 8. By letter dated July 6, 2010, Plaintiff timely appealed the partial denial of its FOIA request regarding the Purdue reports. On April 12, 2011, HHS denied Plaintiff's appeal.
- 9. By letter dated September 21, 2010, HHS stated that it located 9,432 pages of records responsive to Plaintiff's request regarding the Pfizer reports. It withheld 5,216 pages in

their entirety, citing FOIA exemptions (b)(4) and (b)(6), and released 4,216 pages "with portions withheld under exemptions (b)(4) and (b)(6)."

FOIA request. Under 5 U.S.C. § 552(a)(6)(A)(ii), HHS had 20 working days from receipt of

By letter dated October 20, 2010, Plaintiff timely appealed the partial denial of its

Plaintiff's appeal letter to respond. More than 20 working days have passed and HHS still has

not responded to Plaintiff's appeal.

Under 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff has exhausted its administrative 11.

remedies.

10.

12. Plaintiff has a statutory right to the records it seeks, and HHS has no legal basis

for failing to disclose those records to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

(1) Declare that Defendant's withholding of the requested records is unlawful;

(2) Order defendant to make the requested records available to Plaintiff;

(3) Award Plaintiff its costs and reasonable attorneys' fees; and

(4) Grant all other appropriate relief.

Respectfully submitted,

Adina H. Rosenbaum

D.C. Bar No. 490928

Public Citizen Litigation Group

1600 20th Street NW

Washington, DC 20009

(202) 588-1000

arosenbaum@citizen.org

Counsel for Plaintiff

Dated: September 16, 2011

3

Case 1:11-cv-01681-BAH Document 1-1 Filed 09/16/11 Page 1 of 2 CIVIL COVER SHEET

JS-44 (Rev. 2/11 DC)					Coll		
I (a) PLAINTIFFS			DEFENDANTS				
Public Citizen			Department of Health and Human Services				
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)			COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF				
(c) A FTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Addina H Rosenbaum Public Citizen Litigation Group 1600 20th Street NW Washington, DC 20009 (202) 588-1000			Case: 1:11-cv-01681 Assigned To : Howell, Beryl A. Assign. Date : 9/16/2011 Description: FOIA/Privacy Act				
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)		III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!					
-	Overnment Not a Party)	itizen of this S		ncorporated or Principal Place f Business in This State	PTF DFT O 4 O 4		
	te Citizenship of Ci in item III) Ci	itizen of Anot itizen or Subje oreign Countr	ect of a O 3 O 3	ncorporated and Principal Place f Business in Another State Foreign Nation	O 5 O 5		
IV	. CASE ASSIG	NMENT	AND NATURE OF S	UIT			
(Place a X in one category, A	-N, that best repres	ents your	cause of action and <u>one</u> in a	corresponding Nature	of Suit)		
1	O B. Personal Injury/ Malpractice		Administrative Agency eview	Order/Pre	O D. Temporary Restraining Order/Preliminary Injunction		
315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle		Social Sec 861 862 863 864 865 Other St 891 892 893 894	1 HIA ((1395ff) 2 Black Lung (923) 3 DIWC/DIWW (405(g) 4 SSID Title XVI 5 RSI (405(g)		gory of case		
O E. General Civil (Other) OR O F. Pro Se General Civil							
Real Property 210 Land Condemnation 220 Foreclosure 230 Rent, Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	Bankruptcy 422 Appeal 28 USG 423 Withdrawal 2 Prisoner Petitions 535 Death Penalty 540 Mandamus & 550 Civil Rights 555 Prison Condity Property Rights 820 Copyrights 830 Patent 840 Trademark Federal Tax Suits 870 Taxes (US pla	y k Other ition	Forfeiture/Penalty 610 Agriculture 620 Other Food & Drug 625 Drug Related Seizu of Property 21 USC 630 Liquor Laws 640 RR & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other Other Statutes 400 State Reapportionm 430 Banks & Banking 450 Commerce/ICC Rates/etc.	470 Racketeer C881 Corrupt Or 480 Consumer Or 490 Cable/Satel 810 Selective Se 850 Securities/Or Exchange 3410 990 Appeal of fe under equal 950 Constitution Statutes 890 Other Statutes	igration Actions Influenced & rganizations Credit lite TV ervice Commodities/ Challenge 12 USC ee determination al access to Justice nality of State		

Case 1:11-cv-01681-BAH Document 1-1 Filed 09/16/11 Page 2 of 2

O G. Habeas Corpus/ 2255 530 Habeas Corpus-General 510 Motion/Vacate Sentence 463 Habeas Corpus - Alien Detainee	O H. Employment Discrimination 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	T. FOIA/PRIVACY ACT September 1 September 1 September 2 September 2 September 2 September 3 September	○ J. Student Loan □ 152 Recovery of Defaulted Student Loans (excluding veterans)				
O K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations Disclosure Act 740 Labor Railway Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	C L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 444 Welfare 440 Other Civil Rights 445 American w/Disabilities- Employment 446 Americans w/Disabilities- Other	M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument					
V. ORICIN O 1 Original Proceeding from State Court Appellate Court O 2 Removed from State Court O 3 Remanded from Appellate Court O 4 Reinstated or Reopened O 5 Transferred from another district (specify) O 6 Multi district D 7 Appeal to District Judge from Mag. Judge VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.) This case is brought under the Freedom of Information Act, 5 U S.C 552, based on the defendant's withholding of requested records							
VII. REQUESTED IN COMPLAINT VIII. RELATED CASE(S) IF ANY	CHECK IF THIS IS A CLASS ACTION UNDER F.R C.P. 23 (See instruction) YES	DEMAND \$ JURY DEMAND: NO	Check YES only if demanded in complaint YES O NO N				
0/40/44	IGNATURE OF ATTORNEY OF RECO	RD MIM					

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44

Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence Use 11001 to indicate plaintiff is resident of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES. This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION. Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

