

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,)
 1600 20th Street NW)
 Washington, DC 20009,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF HEALTH)
 AND HUMAN SERVICES,)
 200 Independence Avenue SW)
 Washington, DC 20201)
)
 Defendant.)
)
)
 _____)

Civil Action No. _____

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).”

10. By letter dated October 20, 2010, Plaintiff timely appealed the partial denial of its FOIA request. Under 5 U.S.C. § 552(a)(6)(A)(ii), HHS had 20 working days from receipt of Plaintiff’s appeal letter to respond. More than 20 working days have passed and HHS still has not responded to Plaintiff’s appeal.

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

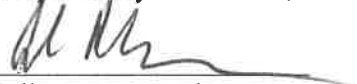
12. Plaintiff has a statutory right to the records it seeks, and HHS has no legal basis for failing to disclose those records to Plaintiff.

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,



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Counsel for Plaintiff

Dated: September 16, 2011

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/PRIVACY ACT <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 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 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ Check YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form

DATE 9/16/11 SIGNATURE OF ATTORNEY OF RECORD [Signature]

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., 88888 if plaintiff is resident of the United States but not 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.

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