

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

U.S. RIGHT TO KNOW
4096 Piedmont Avenue, #963
Oakland, CA 94611

Plaintiff,

v.

Civil Action No. 18-388

DEPARTMENT OF HEALTH AND
HUMAN SERVICES
200 Independence Avenue, S.W.
Washington, D.C. 20201

Defendant.

* * * * *

COMPLAINT

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., as amended, for the disclosure of agency records improperly withheld from plaintiff U.S. Right to Know by the defendant Department of Health and Human services (as well as their subordinate entity).

JURISDICTION

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff U.S. Right to Know (“USRTK”) is a 501(c)(3) non-profit food and public

health research organization based in Oakland, California.

4. Defendant Department of Health and Human Service (“HHS”) is an agency within the meaning of 5 U.S.C. § 552 (e), and is in possession and/or control of the records requested by the plaintiff that are the subject of this action. HHS controls – and consequently serves as the proper party defendant for litigation purposes for – the Centers for Disease Control and Prevention (“CDC”).

FACTUAL BACKGROUND

5. This FOIA action seeks to secure records in order to enhance the public’s understanding and awareness of the degree of behind-the-scenes communications between CDC officials and the private companies whose products may have implications for public health. In particular, USRTK endeavors in this action to shine the light of transparency on interactions between vendors of sugary drinks and CDC officials.

6. According to some studies, sugary drinks are linked to tens of thousands of deaths each year. https://www.washingtonpost.com/news/to-your-health/wp/2015/06/29/sugary-drinks-linked-to-180000-deaths-a-year-study-says/?utm_term=.7cf1be6da60e (last accessed February 15, 2018). In 2017, relying upon documents USRTK secured through other FOIA requests, the media reported on the close connection between then-CDC Director Dr. Brenda Fitzgerald (“Dr. Fitzgerald”) and the soft drink company Coca-Cola. That reporting reflected that Dr. Fitzgerald’s past professional relationship with Coca-Cola included coordinating on “Power Up for 30” as part of a statewide health initiative in the State of Georgia. That professional relationship particularly was memorialized in communications between Dr. Fitzgerald and then-Coca-Cola Chief

Science and Health Officer, Rhona S. Applebaum (“Ms. Applebaum”). https://www.nytimes.com/2017/07/22/health/brenda-fitzgerald-cdc-coke.html?_r=0 (last accessed February 15, 2018).

7. USRTK also separately secured records through FOIA requests documenting communications between CDC employees and other current and former Coca-Cola employees, such as Alex Malaspina (“Mr. Malaspina). In addition to having been a senior vice president at Coca-Cola, Mr. Malaspina founded the International Life Sciences Institute (“ILSI”). https://www.huffingtonpost.com/carey-gillam/beverage-industry-finds-f_b_10715584.html (last accessed February 15, 2018).

8. Expanding upon its previous efforts, USRTK now seeks to flesh out the extent of these types of communications involving a host of CDC officials. The intent of this action is to ensure that the public is better informed about these communications and to what extent, if any, they are having an impact on the CDC and its public health decisions that impact Americans’ lives.

COUNT ONE

9. The plaintiff, USRTK, repeats and realleges paragraphs 5 through 8 above, inclusive.

10. On December 15, 2017, USRTK submitted six separate but largely similar FOIA requests to CDC.

11. Each of the six separate FOIA requests sought communications between a designated CDC official and two categories of non-U.S. Government officials. The two categories consisted of current and former employees of The Coca-Cola Co., including Ms. Applebaum and Mr. Malaspina, as well as current and former employees of ILSI.

12. The specific designated CDC officials identified among the six separate FOIA requests were the following: (a) Dr. Barbara A. Bowman, former Director of CDC's Division for Heart Disease and Stroke Prevention; (b) Janet Collins, Director of Nutrition, Physical Activity and Obesity at the CDC; (c) Richard A. Goodman, a former senior CDC employee; (d) Dr. Felipe Lobelo, a former CDC employee; (e) Dr. Michael Pratt, Senior Advisor for Global Health at the CDC; (f) Charlie Stokes; and (g) Chloe Tonney.

13. By letter dated December 19, 2017, CDC acknowledged receipt of the six separate FOIA requests. In its letter, the CDC indicated that it was consolidating all six requests into one FOIA request, designated as #18-00242-FOIA.

14. To date, no substantive response has been received from CDC. USRTK has constructively exhausted all required administrative remedies.

15. USRTK has a legal right under the FOIA to obtain the information it seeks.

WHEREFORE, plaintiff U.S. Right to Know prays that this Court:

(1) Orders the defendant federal agency to disclose the requested records in their entirety and make copies promptly available to the plaintiff;

(2) Award reasonable costs and attorney's fees as provided in 5 U.S.C. § 552 (a)(4)(E) and/or 28 U.S.C. § 2412 (d);

(3) expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and

(4) grant such other relief as the Court may deem just and proper.

Date: February 21, 2018

Respectfully submitted,

/s/

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