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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 U.S. RIGHT TO KNOW, a California Non-Profit
12 Corporation,

13 Plaintiff,

14 vs.

15 NATIONAL INSTITUTES OF HEALTH,
16 Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act, 5 U.S.C. §
552 *et seq*

INTRODUCTION

1
2 1. Through this action, Plaintiff U.S. Right to Know (USRTK) seeks access to
3 government records held by Defendant National Institutes of Health (NIH), pursuant to the Freedom
4 of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and United States Department of Health &
5 Human Services FOIA regulations promulgated thereunder, 45 C.F.R. Part 5. This action challenges
6 Defendant's unlawful failure to abide by the statutory requirements of FOIA and applicable
7 implementing regulations.

8 2. Defendant is unlawfully withholding from public disclosure information sought by
9 USRTK, information to which USRTK is entitled and for which no valid disclosure exemption
10 applies or has been properly asserted. In particular, Defendant has violated, and remains in
11 violation of, the statutory mandates imposed by the FOIA by: (Count I) failing to provide a timely
12 final determination on USRTK's FOIA Requests; (Count II) unlawfully withholding records from
13 public disclosure for which no valid disclosure exemption applies or has been properly asserted, or
14 to provide the reasonably segregable portions of those records; and (Count III) failing to provide an
15 updated "estimated date of completion."

16 3. The records requested by USRTK are likely to contribute significantly to the
17 understanding of the operations or the activities of the government. USRTK is a 501(c)(3) nonprofit
18 organization and, by its nature, has no commercial interest in the requested records.

19 4. USRTK seeks declaratory relief establishing that Defendant has violated the FOIA
20 and that such actions entitle USRTK to relief thereunder. USRTK also seeks injunctive relief
21 directing Defendant to conduct a reasonably adequate search for records and to promptly provide
22 responsive material, to reasonably segregate portions of non-exempt records, and to provide proper
23 justifications for any disclosure exemptions that are applied. Finally, USRTK requests that the
24 Court award Plaintiff its reasonable attorneys' fees and costs incurred in bringing this action.

JURISDICTION AND VENUE

25
26
27 5. This Court has jurisdiction pursuant to 5 U.S.C. section 552(a)(4)(B). That provision
28 of the FOIA grants jurisdiction to "the district court of the United States in the district in which the

1 complainant resides or has his principal place of business[.]” 5 U.S.C. § 552(a)(4)(B). USRTK is a
2 nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law
3 for charitable purposes. USRTK was incorporated in the State of California in May 2014. USRTK
4 maintains its principal place of business in the Northern District of California.

5 6. This Court also has federal question jurisdiction pursuant to 28 U.S.C. section 1331
6 because this action arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. section
7 2201 *et seq.*

8 9 INTRADISTRICT ASSIGNMENT

10 7. Pursuant to Local Rule 3-2(c), this case is properly brought in the San Francisco
11 Division of the Northern District of California, because a substantial part of the events and
12 omissions which give rise to the claims alleged herein occurred in the County of San Francisco.

13 8. Under the FOIA, 5 U.S.C. § 522(a)(4)(B), jurisdiction vests in the district court
14 where “the complainant resides” or “has his principal place of business.”

15 9. Plaintiff has its principal place of business in the County of San Francisco.

16 10. As such, under the L.R. 3-2(c), (d), intradistrict assignment to the San Francisco
17 division is proper.

18 19 PARTIES

20 11. Plaintiff USRTK is a 501(c)(3) nonprofit corporation organized under the laws of the
21 State of California. USRTK is a public interest, investigative research group focused on promoting
22 transparency for public health. USRTK works nationally and globally to expose corporate
23 wrongdoing and government failures that threaten the integrity of food systems, the environment,
24 and human health.

25 12. Defendant NIH is an agency of the United States executive branch.

26 13. Defendant NIH qualifies as an “agency” under the FOIA, the records sought are
27 “records” under the FOIA, and because Defendant NIH is in possession and control of the records
28 sought by USRTK, the NIH is subject to the FOIA pursuant to 5 U.S.C. §552(f).

LEGAL FRAMEWORK

14. The FOIA requires U.S. government agencies to “promptly” make public records available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

15. The FOIA requires an agency to issue a final determination on any such information request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i). In issuing a final determination, an agency is required to inform the requester of three things: (1) the agency’s determination of whether or not it must comply with the request; (2) the reasons for its decision; and (3) notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

16. The FOIA allows an agency to extend the twenty-day determination deadline, however, by ten working days when “unusual circumstances” exist and when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 45 C.F.R. § 5.24(f). A notice informing a requester of the invocation of the “unusual circumstances” provision must specify the applicable “unusual circumstances.” *Id.*

17. Permissible “unusual circumstances” are limited to: “(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. § 552(a)(6)(B)(iii).

18. An agency is entitled to one ten-business day extension. 5 U.S.C. § 552(a)(6)(B)(i). The written notice provided to the requester must specify the specific unusual circumstances justifying the extension and the date on which a final determination is expected to be dispatched. *Id.*; 45 C.F.R. § 5.24(f).

1 19. In some circumstances, the FOIA allows an agency to invoke an extension beyond
2 ten days. To invoke a longer extension, the FOIA requires an agency to provide written notification
3 to the requester that (1) offers the requester an opportunity to limit the scope of the request so that it
4 may be processed within that time limit, or (2) offers the requester an opportunity to arrange with
5 the agency an “alternative time frame” for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii); 45
6 C.F.R. § 5.24(f).

7 20. As part of invoking an “alternative time frame” extension, the agency must also
8 make available to the requester its FOIA Public Liaison, who is tasked to resolve any dispute
9 between the requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii); 45 C.F.R. § 5.24(f).

10 21. FOIA Public Liaisons “shall serve as supervisory officials” and “shall be responsible
11 for assisting in reducing delays, increasing transparency and understanding of the status of requests,
12 and assisting in the resolution of disputes.” 5 U.S.C. § 552(l).

13 22. Even when an “unusual circumstances” extension is made, the agency must still
14 notify the requester of its expected date on which a final determination will be dispatched. 5 U.S.C.
15 § 552(a)(6)(B)(i); 45 C.F.R. § 5.24(f) (“Whenever we cannot meet the statutory time limit for
16 processing a request because of ‘unusual circumstances,’ as defined in the FOIA, and we extend the
17 time limit on that basis, we will notify you, before expiration of the 20-day period to respond and in
18 writing of the unusual circumstances involved and of the date by which we estimate processing of
19 the request will be completed.”).

20 23. “Exceptional circumstances” for failure to comply with applicable time limits “does
21 not include a delay that results from a predictable agency workload of requests under this section,
22 unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.”
23 5 U.S.C. § 552(a)(6)(C)(ii).

24 24. If an agency fails to provide a final determination on a FOIA request within the
25 statutory timeframe, the requester is deemed to have exhausted its administrative remedies and may
26 immediately file suit against the agency. 5 U.S.C. § 552(a)(6)(C)(i).

1 25. The FOIA also requires agencies to provide “an estimated date on which the agency
2 will complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C.
3 § 552(a)(6)(B)(i).

4 26. Agencies shall make reasonable efforts to maintain their records so they are
5 reproducible for FOIA purposes, and “shall make reasonable efforts to search” for responsive
6 records. 5 U.S.C. § 552(a)(3)(B), (C). The term “search” “means to review, manually or by
7 automated means, agency records for the purpose of locating those records which are responsive to
8 a request.” 5 U.S.C. § 552(a)(3)(D).

9 27. In furnishing records responsive to a request under the FOIA, an agency may, for a
10 limited set of categories of information, exclude or withhold such information from disclosure.
11 5 U.S.C. § 552(b). However, even where proper justification exists for withholding such
12 information, the agency must provide the remaining portions of records that are reasonably
13 segregable from the properly withheld portions thereof. *Id.*

14 28. Except in certain circumstances, when an agency produces a record in response to a
15 FOIA request but withholds a portion thereof, the agency must indicate the volume of information
16 withheld and the exemption under which such information has been withheld. *Id.*; 5 U.S.C. §
17 552(a)(6)(F).

18 29. An agency that withholds public records from a requestor under the FOIA bears the
19 burden of sustaining the legality of its action. 5 U.S.C. § 552(a)(4)(B).

20 30. Requesters under the FOIA may ask that an agency waive fees associated with any
21 request for records “if disclosure of the information is in the public interest because it is likely to
22 contribute significantly to the public understanding of the operations or activities of the government
23 and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

24 31. An agency may only charge certain fees depending on the category of requester. For
25 non-commercial requesters such as USRTK, “fees shall be limited to reasonable standard charges
26 for document search and duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

32. Agencies are prohibited from assessing search fees if the agency fails to comply with the FOIA's twenty-day determination deadline or any lawful extension under the statute's "unusual circumstances" provisions. 5 U.S.C. § 552(a)(4)(A)(viii).

33. This Court has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant, pursuant to 5 U.S.C. § 552(a)(4)(A)(i)(B).

STATEMENT OF OPERATIVE FACTS

FOIA Request One

34. On June 11, 2024, USRTK submitted a two-part FOIA Request to the NIH (referred to herein as "Request One"). USRTK submitted Request One to the NIH by e-mailing Request One to Gorka Garcia-Malene, Freedom of Information Officer for the NIH, at his NIH address for submission of FOIA requests, [nihfoia@od.nih.gov](mailto:.nihfoia@od.nih.gov). Request One sought a waiver of all fees associated with processing the request. A true and accurate copy of Request One is attached hereto as **Exhibit A** and is incorporated by reference as though set forth in full herein.

35. Gorka Garcia-Malene has been the Freedom of Information ("FOIA") Officer for the NIH since October 15, 2017. He held that position as recently as May 13, 2025. Declaration of Gorka Garcia-Malene in the case of *US Right to Know v. National Institutes of Health*, Case Number 23-cv-02954 (D.C. Northern District of California), **ECF No. 39-1**, filed May 13, 2025, ¶1. A true and accurate copy of the Gorka Garcia-Malene Declaration is attached hereto as **Exhibit C** and is incorporated by reference as though set forth in full herein.

36. As the NIH-FOIA Officer, Mr. Garcia-Malene is responsible for supervising and directing the day-to-day activities of the NIH FOIA Office ("NIH FOIA"). (**Exh. C. ¶2**).

37. NIH-FOIA typically receives FOIA requests via its electronic FOIA review platform. (**Exh. C. ¶10**).

38. USRTK submitted Request One to NIH-FOIA via NIH-FOIA's electronic FOIA review platform.

39. USRTK has no commercial interest or value in records responsive to Request One.

1 40. The records requested by USRTK are likely to contribute significantly to the public
2 understanding of the operations and activities of the government, especially as they pertain to
3 apparent attempts by NIH personnel to evade the Federal Records Act and the Freedom of
4 Information Act, and the destruction of Federal records. (**Exh. A., pg. 9**).

5 41. USRTK has a demonstrated track record of obtaining and disseminating information
6 obtained under the FOIA and state public records laws concerning public health. Since 2015,
7 USRTK has obtained, posted online, and reported on thousands of industry and government
8 documents gathered via public records requests. USRTK's work has contributed to three New York
9 Times investigations, 15 academic papers in public health journals, 13 articles in the BMJ, one of
10 the world's leading medical journals, and global media coverage documenting how food and
11 chemical corporations impact public health and the environment. USRTK's staff has expertise in
12 investigative journalism and advanced research, especially as it concerns impacts on human health.
13 (<https://usrtk.org/about-u-s-right-to-know/>). USRTK is a recognized news outlet and is a member
14 of the Institute for Nonprofit News, a membership organization that supports and advocates for the
15 growth and sustainability of the nonprofit news sector; it has a network of over 400 local to global,
16 topic-specific, and investigative nonprofit news organizations and over 3,000 practitioners
17 dedicated to public service journalism.

18 42. USRTK's investigation of the origins of COVID-19 has been featured in news
19 outlets around the world, including the [Wall Street Journal](#), [New York Times](#), [Washington Post](#),
20 [USA Today](#), [New Yorker](#), [Vanity Fair](#), [Science](#), [the BMJ](#), [Journal of Medical Ethics](#) and many other
21 outlets. (<https://usrtk.org/about-u-s-right-to-know/>).

22 43. In February 2025, USRTK received the James Madison Freedom of Information
23 Award from the Society for Professional Journalists Northern California chapter. This award
24 recognizes people and organizations that have made "significant contributions to advancing
25 freedom of information and expression in the spirit of James Madison, the creative force behind the
26 First Amendment." The award states in part that:

27
28 By filing more than 160 requests under the Freedom of Information
 Act, initiating 30 lawsuits to uncover documents held by federal

officials, and combing through tens of thousands of documents, U.S. Right to Know unearthed crucial information about the potential origins of COVID-19 and the high-risk research being conducted at the Wuhan Institute of Virology.

<https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-freedom-of-information-awards-3/>

44. USRTK shares its findings with media outlets, public health and medical journals, and through its own library of information, available online at: <https://www.usrtk.org>. Many of USRTK's documents are available through the USRTK Agrichemical Collection of the University of California, San Francisco's (UCSF) Chemical Industry Documents Archive, available online at: <https://www.industrydocuments.ucsf.edu/chemical/collections/usrtk-agrichemical-collection/>, and the USRTK Food Industry Collection of the UCSF Food Industry Documents Archive, available online at: <https://www.industrydocuments.ucsf.edu/food/collections/usrtk-food-industry-collection/>.

45. USRTK did not receive any communications from the NIH following the submission of Request One on June 11, 2024.

46. On August 5, 2024, approximately two months after submitting Request One, USRTK wrote to Gorka Garcia-Malene, Freedom of Information Officer, regarding Request One. USRTK stated that it had not received an acknowledgment of its Request, or information about when USRTK should expect to receive an official "determination" on its request, as required by the FOIA, 5 U.S.C. §552(a)(6)(B)(i). In its letter, USRTK formally demanded that the NIH, within 10 business days, provide USRTK with an official determination on Request One, or at the very least, a date certain by which USRTK should expect to receive such a determination. USRTK also requested that the NIH address its request for a fee waiver in a timely manner. Finally, USRTK asked that the NIH provide an estimated completion date that complied with the FOIA's requirements to promptly make records available on request.

47. USRTK did not receive any communications from the NIH following the submission of the August 5, 2024, letter.

1 48. On October 9, 2024, approximately four months after submitting Request One,
2 USRTK again wrote to Gorka Garcia-Malene, Freedom of Information Officer at the NIH,
3 regarding the Request. This letter referenced USRTK's August 5, 2024, letter sent to Mr. Garcia-
4 Malene. USRTK again stated that it had not received an acknowledgment of Request One, or
5 information about when USRTK should expect to receive an official "determination" on its request,
6 as required by the FOIA, 5 U.S.C. §552(a)(6)(B)(i). In its letter, USRTK again formally demanded
7 that the NIH, within 10 business days, provide USRTK with an official determination on the
8 Request, or at the very least, a date certain by which USRTK should expect to receive such a
9 determination. USRTK again requested that the NIH address its request for a fee waiver in a timely
10 manner. Finally, USRTK again asked that the NIH provide an estimated completion date that
11 complied with the FOIA's requirements to promptly make records available on request.

12 49. USRTK did not receive any communications from the NIH following the submission
13 of the October 9, 2024, letter.

14 50. On February 19, 2025, approximately eight months after USRTK's submission of
15 Request One, counsel for USRTK sent a letter to Mr. Garcia-Malene, reciting the history of
16 USRTK's Request One submission, as well as the two subsequent follow up letters. Counsel for
17 USRTK requested that the NIH respond within 10 business days with (1) a specific and reasonable
18 response schedule, and (2) a fee waiver determination. Counsel for USRTK also requested that Mr.
19 Garcia-Malene provide written confirmation of his receipt of the letter, which was sent by electronic
20 mail to the electronic mailbox at the NIH used by Mr. Garcia-Malene.

21 51. Neither counsel for USRTK nor USRTK itself ever received any communications
22 from Mr. Garcia-Malene or anyone at the NIH following the submission of the February 19, 2025,
23 letter.

24 52. To date, USRTK and its legal counsel have received no communications from the
25 NIH about Request One.

26 53. To date, the NIH has not provided USRTK or its legal counsel with an estimated
27 date of completion.
28

54. To date, the NIH has not provided USRTK or its legal counsel with a timely and lawful “determination” that informs USRTK of (1) the NIH’s determination of whether or not to comply with Request One; (2) the reasons for its decision; and (3) notice of USRTK’s right to appeal to the head of the agency. 5 U.S.C. §552(a)(6)(A)(i).

55. At no time has the NIH lawfully invoked the FOIA’s “unusual circumstances” exception to the FOIA’s twenty-day determination deadline.

56. The NIH has not shown due diligence in responding to the Request. 5 U.S.C. §552(a)(6)(C)(i).

57. To date, the NIH has failed to issue a decision on USRTK’s request for a waiver of fees associated with the processing of Request One.

58. To date, the NIH has not produced a single record responsive to Request One.

59. USRTK has constructively exhausted all administrative remedies required by the FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C).

60. Due to the failure of the NIH to comply with the FOIA, USRTK has been forced to retain the services of counsel and to expend funds litigating Defendant NIH’s unlawful actions and omissions under the FOIA.

FOIA Request Two

61. On July 18, 2024, USRTK submitted a FOIA request to Gorka Garcia-Malene, FOIA Officer, at the NIH. This FOIA request is referred to herein as Request Two. USRTK submitted Request Two to the NIH by e-mailing Request Two to Gorka Garcia-Malene, Freedom of Information Officer for the NIH, at his NIH address for submission of FOIA requests, [nihfoia@od.nih.gov](mailto:.nihfoia@od.nih.gov). Request Two sought a waiver of all fees associated with processing the request. A true and accurate copy of Request Two is attached hereto as **Exhibit B** and is incorporated by reference as though set forth in full herein. A true and accurate copy of Attachment #1 and Attachment #2 to Request Two are attached hereto as **Exhibit B-1** and **Exhibit B-2** respectively.

62. The e-mail address to which Request Two was submitted was then and is now the NIH-FOIA’s electronic FOIA review platform.

1 63. USRTK has no commercial interest or value in records responsive to Request Two.

2 64. The records requested by USRTK are likely to contribute significantly to the public
3 understanding of the operations and activities of the government, especially as they pertain to the
4 NIH's knowledge of EcoHealth Alliance's coronavirus research activities in partnership with the
5 Wuhan Institute of Virology. (**Exh. B., pg. 4**).

6 65. After submitting Request Two on July 18, 2024, USRTK did not receive any
7 communications from the NIH.

8 66. On October 5, 2024, USRTK sent a letter via email to Gorka Garcia-Malene at the
9 NIH FOIA email address, in which it sought a Request for Acknowledgement, Determination and
10 ECD for Request Two. In this letter, USRTK stated that it had not yet received an
11 acknowledgement of request, or information about when USRTK should expect to receive an
12 official determination, as required by FOIA, 5 U.S.C. §552(a)(6)(B)(i). USRTK formally demanded
13 that the NIH provide an official determination or a date certain for issuance of an official
14 determination within 10 business days.

15 67. The NIH did not provide USRTK any communication following the submission of
16 USRTK's October 5, 2024, correspondence.

17 68. On October 27, 2024, USRTK sent a letter via email to Gorka Garcia-Malene at the
18 NIH FOIA email address, again containing USRTK's Request for Acknowledgement,
19 Determination and ECD for Request Two. The October 27, 2024, letter stated that no response had
20 been received to USRTK's October 5, 2024, request for official determination. The October 27,
21 2024, letter also stated that USRTK had not yet received an acknowledgement of request, or
22 information about when USRTK should expect to receive an official determination, as required by
23 FOIA, 5 U.S.C. §552(a)(6)(B)(i). The October 27, 2024, letter from USRTK to the NIH demanded
24 that an official determination or a date certain for issuance of an official determination be provided
25 within 10 business days.

26 69. The NIH failed to respond to USRTK following the submission of USRTK's
27 October 27, 2024, correspondence.

1 70. On February 19, 2025, approximately seven months after USRTK's submission of
2 Request Two, counsel for USRTK sent a letter to Mr. Garcia-Malene via email at official NIH
3 email addresses, reciting the history of the submission of Request Two by USRTK, as well as the
4 two subsequent follow up letters. Counsel for USRTK requested that the NIH respond within 10
5 business days with (1) a specific and reasonable response schedule, and (2) a fee waiver
6 determination. Counsel for USRTK also requested that Mr. Garcia-Malene provide written
7 confirmation of his receipt of the letter, which was sent by electronic mail to the electronic mailbox
8 at the NIH used by Mr. Garcia-Malene.

9 71. The NIH, including Mr. Garcia Malene or another individual, never responded to
10 counsel for USRTK or USRTK following the submission of the February 19, 2025, letter.

11 72. To date, USRTK and its legal counsel have received no communications from the
12 NIH concerning Request Two.

13 73. To date, the NIH has not provided USRTK or its legal counsel with an estimated
14 date of completion.

15 74. To date, the NIH has not provided USRTK or its legal counsel with a timely and
16 lawful "determination" that informs USRTK of (1) the NIH's determination of whether or not to
17 comply with Request Two; (2) the reasons for its decision; and (3) notice of USRTK's right to
18 appeal to the head of the agency. 5 U.S.C. §552(a)(6)(A)(i).

19 75. At no time has the NIH lawfully invoked the FOIA's "unusual circumstances"
20 exception to the FOIA's twenty-day determination deadline.

21 76. The NIH has not shown due diligence in responding to the Request. 5 U.S.C.
22 §552(a)(6)(C)(i).

23 77. To date, the NIH has failed to issue a decision on USRTK's request for a waiver of
24 fees associated with the processing of Request Two.

25 78. To date, the NIH has not produced a single record responsive to Request Two.

26 79. USRTK has constructively exhausted all administrative remedies required by the
27 FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C).
28

80. Due to the failure of the NIH to comply with the FOIA, USRTK has been forced to retain the services of counsel and to expend funds litigating Defendant NIH's unlawful actions and omissions under the FOIA.

CAUSES OF ACTION

COUNT I

Violations of the Freedom of Information Act and HHS Regulations: Failure to Provide Timely Final Determination

81. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

82. USRTK has a statutory right to have Defendant process its FOIA requests in a manner that complies with the FOIA. USRTK's rights in this regard were violated by Defendant's failure to provide a timely and legally adequate final determination for Request One and Request Two.

83. To date, approximately ten months after Request One was submitted and approximately nine months after Request Two was submitted, USRTK has not received any written communication from Defendant NIH about whether the Agency will comply with the FOIA Request, the Defendant's reasons for making that decision, and any right of USRTK to administratively appeal that decision. 5 U.S.C. § 552(a)(6)(A)(i); 45 C.F.R. Part 5.

84. Based on the nature of USRTK's organizational activities, USRTK will continue to employ the FOIA's provisions to request information from Defendant in the foreseeable future. These activities will be adversely affected if Defendant is allowed to continue violating the FOIA's response deadlines.

85. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court, Defendant will continue to violate USRTK's rights to receive public records under the FOIA.

86. Defendant's failure to make a final determination on the FOIA Request One and FOIA Request Two within the statutory timeframe has prejudiced USRTK's ability to timely obtain public records.

COUNT II

**Violation of the Freedom of Information Act:
Unlawful Withholding of Non-Exempt Public Records**

87. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

88. USRTK has a statutory right to have Defendant NIH process its FOIA requests in a manner that complies with the FOIA. USRTK's rights in this regard were violated when Defendant failed to promptly provide public, non-exempt records to USRTK in response to the two FOIA Requests, 5 U.S.C. §§ 552(a)(3)(A) & (b), to provide a reasonable estimate of the volume of withheld records, 5 U.S.C. § 552(a)(6)(F), and to reasonably segregate all non-exempt portions of otherwise exempt material, 5 U.S.C. § 552(b).

89. Defendant is unlawfully withholding public disclosure of information sought by USRTK, information to which it is entitled and for which no valid disclosure exemption applies.

90. USRTK has constructively exhausted its administrative remedies with respect to Request One and Request Two.

91. USRTK is entitled to injunctive relief to compel production of all non-exempt, responsive records.

92. Based on the nature of USRTK's organizational activities, USRTK will undoubtedly continue to employ FOIA's provisions to request information from Defendant in the foreseeable future.

93. USRTK's organizational activities will be adversely affected if Defendant is allowed to continue violating FOIA's response deadlines as it has in this case.

94. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court, Defendant will continue to violate the rights of USRTK to receive public records under the FOIA.

COUNT III

**Violation of the Freedom of Information Act:
Failure to Provide Estimated Date of Completion**

95. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

96. USRTK has a statutory right to have Defendant process FOIA Request One and FOIA Request Two in a manner that complies with the FOIA. USRTK's rights in this regard were violated by Defendant's unlawful failure to provide an estimated date of completion for Request One and Request Two, as required by the FOIA, 5 U.S.C. § 552(a)(7)(B)(ii).

97. USRTK formally requested that the NIH provide an estimated date of completion for both Request One and Request Two. No such date was provided by the NIH.

98. Based on the nature of USRTK's organizational activities, USRTK will continue to employ FOIA's provisions to request information from Defendant NIH in the foreseeable future. These activities will be adversely affected if Defendant is allowed to continue violating the FOIA's requirements for providing USRTK with an estimated date of completion on FOIA Request One and FOIA Request Two.

99. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court, Defendant NIH will continue to violate the rights of USRTK to receive public records under the FOIA.

REQUEST FOR RELIEF

THEREFORE, USRTK prays that this Court:

1. Order Defendant NIH to promptly provide USRTK all the information sought in this action and to immediately disclose the requested records for Request One and Request Two in unredacted format unless an exemption is properly claimed and properly applies.

2. Declare Defendant NIH's failure to provide USRTK with a final determination for Request One and Request Two as unlawful under the FOIA.

3. Declare Defendant NIH's failure to promptly provide USRTK with all non-exempt records responsive to Request One and Request Two as unlawful under the FOIA.

1 4. Declare Defendant NIH's failure to provide USRTK with an estimated date of
2 completion for Request One and Request Two, as required by 5 U.S.C. § 552(a)(7)(B)(ii), unlawful
3 under the FOIA.

4 5. Award USRTK its reasonable attorneys' fees and costs pursuant to 5 U.S.C.
5 § 552(a)(4)(E) or 28 U.S.C. § 2412.

6 6. Grant such other and further relief to USRTK as the Court may deem just and
7 proper.

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9 Dated: May 28, 2025

Respectfully Submitted,

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11 By: /s/ Richard A. Brody

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17 *Attorneys for Plaintiff US Right to Know*
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