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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 5. This Court has jurisdiction pursuant to 5 U.S.C. section 552(a)(4)(B). That provision  
27 of the FOIA grants jurisdiction to “the district court of the United States in the district in which the  
28 complainant resides or has his principal place of business[.]” 5 U.S.C. § 552(a)(4)(B). USRTK is a

1 nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law  
2 for charitable purposes. USRTK was incorporated in the State of California in May 2014. USRTK  
3 maintains its principal place of business in the Northern District of California.

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

#### 7 **INTRADISTRICT ASSIGNMENT**

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

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

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

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

#### 16 **PARTIES**

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

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

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

#### 26 **LEGAL FRAMEWORK**

27 14. The FOIA requires U.S. government agencies to “promptly” make public records  
28 available to any person if that person makes a request which (1) reasonably describes the records

1 sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. §  
2 552(a)(3)(A).

3 15. The FOIA requires an agency to issue a final determination on any such information  
4 request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i). In  
5 issuing a final determination, an agency is required to inform the requester of three things: (1) the  
6 agency's determination of whether or not it must comply with the request; (2) the reasons for its  
7 decision; and (3) notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. §  
8 552(a)(6)(A)(i).

9 16. The FOIA allows an agency to extend the twenty-day determination deadline,  
10 however, by ten working days when "unusual circumstances" exist and when the agency so notifies  
11 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  
12 requester of the invocation of the "unusual circumstances" provision must specify the applicable  
13 "unusual circumstances." *Id.*

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

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

25 19. In some circumstances, the FOIA allows an agency to invoke an extension beyond  
26 ten days. To invoke a longer extension, the FOIA requires an agency to provide written notification  
27 to the requester that (1) offers the requester an opportunity to limit the scope of the request so that it  
28 may be processed within that time limit, or (2) offers the requester an opportunity to arrange with

1 the agency an “alternative time frame” for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii); 45  
2 C.F.R. § 5.24(f).

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

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

9 22. Even when an “unusual circumstances” extension is made, the agency must still  
10 notify the requester of its expected date on which a final determination will be dispatched. 5 U.S.C.  
11 § 552(a)(6)(B)(i); 45 C.F.R. § 5.24(f) (“Whenever we cannot meet the statutory time limit for  
12 processing a request because of ‘unusual circumstances,’ as defined in the FOIA, and we extend the  
13 time limit on that basis, we will notify you, before expiration of the 20-day period to respond and in  
14 writing of the unusual circumstances involved and of the date by which we estimate processing of  
15 the request will be completed.”).

16 23. “Exceptional circumstances” for failure to comply with applicable time limits “does  
17 not include a delay that results from a predictable agency workload of requests under this section,  
18 unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.”  
19 5 U.S.C. § 552(a)(6)(C)(ii).

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

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

26 26. Agencies shall make reasonable efforts to maintain their records so they are  
27 reproducible for FOIA purposes, and “shall make reasonable efforts to search” for responsive  
28 records. 5 U.S.C. § 552(a)(3)(B), (C). The term “search” “means to review, manually or by

1 automated means, agency records for the purpose of locating those records which are responsive to  
2 a request.” 5 U.S.C. § 552(a)(3)(D).

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

8 28. Except in certain circumstances, when an agency produces a record in response to a  
9 FOIA request but withholds a portion thereof, the agency must indicate the volume of information  
10 withheld and the exemption under which such information has been withheld. *Id.*; 5 U.S.C. §  
11 552(a)(6)(F).

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

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

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

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

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

27 **STATEMENT OF OPERATIVE FACTS**

28 34. On June 6, 2023, USRTK submitted a three-part FOIA Request to the NIH (referred

1 to herein as “the Request”). USRTK submitted the Request to the NIH by e-mailing the Request to  
2 Marianne Manheim at the National Library of Medicine, at the NIH address for submission of  
3 FOIA requests [nhlbifoiarequest@nhlbi.nih.gov](mailto:nhlbifoiarequest@nhlbi.nih.gov). The Request sought a waiver of all fees associated  
4 with processing the request. A true and accurate copy of the Request is attached hereto as **Exhibit**  
5 **A** and is incorporated by reference as though set forth in full herein.

6 35. The Request was a three-part request under the FOIA seeking the production of  
7 documents pertaining to Dr. David Morens, who was the Senior Advisor to the Director of the  
8 National Institute of Allergy and Infectious Diseases (NIAID) within the NIH. **Exh. A, pg. 1.**

9 36. The Request requested that the NIH conduct a complete and thorough search of Dr.  
10 Morens’ personal communications channels for official NIH business. The Request stated that:

11 In a September 2021 email obtained by investigators of the U. S.  
12 House Select Subcommittee on the Coronavirus Pandemic, Dr.  
13 Morens instructed proponents of the natural origin theory of COVID-  
14 19 emergence to send correspondence to his personal Gmail  
15 address(es) to avoid public scrutiny through FOIA requests. He wrote,  
16 “As you know, I always try to communicate on gmail because my  
17 NIH email is FOIA’d constantly.” **Exh. A, pg. 1.**

18 37. The Request identified those personal communications channels of Dr. Morens to  
19 include but not be limited to Dr. Morens’ personal Gmail address(es), as well as Slack, Signal,  
20 Whatsapp and SMS messages. **Exh. A, pg. 1.**

21 38. The Request was assigned FOIA Case Number 60374 by the HHS.

22 39. At all times alleged herein, and up to the present date, Marianne Manheim has been  
23 and is currently the NIH Freedom of Information Office Coordinator for the National Library of  
24 Medicine (NLM), in addition to other institutions which are part of the NIH.

25 ([https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-](https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/freedom-information-act-office/nih-freedom-information-office-coordinators)  
26 [liaison/freedom-information-act-office/nih-freedom-information-office-coordinators](https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/freedom-information-act-office/nih-freedom-information-office-coordinators)). The NIH’s  
27 Freedom of Information Act Office directs FOIA Requestors to “...direct requests for information  
28 about a specific NIH component to that component...” as USRTK did here.

29 ([https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-](https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/freedom-information-act-office)  
30 [liaison/freedom-information-act-office](https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/freedom-information-act-office)).

1 40. USRTK has no commercial interest or value in records responsive to the Request.

2 41. The records requested by USRTK are likely to contribute significantly to the public  
3 understanding of the operations and activities of the government. The information sought in the  
4 Request "...concerns the operations and activities of the NIH..." and requests information about the  
5 NIH's knowledge of the origins of the Covid-19 pandemic, including information that NIH staff  
6 may have deliberately withheld from the public." **Exh. A, pg. 5, ¶ 1.**

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

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

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

1 By filing more than 160 requests under the Freedom of Information  
2 Act, initiating 30 lawsuits to uncover documents held by federal  
3 officials, and combing through tens of thousands of documents, U.S.  
4 Right to Know unearthed crucial information about the potential  
5 origins of COVID-19 and the high-risk research being conducted at  
6 the Wuhan Institute of Virology.

7 See Thomas Peele & Laura Wenus, *SPJ NORCAL Honors Transparency Champions in James*  
8 *Madison Freedom of Information Awards*, Society of Professional Journalists, Northern California,  
9 [https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-](https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-freedom-of-information-awards-3/)  
10 [freedom-of-information-awards-3/](https://spjnorcal.org/2025/02/12/spj-norcal-honors-transparency-champions-in-james-madison-freedom-of-information-awards-3/) (last visited February 10, 2026).

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

19 46. On August 10, 2023, Robin L. Schofield of the Department of Health & Human  
20 Services ("HHS") sent a letter to Hana Mensendiek of USRK acknowledging that the HHS had  
21 received the Request on July 6, 2023, the same day on which it was submitted. Ms. Schofield's  
22 letter restated the request by USRTK. It also stated that provisions of the FOIA allowed the HHS to  
23 recover part of the cost of complying with the Request. Ms. Schofield specifically stated that "...we  
24 are not addressing your request for a fee waiver at this time."

25 47. On July 26, 2024, over one year after submitting the Request, Gary Ruskin,  
26 Executive Director of USRTK and Hana Mensendiek, Investigator for USRTK, wrote to Robin L.  
27 Schofield, Government Information Specialist at the National Heart, Lung and Blood Institute of the  
28 NIH. The letter was sent via email to not only Ms. Schofield, but also to Kara Citarella at the NIH  
and also to the [NHLBfoiarequest@nhlbi.nih.gov](mailto:NHLBfoiarequest@nhlbi.nih.gov) email address. In this letter, USRTK stated that it  
had not received an acknowledgment of its Request, or information about when USRTK should

1 expect to receive an official “determination” on its request, as required by the FOIA, 5 U.S.C.  
2 §552(a)(6)(B)(i). In its letter, USRTK formally demanded that the NIH, within 10 business days,  
3 provide USRTK with an official determination on the Request, or at the very least, a date certain by  
4 which USRTK should expect to receive such a determination. USRTK also requested that the NIH  
5 address its request for a fee waiver in a timely manner. Finally, USRTK asked that the NIH provide  
6 an estimated completion date that complied with the FOIA’s requirements to promptly make  
7 records available on request.

8 48. On August 1, 2024, USRTK received an email from Kara Citarella at NIH/NHLBI  
9 confirming receipt of the July 26, 2024, correspondence and advising that Ms. Schofield was no  
10 longer with NHLBI and stating that future inquiries could be directed to the agency’s mailbox at  
11 [NHLBIFOIARequest@mail.nih.gov](mailto:NHLBIFOIARequest@mail.nih.gov).

12 49. On August 2, 2024, Kara Citarella sent an email to Hana Mensendiek of USRTK  
13 stating that the agency did not anticipate having to extend a fee waiver. Ms. Citarella provided an  
14 estimate of 6 months for completion of the Request, which indicates that documents would be  
15 produced to USRTK in early March 2025.

16 50. On November 14, 2024, Hana Mensendiek of USRTK sent a letter to Ms. Citarella  
17 again requesting an official determination under the Freedom of Information Act, 5 U.S.C. § 552, et  
18 seq. within 10 business days and stating that it was USRTK’s understanding that the estimated  
19 completion date for the Request was February 1, 2025.

20 51. On December 13, 2024, Ms. Citarella sent an email to Hana Mensendiek of USRTK,  
21 stating that:

22 We are currently producing records responsive to the January 1, 2017  
23 through January 21, 2022 portion of the timeframe under your  
24 litigation 23cv2954 and NIH FOIA case 57707. We are currently  
25 dealing with other litigations, including yours, and anticipate  
resuming a rolling production of records responsive to 60374 in May.

26 52. The new estimated completion date of May 2025 was two months later than  
27 originally stated by the NIH.

28 53. On February 19, 2025, Richard Brody, counsel for USRTK, sent a letter to Ms.

1 Citarella, stating that USRTK had not received the formal determination which had been requested  
2 and had not received an official decision on USRTK's fee waiver request. This letter also stated  
3 that it was unreasonable for the NIH to claim that it required in excess of a year to begin processing  
4 the Request since that delay was due to the NIH's inadequate staffing to handle the then-current  
5 number of FOIA requests. This letter requested that the NIH, within ten business days of the letter,  
6 provide a specific and reasonable response schedule, and a fee waiver determination.

7 54. On February 21, 2025, Gorka Garcia-Malene, FOIA Officer for the NIH, responded  
8 to USRTK counsel's letter. The response, in its entirety, stated the following:

9 Dear Mr. Brody,

10 Thank you for your recent communication (attached) advising us of  
11 your impending FOIA lawsuit. As we have previously indicated to  
12 you, we are currently producing records responsive to the January 1,  
13 2017 through January 21, 2022 portion in 60374 under your litigation  
14 23-cv-2954 (NIH FOIA request 57707). In fact, the records  
15 encompassed by 23-cv2954 are largely duplicates of those  
16 encompassed by 60374. In addition, we are currently dealing with  
17 other litigations including other litigations from you and / or your  
18 client. You may choose to sue us on this matter, though I should point  
19 out that – since we're already producing records responsive to 60374  
20 in 23-cv-2954, you and your client would be choosing to take up the  
21 court's time and the government's time needlessly, as you're already  
22 obtaining records responsive to 60374. You would also be choosing to  
23 take up valuable government resources that would otherwise be  
24 dedicated to fulfilling other requests – including your client's. We  
25 will be sure to inform the court that this is the current posture of your  
26 requests.

27 Best regards.

28 Gorka Garcia-Malene,  
FOIA Officer for NIH

55. On March 31, 2025, after conducting extensive research into the NIH's contention  
that documents responsive to this Request had been produced or were being produced, and in a  
good faith effort to meet and confer, Mr. Brody sent a detailed email response to Mr. Garcia-  
Malene, documenting the few areas where there was a possible overlap between documents  
requested by USRTK in the Request, and documents requested or produced in other FOIA requests.

1 The March 31, 2025, email from counsel for USRTK requested that "...no later than 10 business  
2 days from the date of this e-mail, the NIH provide a specific date within the next four weeks when  
3 production of documents responsive to FOIA request 60374, which have not previously been  
4 produced, will be produced. It is my understanding that the NIH continues to obtain and review e-  
5 mails from Dr. Morens' personal e-mail account, many of which are likely responsive to FOIA  
6 request 60374 but not necessarily responsive to FOIA request 57707. USRTK remains willing to  
7 work as cooperatively as possible with the NIH to ensure that 1) all documents responsive to FOIA  
8 request 60374 are quickly produced and 2) no unnecessary time or expense be spent by the NIH in  
9 producing duplicate documents."

10 56. On March 31, 2025, Roger Bordine, of the FOIA Office of the NIH, responded as  
11 follows:

12 As you are aware, although the requests are not duplicative, the  
13 records received will be: Absent further narrowing, USRTK is  
14 currently slated to receive 44,000 pages of David Morens' gmail in  
15 response to request 57707 (currently in litigation).

16 57. On April 9, 2025, after conducting further investigation, Mr. Brody sent an email to  
17 both Mr. Bordine and Mr. Garcia-Malene, again detailing why the documents sought in the Request  
18 were different from those identified by the NIH in previous emails. The April 9, 2025, email from  
19 counsel for USRTK stated in part that USRTK remained "...willing to work as cooperatively as  
20 possible with the NIH to ensure that all documents responsive to FOIA request 60374 are quickly  
21 produced without unnecessary time or expense on behalf of the NIH. USRTK is willing to accept  
22 documents on a rolling basis."

23 58. On April 22, 2025, Mr. Brody again emailed Mr. Bordine and Mr. Garcia-Malene,  
24 stating that no response had been received to his April 9, 2025, email, and requesting production of  
25 responsive documents by Friday, April 25, 2025.

26 59. On June 6, 2025, in a continuing good faith effort to resolve issues without resort to  
27 litigation, Mr. Brody again wrote a detailed email to Mr. Bordine and Mr. Garcia-Malene, attaching  
28 copies of six previous written attempts by USRTK to meet and confer and resolve issues. The

1 email indicated that "...the NIH has now gone silent and has failed to respond to the two most  
2 recent attempts to meet and confer with the NIH."

3 60. The NIH did not respond to USRTK's counsel's meet and confer attempt of June 6,  
4 2025.

5 61. Beginning on August 13, 2025, and continuing up to the date of the filing of this  
6 complaint, Mr. Brody has met and conferred with counsel for NIH who was representing the NIH in  
7 a different FOIA litigation matter involving USRTK, to attempt to resolve the issues presented here.  
8 Those meet and confer attempts have been unsuccessful.

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

13 63. At no time has the NIH lawfully invoked the FOIA's "unusual circumstances"  
14 exception to the FOIA's twenty-day determination deadline.

15 64. The NIH has not shown due diligence in responding to the Request. 5 U.S.C. §  
16 552(a)(6)(C)(i).

17 65. To date, the NIH has failed to issue a decision on USRTK's request for a waiver of  
18 fees associated with the processing of the Request.

19 66. To date, the NIH has not produced a single record responsive to the Request.

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

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

25 **CAUSES OF ACTION**

26 **COUNT I**

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

69. The allegations made in all preceding paragraphs are realleged and incorporated by

1 reference herein.

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

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

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

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

15 74. Defendant's failure to make a final determination on the Request within the statutory  
16 timeframe has prejudiced USRTK's ability to timely obtain public records.

17 **COUNT II**

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

20 75. The allegations made in all preceding paragraphs are realleged and incorporated by  
21 reference herein.

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

28 77. 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.

1 78. USRTK has constructively exhausted its administrative remedies with respect to the  
2 Request.

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

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

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

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

13 **COUNT III**

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

16 83. The allegations made in all preceding paragraphs are realleged and incorporated by  
17 reference herein.

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

22 85. USRTK formally requested that the NIH provide an estimated date of completion for  
23 the Request. No such date was provided by the NIH.

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

28 87. 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

1 the FOIA.

2 **REQUEST FOR RELIEF**

3 THEREFORE, USRTK prays that this Court:

- 4 1. Order Defendant NIH to promptly provide USRTK all the information sought in this  
5 action and to immediately disclose the requested records for the Request in unredacted  
6 format unless an exemption is properly claimed and properly applies.
- 7 2. Declare Defendant NIH's failure to provide USRTK with a final determination for the  
8 Request as unlawful under the FOIA.
- 9 3. Declare Defendant NIH's failure to promptly provide USRTK with all non-exempt  
10 records responsive to the Request as unlawful under the FOIA.
- 11 4. Declare Defendant NIH's failure to provide USRTK with an estimated date of  
12 completion for the Request, as required by 5 U.S.C. § 552(a)(7)(B)(ii), unlawful under  
13 the FOIA.
- 14 5. Award USRTK its reasonable attorneys' fees and costs pursuant to 5 U.S.C.  
15 § 552(a)(4)(E) or 28 U.S.C. § 2412.
- 16 6. Grant such other and further relief to USRTK as the Court may deem just and proper.

17  
18 Dated: February 20, 2026

Respectfully Submitted,

19  
20 By: /s/ Jessica L. Blome

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26 *Attorneys for Plaintiff U.S. Right to Know*