

1 JOSEPH H. HUNT
Assistant Attorney General

2 MICHELLE R. BENNETT
3 Assistant Branch Director
4 Civil Division

5 REBECCA M. KOPPLIN
(CA Bar # 313970)
6 BENJAMIN T. TAKEMOTO
(CA Bar # 308075)
Trial Attorney
7 United States Department of Justice
Civil Division, Federal Programs Branch
8 P.O. Box 883, Ben Franklin Station
Washington, DC 20044
9 Tel: (202) 532-4252
Fax: (202) 616-8460
10 E-mail: benjamin.takemoto@usdoj.gov

11 *Attorneys for Defendants*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

14 STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17
18 *ALEX M. AZAR II, in his official capacity as*
19 *Secretary of Health and Human Services,*
20 UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, and
21 DOES 1–100,

22 Defendants.

Case No. 4:19-cv-2769-WHA

**DEFENDANTS’ ANSWER TO
PLAINTIFF’S FOIA CLAIMS**

Hon. William H. Alsup
Hearing: October 30, 2019, 8:00 a.m.

Phillip Burton Federal Building & United
States Courthouse, Courtroom 12, 19th
Floor,
450 Golden Gate Ave., San Francisco, CA
94102

1 Defendants Alex M. Azar II, in his official capacity as Secretary of Health and Human Services,
2 and the United States Department of Health and Human Services answer Plaintiff State of California's
3 Complaint with respect to only Plaintiff's Freedom of Information Act (FOIA) claim and the allegations
4 in support of it. Pursuant to the Court's July 1, 2019 and July 22, 2019 orders, Defendants will file a
5 motion to dismiss or, in the alternative, for summary judgment with respect to the remaining claims in
6 Plaintiff's Complaint by noon on August 21, 2019. Defendants do not respond to non-FOIA claims or
7 allegations in support of such claims at this time and do not waive their right to respond to them by noon
8 on August 21, 2019. The partial answer is as follows:

9 6 Paragraph 6 consists of Plaintiff's characterization of its FOIA claims, to which no response is
10 required.

11 7 Paragraph 7, to the extent that it relates to Plaintiff's FOIA claims, consists of legal conclusions
12 regarding jurisdiction to which no response is required.

13 9 Paragraph 9, to the extent that it relates to Plaintiff's FOIA claims, consists of legal conclusions
14 regarding venue to which no response is required.

15 10 Paragraph 10, to the extent that it relates to Plaintiff's FOIA claims, consists of legal conclusions
16 regarding intra-district assignment to which no response is required.

17 11 To the extent that paragraph 11 relates to Plaintiff's FOIA claims, Defendants admit the first
18 sentence. The second and third sentences consist of legal conclusions to which no response is
19 required.

20 14 Admitted.

21 15 To the extent that paragraph 15 relates to Plaintiff's FOIA claims, Defendants admit that HHS
22 is an agency of the United States government. The remainder of the first sentence is denied. The
23 second sentence is admitted.

24 64 The first sentence does not relate to Plaintiff's FOIA claims. To the extent that the second
25 sentence relates to Plaintiff's FOIA claims, it is admitted except with respect to the last clause;
26 Defendants lack knowledge or information sufficient to form a belief about the truth of whether
27 Plaintiff provided a copy of the FOIA request and follow-up communications.

28 80 The body of paragraph 80 does not relate to Plaintiff's FOIA claims. To the extent that footnote

1 55 relates to Plaintiff's FOIA claims, it consists of legal conclusions to which no response is
2 required.

3 105 Paragraph 105 consists of legal conclusions to which no response is required.

4 106 Paragraph 106 consists of legal conclusions to which no response is required.

5 107 Paragraph 107 consists of legal conclusions to which no response is required.

6 108 Paragraph 108 consists of legal conclusions to which no response is required.

7 109 Paragraph 109 consists of legal conclusions to which no response is required.

8 110 Paragraph 110 consists of legal conclusions to which no response is required.

9 111 Paragraph 111 consists of legal conclusions to which no response is required.

10 112 Paragraph 112 consists of legal conclusions to which no response is required.

11 113 Admitted. Defendants respectfully refer the Court to Plaintiff's April 25, 2018 letter for a full
12 and complete statement of its contents.

13 114 The first and second sentence are admitted. The third sentence consists of Plaintiff's
14 characterization of Defendants' May 10, 2018 letter, to which no response is required.
15 Defendants respectfully refer the Court to their May 10, 2018 letter for a full and complete
16 statement of its contents.

17 115 Paragraph 115 consists of Plaintiff's characterization of Defendants' May 10, 2018 letter, to
18 which no response is required. Defendants respectfully refer the Court to their May 10, 2018
19 letter for a full and complete statement of its contents.

20 116 Paragraph 116 consists of Plaintiff's characterization of Defendants' May 10, 2018 letter, to
21 which no response is required. Defendants respectfully refer the Court to their May 10, 2018
22 letter for a full and complete statement of its contents.

23 117 Paragraph 117 consists of Plaintiff's characterization of Defendants' May 10, 2018 letter, to
24 which no response is required. Defendants respectfully refer the Court to their May 10, 2018
25 letter for a full and complete statement of its contents.

26 118 As to the first sentence, Defendants admit that Plaintiff e-mailed the assigned government
27 information specialist on June 6, 2018. The remainder of the first sentence contains Plaintiff's
28 characterization of the June 6, 2018 e-mail, to which no response is required. Defendants

1 respectfully refer the Court to Plaintiff's June 6, 2018 e-mail for a full and complete statement
2 of its contents. The second sentence is denied; the assigned government information specialist
3 responded via e-mail on June 27, 2019. Defendants respectfully refer the Court to that e-mail
4 for a full and complete statement of its contents. As to the third sentence, Defendants admit that
5 Plaintiff e-mailed the assigned government information specialist on June 12, 2018. The
6 remainder of the third sentence contains Plaintiff's characterization of the June 12, 2018 e-mail,
7 to which no response is required. Defendants respectfully refer the Court to Plaintiff's June 12,
8 2018 e-mail for a full and complete statement of its contents. As to the fourth sentence,
9 Defendants admit that Plaintiff e-mailed the assigned government information specialist on June
10 19, 2018. The remainder of the fourth sentence contains Plaintiff's characterization of the June
11 19, 2018 e-mail, to which no response is required. Defendants respectfully refer the Court to
12 Plaintiff's June 19, 2018 e-mail for a full and complete statement of its contents.

13 119 As to the first sentence, Defendants admit that Plaintiff e-mailed the assigned government
14 information specialist on June 26, 2018. The remainder of the first sentence contains Plaintiff's
15 characterization of the June 26, 2018 e-mail, to which no response is required. Defendants
16 respectfully refer the Court to Plaintiff's June 26, 2018 e-mail for a full and complete statement
17 of its contents. As to the second and third sentences, Defendants admit that the assigned
18 government information specialist e-mailed Plaintiff on June 27, 2018. The remainder of those
19 sentences contain Plaintiff's characterization of that e-mail, to which no response is required.
20 Defendants respectfully refer the Court to the specialist's June 27, 2018 e-mail for a full and
21 complete statement of its contents. As to the fourth sentence, Defendants admit that Plaintiff e-
22 mailed the assigned government information specialist on June 27, 2018. The remainder of the
23 fourth sentence contains Plaintiff's characterization of the June 27, 2018 e-mail, to which no
24 response is required. Defendants respectfully refer the Court to Plaintiff's June 27, 2018 e-mail
25 for a full and complete statement of its contents. As to the fifth sentence, Defendants admit that
26 Plaintiff e-mailed the assigned government information specialist on July 16, 2018. The
27 remainder of the fifth sentence contains Plaintiff's characterization of the July 16, 2018 e-mail,
28 to which no response is required. Defendants respectfully refer the Court to Plaintiff's July 16,

1 2018 e-mail for a full and complete statement of its contents.

2 120 Defendants admit that a meeting took place with Plaintiff, OMB, and HHS on February 15,
3 2019. Defendants lack knowledge or information sufficient to form a belief about the truth of
4 whether Plaintiff provided a duplicate copy of the FOIA request and follow-up correspondence.

5 121 Defendants admit that, as of the filing of the Complaint, they had not produced any responsive
6 documents in response to the FOIA request. The remainder of Paragraph 121 consists of
7 Plaintiff's characterization of correspondence with Defendants, to which no response is
8 required. Defendants respectfully refer the Court to that correspondence a full and complete
9 statement of its contents.

10 122 The first sentence of paragraph 122 consists of legal conclusions to which no response is
11 required. Defendants deny the second sentence. The third sentence consists of legal conclusions
12 to which no response is required.

13 123 Paragraph 123 consists of legal conclusions to which no response is required.

14 124 Paragraph 124 consists of legal conclusions to which no response is required.

15 125 Paragraph 125 consists of legal conclusions to which no response is required.

16 126 The first clause consists of legal conclusions to which no response is required. Defendants lack
17 knowledge or information sufficient to form a belief about the truth of the remainder of this
18 paragraph.

19 187 To the extent that Defendants have responded to these paragraphs, Defendants repeat their
20 response here. To the extent that Defendants have not responded to these paragraphs, they are
21 unrelated to Plaintiff's FOIA claims. Defendants do not waive their right to respond to
22 paragraphs unrelated to Plaintiff's FOIA claims and will respond to such paragraphs via their
23 forthcoming motion to dismiss or, in the alternative, for summary judgment.

24 188 Paragraph 188 consists of legal conclusions to which no response is required.

25 189 Paragraph 189 consists of legal conclusions to which no response is required.

26 190 To the extent that Defendants have responded to these paragraphs, Defendants repeat their
27 response here. To the extent that Defendants have not responded to these paragraphs, they are
28 unrelated to Plaintiff's FOIA claims. Defendants do not waive their right to respond to

1 paragraphs unrelated to Plaintiff's FOIA claims and will respond to such paragraphs via their
2 forthcoming motion to dismiss or, in the alternative, for summary judgment.

3 191 Paragraph 191 consists of legal conclusions to which no response is required.

4 192 Paragraph 192 consists of legal conclusions to which no response is required.

5 193 To the extent that Defendants have responded to these paragraphs, Defendants repeat their
6 response here. To the extent that Defendants have not responded to these paragraphs, they are
7 unrelated to Plaintiff's FOIA claim. Defendants do not waive their right to respond to paragraphs
8 unrelated to Plaintiff's FOIA claim and will respond to such paragraphs via their forthcoming
9 motion to dismiss or, in the alternative, for summary judgment.

10 194 Paragraph 194 consists of legal conclusions to which no response is required.

11 195 Paragraph 195 consists of legal conclusions to which no response is required.

12 196 Paragraph 196 consists of legal conclusions to which no response is required.

13 197 To the extent that Defendants have responded to these paragraphs, Defendants repeat their
14 response here. To the extent that Defendants have not responded to these paragraphs, they are
15 unrelated to Plaintiff's FOIA claims. Defendants do not waive their right to respond to
16 paragraphs unrelated to Plaintiff's FOIA claims and will respond to such paragraphs via their
17 forthcoming motion to dismiss or, in the alternative, for summary judgment.

18 198 Paragraph 198 consists of legal conclusions to which no response is required.

19 199 Paragraph 199 consists of legal conclusions to which no response is required.

20 Page 54 of the Complaint consists of Plaintiff's prayer for relief with respect to its FOIA claims,
21 to which no response is required. To the extent a response is required, Defendants deny that Plaintiff is
22 entitled to the relief requested or to any relief whatsoever.

23 Defendants hereby deny all allegations in Plaintiff's Complaint relating to Plaintiff's FOIA claims
24 not expressly admitted or denied.

25 **AFFIRMATIVE DEFENSES AS TO PLAINTIFF'S FOIA CLAIMS**

- 26 1. Defendants' actions did not violate FOIA or any other statutory or regulatory provision.
27 2. Plaintiff is not entitled to compel production of records exempt from disclosure by one or more
28 exemptions of FOIA, 5 U.S.C. § 552.

1 WHEREFORE, having answered Plaintiff's FOIA claims, Defendants request that

2 1. The Court enter judgment for Defendants on Plaintiff's FOIA claims and dismiss those claims
3 with prejudice; and

4 2. Defendants be granted such further relief as the Court may deem just and proper.

5 Dated: July 29, 2019

Respectfully Submitted,

6 JOSEPH H. HUNT
7 Assistant Attorney General

8 MICHELLE R. BENNETT
9 Assistant Branch Director
Civil Division

10 /s/ Benjamin T. Takemoto
11 REBECCA M. KOPPLIN
12 (CA Bar # 313970)
13 BENJAMIN T. TAKEMOTO
14 (CA Bar # 308075)
15 Trial Attorney
16 United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station
Washington, DC 20044
Tel: (202) 532-4252
Fax: (202) 616-8460
E-mail: benjamin.takemoto@usdoj.gov

17 *Attorneys for Defendants*