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October 22, 2020

Via Electronic Mail Only

Elizabeth A. Brehm, Esq.
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Re: *ICAN v. NIH – Request 54464*
Dist. Ariz. Court No.: CIV-20-01277-JJT

Ms. Brehm:

I am writing in follow-up to my prior email with respect to ICAN's FOIA Request 54464, for which the National Institutes of Health (NIH) provided a final response letter on August 13, 2020. In its letter, NIH explained that it had identified 1,093 pages responsive to the request and was withholding those pages pursuant to Exemption 4, 5 U.S.C. § 552(b)(4), on the basis that the requested safety data was protected from release pursuant to FOIA Exemption 4. This exemption prohibits the disclosure of trade secret information and information that is confidential and commercial or financial in nature.

It has come to NIH's attention that Moderna, the manufacturer of the mRNA-1273 vaccine, as well as Kaiser Permanente and Emory University – entities that actually own the safety data ICAN requested – will be making the 1,093 pages publically available (with minor redactions) within the next few weeks. In addition, Moderna has now expressly withdrawn the objections it raised in response to the Pre-Disclosure Notification it received pertaining to this request. Given these external actions, the NIH has determined that it need not withhold this information any longer and anticipates producing the pages (with minor redactions pursuant to Exemption 6) on or before November 9, 2020.

As you are aware, NIH is scheduled to file its brief on this request on or before October 30, 2020. In light of these developments, I intend to seek a brief two-week extension (November 13, 2020) for filing the agency's brief in order to allow the production of the report and to see if

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any briefing will be required after that. Kindly advise as to your client's position on the extension request. I intend to file for the extension on Monday, October 26, 2020.

Sincerely yours,

MICHAEL BAILEY
United States Attorney
District of Arizona

s/Kristina L. Morrison _____
KRISTINA L. MORRISON
Assistant United States Attorney