

CFSAC Comments December 2014
Jeannette Burmeister

Jeannette Burmeister here. In January, I sued HHS and NIH for violation of the Freedom of Information Act, FOIA, in connection with my FOIA request for documents relating to the IOM study. I won the lawsuit by prevailing on my summary-judgment motion for a proper document production.

The Federal Court held that **“the government’s conduct throughout its dispute with Ms. Burmeister was unreasonable”** and awarded me my entire attorneys’ fees of over \$139,000.

True to form, HHS and NIH have not paid or even committed to paying in spite of my numerous requests.

I did everything in my power to avoid legal fees, for example, I sued without attorneys at first. Yet, the government fought me tooth and nail trying to avoid compliance with federal law and to delay production of responsive documents as long as possible, necessitating my engaging attorneys at the government’s, hence taxpayer’s, expense. The defendants have consistently acted inexcusably and shamefully, really, in their relentless attempts to circumvent their FOIA obligations. They filed a frivolous summary-judgment motion five months into the litigation when they could have used all that time to simply remedy their FOIA violations. Two months later, they doubled down by filing another brief making meritless legal arguments and misstating the law and the facts—the latter, under penalty of perjury. After they lost, they wrongfully accused me of lying.

HHS and NIH have directly caused my health to dramatically deteriorate as a result of their deplorable conduct. They have done everything to prolong this litigation and drive up my attorneys’ fees, arrogantly not anticipating the Court’s ordering them to reimburse me. The DOJ, in defending and enabling this behavior in Court, acted in direct violation of the Attorney General’s instructions to defend only the denial of FOIA disclosures prohibited by law or involving exemptions. Neither was relevant here.

HHS and NIH have acted like bullies vis-à-vis a disabled ME patient just to be ordered by the Court to do what they should have done more than nine months prior, without a dime spent and without any additional damage to my health: to produce the requested documents. The Court-ordered recent document production was again not FOIA-compliant and my attempts to settle the matter out of Court have generated more government stonewalling and meritless arguments and may leave me no choice than to ask the Court to enforce its orders and/or find the defendants in contempt.

And that, committee members, is what you and patients are up against. A complete disregard for the law and the health of patients by HHS.

Thank you!