

NOTICE OF FOIA APPEAL
(APPEAL OF REMANDED REQUEST)

to the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency within the U.S. Department of Health & Human Services,

William Holzerland, Deputy Agency Chief FOIA Officer
Office of the Assistant Secretary for Public Affairs
submitted via email only to: @hhs.gov

Appealing the SAMHSA Freedom of Information Act Response to FOIA #08152022S168

I. Appellant/Appeal Reference Information:

Appellant: *Tim Reiersen*
Pronouns: *he/him*
Filing Date of Appeal: *October 18, 2023*

Appellant Contact Information

Phone:
Email: @proton.me
Mail Address:

Subject Matter of Appeal: *SAMHSA response to records request #08152022S168*
Special Note: *This is the 2nd appeal relating to this records request.*

Date of FOIA Request: *August 15, 2022* See **Attachment 2.**
Date of FOIA Request Clarification: *December 14, 2022* See **Attachment 1.**
Date of FOIA 1st Final Response: *January 20, 2023* See **Attachment 2.**
Date of FOIA 2nd Final Letter: *July 18, 2023* See **Attachment 3.**
Date of 2nd Final Response Notice: *September 14, 2023* See **Attachment 3.**

Additional Reference Information: *All correspondence between Appellant and SAMHSA relating to this FOIA, including the contents of the first appeal and its attachments filed April 17, 2023 and related correspondence, are hereby incorporated as references to this appeal.*

II. Appeal:

- Reasons for the appeal

Failure to comply with **5 U.S.C. § 552**, including but not limited to:

a. Unreasonable, Arbitrary and Capricious Handling & Disposition of Request. During the lengthy processing time for this request there has been an accumulation of implausible responses, absurd results, unreasonable delays, and what appears to be significant withholding of information—information that is not exempt from public

disclosure. Taken in sum, it presents a pattern of arbitrary and capricious action/inaction and unlawful withholding of public documents and information.

b. Inadequate Search. The agency failed to comply with its statutory obligation to make reasonable search for documents. Upon information and belief I have reliable information there were extensive and numerous communications between Crisis Text Line, SAMHSA, and Vibrant Emotional Health, SAMHSA's contractor. It is my assertion that reasonably accessible documents in the possession of SAMHSA are being unlawfully withheld.

c. Failure to Provide Responsive Documents. No documents/information were provided for the following components of the FOIA request including as clarified on 12/14/2022: Request Item No. 1 (in its entirety). Request Item No. 2 (improperly redacted, believed to be unknown withheld documents). Request Item No. 3 (improperly redacted, believed to be unknown withheld documents). Request Item No. 4 (in its entirety, arbitrarily because it was specifically promised).

Further, some documents were obviously withheld, by inspection of provided documents:

Attachment to 12/13/2021 email from [(b)(4) redacted] to James Wright, titled "Best Practices for Quality Text-Based Crisis Intervention.pdf".

Attachment to 1/19/2022 1:07PM email from John Palmiere to [(b)(4) redacted].

d. Improper Redactions. The documents that were provided are heavily redacted under two claimed exemptions from disclosure: Exemption 4 and Exemption (b)(6) of the FOIA. Generally throughout, the nature of redactions makes it difficult for Appellant to show they don't apply. The redactions, however, include several that are obviously improper, calling question to them all. For example, it's obvious (to me because of my personal knowledge) that all parties related to Crisis Text Line and Vibrant Emotional Health, and even most instances of their corporate names have been removed. The corporate names are within the records request itself as a primary subject matter of the request for documents. It is implausible for the exemptions to apply to the corporate or personnel names in this context. In another example, an email discussed a published article by POLITICO, which names Crisis Text Line's spin-off corporation Loris.ai. Yet the name "Loris.ai" is redacted from the email (which is obvious from the article). The email was about concern over public information about Loris.ai and Crisis Text Line's involvement with its spinoff corporation. There is nothing proprietary or confidential here. The redactions are too broad and violate the spirit and letter of law, leaving one to wonder whether they have any legitimacy anywhere within the provided documents.

More specifically, Exemption 4 does not apply. No assurances of confidentiality within or upon the face of these documents were provided by SAMHSA, unless such assurances have also been redacted, which would be yet another inappropriate redaction. Crisis Text Line knew how to get a non-disclosure agreement for a limited subject matter, and did so when inviting SAMHSA representatives for a tour of their crisis line texting

platform (email dated 1/6/2022 6:47PM from [(b)(4) redacted] to James Wright, et al). Such an NDA for proprietary information, if it was even entered by SAMHSA, does not apply to correspondence outside its narrow bounds. No documentation is provided about whether SAMHSA entered the NDA with Crisis Text Line, which would in itself not be exempt from production.

Exception (b)(6) does not apply with the broad sweep given here. These are not personnel, medical or other similar files nor is there any “clearly unwarranted invasion of personal privacy”. I have no objection to removal of any **personal** phone or email addresses, however no one here was acting in their personal capacities, rather they were acting on behalf of agencies and corporations discussing matters of considerable public interest.

e. Contrasting Example from Federal Communications Commission. I made a similar FOIA to the US FCC which provides reasons and further basis for this appeal. **Attachment 4** is an excerpt of responsive documents provided to me by FCC. Please note the (b)(4) exemption was lawfully applied to a cell phone number, while Crisis Text Line staff members, together with their emails, were not redacted. Courtney Hunter is undoubtedly the “Courtney” that was “missed” more than once among SAMHSA’s redactions, please see “Hi Courtney-” email dated 12/17/2021 4:57 PM provided to me by SAMHSA. (For reference, Shairi Turner @crisistextline.org is Chief Health Officer and Shawn Rodriguez is Vice President and Senior Counsel at Crisis Text Line. The other email eruff... belongs to a legal assistant there.) This contrasting example from FCC, where corporate names and emails were not exempt, adds evidence for the arbitrary and capricious handling of my request. FCC knew how to apply a (b)(4) exemption and did so to redact a potentially private cell phone number, while refraining from applying redactions elsewhere where the exemption did not apply.

f. Legitimate Interests, Significant Public Interests. I am a single citizen, a former volunteer for Crisis Text Line who was terminated for voicing my concerns about data ethics, lack of consent, and exploitation of vulnerable persons. I have become an advocate for volunteers and persons seeking help from the 988 Lifeline system of crisis lines. I built an advocacy website www.reformcrisistextline.com and I am public about my advocacy. Again and again I have run into a lack of accountability and lack of transparency within these systems—in their governmental and private-partner implementations. The Freedom of Information Act promises and requires that the agencies of our federal government--the instruments of the public’s own creation--be accountable to that same public. In my advocacy I am trying to speak for persons who for obvious reasons may be unable to speak for themselves, and who lack power and influence in these systems. There are significant public interests in my advocacy. The public needs access to this information to protect itself from exploitation, in particular when the agencies themselves won’t offer the vulnerable the protection they need and deserve. Even though these records have significant public interest associated with them, I made no request for relief from payment as the law allows. Not because I waive the public interest, but because I want to pay fair cost for the records.

g. Failure to Comply, Timeliness. The agency did not comply with statutory requirements for timeliness. See 5 U.S.C. § 552(a)(6)(A)(i). The inference: if the agency does not consider itself bound by all its governing statutes, then I have no way of knowing which statutes it is following and which it is waiving with respect to my lawful request. I therefore request a review of agency action/inaction, namely the failure to provide a fully responsive set of documents to my request.

*h. Timeliness of Appeal. 5 U.S.C. § 552(a)(6)(A)(i) provides the agency shall “notify the person making such a request of...the right of such person to appeal...within a period...that is not less than 90 days after the date of such adverse determination...” Notification was provided on September 14, 2023. This appeal is timely. See **Attachment 3.***

- Supporting documentation (*incorporated herein by this reference*)
Attachment 1: Content of Records Request Including as Clarified/Modified
Attachment 2: Copy SAMHSA Initial Response Letter
Attachment 3: Delivery Confirmation and Current Final Response.
Attachment 4: Contrasting Example, FOIA Response to Appellant from FCC.

Appellant reserves the right to amend this notice of appeal in response to new information or for any other reason pertinent to the proceeding, in Appellant’s sole discretion.

Upon request, Appellant will provide any reasonable documentation or statement for verification of identity. This Notice of Appeal was prepared, approved and submitted by Tim Reiersen, the same who submitted FOIA #08152022S168.