

EMPOWER OVERSIGHT

Whistleblowers & Research



September 30, 2021

VIA ELECTRONIC TRANSMISSION: NIHFOIA@MAIL.NIH.GOV

National Institutes of Health
Building 31, Room 5B35
9000 Rockville Pike
Bethesda, MD 20892

RE: Records Regarding NIH'S SARS-COV-2 Database

Dear FOIA Officer:

Introduction

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on those reports by, among other means, publishing information concerning the same.

Background

The New York Times and *The Washington Post*, among others, have reported on requests by Chinese researchers to have certain SARS-CoV-2 genetic sequences withdrawn from the National Institutes of Health’s (“NIH”) Sequence Read Archive.¹ Genetic sequences for SARS-CoV-2 virus are critical to understanding how the pandemic (which has killed more than 670,000 Americans) started, and

¹ “Scientist Finds Early Virus Sequences That Had Been Mysteriously Deleted,” *New York Times* (Jun 23, 2021); “Seattle scientist digs up deleted coronavirus genetic data, adding fuel to the covid origin debate,” *Washington Post* (Jun 23, 2021).

understanding the origin of the pandemic is essential to furthering the prevention of future pandemics.² Additionally, the State Department has noted that China has not been transparent in its handling of the question of the origin of SARS-CoV-2 and, as part of its hindrance of efforts to gain an understanding of the virus, has removed genetic sequences from its own online databases.³

On June 28, 2021, Senators Charles Grassley and Marsha Blackburn sent the NIH a letter seeking records and answers to seven questions regarding the removal of the SARS-CoV-2 genetic sequences from the Sequence Read Archive. They received a response to their inquiry on September 8, 2021, that they state “failed to fully and completely answer all seven questions and failed to provide the requested records.”⁴ Senators Grassley and Blackburn then sent a follow up letter on September 16, 2021, demanding answers to their previous questions.⁵

Records Request

To shed light on the manner in which the NIH is addressing the SARS-CoV-2 pandemic and responding to information requests from members of Congress, we respectfully request, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, copies of:

1. All communications regarding the letter by Senators Grassley and Blackburn dated June 28, 2021.
2. All communications regarding the NIH’s response to Senators Grassley and Blackburn dated September 8, 2021.
3. All communications regarding the letter by Senators Grassley and Blackburn dated September 16, 2021.

Definitions

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description,

² “COVID Mortality Data,” Johns Hopkins University (<https://coronavirus.jhu.edu/data/mortality>)

³ “Fact Sheet on Activity at the Wuhan Institute of Virology,” U.S. State Dep’t (<https://2017-2021.state.gov/fact-sheet-activity-at-the-wuhan-institute-of-virology/index.html>)

⁴ <https://www.grassley.senate.gov/news/news-releases/did-nih-improperly-delete-covid-19-data-at-request-of-chinese-researchers-senators-want-answers>

⁵ <https://www.grassley.senate.gov/news/news-releases/did-nih-improperly-delete-covid-19-data-at-request-of-chinese-researchers-senators-want-answers>

whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

Instructions

The time period of the requested records is June 28, 2021, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “news media requester”⁶ and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the NIH. Specifically, the public has a significant interest in understanding how the NIH is addressing the SARS-CoV-2 pandemic and responding to information requests from members of Congress. Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the NIH’s practices will be disclosed publicly via its website, and shared copies with other news media for public dissemination.⁷

Request for Expedited Processing

Although Empower Oversight fully expects the NIH to respond to this FOIA request within the 20 business days allotted by the FOIA, it requests expedited processing. Understanding how the NIH responds to FOIA requests can enlighten the public concerning why SARS-CoV-2 genetic sequences were removed from a United States’ federal database when they could help researchers establish how the pandemic started. The request is of widespread and exceptional media interest and the information sought involves questions about research integrity that affect public confidence in the activities and operations of the NIH. Empower Oversight is engaged in disseminating information to the public through its website and working with media.⁸ Accordingly, it is important that this request be processed and the results publicly disseminated as quickly as possible.

⁶ As the Securities Exchange Commission recently conceded, with its issuances of ‘press releases’ describing its activities and findings, and its emails of research papers, FOIA updates, and news accounts of its activities to an address list more than 9,400 members of the press, Capitol Hill staff, and key thought leaders, Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA.

⁷ “Mission,” Empower Oversight (<http://empowr.us/mission>).

⁸ “Mission,” Empower Oversight (<http://empowr.us/mission>).

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. In the event our request for a fee waiver is denied or if you have any questions about this request, please contact us immediately. Thank you for your prompt attention to this matter.

Cordially,

/S/

Jason Foster
Founder & President