

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EMPOWER OVERSIGHT)
WHISTLEBLOWERS & RESEARCH,)
2615 Columbia Pike, #445)
Arlington, VA 22204)

Plaintiff,)

Case No. _____

v.)

NATIONAL INSTITUTES OF HEALTH,)
9000 Rockville Pike)
Bethesda, MD 20892)

Defendant.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Empower Oversight Whistleblowers & Research (hereinafter “Empower Oversight”) brings this action against Defendant National Institutes of Health (“NIH”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), including obtaining access to records maintained by the NIH.

2. The records at issue, including but not limited to communications to and from NIH, relate to SARS-CoV-2 sequences submitted by a Chinese researcher for posting to the Sequence Read Archive (“SRA”) in March 2020 and subsequently withdrawn by the NIH upon the researcher’s request to SRA staff in June 2020. *See infra* ¶¶ 4-7.

3. On June 18, 2021, Dr. Jesse D. Bloom of the Fred Hutchen Cancer Research Center published an article titled “Recovery of deleted deep sequencing data sheds more light on the early Wuhan SARS-CoV-2 epidemic.” Jesse Bloom, *Recovery of deleted deep sequencing data sheds*

more light on the early Wuhan SARS-CoV-2 epidemic, bioRxiv (June 18, 2021), <https://www.biorxiv.org/content/10.1101/2021.06.18.449051v1.full.pdf>.

4. Dr. Bloom explained that in reviewing a March 2020 Wuhan University-associated study containing a spreadsheet with information on 241 genetic sequences from the SRA, his own searches for these sequences indicated that they were deleted from the SRA. *See id.* Nevertheless, he was able to recover certain deleted files from Google Cloud and reconstruct partial sequences of 13 early viruses. *See id.*

5. Dr. Bloom reasoned that “[t]he fact that such an informative data set was deleted has implications beyond those gleaned directly from the recovered sequences,” and that it “therefore seems likely the sequences were deleted to obscure their existence.” *Id.* at 7.

6. A June 23, 2021 New York Times article, among numerous others, heightened the national focus on Dr. Bloom’s conclusions, reporting that he provided “intriguing new information for discerning when and how the virus may have spilled over from a bat or another animal into humans” and that it “raise[s] questions about why original sequences were deleted.” *See* Carl Zimmer, *Scientist Finds Early Virus Sequences That Had Been Mysteriously Deleted*, N.Y.T. (June 23, 2021) (updated July 22, 2021), *available at* <https://www.nytimes.com/2021/06/23/science/coronavirus-sequences.html>.

7. The New York Times article revealed that, in fact, more than 200 data entries from the genetic sequencing of early COVID-19 cases disappeared from an online scientific database in the summer of 2020. *See id.* The article included confirmation by the National Library of Medicine within the NIH, which manages the SRA, that these sequences were “submitted for posting in SRA in March 2020 and subsequently requested to be withdrawn by the submitting investigator in June 2020.” *See id.*

8. However, deletions from the SRA are reportedly rare. From March 2020 to March 2021, the SRA repeatedly received approximately 2.4 million submissions of sequence data, according to the NCBI spokeswoman. However, a *mere 0.19%* were withdrawn. See Amy Dockser Marcus & Drew Hinshaw, *After Covid-19 Data Is Deleted, NIH Reviews How Its Gene Archive Is Handled*, WALL ST. J. (Sept. 13, 2021), available at <https://www.wsj.com/articles/after-covid-19-data-is-deleted-nih-reviews-how-its-gene-archive-is-handled-11631545490>.

9. On June 28, 2021, Senators Grassley, Blackburn, and Marshall sent the NIH a letter seeking records and responses to questions regarding the removal of the sequences from the SRA. Letter from Sen. Grassley et al. to Francis S. Collins, June 28, 2021. The same Senators sent a follow-up letter on September 16, 2021, reiterating their requests. Letter from Sen. Grassley et al. to Francis S. Collins, Sept. 16, 2021.

10. According to the Centers for Disease Control and Prevention (“CDC”), as of November 6, 2021, over 756,000 deaths—and counting—have been attributed to COVID-19 in the United States alone. See *COVID-19 Mortality Overview*, CDC (last accessed Nov. 16, 2021), available at <https://www.cdc.gov/nchs/covid19/mortality-overview.htm>. Yet, upon information and belief, there is no global consensus on the origin of the COVID-19 pandemic.

11. The public thus has a significant interest in understanding the reason why these early sequences were removed from the SRA. In recognizing this significant interest, Empower Oversight filed the three FOIA Requests described herein.

JURISDICTION AND VENUE

12. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

13. Venue is proper in this district and division pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

14. Plaintiff Empower Oversight is a nonprofit, nonpartisan educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. Empower Oversight has its principal place of business located at 2615 Columbia Pike, #445, Arlington, VA 22204. Empower Oversight works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, as well as work to hold authorities accountable to act on such reports.

15. Defendant NIH is an agency within the U.S. Department of Health and Human Services, and a federal administrative agency within the meaning of 5 U.S.C. § 552(f)(1), with its principal place of business located at 9000 Rockville Pike, Bethesda, MD 20892. Upon information and belief, the NIH has possession, custody, and control of the records, within the meaning of 5 U.S.C. § 552(f)(2), to which Empower Oversight seeks access.

LEGAL STANDARD

16. FOIA requires a federal administrative agency to promptly make available requested, non-exempt agency records in response to a request that (a) reasonably describes such records and (b) “is made in accordance with published rules stating the time, place, fees, . . . and procedures to be followed[.]” 5 U.S.C. § 552(a)(3)(A); *see also* 45 C.F.R. § 5.22.

17. FOIA requires an agency to respond to a valid request within twenty (20) days (exempting Saturdays, Sundays, and legal public holidays) (hereinafter “working days”) upon receipt of such request, including notifying the requestor immediately of its determination, the

reasons therefor, and the right to appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i); *see also* 45 C.F.R. §§ 5.24, 5.28.

18. In certain circumstances, an agency may instead provide notice to the requester that “unusual circumstances” merit additional time—up to an additional ten (10) working days—to respond to the request. 5 U.S.C. § 552(a)(4)(viii)(II)(aa); *see also* 45 C.F.R. § 5.24(f). In the event the agency provides notice to the requester of “unusual circumstances,” and that it is not able to respond to the records request within the statutory deadline, the agency must provide the requester “an opportunity to arrange with the agency an alternative time frame for processing the request.” 5 U.S.C. § 552(a)(6)(B)(ii); 45 C.F.R. § 5.24(f).

19. If an agency does not respond to a FOIA request by the statutory deadline, the requester is deemed to have exhausted administrative remedies and may immediately pursue judicial review. 5 U.S.C. § 552(a)(6)(C)(i).

FACTS

20. On July 14, 2021, Empower Oversight submitted a FOIA request to the NIH, *see* Ex. A, seeking access to the following:

- a. All communications regarding the request to post the SARs-CoV-2 sequences to the Sequence Read Archive in March 2020. This request covers all communications between March 1, 2020 to March 31, 2020.
- b. All communications regarding the request to withdraw the SARS-CoV-2 sequences from Sequence Read Archive in June 2020. This request covers all communications between June 1, 2020 to June 31, 2020.
- c. All communications regarding these withdrawn sequences as reported by a preprint titled “Recovery of deleted deep sequencing data sheds more light on the early Wuhan SARS-CoV-2 epidemic” by Jesse Bloom, a virologist at the Fred Hutchinson Cancer Research Center. This request covers all communications between Jesse Bloom and the NIH, from January 1, 2021 and the present. This request covers all communications inside the NIH regarding the preprint from June 21, 2021 to the present.

- d. All communications to, from, and within the NIH press office about the NIH statement released on June 23, 2021, and about reports that these sequences were removed from the Sequence Read Archive. This includes all emails related to the drafting of the statement, communications about the reported removal, and communications with reporters. This request covers all communications between June 21, 2021 to June 25, 2021.

21. On September 30, 2021, Plaintiff submitted two additional FOIA Requests to the NIH. In one September 30, 2021 Request, *see* Ex. B, Plaintiff sought access to and copies of:

- a. All communications regarding the letter by Senators Grassley and Blackburn dated June 28, 2021.
- b. All communications regarding the NIH's response to Senators Grassley and Blackburn dated September 8, 2021.
- c. All communications regarding the letter by Senators Grassley and Blackburn dated September 16, 2021.

22. In the other September 30, 2021 Request, *see* Ex. C, Plaintiff requested a copy of the NIH's "log" of requests for records filed pursuant to the FOIA.

23. To date, Empower Oversight has yet to receive any correspondence whatsoever from Defendant concerning any of its three pending FOIA Requests (hereinafter the "Three Requests"), despite applicable regulations prescribing that the NIH, at a minimum, is required to acknowledge receipt of all FOIA requests in writing within 10 working days. *See* 45 C.F.R. § 5.24; *see also* 45 C.F.R. § 5.4 (explaining that all operating divisions ("OpDivs") of HHS are subject to the requirements in that regulation); 45 C.F.R. § 5.3 (defining NIH as an OpDiv of HHS).

24. However, to date, Empower Oversight's account on the NIH's online FOIA portal shows:

- a. A Request 56712 as having been filed by Empower Oversight on July 15, 2021.
The "Description" of Request 56712 matches the four enumerated items on

Empower Oversight's July 14, 2021 Request, and the details of Request 56712 include an embedded link to a copy of Empower Oversight's request. Therefore, upon information and belief, the responsible FOIA officer "received" that July 14, 2021 Request on or before July 15, 2021.

- b. A Request 57151 as having been filed by Empower Oversight on October 7, 2021. The "Description" of Request 57151 matches the substance of one of Empower Oversight's September 30, 2021 Requests, and the details of Request 57151 include an embedded link to a copy of Empower Oversight's request. Therefore, upon information and belief, the responsible FOIA officer "received" that September 30, 2021 Request on or before October 7, 2021.
- c. A Request 57199 as having been filed by Empower Oversight on October 14, 2021. The "Description" of Request 57199 matches the substance of Empower Oversight's other September 30, 2021 Request, and the details of Request 57199 include an embedded link to a copy of Empower Oversight's September 30, 2021 Request. Therefore, upon information and belief, the responsible FOIA officer "received" that September 30, 2021 Request on or before October 14, 2021.

25. To date, the NIH has not provided a determination as to Request 56712, 57151, or 57199, despite the requirement of 5 U.S.C. § 552(a)(6)(A) that an agency respond within twenty (20) working days, including by providing detail on the scope of the records the agency intends to produce or withhold, the reasons for making that determination, and an explanation of the process by which a requester can administratively appeal that determination.

26. To date, the NIH also has not provided Empower Oversight notice that “unusual circumstances” warrant a failure to comply with the statutory deadline with respect to any of the Three Requests.

27. Empower Oversight has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

Count I

Failure to Comply with Statutory Deadlines in Violation of FOIA, 5 U.S.C. § 552(a)(6)

28. Plaintiff realleges and incorporates by reference each of the foregoing allegations, contained in paragraphs 1-27, as if fully set forth herein.

29. To date, Defendant has failed to respond – timely or otherwise - to each of Plaintiff’s Three Requests identified above in paragraphs 20-22.

30. More than 20 working days have passed since each of the Three Requests were received by the NIH as reflected on its online FOIA portal.

31. FOIA requires Defendant to have provided a final determination within 20 working days of each of the Three Requests. Defendant may extend this 20-day period in the event of “unusual circumstances,” as defined by 5 U.S.C. § 552(a)(6)(B)(iii), for a maximum of 10 working days, but must provide Empower Oversight with notice to do so. *See* 5 U.S.C. §§ 552(a)(4)(A)(viii)(II)(aa), 552(a)(6)(B)(ii).

32. Defendant did not provide a final determination within 20 working days of each of the Three Requests, nor did it contact Empower Oversight with a claim that unusual circumstances exist as to any of the Three Requests.

33. The NIH has thus failed to timely make a determination on all Three Requests, in violation of FOIA. *See* 5 U.S.C. § 552(a)(6).

34. Empower Oversight has constructively exhausted all administrative remedies required by FOIA as to each of the Three Requests. *See* 5 U.S.C. § 552(a)(6)(C)(i).

35. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA as to each of the Three Requests.

Count II

Unlawful Withholding of Agency Records in Violation of FOIA, 5 U.S.C. § 552(a)(3)

36. Plaintiff realleges and incorporates by reference each of the foregoing allegations, contained in paragraphs 1-35, as if fully set forth herein.

37. FOIA requires Defendant to process records requests and promptly provide the requested records or the reasonably segregable portion of records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3)(B).

38. However, Defendant has neither provided Empower Oversight any responsive documents in response to any of its Three Requests, nor has it claimed that any responsive records are exempt from disclosure.

39. Therefore, the NIH's acts and omissions for failing to produce records or claim applicable exemptions violate FOIA. 5 U.S.C. § 552(a)(3)(B).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court:

- A. Declare that NIH failed to make timely determinations on each of Empower Oversight's Three Requests, in violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- B. Declare that NIH failed to promptly provide records responsive to each of Empower Oversight's Three Requests, in violation of FOIA, 5 U.S.C. § 552(a)(3);

- C. Order NIH to immediately conduct a reasonable search for all responsive records, as required by FOIA, 5 U.S.C. § 552(a)(3)(C);
- D. Order NIH to immediately provide determinations on each of Empower Oversight's Three Requests, as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- E. Order NIH to promptly disclose to Empower Oversight all responsive, non-exempt records, as required by FOIA, 5 U.S.C. § 552(a)(3);
- F. Award Empower Oversight its costs and reasonable attorneys' fees incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- G. Grant such other relief as the Court may deem just and proper.

November 17, 2021

Respectfully submitted,

/s/ Michael J. Schrier

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*Attorneys for Plaintiff Empower Oversight
Whistleblowers & Research*

EXHIBIT A

EMPOWER OVERSIGHT

Whistleblowers & Research



July 14, 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 (COVID19) DATABASE

Dear FOIA Officer:

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 help to hold those authorities accountable to act on such reports.

We respectfully request records be delivered from the National Institutes of Health (NIH) pursuant to this request under the Freedom of Information Act (FOIA), 5 U.S.C. 552 within the next 20 business days. As detailed below, we request access to certain records regarding SARS-CoV-2 sequences submitted for posting to the Sequence Read Archive in March 2020 by Chinese researchers and subsequently requested to be withdrawn by the submitting investigator in June 2020. Sequences of SARS-CoV-2 virus are critical to understanding how this pandemic (which has killed more than 600,000 Americans) started, in order to prevent future pandemics.¹ Furthermore, the State Department has noted that China has not been transparent in its handling of the SARS-CoV-2 origin question and has removed virus sequences from its own online databases that could help uncover how the pandemic started.²

The *New York Times* and the *Washington Post* have reported on requests to remove these sequences and this removal has added fuel to the SARS-CoV-2 origin debate.³

¹ “COVID Mortality Data,” Johns Hopkins University (<https://coronavirus.jhu.edu/data/mortality>).

² “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>)

³ “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](#)).

According to the *Washington Post*, “The NIH released a statement Wednesday saying that a researcher who originally published the genetic sequences asked for them to be removed from the NIH database so that they could be included in a different database.”⁴ In a statement to the *Washington Post*, the NIH said:

These SARS-CoV-2 sequences were submitted for posting in SRA in March 2020 and subsequently requested to be withdrawn by the submitting investigator in June 2020. The requestor indicated the sequence information had been updated, was being submitted to another database, and wanted the data removed from SRA to avoid version control issues.⁵

And, according to the *New York Times*:

“These SARS-CoV-2 sequences were submitted for posting in SRA in March 2020 and subsequently requested to be withdrawn by the submitting investigator in June 2020,” said Renate Myles, a spokeswoman for the National Institutes of Health. She said that the investigator, whom she did not name, told the archive managers that the sequences were being updated and would be added to a different database.⁶

Accordingly, please provide all records relating to the following:

- 1) All communications regarding the request to post the SARS-CoV-2 sequences to the Sequence Read Archive in March 2020. This request covers all communications between March 1, 2020 to March 31, 2020.
- 2) All communications regarding the request to withdraw the SARS-CoV-2 sequences from Sequence Read Archive in June 2020. This request covers all communications between June 1, 2020 to June 31, 2020.
- 3) All communications regarding these withdrawn sequences as reported by a preprint titled “Recovery of deleted deep sequencing data sheds more light on the early Wuhan SARS-CoV-2 epidemic” by Jesse Bloom, a virologist at the Fred Hutchinson Cancer Research Center.⁷ This request covers all communications between Jesse Bloom and the NIH, from January 1, 2021 and the present. This request all covers all communications inside the NIH regarding the preprint from June 21, 2021 to the present.
- 4) All communications to, from, and within the NIH press office about the NIH statement released on June 23, 2021, and about reports that these sequences were removed from the Sequence Read Archive. This includes all emails related to the drafting of the statement, communications about the reported removal, and communications with reporters. This request covers all communications between June 21, 2021 to June 25, 2021.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ “Recovery of deleted deep sequencing data sheds more light on the early Wuhan SARS-CoV-2 epidemic,” *bioRxiv* ([Jun 18, 2021](#)).

Fee Waiver Request

Empower Oversight requests a waiver of fees associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii). The information sought is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government. Empower Oversight is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and has no commercial interest in making this request. The public has a significant interest in understanding how this pandemic started. Empower Oversight is committed to government accountability and public integrity and is committed to public disclosure of documents via its website, and by providing these documents to the media for public dissemination.⁸

Request for Expedited Processing

Empower Oversight also requests expedited processing of this request. Understanding how the SARS-CoV-2 pandemic started is of massive public interest both in the United States and around the globe, particularly because understanding how this pandemic started can help us stop future pandemics. The information requested is urgently needed to inform the public concerning actual or alleged federal government activity, namely why were genetic sequences removed from a United States federal database when they could help understand how the pandemic started. The request is of widespread and exceptional media interest and the information sought involves questions about research integrity, which affect public confidence in the operations of NIH. Empower Oversight is engaged in disseminating information to the public through its website and working with media.⁹ It is important that this request be processed and the results publicly disseminated as quickly as possible to help the country guard against future pandemics.

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,

/Jason Foster/

Jason Foster
Founder & President

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

⁹ *Id.*

EXHIBIT B

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

EXHIBIT C

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: Record of NIH'S FOIA Log from March 2020 to Present

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.

Records Request

To shed light on the manner in which the National Institutes of Health ("NIH") administers its statutory obligations under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, we respectfully request a copy of the NIH's "log" of requests for records filed pursuant to the FOIA.

Definitions

“LOG” means all registers, processing queues, spreadsheets, indexes, or other types of records that the NIH maintains or uses to administer and track the date of receipt, subject matter, requester, date of response, and status of all FOIA requests that NIH received from March 1, 2020, through the present.

“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, 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 March 1, 2020, 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”¹ 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.

Moreover, 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 responds to FOIA requests. 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 FOIA practices will be disclosed publicly via its website, and shared copies with other news media for public dissemination.²

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

¹ 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.

² “Mission,” Empower Oversight (<http://empowr.us/mission>).

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

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EMPOWER OVERSIGHT WHISTLEBLOWERS & RESEARCH

(b) County of Residence of First Listed Plaintiff Arlington (VA) (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael J. Schrier, Husch Blackwell LLP (202.378.2313) 750 17th St NW #900, Washington, DC 20006

DEFENDANTS

NATIONAL INSTITUTES OF HEALTH

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. 552

Brief description of cause: Complaint for declaratory and injunctive relief for failure to timely respond to FOIA request and produce responsive records

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11-17-2021 /s/ Michael J. Schrier

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.