

# EMPOWER OVERSIGHT

Whistleblowers & Research



EMPOWR.us

January 5, 2022

VIA ELECTRONIC TRANSMISSION: NIHFOIA@MAIL.NIH.GOV

Chief FOIA Officer  
National Institutes of Health  
Building 31, Room 5B35  
31 Center Drive, MSC 2107  
Bethesda, MD 20892

**RE: FOIA Request for Regarding EcoHealth Alliance**

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 such reports by, among other means, publishing information concerning the same.

## BACKGROUND

In response to a recent Freedom of Information Act (“FOIA”), the National Institutes of Health (“NIH”) released correspondence with EcoHealth Alliance. These documents were published by Sharon Lerner with *The Intercept*.<sup>1</sup> In a letter addressed to Dr. Michael Lauer, Deputy Director for Extramural Research, EcoHealth Alliance sent the NIH documentation of the assessment of the Wuhan Institute of Virology’s (“WIV”) compliance with terms of an NIH grant. This letter from EcoHealth Alliance is dated April 23, 2021.

The EcoHealth Alliance letter to the NIH references numerous attached documents. The letter states, in pertinent part:

As requested, we have supplied all EcoHealth Alliance-WIV subrecipient agreements, as well as documents pertaining to EHA's monitoring of WIV's compliance with the terms and conditions of award. The attached documents

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<sup>1</sup> <https://www.documentcloud.org/documents/21169285-nih-ecohealth-communications-bat-coronavirus-grant-2021>

demonstrate that we have fulfilled all requirements in the CFR codes listed in your letter excerpted above.

The letter then lists six separate attachments. However, the NIH did not make these attachments public. The letter from EcoHealth Alliance also references a letter dated April 11, 2021, that it sent to the NIH.

The NIH responded to the EcoHealth Alliance letter on July 23, 2021. In response, NIH asked the EcoHealth Alliance to provide further documents. The NIH letter states, in pertinent part:

In closing, please be advised that EcoHealth Alliance, Inc. must satisfy the existing specific award condition for UO I All 51797 by 30 days from establishment and must provide the remaining documents and reports requested herein for all three grants (RO1AI110964, U01AI151797, U01AI153420) no later than August 27, 2021.

For ease in responding to this request, attached please find the letter from EcoHealth Alliance dated April 23, 2021, and the NIH letter dated July 23, 2021.

## RECORDS REQUEST

To shed light on EcoHealth Alliance's compliance with NIH regulations regarding its "subrecipient," the WIV, we respectfully request, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, copies of:

1. All attachments that the EcoHealth Alliance describes in its April 23, 2021, letter as: "EcoHealth Alliance 2016-2019 Subrecipient Monitoring Forms for WIV. EcoHealth Alliance began this formal subrecipient monitoring policy in 2016 as per OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) ("Uniform Guidance"), specifically §200.331."
2. All attachments that the EcoHealth Alliance describes in its April 23, 2021, letter as: "2006-2018 WIV Annual Reports. In addition, NIH has full reports on the programmatic results that we filed annually."
3. All attachments that the EcoHealth Alliance describes in its April 23, 2021, letter as: "Wuhan Institute of Virology contracts and invoices for all 5 Years of Grant R01AI110964: 2014-2019."
4. All attachments that the EcoHealth Alliance describes in its April 23, 2021, letter as: "Federal Funding Accountability & Transparency Act Reports for WIV. From 2015 – 2019."
5. All attachments that the EcoHealth Alliance describes in its April 23, 2021, letter as: "Annual Independent Audit Reports from 2014-2019."
6. All attachments that the EcoHealth Alliance describes in its April 23, 2021, letter as: "Inter-Institutional Agreements from DHHS for WIV 2014 & 2019."

7. Any other attachments provided to the NIH in EcoHealth Alliance's letter dated April 23, 2021.
8. All internal communications at NIH regarding the EcoHealth Alliance letter with attachments dated April 23, 2021.
9. EcoHealth Alliance's letter to the NIH dated April 11, 2021, including any attachments.
10. Any response by EcoHealth Alliance to the NIH letter dated July 23, 2021, including any attachments.

## **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, Slack 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 April 11, 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](mailto: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 “representative of the news media”<sup>2</sup> 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.

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 subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

### **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. 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.<sup>3</sup> Accordingly, it is important that this request be processed and the results publicly disseminated as quickly as possible.

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<sup>2</sup> On September 23, 2021, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a “media requestor” in seeking ethics records of senior officials,” Empower Oversight Press Release (Sep 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>

<sup>3</sup> “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 requests for a fee waiver and/or expedited processing are 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

Attachments