

EMPOWER OVERSIGHT

Whistleblowers & Research



June 14, 2023

VIA ELECTRONIC TRANSMISSION: FOIA@HQ.DHS.GOV

Mason Clutter
Acting Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-065

**RE: DHS FOIA REQUEST NUMBER 2022-HQFO-00871
REQUEST RECORDS RESPONSIVE TO DECEMBER 9, 2021 FOIA
REQUEST BEING WITHHELD AND STATUS OF REQUEST**

Dear Ms. Clutter:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization, which is dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help 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.

BACKGROUND

On December 9, 2021, Empower Oversight submitted a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, which is attached as Exhibit A.

The basis for the request was a Newsweek report that the National Institutes of Health (“NIH”) funded risky “gain-of-function” virus research at the Wuhan Institute of Virology (“WIV”). This was done through an NIH grant made to EcoHealth Alliance, a nonprofit run by Peter Daszak.¹ As part of his NIH-funded research, Daszak hired researchers at the WIV

¹ Guterl, Fred, *Dr. Fauci Backed Controversial Wuhan Lab with U.S. Dollars for Risky Coronavirus Research* (April 28, 2020), available at <https://www.newsweek.com/dr-fauci-backed-controversial-wuhan-lab-millions-us-dollars-risky-coronavirus-research-1500741>.

through a subcontract. When EcoHealth Alliance’s NIH grant became public in September 2021, reporters confirmed that EcoHealth Alliance had engaged in gain-of-function research, and had provided a portion of its NIH grant funds to the WIV.²

On September 23, 2021, U.S. House of Representatives voted to include an amendment prohibiting federal funding to EcoHealth Alliance in the Fiscal Year 2022 National Defense Authorization Act (H.R. 4350).³ However, questions remain about the nature of EcoHealth Alliance’s research for federal agencies other than NIH, whether funds from other federal grants were also used for gain-of-function research or to support researchers at the WIV, and whether federal agencies that are not funded by the National Defense Authorization Act may yet fund EcoHealth Alliance, gain-of-function, and/or WIV research.

According to a database of federal awards, the U.S. Department of Homeland Security (“DHS”) has provided millions of dollars in grants to EcoHealth Alliance since 2016. For example, on September 2016, DHS awarded EcoHealth Alliance contract PIID HSHQDC16C00113 (called “Ground Truth”), a contract potentially worth \$2.1 million, with a potential end date of October 14, 2022.⁴

Empower Oversight’s December 9, 2021 FOIA request sought the following:

(1) All communications regarding DHS award PIID HSHQDC16C00113, also called “Ground Truth” to EcoHealth Alliance.

(2) All communications regarding the submission of contract or grant proposals from, or awards of DHS contracts or grants to, EcoHealth Alliance.

RESPONSE FROM DHS

On April 7, 2022, Empower Oversight sent an email to DHS to request the status of the request. More than a year later, on May 15, 2023, Maura Busch of the DHS Privacy Office contacted Empower Oversight. She and Empower Oversight associate Michael Zimmer spoke on May 18, 2023. During that conversation, Ms. Busch communicated the following:

(1) DHS was transitioning to a new FOIA system.

(2) DHS could not look up contracts/grants with EcoHealth Alliance by name, only by contract/grant number.

(3) DHS had searched its email system and come up with approximately 300 emails, although it had not had an opportunity to determine which were duplicates. Also, the emails may contain information that would be exempt under FOIA. Some information may be subject to the submitter notice process.

(4) During its search, DHS identified a second contract/grant with EcoHealth Alliance with the last three digits of 116.

² Lerner, Sharon; Hvistendahl, Mara; Hibbit, Maia, *NIH Documents Provide New Evidence U.S. Funded Gain-of-Function Research in Wuhan* (September 9, 2021), available at <https://theintercept.com/2021/09/09/covid-origins-gain-of-function-research/>.

³ Press Release, *House Passes Resenthaler Amendment Defunding EcoHealth Alliance* (September 23, 2021), available at <https://resenthaler.house.gov/media/press-releases/house-passes-resenthaler-amendment-defunding-ecohealth-alliance>.

⁴ https://www.usaspending.gov/award/CONT_AWD_HSHQDC16C00113_7001_-NONE_-NONE-.

(5) The contract itself would have the information responsive to the request. However, if Empower Oversight still wanted the emails, it should consider narrowing them, such as excluding emails with invoices, or other means to avoid non-responsive or exempt information or information subject to the submitter notice process.

On May 30, 2023, when Empower Oversight asked Ms. Busch if narrowing the emails with search terms would facilitate the process, she responded by asking if Empower Oversight would be interested in the contract and appeared to be unwilling to release any of the emails. That same day, Empower Oversight asked if it was DHS's position that it would rather process all of the emails than conduct a text search. It also asked for a written description of what records had been located as part of its search responsive to Empower Oversight's request. Ms. Busch has not responded yet.

REQUEST RESPONSIVE RECORDS WITHHELD AND STATUS

Based upon communications with DHS's Privacy Office, it is apparent that DHS is withholding records responsive to Empower Oversight's request from approximately eighteen months ago. Empower Oversight immediately requests the following:

- (1) DHS contract/grant number PIID HSHQDC16C00113 with EcoHealth Alliance.
- (2) The DHS contract or grant with EcoHealth Alliance with the last three digits of 116.
- (3) A description of the search that DHS conducted for records pursuant to the request.
- (4) A description of the methods by which DHS can locate contracts or grants.
- (5) A description of emails DHS located pursuant to the request and a timeline for processing those records.

Empower Oversight requests a response to this letter by July 14, 2023. Otherwise, it will have to pursue litigation in this matter.

Cordially,

[/Tristan Leavitt/](#)
Tristan Leavitt
President

EMPOWER OVERSIGHT

Whistleblowers & Research



December 9, 2021

VIA ELECTRONIC FILING AT: FOIA@HQ.DHS.GOV

Privacy Office, Mail Stop 0655
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., S.E.
Washington, D.C. 20528-065

Dear FOIA Officer:

Introduction

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Background

Last year, *Newsweek* reported that the National Institutes of Health (“NIH”) funded risky “gain-of-function” virus research at the Wuhan Institute of Virology (“WIV”).² This was done through an NIH grant made to EcoHealth Alliance, a nonprofit run by Peter Daszak.³ As part of his NIH-funded research, Daszak hired researchers at the WIV through a

¹ “Mission,” Empower Oversight (<http://empowr.us/mission>).

² Guterl, Fred, *Dr. Fauci Backed Controversial Wuhan Lab with U.S. Dollars for Risky Coronavirus Research* (April 28, 2020), available at <https://www.newsweek.com/dr-fauci-backed-controversial-wuhan-lab-millions-us-dollars-risky-coronavirus-research-1500741>.

³ Guterl, Fred, *Dr. Fauci Backed Controversial Wuhan Lab with U.S. Dollars for Risky Coronavirus Research* (April 28, 2020), available at <https://www.newsweek.com/dr-fauci-backed-controversial-wuhan-lab-millions-us-dollars-risky-coronavirus-research-1500741>.

subcontract.⁴ When EcoHealth Alliance’s NIH grant became public in September, reporters confirmed that EcoHealth Alliance had engaged in gain-of-function research, and had provided a portion of its NIH grant funds to the WIV.⁵

On September 23, 2021, U.S. House of Representatives voted to include an amendment prohibiting federal funding to EcoHealth Alliance in the Fiscal Year 2022 National Defense Authorization Act (H.R. 4350).⁶ However, questions remain about the nature of EcoHealth Alliance’s research for federal agencies other than NIH, whether funds from other federal grants were also used for gain-of-function research or to support researchers at the WIV, and whether federal agencies that are not funded by the National Defense Authorization Act may yet fund EcoHealth Alliance, gain-of-function, and/or WIV research.

According to a database of federal awards, DHS has provided millions of dollars in grants to EcoHealth Alliance since 2016.⁷ For example, on September 2016, DHS awarded EcoHealth Alliance contract PIID HSHQDC16C00113 (called “Ground Truth”), a contract potentially worth \$2.1 million, with a potential end date of October 14, 2022.⁸

Records Request

To shed light on DHS’s funding of EcoHealth Alliance, we respectfully request, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, copies of:

1. All communications regarding DHS award PIID HSHQDC16C00113, also called “Ground Truth” to EcoHealth Alliance.
2. All communications regarding the submission of contract or grant proposals from, or awards of DHS contracts or grants to, EcoHealth Alliance.

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,

⁴ Lerner, Sharon; Hvistendahl, Mara; Hibbit, Maia, *NIH Documents Provide New Evidence U.S. Funded Gain-of-Function Research in Wuhan* (September 9, 2021), available at <https://theintercept.com/2021/09/09/covid-origins-gain-of-function-research/>.

⁵ Lerner, Sharon; Hvistendahl, Mara; Hibbit, Maia, *NIH Documents Provide New Evidence U.S. Funded Gain-of-Function Research in Wuhan* (September 9, 2021), available at <https://theintercept.com/2021/09/09/covid-origins-gain-of-function-research/>.

⁶ Press Release, *House Passes Reschenthaler Amendment Defunding EcoHealth Alliance* (September 23, 2021), available at <https://reschenthaler.house.gov/media/press-releases/house-passes-reschenthaler-amendment-defunding-ecohealth-alliance>.

⁷ https://www.usaspending.gov/award/CONT_AWD_HSHQDC16C00113_7001_-NONE_-NONE-.

⁸ https://www.usaspending.gov/award/CONT_AWD_HSHQDC16C00113_7001_-NONE_-NONE-.

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 span of this request covers January 1, 2016, 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”⁹ 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 DHS. Specifically, the public has a significant interest in understanding the funding of gain-of-function and other research proposals submitted by EcoHealth Alliance. To date, over 788,000 Americans have died from SARS-CoV-2 exposure,¹⁰ and a leading theory concerning the SARS-CoV-2 pandemic involves a lab leak at WIV and gain-of-function research conducted at that facility. 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 funding of gain-of-function research and other proposals submitted by EcoHealth Alliance will be disclosed publicly via its website, and will be shared with other news media for public dissemination.

Request for Expedited Processing

Although Empower Oversight fully expects the DHS to respond to this FOIA request at a minimum within the 20 business days allotted by the FOIA, it requests expedited processing. There is widespread media interest in understanding the funding of gain-of-function and other research proposals submitted by EcoHealth Alliance. Understanding the nature and scope of such research, where it is being (and has been) conducted, and by whom, could respond to the exceptional need and urgency to counter the SARS-CoV-2 pandemic before more American lives are lost. Empower Oversight is engaged in disseminating information to the public through its website and working with media. Accordingly, it is important that this request be processed and the results publicly disseminated as quickly as possible.

⁹ 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 of 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.

¹⁰ See, Centers for Disease Control and Prevention, *COVID Data Tracker: United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction* (Updated December 8, 2021), available at https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days.

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 time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President