

**Testimony of Gary Ruskin**  
**Executive Director of U.S. Right to Know**  
**Before the**  
**U.S. Senate Committee on Homeland Security and Governmental Affairs**  
**March 20, 2024**

Thank you for inviting me to testify today about our federal records laws, and how they are failing to ensure transparency for the American public.

My name is Gary Ruskin. I am executive director of U.S. Right to Know, a nonprofit investigative public health research group. We work on behalf of the public's right to know about matters that affect our health. We use transparency laws to investigate corporate wrongdoing and government failures that threaten our health, environment and food system.

I started working on federal transparency issues 30 years ago, when I helped lead an effort<sup>1</sup> to convince Congress to make its core documents available to the public online, such as hearing records, committee and conference reports, and a searchable database of congressional voting records.

This is a hearing about federal records management. In my testimony today, I'm going to focus on the Freedom of Information Act. While collecting and preserving federal records is important, if we can't access them, then we taxpayers have spent a great sum of money for nothing.

Over the last four years, U.S. Right to Know has carried out an investigation into high-risk virological research and the origins of COVID-19. It is a citizen investigation. It is open, collegial and crowd-sourced.<sup>2</sup> As a part of this investigation, we have filed more than 150 international, federal and state public records requests, including 97 Freedom of Information Act requests, seeking thousands of pages of relevant federal records. With the information we have gathered, we have written more than 70 news articles.<sup>3</sup>

To me, this investigation is a test case of citizens' access to government records. If we can't successfully use our nation's public records laws to investigate something as important as the cause for the deaths of nearly 1.2 million Americans,<sup>4</sup> then why bother keeping records at all?

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<sup>1</sup> Congressional Accountability Project, web page on access to government documents. Available at: <https://web.archive.org/web/20070203105826/http://www.congressproject.org/infopolicy/index.html>

<sup>2</sup> The FOI documents we have collected are available at: <https://usrtk.org/covid-19-origins/foi-documents-on-origins-of-sars-cov-2-risks-of-gain-of-function-research-and-biosafety-labs/>

<sup>3</sup> Our reporting on these topics is available at: <https://usrtk.org/category/covid-19-origins/> and <https://usrtk.org/category/risky-research/>

<sup>4</sup> COVID Data Tracker, Centers for Disease Control and Prevention. Available at: <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>

As you know, federal agencies still disagree about the origin of COVID-19. Did it originate naturally, or from a research-related incident in Wuhan? According to the Office of the Director of National Intelligence, the “National Intelligence Council and four other IC [Intelligence Community] agencies assess that the initial human infection with SARS-CoV-2 most likely was caused by natural exposure” and the Central Intelligence Agency and another agency “remain unable to determine the precise origin of the COVID-19 pandemic.”<sup>5</sup>

Meanwhile, Federal Bureau of Investigation Director Christopher Wray has said that COVID-19 “most likely” emerged from a lab in Wuhan.<sup>6</sup> The Department of Energy has also concluded, with “low confidence,” that COVID-19 came from a lab.<sup>7</sup>

During our investigation, we saw that some federal agencies, and especially the National Institutes of Health (NIH) and its parent agency, the U.S. Department of Health and Human Services (HHS), showed a pattern of obstruction, delay and stonewalling. This serves the public poorly, on a matter that so deeply touches the lives of nearly everyone in our entire nation.

Agency stonewalling is an old problem. In 1970, merely two and a half years after the Freedom of Information Act took effect, Ralph Nader reported: “I have reached a disturbing conclusion: government officials at all levels in many of these agencies have systematically and routinely violated both the purpose and specific provisions of the law. These violations have become so regular and cynical that they seriously block citizen understanding and participation in government.”<sup>8</sup>

FOIA backlogs are increasing, according to a new report by the U.S. Government Accountability Office.<sup>9</sup> The report states that in 2022, 22% of FOIA requests were backlogged, meaning that they are pending beyond statutory timeframes. These growing backlogs are yet another sign that our federal records laws aren’t working as they should.

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<sup>5</sup> Office of the Director of National Intelligence, “Potential Links Between the Wuhan Institute of Virology and the Origin of the COVID-19 Pandemic.” June 23, 2023. Available at: <https://www.dni.gov/files/ODNI/documents/assessments/Report-on-Potential-Links-Between-the-Wuhan-Institute-of-Virology-and-the-Origins-of-COVID-19-20230623.pdf>

<sup>6</sup> Anumita Kaur and Dan Diamond, “FBI director says covid-19 ‘most likely’ originated from lab incident.” *Washington Post*, February 28, 2023. Available at: <https://www.washingtonpost.com/nation/2023/02/28/fbi-director-christopher-wray-wuhan-lab/>. Adam Sabes, “FBI director says COVID pandemic ‘most likely’ originated from Chinese lab.” *Fox News*, February 28, 2023. Available at: <https://www.foxnews.com/politics/fbi-director-says-covid-pandemic-most-likely-originated-chinese-lab>

<sup>7</sup> Michael R. Gordon and Warren P. Strobel, “Lab Leak Most Likely Origin of Covid-19 Pandemic, Energy Department Now Says.” *Wall Street Journal*, February 26, 2023. Available at: <https://www.wsj.com/articles/covid-origin-china-lab-leak-807b7b0a>

<sup>8</sup> Ralph Nader, “Freedom From Information: The Act and the Agencies.” *Harvard Civil Rights-Civil Liberties Law Review*. Vol. 5, No. 1, January 1970, at 2.

<sup>9</sup> U.S. Government Accountability Office, “Freedom of Information Act: Additional Guidance and Reliable Data Can Help Address Agency Backlogs.” GAO-24-106535. March 13, 2024. Available at: <https://www.gao.gov/assets/d24106535.pdf>

Our nation's public records laws badly need strengthening and updating. If the public records process worked as the statute requires, we would *not* have to take federal agencies to court nearly so often. Freedom of Information Act litigation is a sign of failure of the public records process. It's costly, both to citizens and to the federal government, to have to turn to the courts. It is an option that is financially out of reach for many Americans.

We have a two-tiered FOIA process in which those who can afford FOIA litigation have far more access to federal records than those who cannot. That's not right. Wealthy or not, all citizens deserve the right to access the federal records that we, the taxpayers, pay for. We ought to have a federal records process that works smoothly and reliably, for everyone, and without unnecessary and costly litigation.

Let me review some key evidence we have that federal agencies are delaying, obstructing, and stonewalling the Federal Records Act and the Freedom of Information Act. I'll conclude with suggestions on how to update and strengthen our federal records laws, based on our organization's experience using them.

In the course of our investigation of high-risk virological research and the origins of COVID-19, we have had to file 25 FOIA lawsuits covering 38 separate FOIA requests.<sup>10</sup>

We have had to litigate FOIA requests to 14 federal agencies and sub-agencies, including:

- Defense Advanced Research Projects Agency (DARPA)
- Defense Intelligence Agency (DIA)
- Defense Threat Reduction Agency (DTRA)
- Department of Defense (DOD)
- Department of Education (ED)
- Department of Energy (DOE)
- Department of Health and Human Services (HHS)
- Department of State (DOS)
- Federal Bureau of Investigation (FBI)
- Food and Drug Administration (FDA)
- National Institutes of Health (NIH)
- National Library of Medicine (NLM)
- Office of the Director of National Intelligence (ODNI)
- U.S. Agency for International Development (USAID)

Why did we litigate so many times? Because these agencies did not comply with the deadlines in the public records laws, and/or were obstructing those laws. For this to happen so many times is a sign that our records processes are failing the public.

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<sup>10</sup> U.S. Right to Know, "FOI lawsuits on origins of COVID-19, gain-of-function research and biolabs." Available at: <https://usrtk.org/covid-19-origins/foi-litigation-on-origins-of-sars-cov-2-gain-of-function-2/>

## NIH and HHS actions are obstructive of public records laws

At NIH, there is evidence that staff intentionally obstructed public records laws. Dr. David Morens has been Senior Advisor to the Director at the National Institute of Allergy and Infectious Diseases (NIAID) for many years. He was a senior aide to Dr. Anthony Fauci, the former director of NIAID. In a September 9, 2021, email to Peter Daszak, president of the NIH-funded EcoHealth Alliance, a US-based collaborator of the Wuhan Institute of Virology that has received millions of dollars<sup>11</sup> of U.S. taxpayer funding<sup>12</sup> to collect and genetically manipulate coronaviruses,<sup>13 14 15</sup> Morens wrote:

“As you know, I try to always communicate on gmail because my NIH email is FOIA'd constantly....Stuff sent to my gmail gets to my phone, but not my NIH computer. Don't worry, just send to any of my addresses and I will delete anything I don't want to see in the New York Times.”<sup>16</sup>

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<sup>11</sup> U.S. Government spending on EcoHealth Alliance is available from USA Spending.gov at: [https://www.usaspending.gov/keyword\\_search/%22ecohealth%20alliance%22](https://www.usaspending.gov/keyword_search/%22ecohealth%20alliance%22)

<sup>12</sup> National Institutes of Health, grant information on “Understanding the Risk of Bat Coronavirus Emergence,” submitted by Peter Daszak. Available from NIH Grantome at: <https://grantome.com/grant/NIH/R01-AI110964-04>

<sup>13</sup> Ben Hu et al., “Discovery of a rich gene pool of bat SARS-related coronaviruses provides new insights into the origin of SARS coronavirus.” *PLoS Pathogens*, Vol. 13, Issue 11, November 30, 2017. Available at: <https://journals.plos.org/plospathogens/article?id=10.1371/journal.ppat.1006698>

<sup>14</sup> Xing-Yi Ge et al., “Isolation and characterization of a bat SARS-like coronavirus that uses the ACE2 receptor.” *Nature*, Vol. 503, October 30, 2013 at 535–538. Available at: <https://www.nature.com/articles/nature12711>

<sup>15</sup> Sharon Lerner and Maia Hibbett, “EcoHealth Alliance Conducted Risky Experiments on MERS Virus in China.” October 21, 2021. Available at: <https://theintercept.com/2021/10/21/virus-mers-wuhan-experiments/>

<sup>16</sup> Jimmy Tobias, “Top NIH Official Advised Covid Scientists That He Uses Personal Email To Evade FOIA.” *The Intercept*, June 29, 2023. Available at: <https://theintercept.com/2023/06/29/covid-nih-personal-email-foia/>



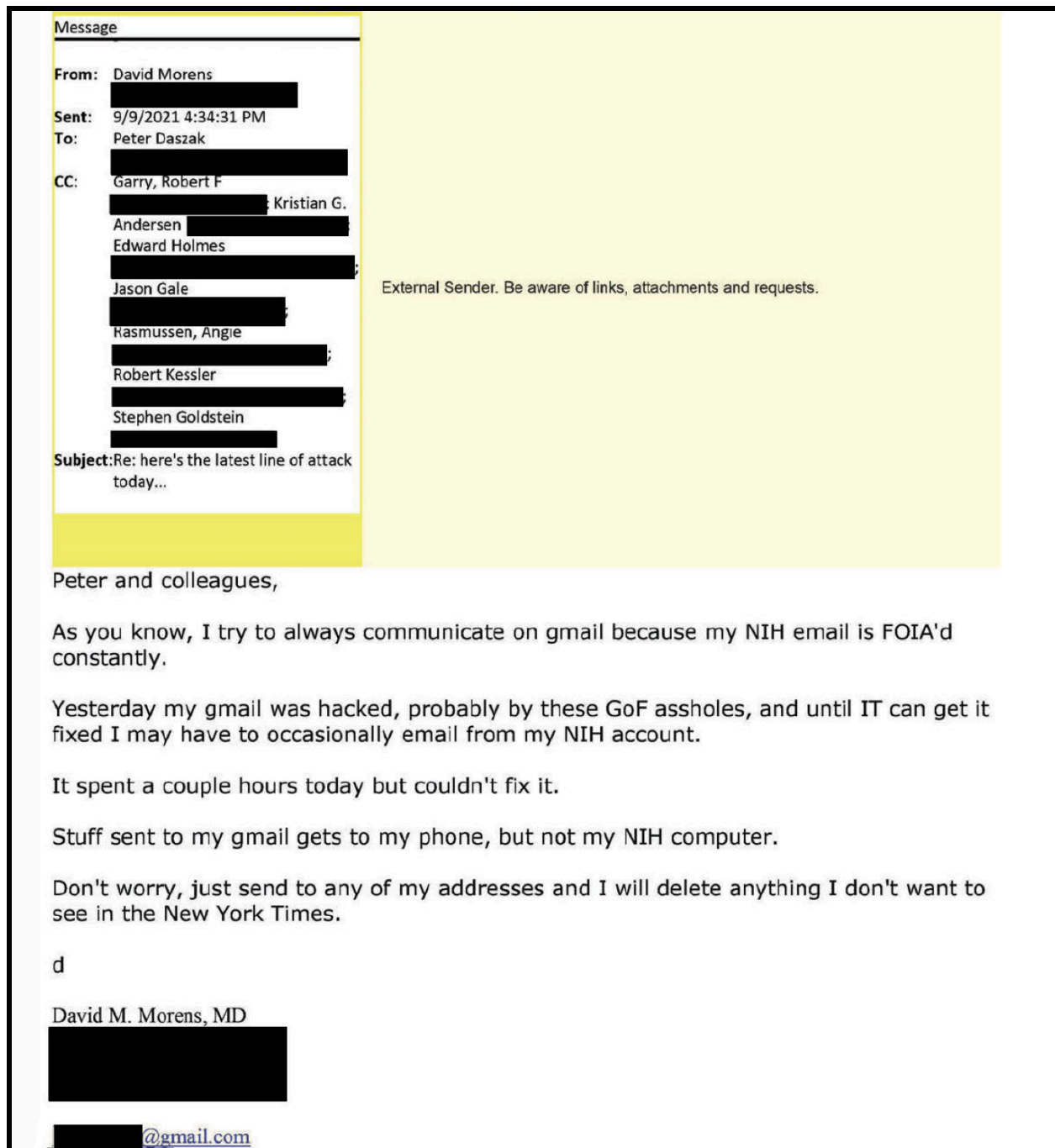


Image 1: Email from David Morens to Peter Daszak, as reported in *The Intercept*<sup>17</sup>

This sort of purposeful obstruction of federal records laws is an attack on the public's right to know what our government is doing with our tax dollars. Plainly, there ought to be accountability when federal officials so directly and intentionally evade federal records laws.

<sup>17</sup> Jimmy Tobias, "Top NIH Official Advised Covid Scientists That He Uses Personal Email To Evade FOIA." *The Intercept*, June 29, 2023. Available at: <https://theintercept.com/2023/06/29/covid-nih-personal-email-foia/>

There is also evidence that NIH and HHS established special review processes that have served to delay release of federal records related to COVID-19 and its origins.

For example, HHS stated that it created four additional layers of legal review for FOIA requests concerning the pandemic or COVID-19. According to a case-management statement, HHS reported that:

“Review of all HHS FOIA requests concerning the pandemic or COVID-19 go through four additional layers of review by a specific group within the legal department at HHS, wherein other attorneys review the FOIA staff’s initial application of the FOIA’s exemptions to otherwise responsive records. This slows down the process of providing responsive records for requests seeking Covid-19 related information.”<sup>18</sup>

NIH Director Dr. Francis Collins was personally reviewing NIH FOIA productions prior to release, according to Jason Foster in *Newsweek*: “we found that NIH Director Francis Collins was reviewing and clearing FOIA requests from reporters”.<sup>19</sup> Aside from being a questionable use of the NIH director’s time, his review of these records was also a conflict of interest, because many of them concern *his own conduct*. Indeed, the conflict of interest could not be more profound: With Dr. Fauci, Dr. Collins built the faulty regulatory infrastructure at NIH that allowed for coronavirus gain-of-function research to be outsourced to a Wuhan lab with a track record of biosafety troubles,<sup>20 21 22</sup> according to the *Washington Post*.<sup>23</sup>

### **Delayed production of records under federal records laws**

Some of the agencies’ delays in producing federal records have been extensive and hard to justify.

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<sup>18</sup> Initial Joint Case Management Statement, US Right to Know v. United States Department of Health and Human Services. Case No. 3:22-cv-04328-TSH, December 1, 2022. Available at:

<https://usrtk.org/wp-content/uploads/2022/12/USRTK-v-HHS-Initial-Case-Management-Statement.pdf>

<sup>19</sup> Jason Foster, “The Public’s Business Ought to be Public.” *Newsweek*, April 13, 2022. Available at:

<https://www.newsweek.com/publics-business-ought-public-opinion-1697029>

<sup>20</sup> Josh Rogin, “State Department cables warned of safety issues at Wuhan lab studying bat coronaviruses.”

*Washington Post*, April 14, 2020. Available at:

<https://www.washingtonpost.com/opinions/2020/04/14/state-department-cables-warned-safety-issues-wuhan-lab-studying-bat-coronaviruses/>

<sup>21</sup> Josh Rogin, “In 2018, Diplomats Warned of Risky Coronavirus Experiments in a Wuhan Lab. No One Listened.” *Politico*, March 8, 2021. Available at:

<https://www.politico.com/news/magazine/2021/03/08/josh-rogin-chaos-under-heaven-wuhan-lab-book-excerpt-474322>

<sup>22</sup> Emily Kopp, “Lab accident is ‘most likely but least probed’ COVID origin, State Dept. memo says.” U.S. Right to Know, March 28, 2022. Available at: <https://usrtk.org/covid-19-origins/lab-accident-is-most-likely-but-least-probed/>

<sup>23</sup> David Willman and Madison Muller, “A Science in the Shadows.” *The Washington Post*, August 26, 2021. Available at: <https://www.washingtonpost.com/nation/interactive/2021/a-science-in-the-shadows/>

For example, on November 8, 2021, we filed FOIA litigation against NIH for nine separate FOIA requests related to COVID-19's origins and high-risk virological research, including communications between the NIH and EcoHealth Alliance or the Wuhan Institute of Virology.<sup>24</sup> NIH failed to produce a single record for more than 16 months after we initiated litigation.<sup>25</sup> NIH explained that thousands of pages of responsive records were bottled up in NIH's Office of the Director for what it called a "review" and "consultation with any government stakeholders prior to release."<sup>26</sup>

In another example, exactly a year ago today, Senator Josh Hawley's COVID-19 Origin Act of 2023 was signed into law.<sup>27</sup> This law requires the Office of the Director of National Intelligence to "declassify any and all information relating to potential links between the Wuhan Institute of Virology and the origin of the Coronavirus Disease 2019 (COVID-19)." In response, on June 23, 2023, the ODNI director released a thin, 10-page, unclassified report<sup>28</sup> with only five pages of substance. We filed a FOIA request for the declassified documents, but ODNI did not respond or give a "determination" on our request within the statutory timeframe. Given this delay, on August 10, 2023, we filed FOIA litigation against ODNI for the declassified documents.<sup>29</sup> Seven months later, ODNI still has not produced any new records not previously released to the public, even though the law requires the relevant records to be declassified.

### **Egregious redactions of records**

Even when agencies do release documents, some of the redactions have been egregious or plainly improper. For example, in a production responding to a FOIA request by the journalist Jason Leopold, HHS redacted an entire paragraph in EcoHealth Alliance President Peter Daszak's email, citing exemption 7(A).<sup>30</sup> This means HHS claimed that the document contains records related to an open law enforcement investigation. However, in the documents HHS produced in its response to an investigation by members of the Senate Homeland Security and

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<sup>24</sup> Complaint, U.S. Right to Know v. National Institutes of Health. Case 1:21-cv-02936-TSC, November 8, 2021.

Available at: <https://usrtk.org/wp-content/uploads/2021/11/USRTK-v-NIH-2.pdf>

<sup>25</sup> Declaration of Gary Mark Ruskin, U.S. Right to Know v. National Institutes of Health. Case 1:21-cv-02936-TSC, March 16, 2023. Available at: <https://usrtk.org/wp-content/uploads/2023/03/USRTK-v-NIH-17-4.pdf>

<sup>26</sup> Joint Status Report, U.S. Right to Know v. National Institutes of Health. Case 1:21-cv-02936-TSC, May 8, 2023. Available at: <https://usrtk.org/wp-content/uploads/2023/05/USRTK-v-NIH-21-JSR-050823.pdf>

<sup>27</sup> S. 619, COVID-19 Origin Act of 2023. Available at: <https://www.congress.gov/bill/118th-congress/senate-bill/619/text>

<sup>28</sup> Office of the Director of National Intelligence, "Potential Links Between the Wuhan Institute of Virology and the Origin of the COVID-19 Pandemic". June 23, 2023. Available at: <https://www.dni.gov/files/ODNI/documents/assessments/Report-on-Potential-Links-Between-the-Wuhan-Institute-of-Virology-and-the-Origins-of-COVID-19-20230623.pdf>

<sup>29</sup> Complaint for Declaratory and Injunctive Relief, US Right to Know v. Office of the Director of National Intelligence. Case No. 1:23-cv-1055. August 10, 2023. Available at: <https://usrtk.org/wp-content/uploads/2023/08/USRTK-v-ODNI-081023.pdf>

<sup>30</sup> Email from Anthony Fauci, director, National Institute for Allergy and Infectious Diseases, to Peter Daszak, President, EcoHealth Alliance, April 19, 2020. Contributed by Jason Leopold. Available at: <https://www.documentcloud.org/documents/20793561-leopold-nih-foia-anthony-fauci-emails>

Governmental Affairs Committee, this paragraph was unredacted, exposing the information HHS previously withheld. The previously redacted paragraph did not appear to contain any information that “could reasonably be expected to interfere with [law] enforcement proceedings,”<sup>31</sup> showing an improper use of this FOIA exemption to shield information from the public. Five Senators noted that “this example calls into question HHS’s redaction process not only for FOIA requests from the public but also for documents produced to Congress.”<sup>32</sup>

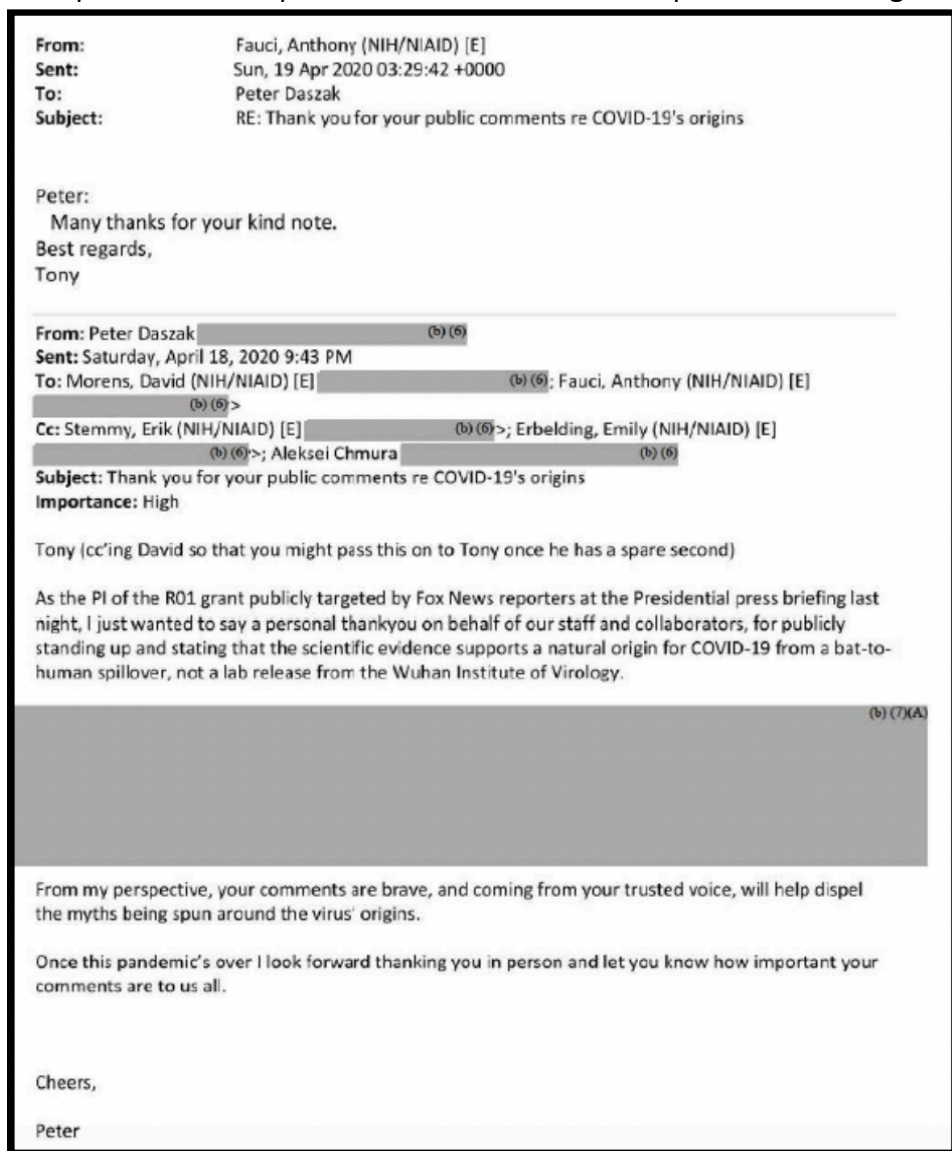


Image 2: Document produced in response to Jason Leopold’s FOIA request<sup>33</sup>

<sup>31</sup> 5 U.S.C. § 552(b)(7)(A).

<sup>32</sup> Correspondence from Senator Ron Johnson, ranking member, Permanent Subcommittee on Investigations, et al. to the Honorable Gary Peters, chairman, Senate Committee on Homeland Security and Governmental Affairs, July 29, 2021. Available at:

<https://www.ronjohnson.senate.gov/services/files/FDEA6728-CF53-4F65-967E-C3F2AC3F38AC>

<sup>33</sup> Email from Peter Daszak, president, EcoHealth Alliance, to Anthony Fauci, director, National Institute for Allergy and Infectious Diseases, Apr. 18, 2020. Contributed by Jason Leopold. Available at:

It's been a very hard few months as these conspiracy theorists have gradually become politicized and hardened in their stance. Especially because the work we've been doing in collaboration with Chinese virologists has given us incredible insight into the risks that these viruses represent, so that we can directly help protect our nation from bat-origin coronaviruses. We're fighting to keep the communications open with our Chinese colleagues, so that we can better address future pandemics like COVID-19.

Image 3: Unredacted paragraph obtained through Senate investigation<sup>34</sup>

We have also received redacted documents and later found redactions that were improperly applied. In records produced by the NIH in response to our FOIA request (the same document was first produced to *Buzzfeed News*), a bulleted list was redacted in an email relaying facts of interest from Dr. Morens to Dr. Fauci, informing him of NIH's support for EcoHealth Alliance and the Wuhan Institute of Virology. This list was redacted under the (b)(5) exemption (the deliberative process privilege) which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."<sup>35</sup>

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<https://www.documentcloud.org/documents/20793561-leopoldnih-foia-anthony-fauci-emails> (containing redactions pursuant to FOIA exemption (b)(7)(A)).

<sup>34</sup> Correspondence from Senator Ron Johnson, ranking member, Permanent Subcommittee on Investigations, et al. to the Honorable Gary Peters, Chairman Senate Committee on Homeland Security and Governmental Affairs, July 29, 2021. Available at:

<https://www.ronjohnson.senate.gov/services/files/FDEA6728-CF53-4F65-967E-C3F2AC3F38AC>

<sup>35</sup> 5 U.S.C. § 552(b)(5).

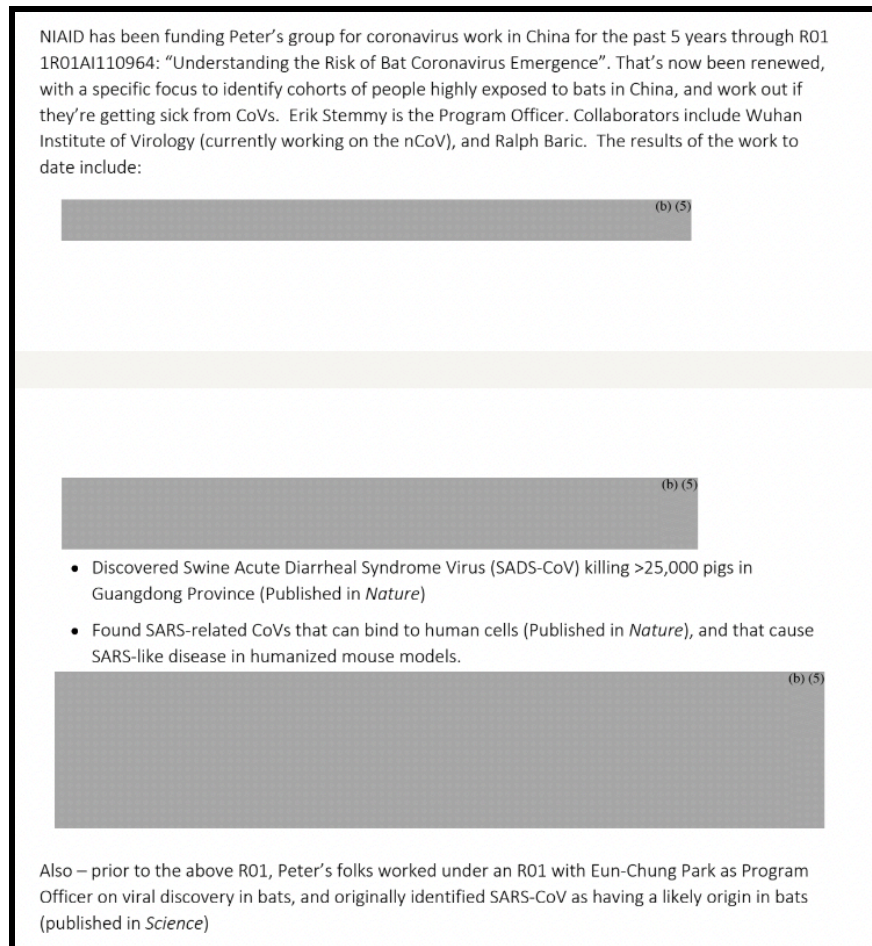


Image 4: Email containing David Morens's list of facts about NIH's funding of EcoHealth Alliance and the Wuhan Institute of Virology, produced to U.S. Right to Know<sup>36</sup>

However, when we obtained the full email through a FOIA lawsuit, the unredacted list was *not* deliberative communication but rather facts about NIH's knowledge in January 2020 of the breadth of NIH-funded novel coronavirus research done in Wuhan, information that NIH may not have wanted to release to the public.<sup>37</sup> Such improper use of Exemption 5 appears to be common, sustaining its nickname as the "withhold it because you want to" exemption.<sup>38 39</sup>

<sup>36</sup> Email from Greg Folkers, chief of staff, Immediate Office of the Director, National Institute of Allergy and Infectious Diseases (NIAID) to Jennifer Routh, News and Science Writing Branch, NIAID and Anthony Fauci, director, NIAID. January 27, 2020. Available at:

<https://usrtk.org/wp-content/uploads/2022/08/Talking-Points-for-NIAID-Director-Dr-Fauci.pdf>

<sup>37</sup> Emily Kopp, "Fauci was told of NIH ties to Wuhan lab's novel coronaviruses by January 2020." U.S. Right to Know, September 5, 2023. Available at: <https://usrtk.org/covid-19-origins/fauci-nih-wuhan-coronaviruses/>

<sup>38</sup> Nick Schwellenbach and Sean Moulton, "The 'Most Abused' Freedom of Information Act Exemption Still Needs to Be Reined In." Project on Government Oversight, Feb. 6, 2020. Available at: <https://www.pogo.org/analysis/the-most-abused-foia-exemption-still-needs-to-be-reined-in>

<sup>39</sup> Statement of Nate Jones, director of the Freedom of Information Act Project of the National Security Archive, George Washington University, before the U.S. House of Representatives Committee on Oversight and Government



NIAID has funded Peter's group for coronavirus work in China for the past 5 years through R01 1R01AI110964: "Understanding the Risk of Bat Coronavirus Emergence". That's now been renewed, with a specific focus to identify cohorts of people highly exposed to bats in China, and work out if they're getting sick from CoVs. Erik Stemmy is the Program Officer. Collaborators include Wuhan Institute of Virology (currently working on the nCoV), and Ralph Baric. The results of the work to date include:

- Sampled 10,074 bats and ~2,000 other mammals at 47 sites across S. China
- Discovered 172 novel  $\beta$ -CoVs (52 novel SARSr-CoVs), >350 novel  $\alpha$ -CoVs
- Discovered closest relative to Wuhan nCoV (92% homology)
- Discovered Swine Acute Diarrheal Syndrome Virus (SADS-CoV) killing >25,000 pigs in Guangdong Province (Published in *Nature*)
- Found SARS-related CoVs that can bind to human cells (Published in *Nature*), and that cause SARS-like disease in humanized mouse models.
- Found that clinical signs of bat SARSr-CoVs in mice were not prevented with a vaccine candidate against SARS-CoV, and were not treatable with most monoclonal therapies being developed
- Found serological evidence that 3% of people living at the wildlife-human interface in rural China are being exposed to these bat SARS-related coronaviruses

Also – prior to the above R01, Peter's folks worked under an R01 with Eun-Chung Park as Program Officer on viral discovery in bats, and originally identified SARS-CoV as having a likely origin in bats (published in *Science*)

Image 5: Unredacted email obtained through FOIA lawsuit<sup>40</sup>

Below is an image of another email released to us almost completely redacted.

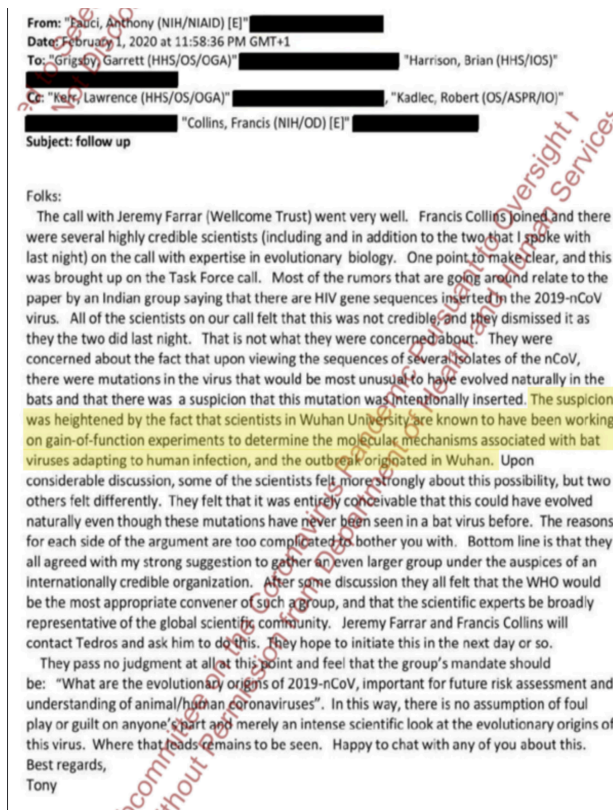
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Reform. June 2, 2015. Available at:

<https://oversight.house.gov/wp-content/uploads/2015/06/Jones-GW-Statement-6-2-FOIA.pdf>

<sup>40</sup> Email from Greg Folkers, chief of staff, Immediate Office of the Director, National Institute of Allergy and Infectious Diseases (NIAID) to Jennifer Routh, News and Science Writing Branch, NIAID, and Anthony Fauci, director, NIAID. January 27, 2020. Available at:

<https://usrtk.org/wp-content/uploads/2023/08/Jan-27-2020-talking-points.png>



Images 6 and 7: Dr. Fauci's February 1, 2020 email produced to U.S. Right to Know<sup>41</sup> and Dr. Fauci's February 1, 2020 email obtained by the House Select Subcommittee on the Coronavirus Pandemic

We had submitted a new FOIA request asking specifically for the unredacted version of these emails, received a heavily redacted response, and submitted yet another FOIA request for the same material, when the largely unredacted email was obtained and released by the House Select Subcommittee on the Coronavirus Pandemic.<sup>42</sup>

The contents of this email make clear why NIAID may not have wanted to produce it. In the email, Dr. Fauci discusses mutations in the SARS-CoV-2 genome that “have never been seen in a bat virus before,” as well as that scientists in Wuhan “are known to have been working on gain-of-function experiments.” As we reported, the email shows that by February 1, 2020, “privately Fauci knew the magnitude of the coronavirus research going on at the coronavirus pandemic’s epicenter, even while publicly shrugging off suggestions the pandemic began with a

<sup>41</sup> Email from Anthony Fauci, director, National Institute of Allergy and Infectious Diseases (NIAID), to Garrett Grisby, director, Office of Global Affairs Department of Health and Human Services (HHS), et al. Feb. 1, 2020. Available at: <https://usrtk.org/wp-content/uploads/2022/09/NIH-FOIA-57153-Murray-Complete-Response.pdf>

<sup>42</sup> Correspondence from Brad Wenstrup, chairman, House Select Subcommittee on the Coronavirus Pandemic to Xavier Becerra, secretary, U.S. Department of Health and Human Services. July 13, 2023. Available at <https://twitter.com/COVIDSelect/status/1679606442414809090>



research accident as conspiratorial.” Another email from the same date shows Drs. Fauci and Collins discussed whether NIH could be tied to the coronavirus research in Wuhan.<sup>43</sup> Taken together with other records obtained under FOIA,<sup>44 45 46</sup> the evidence suggests that Dr. Fauci gave inaccurate testimony to the Senate Committee on Health, Education, Labor and Pensions when he testified on July 20, 2021,<sup>47</sup> that his institute had never funded gain-of-function research in Wuhan.

In another example, *The Intercept* wrote an article about a batch of 292 fully redacted pages that NIH produced on matters related to COVID-19 origins. They reported:

“Even as members of Congress and scientists call for additional information that could shed light on the origins of the pandemic, 292 of 314 pages — more than 90 percent of the current release — were completely redacted. Besides a big gray rectangle that obscures any meaningful text, the pages show only a date, page number, and the NIAID logo. The remaining pages also contain significant redactions.”<sup>48</sup>

In our experience, it is common for agencies to produce multiple pages of fully redacted records, even though FOIA requires agencies to carry out a line-by-line examination of documents and release all reasonably segregable non-exempt portions of the records.<sup>49</sup>

As a part of NIH’s response to one of our FOIA requests, we received a nearly entirely redacted copy of NIAID staffer Ping Chen’s email about her 2017 trip to the Wuhan Institute of Virology. The text was redacted under FOIA exemptions 5 and 6. When Senator Ron Johnson’s Permanent Subcommittee on Investigations staff obtained the redacted text through in camera review, the senator discovered that NIH’s redactions were improper. The redacted text should never have been redacted. In his words, the redactions to our FOIA request to HHS raise “even more

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<sup>43</sup> Emily Kopp, “Francis Collins and Anthony Fauci emailed about whether NIH funded Wuhan lab before secret call.” U.S. Right to Know. September 7, 2022. Available at:

<https://usrtk.org/covid-19-origins/francis-collins-and-anthony-fauci-worried-about-nih-funding-wuhan-lab/>

<sup>44</sup> Emily Kopp, “Fauci was told of NIH ties to Wuhan lab’s novel coronaviruses by January 2020.” U.S. Right to Know, September 5, 2023. Available at: <https://usrtk.org/covid-19-origins/fauci-nih-wuhan-coronaviruses/>

<sup>45</sup> Sharon Lerner, Mara Hvistendahl and Maia Hibbett, “NIH Documents Provide New Evidence U.S. Funded Gain-of-Function Research in Wuhan.” *The Intercept*, September 9, 2021. Available at: <https://theintercept.com/2021/09/09/covid-origins-gain-of-function-research/>

<sup>46</sup> Sharon Lerner and Maia Hibbett, “EcoHealth Alliance Conducted Risky Experiments on MERS Virus in China.” *The Intercept*, October 21, 2021. Available at: <https://theintercept.com/2021/10/21/virus-mers-wuhan-experiments/>

<sup>47</sup> The relevant segment of Dr. Fauci’s testimony is available at:

<https://www.c-span.org/video/?c4970412/senator-rand-paul-accuses-dr-fauci-lying-gain-function-research-wuhan-lab>

<sup>48</sup> Sharon Lerner, “NIH Sent The Intercept 292 Fully Redacted Pages Related To Virus Research In Wuhan.” *The Intercept*, February 20, 2022. Available at:

<https://theintercept.com/2022/02/20/nih-coronavirus-research-wuhan-redacted/>

<sup>49</sup> “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b).

concerns about the validity of redactions HHS previously applied to documents produced pursuant to Freedom of Information Act (FOIA) requests.”<sup>50</sup>

In one COVID-19-related production from NIH, we received 298 consecutive pages of records all completely redacted.<sup>51</sup> These pages were redacted citing the deliberative process privilege but without justification supporting that the documents were intra-agency, predecisional, deliberative, and harmful if disclosed. When an agency relies upon the deliberative process privilege in this broad and sweeping way, FOIA requesters are usually left clueless about whether the exemption was properly applied. Unfortunately, as the *Leopold* and the *Intercept* cases demonstrate, we sometimes later learn that agency redactions are applied improperly.



Image 8: One of the 298 pages fully redacted with a simple b(5) label.

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<sup>50</sup> Correspondence from Senator Ron Johnson, ranking member, Senate Permanent Subcommittee on Investigations to the Honorable Xavier Becerra, secretary, Department of Health and Human Services; and Lawrence A. Tabak, D.D.S., Ph.D., acting director, National Institutes of Health, September 21, 2023. Available at: <https://usrtk.org/wp-content/uploads/2023/09/2023-09-21-RHJ-to-HHS-and-NIH-re-Ping-Chen-Records.pdf>

<sup>51</sup> NIH’s December 28, 2021 production in response to FOIA Request 54696 submitted by U.S. Right to Know. Available at: [https://usrtk.org/wp-content/uploads/2024/03/NIH-FOIA-Request-54696-12.28.21\\_Redacted.pdf](https://usrtk.org/wp-content/uploads/2024/03/NIH-FOIA-Request-54696-12.28.21_Redacted.pdf)

In addition to pages of fully redacted records, NIH has produced entire email chains with their email contents fully or almost fully redacted. For example, a February 2, 2020 email chain with the subject “RE: teleconference” was produced to U.S. Right to Know with individual emails entirely or mostly redacted.

The word “teleconference” refers to a February 1, 2020, meeting in which scientific funders who oversee billions in research funding met with virologists to discuss the origins of COVID-19. Those virologists would immediately begin drafting a paper that would have the effect of exculpating these funders from any responsibility for the emerging pandemic. The paper deemed any hypothesis connecting the virus and the NIH-funded coronavirus lab in Wuhan to be not “plausible.”<sup>52</sup>

The emails below concern discussions after this teleconference on the origins of COVID-19, including thoughts from virologists involved in the teleconference, as well as Jeremy Farrar, then-director of the Wellcome Trust, and Drs. Fauci and Collins from the National Institutes of Health. They are significant because they shed light not only on possible origins of SARS-CoV-2 but also on NIH’s conduct concerning its knowledge on the topic. However, all information except for brief, routine sentences or parts of sentences were redacted citing the “deliberative process” privilege.

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<sup>52</sup> Kristian Andersen, Andrew Rambaut, W. Ian Lipkin, Edward C. Holmes and Robert F. Garry, “The proximal origin of SARS-CoV-2.” *Nature Medicine* 26, 450–452 (2020). Available at: <https://www.nature.com/articles/s41591-020-0820-9>. Emily Kopp, “Visual timeline: ‘Proximal Origin’.” U.S. Right to Know. December 6, 2023. Available at: <https://usrtk.org/covid-19-origins/visual-timeline-proximal-origin/>. Emily Kopp, “Timeline: The proximal origin of SARS-CoV-2.” U.S. Right to Know, April 11, 2023. Available at: <https://usrtk.org/covid-19-origins/timeline-the-proximal-origin-of-sars-cov-2/>

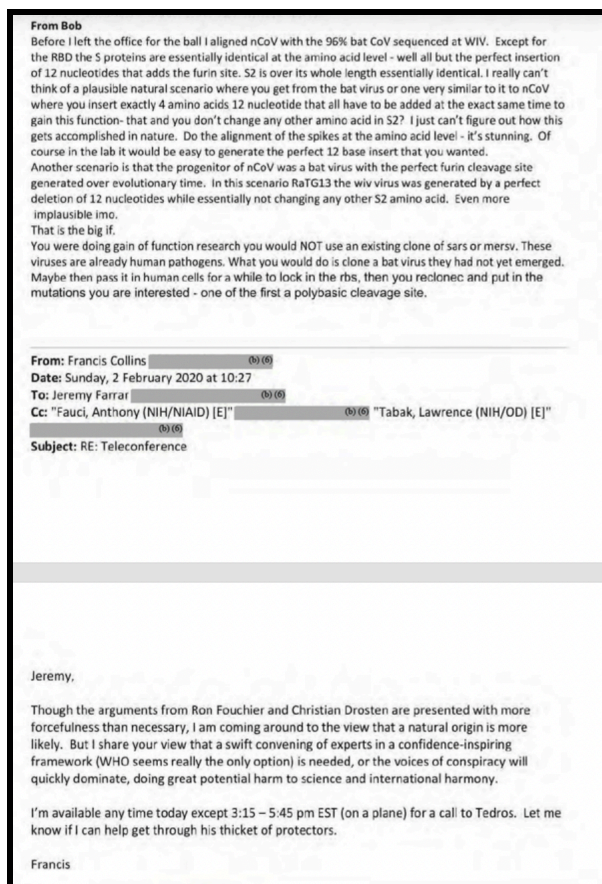
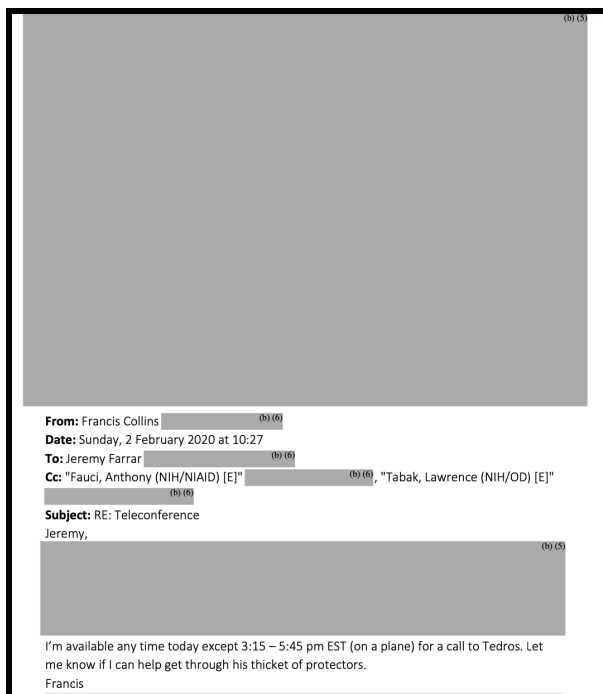
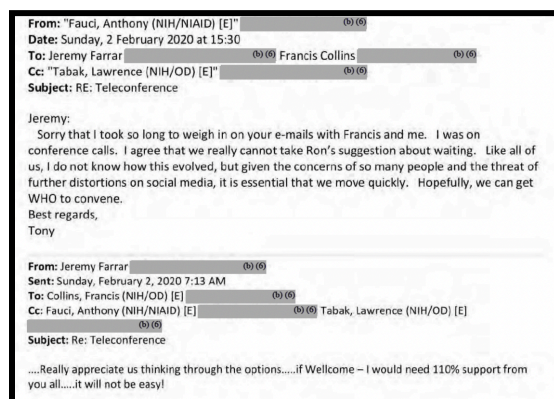
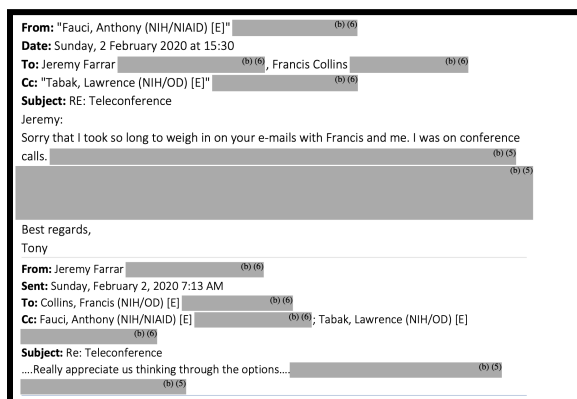


Image 9: Mostly redacted email from Francis Collins in the Feb. 2, 2020 email chain “RE: teleconference”<sup>53</sup>



<sup>53</sup> Email from Francis Collins, director, the National Institutes of Health, to Jeremy Farrar, director, The Wellcome Trust. February 2, 2020. Available at: <https://s3.documentcloud.org/documents/23316400/farrar-fauci-comms.pdf#p=108>. Unredacted version (shown on right) available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>

Image 10: Mostly redacted emails from Anthony Fauci and Jeremy Farrar in the Feb. 2, 2020 email chain “RE: teleconference”<sup>54</sup>

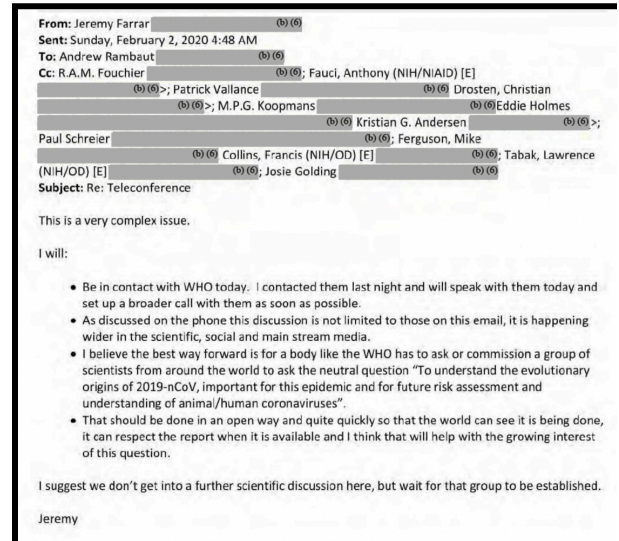
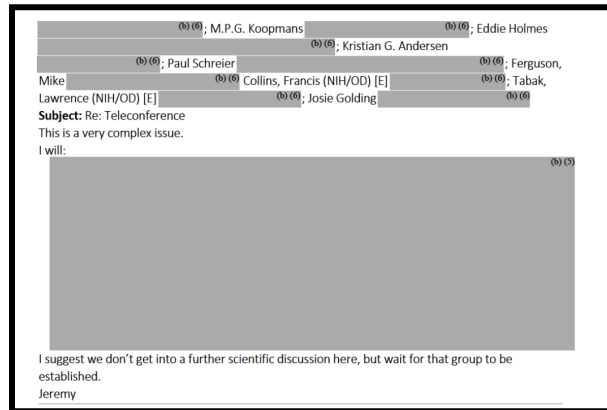


Image 11: Mostly redacted email from Jeremy Farrar in the Feb. 2, 2020 email chain “RE: teleconference”<sup>55</sup>

<sup>54</sup> Email from Anthony Fauci, director, National Institute of Allergy and Infectious Diseases, to Jeremy Farrar, director, The Wellcome Trust, and Francis Collins, director, the National Institutes of Health, to Jeremy Farrar, director, The Wellcome Trust. February 2, 2020. Available at: <https://s3.documentcloud.org/documents/23316400/farrar-fauci-comms.pdf#p=108>. Unredacted version (shown on right) available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>

<sup>55</sup> Email from Jeremy Farrar, director, The Wellcome Trust, to Andrew Rambaut, professor, University of Edinburgh. February 2, 2020. Available at: <https://s3.documentcloud.org/documents/23316400/farrar-fauci-comms.pdf#p=108>. Unredacted version (shown on right) available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>

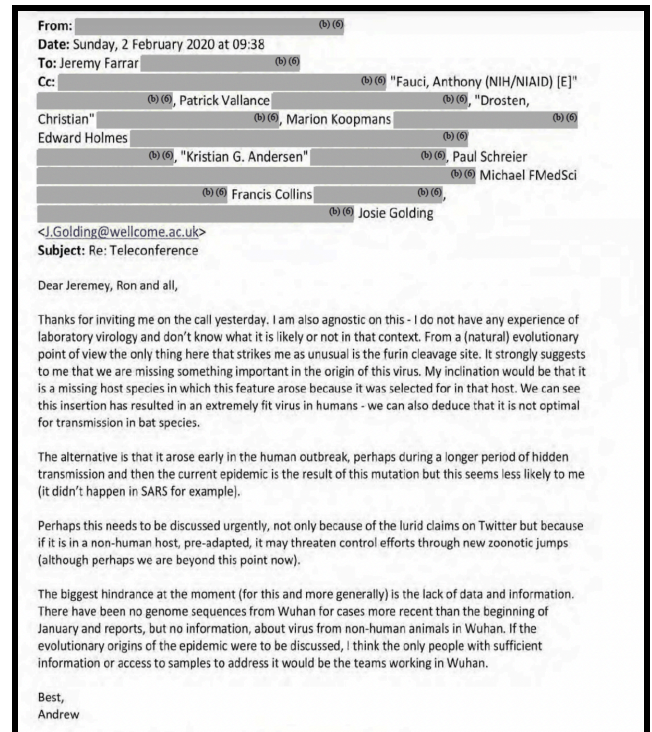
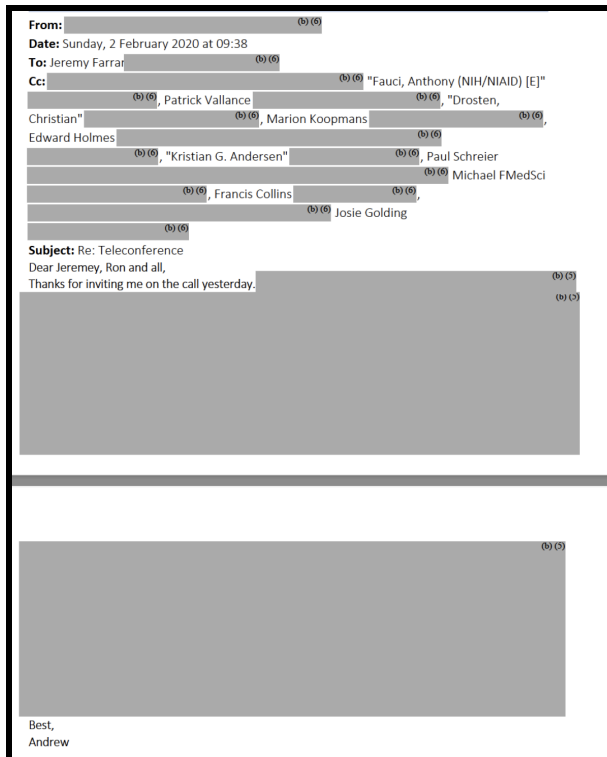


Image 12: Mostly redacted emails from Andrew Rambaut in the Feb. 2, 2020 email chain “RE: teleconference”<sup>56</sup>

<sup>56</sup> Email from Andrew Rambaut, professor, University of Edinburgh, to Jeremy Farrar, director, The Wellcome Trust. February 2, 2020. Available at: <https://s3.documentcloud.org/documents/23316400/farrar-fauci-comms.pdf#p=108>. Unredacted version (shown on right) available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>



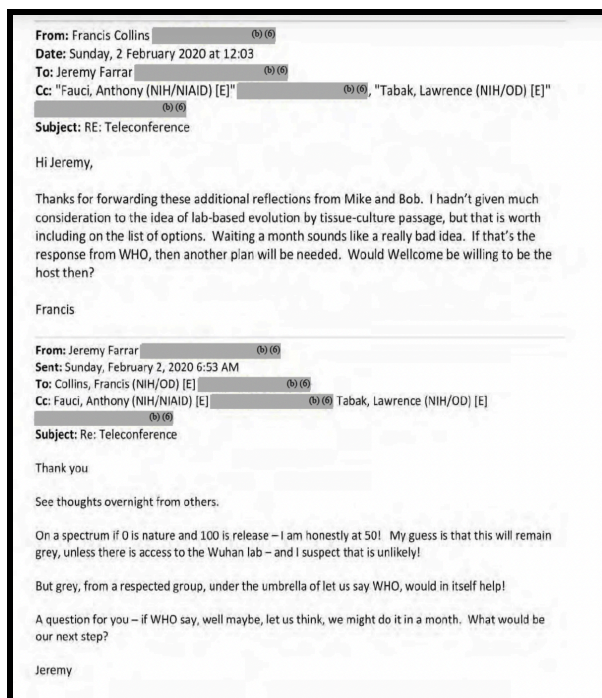
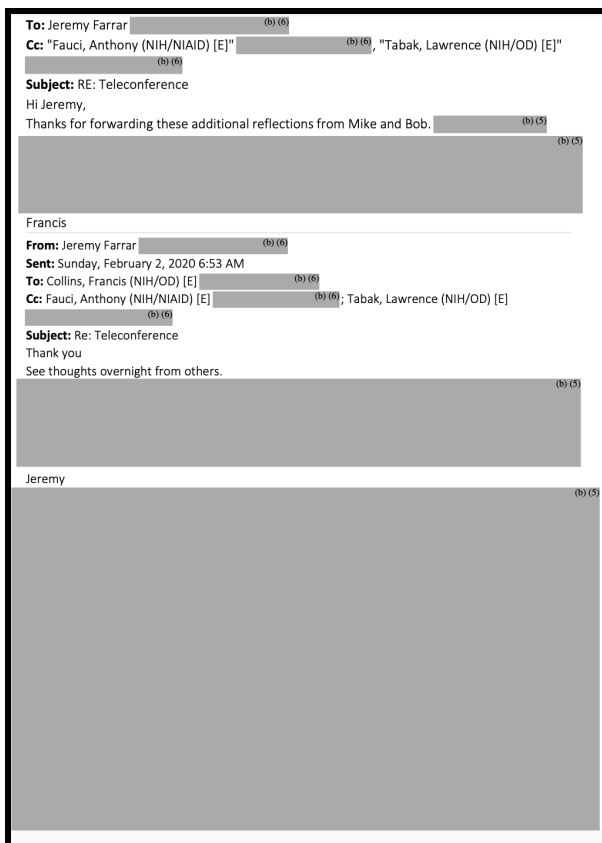


Image 13: Mostly redacted emails from Francis Collins and Jeremy Farrar in the February 2, 2020 email chain "RE: teleconference"<sup>57</sup>

<sup>57</sup> Email between Francis Collins, director, the National Institutes of Health, and Jeremy Farrar, director, The Wellcome Trust. February 2, 2020. Available at: <https://s3.documentcloud.org/documents/23316400/farrar-fauci-comms.pdf#p=108>. Unredacted version (shown on right) available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>

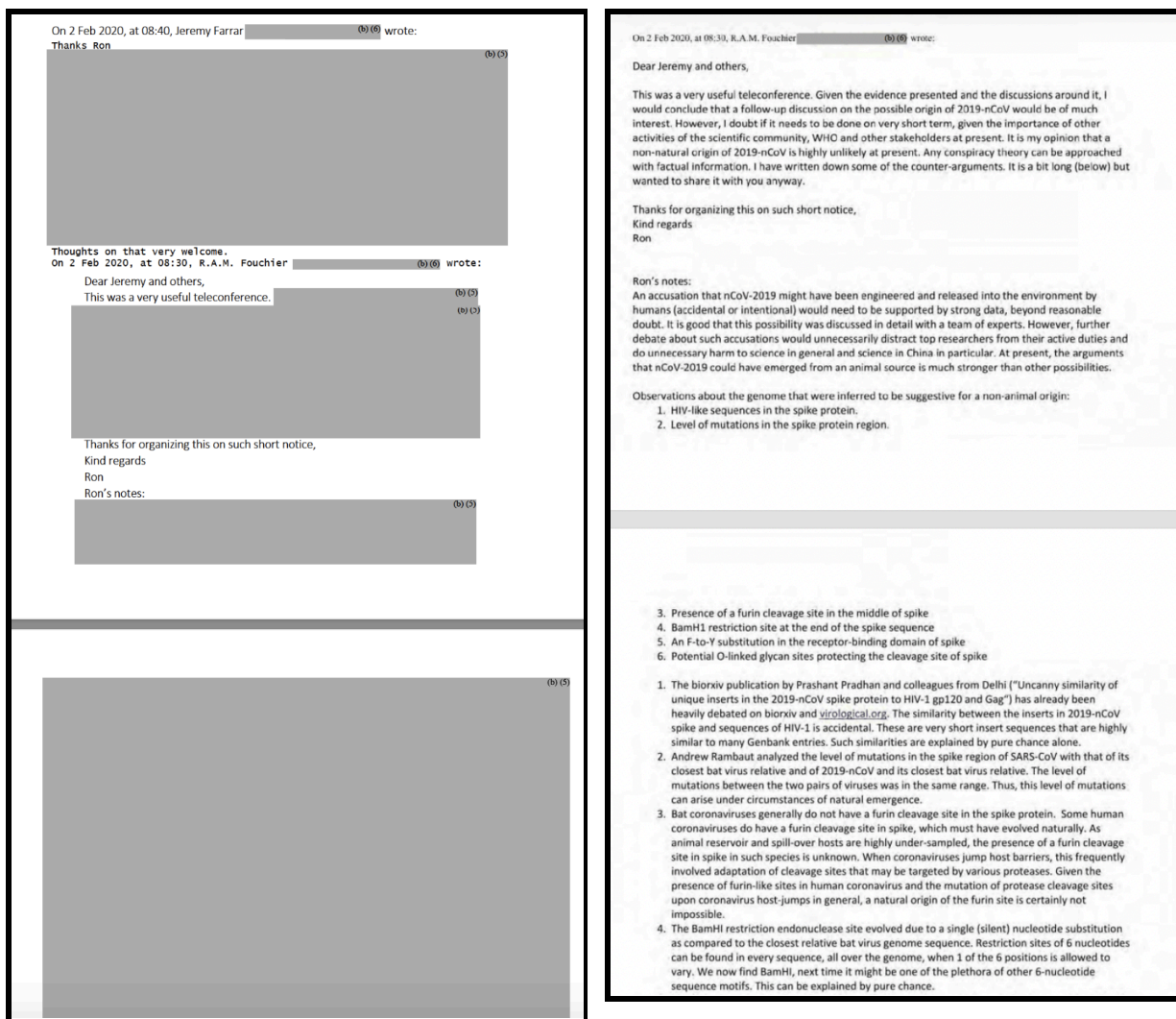


Image 14: Mostly redacted emails from Jeremy Farrar and Ron Fouchier in the February 2, 2020 email chain “RE: teleconference”<sup>58</sup>

<sup>58</sup> Emails from Jeremy Farrar, director, The Wellcome Trust, and Ronaldus Fouchier, deputy head of the Erasmus MC Department of Viroscience, to Anthony Fauci, director, National Institute of Allergy and Infectious Diseases, et al. February 2, 2020. Available at: <https://s3.documentcloud.org/documents/23316400/farrar-fauci-comms.pdf#p=108>. Unredacted version (shown on right) available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>



Previously redacted portions of this email chain were later released to *The Intercept* but without the redactions they employed in a production to us.<sup>59 60</sup> The unredacted records show that virologists involved in the February 1, 2020 teleconference expressed concerns about the “unusual” furin cleavage site found in SARS-CoV-2. They also show a list of observations about the SARS-CoV-2 genome that were suggestive of a non-natural origin, and that a virologist with serious conflicts of interest<sup>61</sup> argued against these points.<sup>62</sup>

The email chain reveals that powerful scientific funders with conflicts of interest may have influenced a paper that played a key role in suppressing debate about the origins of COVID-19, and the highest impact paper in the year 2020, according to Altmetric.<sup>63</sup>

In another email titled “RE: Phone call”, Dr. Fauci relays the virologists’ concerns about the unusual characteristics of SARS-CoV-2 to Jeremy Farrar. The body of this email was also completely redacted in NIH’s first production to *The Intercept*.<sup>64</sup> Only after litigation was the content released, showing that even as Dr. Fauci downplayed the possibility of a non-natural origin of COVID-19, privately, his concern was so grave that he considered reporting it to the FBI and MI5.

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<sup>59</sup> Email from Ronaldus Fouchier, deputy head of the Erasmus MC Department of Viroscience, to Jeremy Farrar, former Director, The Wellcome Trust, February 2, 2020. Contributed by Nausicaa Renner (*The Intercept*). Available at: <https://www.documentcloud.org/documents/23872583-2-2-20-email-1>

<sup>60</sup> Email chain with the subject “RE: teleconference”, contributed by Jimmy Tobias (*The Intercept*). Available at: <https://www.documentcloud.org/documents/23316400-farrar-fauci-comms>

<sup>61</sup> Emily Kopp, “Paper critical of ‘lab leak theory’ cribbed ideas from controversial gain-of-function virologist.” U.S. Right to Know, November 14, 2022. Available at: <https://usrtk.org/covid-19-origins/paper-critical-of-lab-leak-theory-cribbed-ideas-from-controversial-gain-of-function-virologist/>

<sup>62</sup> Email from Ronaldus Fouchier, deputy head of the Erasmus MC Department of Viroscience, to Jeremy Farrar, director, The Wellcome Trust, February 2, 2020. Contributed by Nausicaa Renner (*The Intercept*). Available at: <https://www.documentcloud.org/documents/23872583-2-2-20-email-1>. See also: Emily Kopp, “Visual timeline: ‘Proximal Origin’.” U.S. Right to Know, December 6, 2023. Available at: <https://usrtk.org/covid-19-origins/visual-timeline-proximal-origin/>. Emily Kopp, “Timeline: The proximal origin of SARS-CoV-2.” U.S. Right to Know, April 11, 2023. Available at: <https://usrtk.org/covid-19-origins/timeline-the-proximal-origin-of-sars-cov-2/>

<sup>63</sup> Altmetric Top 100 articles for 2020. Available at: <https://www.altmetric.com/top100/2020/>

<sup>64</sup> Jimmy Tobias, “Evolution of a Theory: Unredacted NIH Emails Show Efforts to Rule Out Lab Origin of Covid.” *The Intercept*, January 19, 2023. Available at: <https://theintercept.com/2023/01/19/covid-origin-nih-emails/>

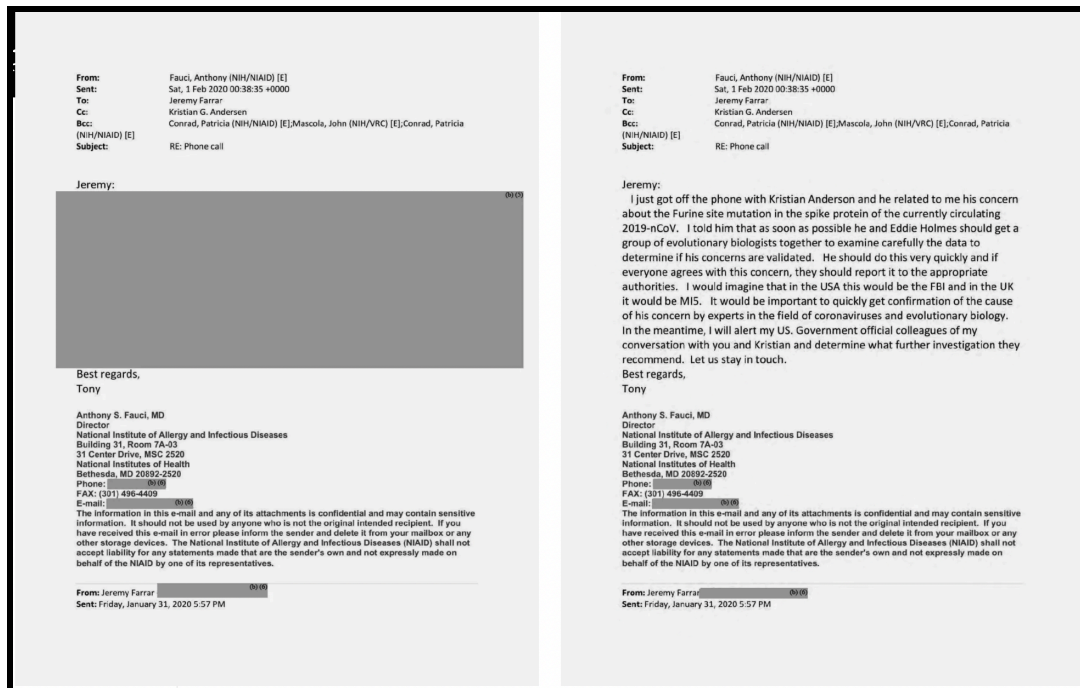


Image 15: Email from Anthony Fauci to Jeremy Farrar as released to *The Intercept*<sup>65</sup>

Drs. Fauci and Collins have referenced the “Proximal Origin” paper on the NIH’s website and in press briefings, reassuring the public that the virus did not originate in a lab.<sup>66</sup> Some of the virologists who authored the paper, along with some news outlets that ran stories on the paper, called speculations about a lab origin of COVID a “crackpot” theory or a “conspiracy theory.”<sup>67</sup> Without the FOIA, the public might not have found out that the same hypothesis these figures called conspiratorial was privately discussed as a serious concern. This is the power of FOIA: to prevent our government from holding absolute control over what information is released to the public and what is kept secret. Redactions like the above, however, undermine this power. It shouldn’t take a lawsuit to force such information out into the open.

<sup>65</sup> Jimmy Tobias, “Evolution of a Theory: Unredacted NIH Emails Show Efforts to Rule Out Lab Origin of Covid.” *The Intercept*, January 19, 2023. Available at: <https://theintercept.com/2023/01/19/covid-origin-nih-emails/>

<sup>66</sup> Francis Collins, “Genomic Study Points to Natural Origin of COVID-19.” NIH Director’s Blog, March 26, 2020. Available at: <https://directorsblog.nih.gov/2020/03/26/genomic-research-points-to-natural-origin-of-covid-19/>  
John Haltiwanger, “Dr. Fauci throws cold water on conspiracy theory that coronavirus was created in a Chinese lab.” *Business Insider*, April 19, 2020. Available at: <https://www.businessinsider.com/fauci-throws-cold-water-conspiracy-theory-coronavirus-escaped-chinese-lab-2020-4>

<sup>67</sup> Kate Holland, “Sorry, conspiracy theorists. Study concludes COVID-19 'is not a laboratory construct.’” *ABC News*, March 27, 2020. Available at: <https://abcnews.go.com/US/conspiracy-theorists-study-concludes-covid-19-laboratory-construct/story?id=69827832>  
<https://usrtk.org/wp-content/uploads/2023/11/crackpot-fringe-consistent-with-natural-evolution.png>

## Other failings in public records process

There also may have been failures to carry out thorough searches for relevant records. For example, in August 2022, U.S. Right to Know filed a FOIA request with the National Library of Medicine (part of NIH) for all SARS-related coronavirus sequences that were submitted to the Sequence Read Archive (SRA) between 2016 and 2021 but were not released, or that were suppressed, withdrawn, deleted, or otherwise withheld from public view.<sup>68</sup> After we filed litigation over this FOIA request, the assistant U.S. attorney told us that “there are no results and thus no responsive records” if the relevant part of the request were narrowed to cover through the end of 2019. However, in July 2022, over 100 SARS-related coronavirus spike sequences were accidentally released and subsequently suppressed about 10 days later. Screenshots of these sequences show that they were submitted in 2018, and therefore should have been produced in response to our request.<sup>69</sup>

NIH appears to stonewall FOIA requests by producing hundreds of pages of useless material, such as spam from listservs and news article after news article. And it appears to use the same tactic against congressional investigators. This tactic can artificially inflate the number of responsive pages without disclosing any meaningful information, while forestalling the production of relevant material. According to House Select Subcommittee on the Coronavirus Pandemic Chairman Brad Wenstrup, only two of the 49 pages that NIH produced in response to the subcommittee’s request for documents related to David Morens were meaningful, and the rest were already publicly available or unresponsive to the request. Wenstrup called the response “unacceptable” and wrote that “this obstruction will not be tolerated.”<sup>70</sup>

Another key problem is that our federal records laws aren’t ready for the 21st Century. The Federal Records Act of 1950 is now 74 years old. We now have federal employees communicating by Slack, Signal, and WhatsApp. They are communicating on their phones and tablets, not only at their desktops. They are likely creating and storing important government records in platforms such as Google Docs, Microsoft 365, Basecamp, Asana and perhaps many others. The federal records processes do not provide adequate support for production of these records.

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<sup>68</sup> FOIA request from Karolina Corin Ph.D. and Gary Ruskin, U.S. Right to Know, to Marianne Manheim, National Library of Medicine, August 22, 2022. Available at:

<https://usrtk.org/wp-content/uploads/2024/03/NCBI-FOIA-21-22.8.22.pdf>

<sup>69</sup> Screenshots available at:

<https://usrtk.org/wp-content/uploads/2024/03/Screen-Shot-2024-02-26-at-10.19.11-PM.png>

<https://usrtk.org/wp-content/uploads/2024/03/Screen-Shot-2022-08-12-at-10.38.29-AM.png>

<https://usrtk.org/wp-content/uploads/2024/03/Screen-Shot-2022-08-12-at-10.38.47-AM.png>

<sup>70</sup> Correspondence from Brad Wenstrup, D.P.M., chairman, House Select Subcommittee on the Coronavirus Pandemic, to Lawrence Tabak, D.D.S., Ph.D., acting director, National Institutes of Health, October 13, 2023. Available at:

<https://oversight.house.gov/wp-content/uploads/2023/10/2023.10.13-SSCP-Letter-to-NIH-Re.-Subpoena-for-Morens-Documents-.pdf>

For example, in one FOIA request to the CDC, we requested Slack messages and email notifications of one CDC employee who was part of a Slack channel called “SARS2.slack.com”, a discussion channel whose participants included government employees and public university researchers. These public university researchers included protégés of Wuhan Institute of Virology collaborator Ralph Baric. These Slack messages could potentially hold clues about gain-of-function experiments underway in Wuhan and elsewhere. Documents obtained through a different FOI request suggested that this CDC employee participated actively in the “SARS2” Slack channel to exchange information about SARS-CoV-2, the virus that causes COVID-19.<sup>71</sup> However, CDC produced only three pages of documents in response to our request.<sup>72</sup> This was a single email notification, apparently unrelated to our request. CDC could not locate any of the Slack messages that we requested.

Federal employees are using 21st Century platforms to communicate on the job. And we know there will always be new devices and new platforms. We ought to ensure that our federal records laws capture all of these newer platforms that contain government work products that the public has a right to access.

### **Solutions to problems in the public records process**

I’d like to briefly highlight potential solutions to problems in federal records management, based on our organization’s experience.

It is crucial to limit agencies’ use of FOIA exemptions to when they are clearly in the public interest. Currently, with respect to FOIA exemptions, federal agencies are given “a vast amount of discretion – so vast that to call these exemptions loopholes would be to understate their avoidance potential,” Ralph Nader wrote.<sup>73</sup> Just because an agency can redact records under a FOIA exemption doesn’t mean that it should or that it is in the public interest to do so. In addition, the Justice Department should decline to defend federal agencies in FOIA litigation unless the agency can show that the release of the relevant records is clearly contrary to the public interest.

In general, we get the federal records management that we pay for. If we want better records management, we’ll likely have to pay for it. That’s not easy to do. But at the same time, it ought to bring a wealth of benefits: a better-informed public, one that is more able to hold its government accountable, greater transparency in general, and likely more public trust.

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<sup>71</sup> Notifications from the SARS2 workspace to Vineet Menachery, assistant professor, University of Texas Medical Branch at Galveston. March 3, 2020. Available at:

<https://usrtk.org/wp-content/uploads/2024/03/UTMB-9-slacks.pdf>

<sup>72</sup> Slack notification to Natalie Thornburg, lead research microbiologist, Centers for Disease Control and Prevention. June 9, 2023. Available at:

<https://usrtk.org/wp-content/uploads/2024/03/23-01182.pdf>

<sup>73</sup> Ralph Nader, “Freedom From Information: The Act and the Agencies.” *Harvard Civil Rights-Civil Liberties Law Review*. Vol. 5, No. 1, January 1970, at 4.

If implemented successfully, budgeting for better records management might end up saving money. FOIA litigation costs taxpayers a lot of money, as we are the ones ultimately paying for the agencies' litigation bills and fee settlements. It often costs the FOIA requester a lot of money as well. Filing FOIA litigation is a lose-lose situation for everyone. With better records management, we could have less FOIA litigation. Less litigation could save millions of dollars for the federal government. It could help make the federal government run more efficiently. We ought to fund more at the front end of records management, to save money at the back end.

Lack of resources is sometimes a problem, but it is not the only reason for inefficiencies and noncompliance at the agency and staff level. There must be accountability. In general, there should be new carrots and sticks to make sure that federal agencies and agency staff comply with our federal records laws. At the agency level, there could be funds given to agencies that comply with the records laws, and funds taken away from those that do not. In addition, we would support statutory penalties for willful, brazen disregard of our federal records laws.

At the level of individual agency staff, there should also be new carrots and sticks. We would support federal penalties for agency staff who willfully disregard federal records laws. For example, when a senior NIAID staffer, Dr. David Morens, declares that he is willfully disobeying federal records laws, there ought to be a process that includes a thorough investigation of such conduct, and if it is as serious as it appears, a significant penalty. When there is no public release of any investigative findings, and no visible accountability for such actions, it signals to other federal officials that they can violate our public records laws with impunity. This is a destructive message. It encourages further disregard for our federal records laws and the public's right to know. This is a failing in our public records laws that must be remedied.

At the same time, there are federal agency staff who go far beyond what is expected of them to provide records and uphold the public trust. These staff get little, if any, credit for their good deeds. We should find ways to express our thanks to them and others who do their important job with care, diligence and inventiveness.

Presidents can help too. Jimmy Carter was a strong advocate for citizen access to government information, both in the United States and across the world.<sup>74</sup> James Madison probably put it best: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."<sup>75</sup> It would be bracing to hear similar words from our current president, or the next one.

Federal records laws are crucial to having a government that we the people can trust. Right now, our federal government suffers from partisanship and a lack of public trust. One way to

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<sup>74</sup> Jimmy Carter, "We need fewer secrets." *Washington Post*, July 3, 2006. Available at: <https://www.washingtonpost.com/opinions/2006/07/03/jimmy-carter-fewer-secrets/>

<sup>75</sup> Correspondence of James Madison to W. T. Barry, August 4, 1822. Library of Congress. Available at: [https://www.loc.gov/resource/mjm.20\\_0155\\_0159/?sp=1&st=text](https://www.loc.gov/resource/mjm.20_0155_0159/?sp=1&st=text)

repair this trust is to strengthen the public's right to know what our federal agencies are doing with our tax dollars. The public ought to be able to trust the government, and making it transparent and accountable would go a long way to re-establishing that trust. That's why these federal records laws are so important. We encourage you to strengthen and update them so that they are effective in the 21st Century. There are millions of Americans who stand ready to assist you in this effort.

## Appendix #1

### **U.S. Right to Know's FOI lawsuits on the origins of COVID-19, gain-of-function research and biolabs**

U.S. Right to Know, a nonprofit investigative public health group, has filed numerous lawsuits against federal agencies for violating provisions of the Freedom of Information Act (FOIA) and state FOI laws. The lawsuits are part of our efforts to uncover what is known about the origins of novel coronavirus SARS-CoV-2, leaks or mishaps at biosafety labs, and the risks of gain-of-function research that seeks to augment the infectivity or lethality of potential pandemic pathogens.

We have filed more than 150 state, federal, and international public records requests seeking information about the origins of SARS-CoV-2, and the risks of biosafety labs and gain-of-function research, as well as 27 FOI lawsuits on these matters.

#### **FOI lawsuits filed**

(1) **U.S. Department of State:** On November 14, 2023, USRTK [filed a lawsuit](#) against the U.S. Department of State for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the District of Columbia, seeks records relating to the State Department's knowledge of and investigation of the origins of COVID-19, including: (1) a specifically identified memorandum of conversation (memcon) between Christopher Ford, former Under Secretary of State for Arms Control and International Security, and Stephen Biegun, former Deputy Secretary of State; (2) communications between Biegun and the U.S. Department of Health and Human Services (HHS) or the Office of the Director of National Intelligence (ODNI). Case 1:23-cv-03412.

(2) **Defense Intelligence Agency:** On November 10, 2023, USRTK [filed a lawsuit](#) against the Defense Intelligence Agency (DIA) for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Eastern District of Virginia, seeks reports and records of communication that could show DIA's knowledge of the early circumstances surrounding COVID-19 in its epicenter, Wuhan, China. Specifically, we requested records related to findings by the National Center for Medical Intelligence, a component of the DIA responsible for medical and health intelligence. Case 1:23-cv-01528.

(3) **Office of the Director of National Intelligence:** On August 10, 2023, USRTK [filed a lawsuit](#) against the ODNI for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Eastern District of Virginia, seeks records declassified under the [COVID-19 Origin Act of 2023](#), including records: (1) showing activities performed by the Wuhan Institute of Virology with or on behalf of the People's Liberation Army; (2) referring to coronavirus research (non-COVID-19) or related activities performed at the WIV; (3) referring to researchers at the WIV who fell ill in autumn 2019; and, (4) relating to potential links between the WIV and the origin of COVID-19. Case 1:23-cv-01055.

(4) **National Institutes of Health:** On June 19, 2023, USRTK [filed a lawsuit](#) against the NIH for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the District of Maryland, seeks two specific emails sent in the early days of the COVID-19 pandemic between NIH officials including former NIAID Director Anthony Fauci. Portions of these emails were redacted in previous releases. Disclosure of these emails may shed light on what the NIH knew about the origins of the pandemic, as well as its response to such information. Case 8:23-cv-01635-DKC.

(5) **Federal Bureau of Investigation:** On June 18, 2023, USRTK [filed a lawsuit](#) against the Federal Bureau of Investigation (FBI) for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the District of Columbia, seeks documents supporting or underpinning or providing evidence for a statement within the report “[Intelligence Community Assessment on COVID-19 Origins](#),” released by the Office of the Director of National Intelligence on October 29, 2021, that one Intelligence Community element “assesses with moderate confidence that COVID-19 most likely resulted from a laboratory-associated incident involving WIV or other researchers—either through exposure to the virus during experiments or through sampling. Case 1:23-cv-01768.

(6) **Federal Bureau of Investigation:** On June 18, 2023, USRTK [filed a lawsuit](#) against the Federal Bureau of Investigation (FBI) for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the District of Columbia, seeks documents supporting or underpinning or providing evidence for statements made by FBI Director Christopher Wray on February 28, 2023 about the possible lab origin of COVID-19, particularly that “The FBI has for quite some time now assessed that the origins of the pandemic are most likely a potential lab incident in Wuhan” and that the Chinese government “has been doing its best to try and thwart and obfuscate the work [...] that we’re doing.” Case 1:23-cv-01769.

(7) **National Institutes of Health:** On June 15, 2023, USRTK [filed a lawsuit](#) against the NIH for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, San Francisco Division, encompasses two FOIA requests. The first FOIA request, filed on November 5, 2021, seeks communications between four key NIH employees and researchers working with pathogens of pandemic potential. The second request, filed on January 21, 2022, seeks communications between one key NIH employee and EcoHealth Alliance, which collaborated with the Wuhan Institute of Virology. These requests aim to uncover the extent of NIH’s communications with, and oversight of, high-risk pathogen research conducted under its funding programs. Case 4:23-cv-02954-KAW.

(8) **Department of Defense, Uniformed University of the Health Sciences:** On June 15, 2023, USRTK [filed a lawsuit](#) against the Department of Defense (DoD) Uniformed University of the Health Sciences (USU) for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, San Francisco Division, seeks the records of communications of two employees of DoD’s USU, who are connected with the U.S.



government's research on the pandemic potential of bat-associated pathogens of security concern. Both researchers have been working on bat virus pathogens in collaboration with EcoHealth Alliance, Colorado State University, NIH's Rocky Mountain Laboratory, and others, and one of them visited the Wuhan Institute of Virology. We filed the request on January 11, 2021. Two years and four months since then, despite our follow-ups and request to provide an official "determination" on our request, we have received no further communication from DoD or USU about the request. Case 3:23-cv-02956-TSH.

(9) **Defense Intelligence Agency:** On June 14, 2023, USRTK [filed a lawsuit](#) against the Defense Intelligence Agency for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, San Francisco Division, seeks a copy of one specifically identified agency record: "China: Origins of the COVID-19 Outbreak Remain Unknown," dated March 27, 2020. We filed the request on August 17, 2020. Despite extensive follow-ups and three formal requests to provide an official "determination" on our request, we have received no determination or estimated date of completion on our request. The last estimated date of completion DIA provided was September 30, 2021. We have received no records. Case 3:23-cv-02936.

(10) **Department of Energy:** On April 24, 2023, USRTK [filed a lawsuit](#) against the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the District of New Mexico, seeks unclassified intelligence findings or briefings by the Lawrence Livermore National Laboratory (LLNL)'s Intelligence Programs related to the origin of COVID-19, as well as key DOE employee communications on the topic. Our request aims to uncover the evidence underpinning the DOE's [assessment](#) that the COVID-19 pandemic likely originated from a research-related incident in China. Case 1:23-cv-00343.

(11) **Defense Threat Reduction Agency:** On January 25, 2023, USRTK [filed a lawsuit](#) against the DTRA for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Eastern District of Virginia, encompasses two FOIA requests. The first FOIA request, filed on November 16, 2022, seeks all records pertaining to any DTRA investigations or reviews of the EcoHealth Alliance or its work. The second request, filed on December 19, 2022, seeks records of specific DTRA employees that contain the keyword "EcoHealth". These requests aim to uncover if the DTRA discovered or was informed of any negligence or misconduct by the EcoHealth Alliance, which partnered with and funded the Wuhan Institute of Virology. Case 1:23-cv-00111.

(12) **Department of Health and Human Services and National Library of Medicine:** On November 22, 2022, USRTK [filed a lawsuit](#) against the U.S. Department of Health and Human Services and the National Library of Medicine for violating the provisions of the Freedom of Information Act. It's common practice for researchers to compare potentially new genetic sequences to a database of known sequences using BLAST to determine if their sequence is novel or related to known sequences. We sent a FOIA request to the NIH to ask if any BLAST query inputs made before the start of the COVID-19 pandemic matched portions of the

SARS-CoV-2 genome. Our request focused on the RdRp and spike genes since these genes may have a greater chance of being sequenced. The RdRp gene is often used to identify the presence of coronaviruses, and for many coronaviruses only partial RdRp sequences are known. The spike gene is of great research interest due to the role it plays in pathogenesis and viral transmission. If someone was looking for a sequence that matches SARS-CoV-2 before the pandemic began, then that would suggest that a lab may have possessed a progenitor of SARS-CoV-2, or a highly-similar relative. We sent our FOIA request on June 1, 2022. On June 9th, the [NLM replied](#) that it has “no responsive records.” On June 15th, [we appealed](#) and asked some questions. We did not receive a response. Case 1:22-cv-03555.

(13) **Defense Advanced Research Projects Agency:** On November 22, 2022, USRTK [filed a lawsuit](#) against the Defense Advanced Research Projects Agency for violating the provisions of the Freedom of Information Act. This suit encompasses two FOIA requests. The first FOIA request, filed on October 2, 2020, asks for records pertaining to funding contracts, grant agreements, and communications about funds that DARPA provided to Duke University in 2017 as part of DARPA’s Pandemic Prevention Platform program. The second FOIA request, filed on March 1, 2021, asks for contracts, grants, and communications about funding, pertaining to eight contracts funded under DARPA’s program titled “Preventing Emerging Pathogenic Threats”, or PREEMPT. Case 3:22-cv-07377-TSH.

(14) **Department of Health and Human Services and National Library of Medicine:** On November 21, 2022, USRTK [filed a lawsuit](#) against the U.S. Department of Health and Human Services and the National Library of Medicine for violating the provisions of the Freedom of Information Act. Early genomic sequences of SARS-CoV-2, as well as sequences of highly-related SARS-like coronaviruses, are crucial to understanding the origins of COVID-19. It has become apparent that NIH (NLM/NCBI) may have such sequences that aren’t publicly available. In 2021, Jesse Bloom found early SARS-CoV-2 sequences that had been deleted from the NIH’s Sequence Read Archive (SRA) at the submitter’s request. An email in 2021 revealed that eight SARS-CoV-2 submission packages had been deleted. In July 2022, NCBI released 163 spike protein sequences from SARS-like coronaviruses, and then removed them from public view 10 days later. For these reasons, we submitted a FOIA on August 22, 2022 asking the NIH to release all early SARS-CoV-2 sequences, as well as all full and partial SARS-like coronavirus sequences that are in its databases but that have been withheld from public view. Case 1:22-cv-03545-ABJ.

(15) **Department of State:** On July 28, 2022, USRTK [filed a lawsuit](#) against the U.S. Department of State for violating the provisions of the Freedom of Information Act. The lawsuit, filed in the Northern District of California, seeks records for two FOIA requests, filed on January 27, 2021 and June 8, 2021. The FOIA requests to State are for evidence underpinning the 15 January 2021 State “[Fact Sheet: Activity at the Wuhan Institute of Virology](#),” and press statement by then-Secretary of State Michael Pompeo, “[Ensuring a transparent, thorough investigation of COVID-19’s origin](#),” as well as emails about the Wuhan Institute of Virology, Mojiang, RaTG13 and other matters related to the origins of COVID-19. Case 3:22-cv-04359-KAW.

(16) **Department of Health and Human Services:** On July 27, 2022, USRTK [filed a lawsuit](#) against the U.S. Department of Health and Human Services (HHS) for violating the provisions of the Freedom of Information Act. The lawsuit, filed in the Northern District of California, seeks records for two FOIA requests, filed on July 14, 2020 and March 8, 2021. The FOIA requests to HHS are for communications with the Wuhan Institute of Virology or the EcoHealth Alliance, or about the origins of COVID-19. Case 3:22-cv-04328-TSH.

(17) **Department of State:** On April 25, 2022, USRTK [filed a lawsuit](#) against the U.S. Department of State for violating provisions of FOIA. The lawsuit, filed in U.S. District Court for the District of Columbia, seeks documents and correspondence of State employees, including C.S. Eliot Kang, Ann Ganzer, David Feith, Bruce Turner, Robert Wood and Laura Gross, related to a State Dept. investigation of the origins of COVID-19, EcoHealth Alliance, gain-of-function research, dual use research of concern, the Global Virome Project, and other matters. Case 1:22-cv-01130-JMC.

(18) **University of North Carolina at Chapel Hill:** On April 18, 2022, USRTK [filed a lawsuit](#) against the University of North Carolina at Chapel Hill for violating the provisions of the North Carolina Public Records Act. The lawsuit, filed in North Carolina District Court in Orange County, seeks records for seven public records requests to the University of North Carolina, including: (1) emails between Prof. Ralph Baric, former Prof. Lishan Su or Ms. Toni Baric with the Wuhan Institute of Virology or the Wuhan Center for Disease Control and Prevention or the EcoHealth Alliance, or others; (2) emails to or from Prof. Ralph Baric containing any of the search terms “DEFUSE” or “DARPA” or “DTRA”. UNC filed its [reply brief](#) on March 9, 2023. Case 22CV463.

(19) **Defense Threat Reduction Agency:** On January 14, 2022, USRTK [filed a lawsuit](#) against the DTRA for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, seeks: (1) finished intelligence, documents and reports about accidents, containment failures or deliberate release of biological agents from facilities in 21 countries around the world; (2) assessments of risks, hazards and efficacy of BSL-2, BSL-3 and BSL-4 containment schemes (including flaws, failings or weaknesses) in those same 21 countries; and, (3) grant proposals and other documents from the EcoHealth Alliance and Metabiota. Case 3:22-cv-00299-JCS.

(20) **National Institutes of Health:** On November 8, 2021, USRTK filed a lawsuit against the NIH for violating provisions of the FOIA. The [lawsuit \(amended complaint\)](#) filed 2/10/22), filed in U.S. District Court in Washington, DC, seeks records for nine FOIA requests to NIH regarding the origins of SARS-CoV-2, and communications between the NIH and EcoHealth Alliance or the Wuhan Institute of Virology. The records requests also included EcoHealth Alliance grant applications, scientific reviews, funding agreements, and correspondence with Dr. Erik Stemmy, NIAID (NIH) project officer, as well as documents regarding NIH’s Rocky Mountain Laboratories (RML), the DARPA-funded Preventing Emerging Pathogenic Threats (PREEMPT) Program, and communication between the NIH and the World Health Organization (WHO) concerning the origins of COVID-19. This is our [second](#) FOIA lawsuit against NIH related to the origins of COVID-19. Case 1:21-cv-02936-TSC.

(21) **Agency for International Development (USAID):** On October 14, 2021, USRTK [filed a lawsuit](#) against USAID for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, seeks records related to USAID funding and oversight of EcoHealth Alliance (EHA), which was a lead consortium partner in USAID-funded projects in the Emerging Pandemic Threats (EPT) program. Initiated in 2009, USAID's EPT PREDICT programs funded collaborations between EHA and researchers at University of California, Davis; Wuhan Institute of Virology; Metabiota, Inc.; and others, to study the pandemic potential of infectious diseases including bat-associated coronaviruses. Case 3:21-cv-08058-SK.

(22) **Department of Health and Human Services (HHS):** On October 14, 2021, USRTK [filed a lawsuit](#) against HHS for violating provisions of the FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, seeks correspondence between senior HHS employees, including Robert Kadlec, assistant secretary for preparedness and response, with the World Health Organization's director general's office, and others, related to the SARS-CoV-2 pandemic. Case 3:21-cv-08056-TSH.

(23) **University of Maryland:** On October 6, 2021, USRTK [filed a lawsuit](#) against the University of Maryland for violating provisions of the Maryland Public Information Act. The lawsuit, filed in Maryland Circuit Court for Prince George's County, seeks correspondence and documents of Professor Rita R. Colwell, Distinguished University Professor at the University of Maryland at College Park, relevant to the origins of the ongoing COVID-19 pandemic. Colwell serves on the board of directors of the EcoHealth Alliance, which funded and conducted research with bat coronaviruses closely related to SARS-CoV-2 in collaboration with the Wuhan Institute of Virology and others. On June 10, 2022, Maryland Judge John P. Davey [denied the University of Maryland's motion](#) for partial summary judgment. On October 6, 2022, Judge Davey [ordered](#) that our lawyers may have access to the records in the case to make arguments about whether they should be made public. On April 24, 2023, Judge Ademiluyi issued her [decision](#) on motions for summary judgment. Case CAL21-11730.

(24) **Food and Drug Administration:** On Feb. 4, 2021, USRTK [filed a lawsuit](#) against the U.S. Food and Drug Administration (FDA) for violating provisions of FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, seeks documents and correspondence with or about China's Wuhan Institute of Virology, the Wuhan Center for Disease Control and Prevention, and the EcoHealth Alliance, which partnered with and funded the Wuhan Institute of Virology, among other subjects. Case 21-cv-00884-KAW.

(25) **Department of Education:** On Dec. 17, 2020 USRTK [filed a lawsuit](#) against the U.S. Department of Education for violating provisions of FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, seeks documents that the Education Department requested from the University of Texas' Medical Branch at Galveston about its funding agreements and scientific and/or research cooperation with China's Wuhan Institute of Virology. Case 3:20-cv-09117-DMR.

(26) **Department of State:** On Nov. 30, 2020 USRTK [filed a lawsuit](#) against the U.S. Department of State for violating provisions of FOIA. The lawsuit, filed in U.S. District Court for the Northern District of California, seeks documents and correspondence with or about China's Wuhan Institute of Virology, the Wuhan Center for Disease Control and Prevention, and the EcoHealth Alliance, which partnered with and funded the Wuhan Institute of Virology, among other subjects. See [news release](#). Case 3:20-cv-08415-JCS.

(27) **National Institutes of Health:** On Nov. 5, 2020 USRTK filed a lawsuit against the National Institutes of Health (NIH) for violating provisions of FOIA. The lawsuit, filed in U.S. District Court in Washington, D.C., seeks correspondence with or about organizations such as the Wuhan Institute of Virology and the Wuhan Center for Disease Control and Prevention, as well as the EcoHealth Alliance, which partnered with and funded the Wuhan Institute of Virology. See [news release](#). Case 1:20-cv-03196-CKK.