

Exhibit 1

To: Gorka Garcia-Malene National Institute of Health FOIA Officer
Building 31 Room 5B35
9000 Rockville Pike
Bethesda, MD 20892
nihfoia@mail.nih.gov, 301-496-5633

From: Katherine Eban
Vanity Fair Magazine
623 11th St. Brooklyn, NY 11215
EbanVF40@gmail.com, 917-821-9634

From: Zachary Smith
Freelance Journalist
2159 E. 2nd St
Brooklyn, NY 11223

From: Brenna Holland
Freelance Journalist
360 McCloud Drive
Fort Lee, NJ 07024

Date: 11/22/21

Dear FOIA officer,

We are journalists, working jointly on an article that is proceeding towards publication. It will be significant for public understanding and involves urgent matters of public health. I, Katherine Eban, am a Contributing Editor at Vanity Fair magazine with 25 years of journalism experience. Mr. Smith and Ms. Holland are published freelance journalists working at my direction.

Under the Freedom of Information Act, 5 U.S.C. § 552, we are each requesting the following documents:

Section 1: Information relating to the National Institute of Health's (NIH) grant funding for a clinical research study conducted at the Icahn School of Medicine at Mount Sinai (1468 Madison Ave, New York, NY 10029). The study is called A Multiscale Investigation of the Living Human Brain, hereafter referred to as "The Living Brain Project."

RECORDS SOUGHT:

- **Reference number for The Living Brain Project:** 5R01AG069976-02 or 1R01MH123765-01 as filed on the [National Institutes of Health RePORTER tool](#)
- **Date range of requested documents:** The timeframe for my request is January 1, 2013 through the date the search for responsive records is conducted.

The follow documentation relating to the following NIH funding applicants:

1. Dr. Alexander Charney, MD, PhD, Co-Director of the Center for Neuromodulation and the Brain and Data Sciences Lab at the Icahn School of Medicine at Mount Sinai (1000 10th Ave 10th floor, New York, NY 10029), hereafter referred to as, "Charney Lab"

2. Brian Harris Kopell, MD, a professor of neurosurgery at Mount Sinai and the Co-Director of Charney Lab
 - Any and all applications for grant funding for the Living Brain Project made by Dr. Alexander Charney and/or Dr. Kopell.
 - Any and all documentation relating to Dr. Charney's and/or Dr. Kopell's applications for funding for The Living Brain Project, including emails, memos, letters, meeting minutes, records and progress reports.
 - Any and all communications between: Drs. Charney and/or Kopell and any division of the NIH, including the National Institute of Aging (NIA); between Drs. Charney and/or Kopell and NIH officials, including but not limited to scientific review officers, scientific review groups, the national advisory council or board; or any communications between these groups or entities within the peer review system.
 - Note: applications for funding made by Drs. Charney and/or Kopell to any NIH division should be provided to us. You'll find their grant was administered by the NIA, but the search for these records should be conducted throughout the entirety of the NIH.
 - Any and all documentation, analysis or correspondence between groups or individuals within the internal peer review system and outside experts who were consulted or commissioned to review The Living Brain Project's funding applications.
 - Any and all communications relating to rejected applications for funding made by Drs. Charney and/or Kopell, or on behalf of The Living Brain Project.

Section 2: Additional applications for NIH funding made by Drs. Charney and/or Kopell.

- Requests for funding—either successful or unsuccessful—from Drs. Charney and/or Kopell to The Brain Research Through Advancing Innovative Neurotechnologies (BRAIN) Initiative.
- Any and all documents including emails, memos, letters, meeting minutes, records and progress reports relating to applications or requests for funding made by Drs. Charney and/or Kopell to any NIH agency. These records need not be related to The Living Brain Project.

Section 3: NIH Complaints

- Any and all complaints about the Living Brain Project, sent to any division within the NIH, including but not limited to issues regarding the ethics, efficacy, or legality of the study.
- Any and all complaints about, or allegations of, discrimination committed by any investigator at Mount Sinai Hospital or the Icahn School of Medicine who has received an NIH grant. That would include any complaints sent to [Dr. Mike Lauer](#) or other officials in the Office of Extramural Affairs.

Section 4: How responsive records should be provided.

I request copies of the responsive records for this FOIA request be provided in a digital format, either via email, or stored on a thumb drive, CD or other electronic data storage device. See 5 U.S.C. §552 (a)(3) B). Providing these records in an electronic format will save agency staff processing time, as well as reducing the cost of making paper copies of all responsive records.

All records should be sent either to Ms. Eban's address of: 623 11th St. Brooklyn, NY 11215. or her email address of: EbanVF40@gmail.com.

Section 5: Request for a fee waiver.

We request a waiver of all costs because we are journalists and this information is being requested for news gathering purposes. Making this information available is in the public interest and a matter of immediate consequence to issues of public health.

Section 6: Request for expedited processing.

There is an urgency to make these records available to us on an expedited basis so that we may inform the public about a breaking news matter. The Living Brain Project is an ongoing clinical trial. The ethics of the trial and the safety of former, current and future trial participants is of consequence to every American who engages with our healthcare institutions.

I specifically request an estimated date of completion of this request.

Section 7: Policy and Legal Direction for Open Government

Disclosure of the above referenced agency records are also sought in order to promote government transparency, and to reflect the Administration's policy to support our nation's fundamental commitment to open government. As the Supreme Court has observed, "virtually every document generated by an agency is available in one form or another, unless it falls within one of the Act's nine exemptions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975). FOIA was designed to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny," see, e.g., *Dept. of the Air Force v. Rose*, 425 U.S. 352, 361 (1976), and in order "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); see also *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *United States Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

The above described agency records are subject to disclosure under FOIA, and are not otherwise exempt from disclosure pursuant to FOIA's nine statutory exemptions. See 5 U.S.C. § 552(b)(1) - (9). To the extent that a determination is made by your FOIA office staff that any limited portions of the records listed above will be withheld from disclosure for this request, FOIA expressly requires all agencies to disclose "[a]ny reasonably segregable portion of a record . . . after deletion of the portions of the record which are exempt." 5 U.S.C. §552(b). See, e.g., *Oglesby v. U.S. Dept. of Army*, 79 F.3d 1172, 1178 (D.C. Cir. 1996); see also *Abdelfattah v. U.S. Dept. Of Homeland Security*, 488 F.3d 178, 186-187 (3rd Cir).

The 2007 Openness Promotes Effectiveness in our National Government Act amendments to FOIA (the "OPEN Government Act") requires identification of the amount of any material withheld, the location of any withholdings, a direct reference to the specific statutory exemption supporting each withholdings asserted, and if technically possible, also require that this information shall "be indicated at the place in the record where such deletion is made." See 5 U.S.C. § 552(b). Therefore, I would appreciate your assistance in expressly identifying any exempt responsive records (or portions thereof) and the applicable FOIA exemptions for any responsive materials withheld for this FOIA request.

Please inform me in writing if there are any "unusual circumstances" that will cause delay in responding to this FOIA request, or providing the records which are requested, and in addition, please provide the approximate date that you anticipate a final response will be

provided.

In excising material, please “black out” the material rather than “white out” or “cut out.” I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationary headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

Section 8: Conclusion.

If my request is denied in whole or part, please justify all withholdings by reference to specific exemptions and statutes, as applicable. For each withholding please also explain why your agency “reasonably foresees that disclosure would harm an interest protected by an exemption” or why “disclosure is prohibited by law[.]”

Thank you in advance for your assistance. Please let us know if you have any questions about this request. We can be reached by email at EbanVF40@gmail.com, or you can reach Ms. Eban at 917-821-9634.

SENT VIA EMAIL

Sincerely,

Katherine Eban
Brenna Holland
Zachary Smith