

Exhibit 1

NIH FREEDOM OF INFORMATION ACT APPEAL

VIA EMAIL

February 15, 2023

Deputy Agency Chief FOIA Officer
Office of the Assistant Secretary for Public Affairs
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue
Suite 729H
Washington, D.C. 20201
FOIARequest@psc.hhs.gov

Re: Joint Appeal of NIH FOIA Requests #57839 and #57840 (IR#0706 & IR#0707)

Dear Sir or Madam:

This firm represents Informed Consent Action Network (“**ICAN**”). On behalf of ICAN, on February 10, 2022, we submitted requests for records (“**FOIA Requests**”) from the files of the National Institutes of Health (“**NIH**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”). On November 28, 2022, Gorka Garcia-Malene, NIH Division of Freedom of Information Director, responded to the FOIA Requests (“**Final Responses**”). ICAN writes now to appeal the Final Responses.

A. The FOIA Requests

On February 10, 2022, ICAN submitted FOIA Requests to NIH for the following documents:

FOIA Request #57839 (IR#0706):

- 1. A copy of “the request to remove the data in June 2020” referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html> . . .**
- 2. All communications regarding “the request to remove the data in June 2020” referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html> . . .**

3. All communications regarding the removal of “the data in June 2020” referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html> . .

(Attachment 1.)

FOIA Request #57840 (IR#0707):

All documents concerning the NIH’s “review” of data removed from the National Center for Biotechnology Information’s (NCBI) Sequence Read Archive (SRA) data system, in light of the findings of Jesse D. Bloom, and his publication titled *Recovery of deleted deep sequencing data shed more light on the early Wuhan SARS-CoV-2 epidemic* as referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html> . .

(Attachment 2.)

B. NIH’s Final Responses

On November 28, 2022, NIH issued two Final Responses. For FOIA Request #57839, the final response stated in relevant part,

NIH searched their files and found 62 pages of responsive records. The information redacted from those records is protected from release pursuant to Exemption 6 of the FOIA, 5 U.S.C. 552 (b)(6), and section 5.67 of the HHS FOIA Regulations, 45 C.F.R. Part 5. Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy.

(Attachment 3.)

For FOIA Request #57840, the final response stated in relevant part,

NIH searched their files and found 75 pages of responsive records. The information redacted from those records is protected from release pursuant to Exemption 6 of the FOIA, 5 U.S.C. 552 (b)(6), and section 5.67 of the HHS FOIA Regulations, 45 C.F.R. Part 5. Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy.

(Attachment 4.)

C. Argument

NIH improperly withheld documents and information pursuant to Exemption 6 and failed to conduct an adequate search. For the reasons set forth below, ICAN appeals the agency's Final Responses.

1. NIH Improperly Withheld Records Under FOIA Exemption 6

NIH has not properly demonstrated that the withheld records fall under the scope of Exemption 6. "An agency withholding responsive documents from a FOIA request bears the burden of proving the applicability of the claimed exemptions." *American Civil Liberties Union v. DOD*, 628 F.3d 612, 619 (D.C. Cir. 2011). Exemption 6 applies to prevent disclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). When evaluating withholdings under Exemption 6, there is a "presumption in favor of disclosure [that] is as strong as can be found anywhere in the Act." *Multi AG Media LLC v. U.S. Dep't of Agric.*, 515 F.3d 1224, 1227 (D.C. Cir. 2008) (quoting *Nat'l Ass'n of Homebuilders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002)) (internal quotation marks omitted). Therefore, an agency may withhold personal information only if "disclosure would compromise a substantial, as opposed to a de minimis, privacy interest." *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989).

Furthermore, even when privacy interests exist, courts must "weigh the privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of privacy." *Lepelletier v. FDIC*, 164 F.3d 37, 46 (D.C. Cir. 1999) (internal quotation marks omitted); *see also U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 598 (1982). The public interest "must be assessed in light of the FOIA's central purpose, which is to open agency action to the light of public scrutiny." *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 894 (D.C. Cir. 1995) (quotations omitted).

In this instance, NIH invoked Exemption 6 without demonstrating that the withheld records are "personnel and medical files," or "similar files," or that their release would compromise a substantial, as opposed to a de minimis, privacy interest. 5 U.S.C. § 552(b)(6); *Nat'l Ass'n of Retired Fed. Emps.*, 879 F.2d at 875. NIH's Final Responses make only conclusory statements regarding the redacted records withheld under Exemption 6. (*See Attachments 3 & 4.*) Thus, NIH failed its burden of proving the applicability of the claimed exemption. *American Civil Liberties Union*, 628 F.3d at 619.

Additionally, NIH's Final Responses fail to indicate whether it weighed the alleged privacy interests in non-disclosure against the public's interest in the release of records. *Lepelletier*, 164 F.3d at 46. Thus, it is inconclusive whether the disclosure could be accurately described as an unwarranted invasion of privacy, as Exemption 6 requires. To the contrary of NIH's conclusory assertions, the public has an extraordinary interest in the redacted records that would warrant an invasion of privacy. For example, there are credible reasons to believe the individual, whose information has been redacted under Exemption 6, is a Chinese national and/or agent of the Chinese government, involved in scientific data that could be used to determine the origins of the coronavirus which caused the COVID-19 global pandemic.

According to the article cited in ICAN's FOIA Requests¹, Sen. Josh Hawley publicly stated²:

New public reporting suggests Chinese researchers directed the National Institutes of Health (NIH) to purge gene sequences of COVID-19 cases from a key NIH database. The deleted information could be critical for understanding how the virus spread and where it came from. These deletions are alarming and merit a full congressional and law enforcement investigation.

While it appears NIH has previously claimed that investigators hold the rights to their data, Sen. Hawley contended that³,

That's not what the NIH says in its public materials. It says removal of information is disfavored and is only permitted pursuant to specific protocols that do not appear to have been followed here But moreover, why the NIH would agree to remove key data about COVID-19 in the midst of the most severe public health crisis in a century is unfathomable.

Moreover, Richard Ebright, a chemistry and chemical biology professor at Rutgers University said⁴,

It is not common to withdraw error-free data. I can think of no defensible reason to do so The findings also provide evidence of deliberate obfuscation of early events in the emergence of SARS-CoV-2 in Wuhan in the fall of 2019 and evidence of deliberate obstruction of investigation of those events.

The public's interest in learning more about the origins of the COVID-19 remains a top priority. Most recently, according to the Associated Press, on February 13, 2023, congressional delegates have "kicked off an investigation [] into the origins of COVID-19 by issuing a series of letters to current and former Biden administration officials for documents and testimony."⁵ Congressman, James Comer, chairman of the oversight committee said the investigation will "follow the facts" and "hold U.S. government officials that took part in any sort of cover-up accountable."⁶

¹ <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html?guccounter=1>.

² <https://www.hawley.senate.gov/sites/default/files/2021-06/Hawley-Letter-NIH-COVID.pdf>.

³ *Id.*

⁴ <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html?guccounter=1>.

⁵ <https://apnews.com/article/science-us-republican-party-brad-wenstrup-james-comer-anthony-fauci-5fdec072d1d60ae097e7044c73a5d3ca>.

⁶ *Id.*

Therefore, as demonstrated above, the public has a deep interest in learning who in NIH authorized, and why, the removal of information that could help congressional delegates and the scientific community understand more about the origins of the virus that caused COVID-19. NIH used Exemption 6 to redact the name, email address, signature block, details in subject lines, case information, etc., associated with the individual who requested the removal of this critical information from NIH's Sequence Read Archive ("SRA"). Moreover, NIH also used Exemption 6 to redact the name and information of the agent(s) tasked with communicating with the aforementioned person. This redacted information could provide essential details to the public – including possible conflicts of interest – that could help reveal why NIH authorized the removal of such critical information from the SRA system.

In sum, the public's interest in the redacted information far outweighs any individual privacy interests at stake here. The redacted information appears to involve one person, who is most likely a foreign national, and an agent of a foreign government. The United States has recognized that foreign nationals have a weaker privacy interest than U.S. citizens because they are not entitled to the additional layer of protection afforded by The Privacy Act of 1974, 5 U.S.C. § 552a(a)(2). Moreover, the other privacy interest involved appears to be of a public employee at NIH, whose name and email should not be subject to Exemption 6. Due to their role as a public employee responding to public inquiries regarding the SRA system, the information these public employees voluntarily disclose to the public in their official capacity should be the same information the public can obtain through FOIA Requests.

Lastly, when assessing the strength of the public interest in light of FOIA's central purpose, which is to open the agency's action to the light of public scrutiny, it is clear there is a strong public interest in disclosing the redacted information. *Nation Magazine, Wash. Bureau*, 71 F.3d at 894. As stated above, there are numerous congressional delegates, and others in the scientific community legitimately concerned about a potential cover-up regarding information concerning the origins of the virus that causes COVID-19. To help assess whether these accusations are true, or have any basis at all, the release of the redacted information would assist investigators in opening the agency's action to the light of public scrutiny, and thus strongly promote the central purpose of FOIA.

For the reasons stated above, NIH has failed in its burden to prove the applicability of Exemption 6, and the withheld records should be immediately released. *American Civil Liberties Union*, 628 F.3d at 619.

2. NIH Failed to Conduct an Adequate Search

NIH has failed to conduct adequate searches of the requested records. An agency's search is adequate only if it is "reasonably calculated to uncover all relevant documents." *Zemansky v. E.P.A.*, 767 F.2d 569, 571 (9th Cir. 1985) (quoting *Weisberg v. U.S. Dep't. of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (internal quotation marks omitted). "An agency fulfills its obligations under FOIA if it can demonstrate *beyond material doubt* that its search was reasonably calculated to uncover all relevant documents." *Defs. of Wildlife v. United States Border Patrol*, 623 F. Supp. 2d 83, 91 (D.D.C. 2009) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)) (emphasis added). To satisfy its FOIA obligations, an agency needs to adequately describe the scope and methods of its searches, which can reasonably be expected to

uncover the records sought and demonstrate that the places most likely to contain responsive materials were searched. *Davidson v. E.P.A.*, 121 F. Supp. 2d 38, 39 (D.D.C. 2000). At a minimum, the agency must specify “what records were searched, by whom, and through what process.” *Steinberg v. U.S. Dep’t. of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994).

To determine whether a search for responsive records was adequate, a court must first determine the scope of the documents the plaintiff requested. *Wallick v. Agric. Mktg. Serv.*, 281 F. Supp. 3d 56, 66 (D.D.C. 2017). It has been long established that an agency has a duty to construe FOIA requests liberally. *See Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985); *Conservation Force v. Ashe*, 979 F. Supp. 2d 90, 101-102 (D.D.C. 2013); *Rodriguez v. DOD*, 236 F. Supp. 3d 26, 36-38 (D.D.C. 2017). This means an agency is compelled to interpret requests broadly, even if a narrower reading is also reasonable. *Id.* An agency has a duty under the FOIA to select the interpretation that would likely yield the greatest number of responsive documents. *Conservation Force*, 979 F. Supp. 2d at 102-03; *Nat’l Sec. Counselors v. CIA*, 849 F. Supp. 2d 6, 12 (D.D.C. 2012). Technical precision is not required in FOIA requests, and a request certainly should not fail where the agency knew or should have known what the requester was seeking all along. *Inst. for Justice v. IRS*, 941 F.3d 567, 572 (D.C. Cir. 2019). FOIA obligates agencies to conduct searches in good faith. *Steinberg*, 23 F.3d at 551 (quoting *Weisberg*, 745 F.2d at 1485). A court can conclude a search is inadequate when the facts reveal a “positive indication of overlooked materials.” *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999).

NIH’s Final Responses provided no information regarding the adequacy of its searches. Without specifying what records were searched, by whom, and through what process, ICAN cannot assume NIH’s search was adequate. *Steinberg*, 23 F.3d 552. Moreover, the lack of detail in NIH’s Final Responses regarding its searches suggests it likely could not demonstrate beyond material doubt that its searches were reasonably calculated to uncover all relevant documents. *Valencia-Lucena*, 180 F.3d at 325. ICAN respectfully requests the agency to review its search methods to assure it would meet its FOIA obligations in litigation.

Furthermore, it appears NIH failed to liberally interpret ICAN’s FOIA Requests as it is required by law. *Hemenway*, 601 F. Supp. at 1005. For FOIA Request #57839, it specifically sought (1) a copy of the request to remove data, (2) all communications regarding the request to remove data, and (3) *all communications regarding the removal of the data.* (See **Attachment 1.**) Additionally, for FOIA Request #57840, it specifically sought *all documents concerning NIH’s review of data removed.* (See **Attachment 2.**) However, NIH’s productions did not provide any documents that detailed interagency discussions, processes, or protocols for authorizing the removal of such data. A proper interpretation of the FOIA Requests would include all records detailing the interagency communications, including those associated with the official decision-making process and protocols regarding the official review and approval of the request to remove data from SRA. Its highly unlikely that no interagency communications occurred regarding the removal of this information. At the very least, a professional employee of the agency familiar with the subject matter should have searched all NIH personnel tasked with the authority to review and approve requests for removal of data from the SRA system. Such files would include the NIH agent(s) whose names were redacted from the production, their supervisors authorized to make final decisions on the matter, and/or others in the agency who were contacted regarding the removal of these specific data sets. Consequently, because NIH failed to adequately describe its search, and its productions lack any interagency records that could have likely been easily found

by a professional employee of the agency familiar with the subject matter, there is a positive indication of overlooked materials. *Steinberg*, 23 F.3d 552; *Valencia-Lucena*, 180 F.3d at 326.

Therefore, for all these reasons, NIH did not demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents. *Defs. of Wildlife*, 623 F. Supp. 2d at 91.

D. Appellate Request

Given the foregoing, ICAN hereby appeals and requests that the documents responsive to the FOIA Requests be produced within 20 days of this appeal. Thank you for your time and attention to this matter. If you require any additional information, please contact us at **(212) 532-1091** or through email at **foia@sirillp.com**.

Very truly yours,

/s/ Aaron Siri

Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

Colin Farnsworth, Esq.

Enclosures

Attachment 1



NEW YORK | LOS ANGELES | MIAMI
PHOENIX | DETROIT | DENVER

200 Park Avenue, 17th Floor, New York, NY 10166
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

NIH FREEDOM OF INFORMATION ACT REQUEST

VIA ONLINE PORTAL

February 10, 2022

Gorka Garcia-Malene
Freedom of Information Act Officer
National Institutes of Health
Building 31 Room 5B35
9000 Rockville Pike
Bethesda, Maryland 20892

Re: *The NIH's Deletion of SRA Data (IR#0706)*

Dear Sir or Madam:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, please provide the following records to foia@sirillp.com in electronic form:

1. A copy of “the request to remove the data in June 2020” referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.
2. All communications regarding “the request to remove the data in June 2020” referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.
3. All communications regarding the removal of “the data in June 2020” referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.

We ask that you waive any and all fees or charges pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). ICAN is a not-for-profit news media organization whose mission is to raise public awareness about vaccine safety and to provide the public with information to give informed consent. As part of its mission, ICAN actively investigates and disseminates information regarding vaccine safety issues

for free, including through its website,¹ a weekly health news and talk show,² and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government's vaccine safety programs, including the government's efforts to promote vaccine safety. The information ICAN is requesting will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We therefore request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately take further action.

Furthermore, we specifically request that the agency provide us with an estimated date of completion for this request.

If you would like to discuss our request or any issues raised in this letter, please feel free to contact us at (212) 532-1091 or foia@sirillp.com during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

/s/ Aaron Siri

Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

¹ <https://www.icandecide.org/>.

² <https://thehighwire.com/>.

Exhibit A

verizon 5G

Obtén nuestros mejores planes Unlimited.

5G Ultra Wideband disponible en ciertas áreas. Se aplican términos.

Washington Examiner

NIH defends deleting COVID-19 genetic data pointing to lab leak origin



Jerry Dunleavy

June 24, 2021 · 5 min read



The National Institutes of Health defended its decision to delete its record of the genetic sequencing of COVID-19 cases from early in the coronavirus pandemic, apparently done at the request of Chinese researchers.



Live, virtual evening classes for only 10 months.

START IN AUGUST

yahoo! / Malwarebytes

Remove malware on your computer

Get complete protection now

Get 30 days FREE*

TRENDING

Pat Sajak walks off set after unprecedented 'Wheel of Fortune' win

Yahoo Entertainment · 2 min read

Christian revival at school prompts student walkout in W.Va.

Associated Press · 6 min read

Dave Chappelle said he's 'not bluffing' as he threatens to pull investments from the city if a...

INSIDER · 2 min read

Exclusive: DHS warns that trucker protests in U.S. could begin on

Search bar

determine if the virus sprang from a mysterious lab in Wuhan, China, which stymied an earlier investigation by the World Health Organization dismissing the lab theory.

"Here I identify a data set containing SARS-CoV-2 sequences from early in the Wuhan epidemic that has been deleted from the NIH's Sequence Read Archive," noted Jesse Bloom of the Fred Hutchinson Cancer Research Center, in a scientific paper released Tuesday. "I recover the deleted files from the Google Cloud, and reconstruct partial sequences of 13 early epidemic viruses."

Bloom added his analysis cast doubt on the alternative theory the virus originated in a so-called "wet market" where exotic foods and live animals are sold.

An NIH spokesperson told the Washington Examiner the request to remove the data in June 2020, which had been posted three months earlier, has been reviewed in light of Bloom's finding. The spokesperson added that "submitting investigators hold the rights to their data and can request withdrawal of the data."

When asked who within the Chinese government asked NIH to delete the COVID-19 genetic data from its database, the institute told the Washington Examiner it would "have to submit a [Freedom of Information Act] request."

The March 2020 paper that initially identified the sequence had 15 Chinese authors, 11 of whom worked for Wuhan University, and at least one worked for the Wuhan Institute of Virology. The June paper linked to the NIH and swapped in for the original listed all of the same authors and added three more from the University of Chinese Academy of Sciences. That paper did not include full gene sequencing information related to COVID-19.



If you're noticing changes, it could be Alzheimer's. Visit a doctor together.

LEARN MORE

ad alzheimer's association

POPULAR

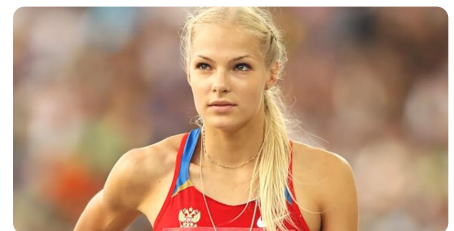


TYPE: HEAT ADVISORY
ISSUED: THURSDAY 2:40 AM PST
UNTIL: SUNDAY 6:00 PM PST

LIVE WEBCAM
700DHD

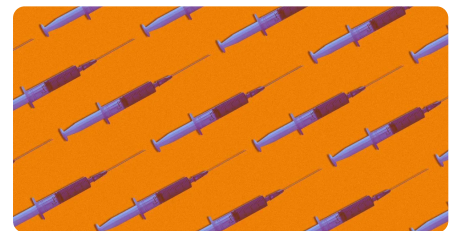
Latest weather with Leslie Lopez

KABC - Los Angeles



Pole Vaulter Gave Fans A Little Too Much

Ad • Sportinal



Omicron dashboard: Catch up fast

Axios

experiments involving the bat coronavirus identified by Wuhan virologists in January 2020 as its closest sample to COVID-19" and that the lab "has a published record of conducting 'gain-of-function' research to engineer chimeric viruses."

The fact sheet also asserted the lab "engaged in classified research, including laboratory animal experiments, on behalf of the Chinese military" and that lab workers became sick with coronavirus-like symptoms in autumn 2019.

Bloom noted in his paper the first reports outside of China at the end of December 2019 emphasized the wet market theory, but "this theory became increasingly tenuous as it was learned that many early cases had no connection to the market."

"In the case of Wuhan, genomic epidemiology has also proven frustratingly inconclusive," Bloom wrote. "Some of the problem is simply limited data: despite the fact that Wuhan has advanced virology labs, there is only patchy sampling of SARS-CoV-2 sequences from the first months of the city's explosive outbreak."

The U.S. virologist identified and recovered the deleted dataset of partial SARS-CoV-2 sequences from outpatient samples collected early in the Wuhan epidemic, which he said shows the early Wuhan samples don't match the viruses that caused the outbreak.

Bloom explained his findings on Twitter, saying, "First, the fact this dataset was deleted should make us skeptical that all other relevant early Wuhan sequences have been shared ... Second major implication is that it may be possible to obtain additional information about early spread of SARS-CoV-2 in Wuhan even if efforts for more on-the-ground investigations are stymied."

Breezy and milder: 7-day forecast

WABC - NY



Lawyers who tried to overturn Michigan's election argue they shouldn't be punished

The Holland Sentinel



25 Worst First Ladies In History, Ranked In Order

Ad • Moneywise



Somerset County top basketball, rifle, swimming, wrestling performers for Feb. 4-10

The Daily American



2 children injured in 2 Houston shootings just hours apart

KRIV

Search bar

provide additional evidence against the hypothesis that SARS-CoV-2 entered humans at Huanan Seafood Market. The findings also provide evidence of deliberate obfuscation of early events in the emergence of SARS-CoV-2 in Wuhan in the fall of 2019 and evidence of deliberate obstruction of investigation of those events."

[CLICK HERE TO READ MORE FROM THE WASHINGTON EXAMINER](#)

Sen. Josh Hawley called deletion of the sequence at the behest of Chinese officials a possible "cover-up."

"I write with grave concern about the latest allegations of a COVID-19 cover-up," Hawley wrote in a letter to NIH Director Francis Collins and head of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci. "New public reporting suggests Chinese researchers directed the National Institutes of Health (NIH) to purge gene sequences of COVID-19 cases from a key NIH database. The deleted information could be critical for understanding how the virus spread and where it came from. These deletions are alarming and merit a full congressional and law enforcement investigation."

The Missouri Republican rejected NIH's explanation that submitting investigators hold the rights to their data.

"That's not what the NIH says in its public materials. It says removal of information is disfavored and is only permitted pursuant to specific protocols that do not appear to have been followed here," Hawley wrote. "But moreover, why the NIH would agree to remove key data about COVID-19 in the midst of the most severe public health crisis in a century is unfathomable."

Washington Examiner Videos

Build Back Better Bust: Massive Spending Halted

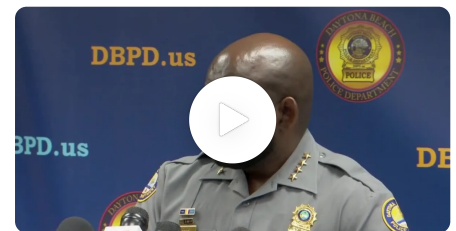
DOL provides updated guidance to waive recovery of certain unemployment overpayments

WFTS-Tampa



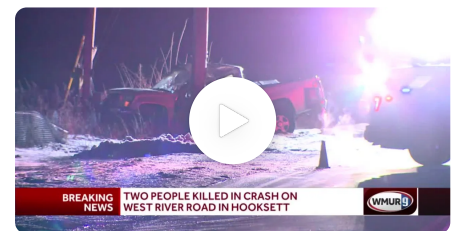
Do You Have These Plates?

Ad • www.investing.com



Daytona Beach police chief addresses deadly shooting, officer hurt in crash

WESH - Orlando Videos



Two people killed in Hooksett crash

WMUR - Manchester



Oklahoma experts address concerns about air quality after apartment fire

KOCO - Oklahoma City Videos

Attachment 2



NEW YORK | LOS ANGELES | MIAMI
PHOENIX | DETROIT | DENVER

200 Park Avenue, 17th Floor, New York, NY 10166
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

NIH FREEDOM OF INFORMATION ACT REQUEST

VIA ONLINE PORTAL

February 10, 2022

Gorka Garcia-Malene
Freedom of Information Act Officer
National Institutes of Health
Building 31 Room 5B35
9000 Rockville Pike
Bethesda, Maryland 20892

Re: *The NIH's Review of its Deletion of SRA Data (IR#0707)*

Dear Sir or Madam:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, please provide the following records to foia@sirillp.com in electronic form:

All documents concerning the NIH’s “review” of data removed from the National Center for Biotechnology Information’s (NCBI) Sequence Read Archive (SRA) data system, in light of the findings of Jesse D. Bloom, and his publication titled *Recovery of deleted deep sequencing data shed more light on the early Wuhan SARS-CoV-2 epidemic* as referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.

We ask that you waive any and all fees or charges pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). ICAN is a not-for-profit news media organization whose mission is to raise public awareness about vaccine safety and to provide the public with information to give informed consent. As part of its mission, ICAN actively investigates and disseminates information regarding vaccine safety issues for free, including through its website,¹ a weekly health news and talk show,² and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to the public understanding of the government’s vaccine safety programs, including the

¹ <https://www.icandecide.org/>.

² <https://thehighwire.com/>.

government's efforts to promote vaccine safety. The information ICAN is requesting will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We therefore request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately take further action.

Furthermore, we specifically request that the agency provide us with an estimated date of completion for this request.

If you would like to discuss our request or any issues raised in this letter, please feel free to contact us at (212) 532-1091 or foia@sirillp.com during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,

/s/ Aaron Siri

Aaron Siri, Esq.

Elizabeth A. Brehm, Esq.

Exhibit A

verizon 5G

Obtén nuestros mejores planes Unlimited.

5G Ultra Wideband disponible en ciertas áreas. Se aplican términos.

Washington Examiner

NIH defends deleting COVID-19 genetic data pointing to lab leak origin



Live, virtual evening classes for only 10 months.

START IN AUGUST



Jerry Dunleavy

June 24, 2021 · 5 min read



The National Institutes of Health defended its decision to delete its record of the genetic sequencing of COVID-19 cases from early in the coronavirus pandemic, apparently done at the request of Chinese researchers.

yahoo! / Malwarebytes

Remove malware on your computer

Get complete protection now



Get 30 days FREE*

TRENDING

Pat Sajak walks off set after unprecedented 'Wheel of Fortune' win

Yahoo Entertainment · 2 min read



Christian revival at school prompts student walkout in W.Va.

Associated Press · 6 min read



Dave Chappelle said he's 'not bluffing' as he threatens to pull investments from the city if a...

INSIDER · 2 min read



Exclusive: DHS warns that trucker protests in U.S. could begin on



Search bar

determine if the virus sprang from a mysterious lab in Wuhan, China, which stymied an earlier investigation by the World Health Organization dismissing the lab theory.

"Here I identify a data set containing SARS-CoV-2 sequences from early in the Wuhan epidemic that has been deleted from the NIH's Sequence Read Archive," noted Jesse Bloom of the Fred Hutchinson Cancer Research Center, in a scientific paper released Tuesday. "I recover the deleted files from the Google Cloud, and reconstruct partial sequences of 13 early epidemic viruses."

Bloom added his analysis cast doubt on the alternative theory the virus originated in a so-called "wet market" where exotic foods and live animals are sold.

An NIH spokesperson told the Washington Examiner the request to remove the data in June 2020, which had been posted three months earlier, has been reviewed in light of Bloom's finding. The spokesperson added that "submitting investigators hold the rights to their data and can request withdrawal of the data."

When asked who within the Chinese government asked NIH to delete the COVID-19 genetic data from its database, the institute told the Washington Examiner it would "have to submit a [Freedom of Information Act] request."

The March 2020 paper that initially identified the sequence had 15 Chinese authors, 11 of whom worked for Wuhan University, and at least one worked for the Wuhan Institute of Virology. The June paper linked to the NIH and swapped in for the original listed all of the same authors and added three more from the University of Chinese Academy of Sciences. That paper did not include full gene sequencing information related to COVID-19.

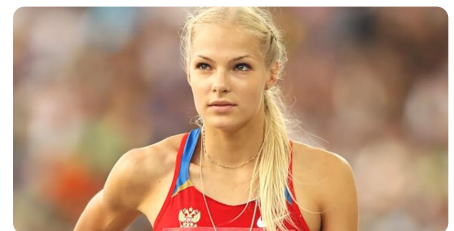


POPULAR



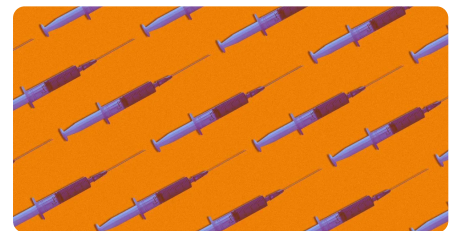
Latest weather with Leslie Lopez

KABC - Los Angeles



Pole Vaulter Gave Fans A Little Too Much

Ad • Sportinal



Omicron dashboard: Catch up fast

Axios

experiments involving the bat coronavirus identified by Wuhan virologists in January 2020 as its closest sample to COVID-19" and that the lab "has a published record of conducting 'gain-of-function' research to engineer chimeric viruses."

The fact sheet also asserted the lab "engaged in classified research, including laboratory animal experiments, on behalf of the Chinese military" and that lab workers became sick with coronavirus-like symptoms in autumn 2019.

Bloom noted in his paper the first reports outside of China at the end of December 2019 emphasized the wet market theory, but "this theory became increasingly tenuous as it was learned that many early cases had no connection to the market."

"In the case of Wuhan, genomic epidemiology has also proven frustratingly inconclusive," Bloom wrote. "Some of the problem is simply limited data: despite the fact that Wuhan has advanced virology labs, there is only patchy sampling of SARS-CoV-2 sequences from the first months of the city's explosive outbreak."

The U.S. virologist identified and recovered the deleted dataset of partial SARS-CoV-2 sequences from outpatient samples collected early in the Wuhan epidemic, which he said shows the early Wuhan samples don't match the viruses that caused the outbreak.

Bloom explained his findings on Twitter, saying, "First, the fact this dataset was deleted should make us skeptical that all other relevant early Wuhan sequences have been shared ... Second major implication is that it may be possible to obtain additional information about early spread of SARS-CoV-2 in Wuhan even if efforts for more on-the-ground investigations are stymied."

Breezy and milder: 7-day forecast

WABC - NY



Lawyers who tried to overturn Michigan's election argue they shouldn't be punished

The Holland Sentinel



25 Worst First Ladies In History, Ranked In Order

Ad • Moneywise



Somerset County top basketball, rifle, swimming, wrestling performers for Feb. 4-10

The Daily American



2 children injured in 2 Houston shootings just hours apart

KRIV

Search bar

provide additional evidence against the hypothesis that SARS-CoV-2 entered humans at Huanan Seafood Market. The findings also provide evidence of deliberate obfuscation of early events in the emergence of SARS-CoV-2 in Wuhan in the fall of 2019 and evidence of deliberate obstruction of investigation of those events."

[CLICK HERE TO READ MORE FROM THE WASHINGTON EXAMINER](#)

Sen. Josh Hawley called deletion of the sequence at the behest of Chinese officials a possible "cover-up."

"I write with grave concern about the latest allegations of a COVID-19 cover-up," Hawley wrote in a [letter](#) to NIH Director [Francis Collins](#) and head of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci. "New public reporting suggests Chinese researchers directed the National Institutes of Health (NIH) to purge gene sequences of COVID-19 cases from a key NIH database. The deleted information could be critical for understanding how the virus spread and where it came from. These deletions are alarming and merit a full congressional and law enforcement investigation."

The Missouri Republican rejected NIH's explanation that submitting investigators hold the rights to their data.

"That's not what the NIH says in its public materials. It says removal of information is disfavored and is only permitted pursuant to specific protocols that do not appear to have been followed here," Hawley wrote. "But moreover, why the NIH would agree to remove key data about COVID-19 in the midst of the most severe public health crisis in a century is unfathomable."

Washington Examiner Videos

Build Back Better Bust: Massive Spending Halted

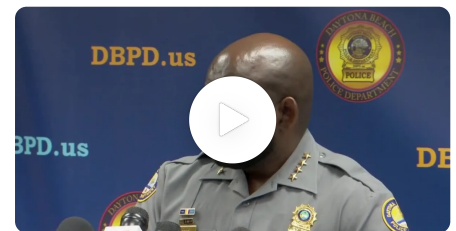
FORECAST ZEPHYRHILLS 8AM 50° 12PM 52° 4PM 54°
DOL provides updated guidance to waive recovery of certain unemployment overpayments

WFTS-Tampa



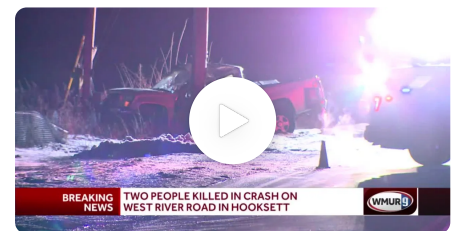
Do You Have These Plates?

Ad • [www.investing.com](#)



Daytona Beach police chief addresses deadly shooting, officer hurt in crash

WESH - Orlando Videos



Two people killed in Hooksett crash

WMUR - Manchester



Oklahoma experts address concerns about air quality after apartment fire

KOCO - Oklahoma City Videos

Attachment 3



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Freedom of Information Office
Building 31, Room 5B-35
31 Center Drive, MSC 2107
Bethesda, Maryland 20892-2107
phone: (301) 496-5633
fax: (301) 402-4541

Via E-mail: foia@sirillp.com

November 28, 2022

Aaron Siri
Siri & Glimstad LLP
745 Fifth Ave.
Suite 500
New York, NY 10151

Re: NIH FOIA Case No. 57839

Dear Mr. Siri:

This is the final response to your February 10, 2022, Freedom of Information Act (FOIA) request addressed to the National Institute of Health (NIH) FOIA office which was received on the same day. Department of Health and Human Services' (HHS) policy calls for the fullest possible disclosure provided by the FOIA, 5 U.S.C. §552, consistent with the protections contained therein. The implementing HHS Regulations establish the criteria pursuant to which the FOIA is administered, *see* 45 C.F.R. Part 5. Copies of the FOIA and the HHS FOIA Regulations are located at: <http://www.nih.gov/icd/od/foia/efoia.htm> and <http://www.nih.gov/icd/od/foia/cfr45.htm>.

You requested copies of the following records:

1. A copy of "the request to remove the data in June 2020" referenced in the following article: <https://news.yahoo.com/nihdefends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.
2. All communications regarding "the request to remove the data in June 2020" referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.
3. All communications regarding the removal of "the data in June 2020" referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html>, attached hereto as Exhibit A.

NIH searched their files and found 62 pages of responsive records. The information redacted from those records is protected from release pursuant to Exemption 6 of the FOIA, 5 U.S.C. 552 (b)(6), and section 5.67 of the HHS FOIA Regulations, 45 C.F.R. Part 5. Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy.

Page 2 – Siri (57839)

You have the right to appeal this determination to deny you access to information in the Agency’s possession. Should you wish to do so, your appeal must be sent within ninety (90) days of the date of this letter, following the procedures outlined in Subpart F of the HHS FOIA Regulations (<https://www.federalregister.gov/documents/2016/10/28/2016-25684/freedom-of-information-regulations>) to the Assistant Secretary for Public Affairs at <https://requests.publiclink.hhs.gov/App/Index.aspx>.

Clearly mark both the envelope and your letter “Freedom of Information Act Appeal.”

If you are not satisfied with the processing and handling of this request, you may contact the NIH FOIA Public Liaison and/or the Office of Government Information Services (OGIS):

NIH FOIA Public Liaison

Denean Standing-Ojo
Office of Communications and
Public Liaison
Building 31, 5B52S
31 Center Drive
Bethesda, MD 20892
301-496-5077 (phone)
[nihfoia@mail.nih.gov](mailto:.nihfoia@mail.nih.gov) (email)

OGIS

National Archives and Records Admin.
8601 Adelphi Rd – OGIS
College Park, MD 20740-6001
202-741-5770 (phone)
1-877-684-6448 (toll-free)
202-741-5769 (fax)
ogis@nara.gov (email)

In certain circumstances, provisions of the FOIA and HHS FOIA Regulations allow us to recover part of the cost of responding to your request. Because no unusual circumstances apply to the processing of your request, there is no charge associated with our response.

If you have any questions about this response, please call 301-496-5633.

Sincerely,

Gorka Garcia
malene -S
Gorka Garcia-Malene
Freedom of Information Officer, NIH



Digitally signed by Gorka Garcia-malene -S
Date: 2022.11.28 13:33:06 -05'00'

Enclosures: One pdf file (total 62 pages)

Attachment 4



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Freedom of Information Office
Building 31, Room 5B-35
31 Center Drive, MSC 2107
Bethesda, Maryland 20892-2107
phone: (301) 496-5633
fax: (301) 402-4541

Via E-mail: foia@sirillp.com

November 28, 2022

Aaron Siri
Siri & Glimstad LLP
745 Fifth Ave.
Suite 500
New York, NY 10151

Re: NIH FOIA Case No. 57840

Dear Mr. Siri:

This is the final response to your February 10, 2022, Freedom of Information Act (FOIA) request addressed to the National Institute of Health (NIH) FOIA office which was received on the same day. Department of Health and Human Services' (HHS) policy calls for the fullest possible disclosure provided by the FOIA, 5 U.S.C. §552, consistent with the protections contained therein. The implementing HHS Regulations establish the criteria pursuant to which the FOIA is administered, *see* 45 C.F.R. Part 5. Copies of the FOIA and the HHS FOIA Regulations are located at: <http://www.nih.gov/icd/od/foia/efoia.htm> and <http://www.nih.gov/icd/od/foia/cfr45.htm>.

You requested copies of the following records:

All documents concerning the NIH's "review" of data removed from the National Center for Biotechnology Information's (NCBI) Sequence Read Archive (SRA) data system, in light of the findings of Jesse D. Bloom, and his publication titled Recovery of deleted deep sequencing data shed more light on the early Wuhan SARS-CoV-2 epidemic as referenced in the following article: <https://news.yahoo.com/nih-defends-deleting-covid-19-000500673.html> , attached hereto as Exhibit A.

NIH searched their files and found 75 pages of responsive records. The information redacted from those records is protected from release pursuant to Exemption 6 of the FOIA, 5 U.S.C. 552 (b)(6), and section 5.67 of the HHS FOIA Regulations, 45 C.F.R. Part 5. Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy.

You have the right to appeal this determination to deny you access to information in the Agency's possession. Should you wish to do so, your appeal must be sent within ninety (90) days

Page 2 – Siri (57840)

of the date of this letter, following the procedures outlined in Subpart F of the HHS FOIA Regulations (<https://www.federalregister.gov/documents/2016/10/28/2016-25684/freedom-of-information-regulations>) to the Assistant Secretary for Public Affairs at <https://requests.publiclink.hhs.gov/App/Index.aspx>.

Clearly mark both the envelope and your letter “Freedom of Information Act Appeal.”

If you are not satisfied with the processing and handling of this request, you may contact the NIH FOIA Public Liaison and/or the Office of Government Information Services (OGIS):

NIH FOIA Public Liaison

Denean Standing-Ojo
Office of Communications and
Public Liaison
Building 31, 5B52S
31 Center Drive
Bethesda, MD 20892
301-496-5077 (phone)
[nihfoia@mail.nih.gov](mailto:.nihfoia@mail.nih.gov) (email)

OGIS

National Archives and Records Admin.
8601 Adelphi Rd – OGIS
College Park, MD 20740-6001
202-741-5770 (phone)
1-877-684-6448 (toll-free)
202-741-5769 (fax)
ogis@nara.gov (email)

In certain circumstances, provisions of the FOIA and HHS FOIA Regulations allow us to recover part of the cost of responding to your request. Because no unusual circumstances apply to the processing of your request, there is no charge associated with our response.

If you have any questions about this response, please call 301-496-5633.

Sincerely,

**Gorka Garcia-
malene -S**
Gorka Garcia-Malene
Freedom of Information Officer, NIH

Digitally signed by Gorka
Garcia-malene -S
Date: 2022.11.28
13:34:17 -05'00'

Enclosures: One pdf file (total 75 pages)