

**Exhibit 103**



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June 8, 2023

Assistant Sec. Kamara Jones  
Acting Assistant Secretary for Public Affairs  
Department of Health and Human Services  
Kamara.Jones@hhs.gov

**SENT VIA ONLINE PORTAL:** via <https://requests.publiclink.hhs.gov/App/Index.aspx>

**RE:** Administrative Appeal of FOIA Request 60127

**I. FACTUAL BACKGROUND**

On May 9, 2023, our law firm, on behalf of our law firm's client, Chinese American Legal Defense Alliance (CALDA) (“Requester”), submitted a Freedom of Information Act (“FOIA”) request to the National Institutes of Health (“Agency”) which sought records concerning a total of eleven different topics spanning from January 1, 2014 through the present. Ex. 1. The entire request is attached as Exhibit 1.

The same day, May 9, 2023, the Agency responded to the Requester’s FOIA request and assigned it FOIA No.: 60127. Ex. 2. The statutory deadline to respond to this request was June 7, 2023. 5 U.S.C. § 552(a)(6)(A)(i).

On May 19, 2023, the Agency responded to Requester’s FOIA request by denying its request for expedited processing. Ex. 3. Agency further stated it is doing “everything possible to comply with [Requester’s] request in a timely manner.” *Id.*

As of the filing of this appeal, Agency has not responded to Requester's request.

## II. THE FREEDOM OF INFORMATION ACT

The purpose of FOIA is to “open agency action to the light of public scrutiny.” *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976). Former President Obama reinforced FOIA's strong presumption of disclosure with regard to all FOIA decisions. *See* Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (directing agencies to administer FOIA under a presumption that, “[i]n the face of doubt, openness prevails”). Attorney General Merrick Garland issued FOIA guidelines that reinforce a commitment to open government, encouraging federal agencies to both “make discretionary releases of information” and “consider [whether] partial disclosure” is possible when an agency determines full disclosure is not possible. *See* Attorney General Merrick Garland's Memorandum for Heads of Executive Departments and Agencies (Mar. 15, 2022).

In his memo, the Attorney General Garland also reiterated a “foreseeable harm” standard for defending agency decisions to withhold information under FOIA. *See id.* Thus, the DOJ will defend an agency's denial of a FOIA request “only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” *Id.* Under this standard “information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure.” *Id.*

FOIA “mandates a policy of broad disclosure of government documents” and carries a strict disclosure mandate that requires federal agencies to expeditiously disclose requested records to requesters. *See* 5 U.S.C. § 552, *Church of Scientology v. Dep't of the Army*, 611 F.2d 738, 741 (9th Cir. 1980). Consequently, any inquiry under FOIA brings with it a “strong presumption in favor of disclosure.” *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991). To that end, nothing in FOIA should be read to “authorize withholding of information or limit the availability of records to the public, except as specifically stated.” *See* § 552(c). Congress recognized that in certain limited instances, records may be exempt from FOIA's broad disclosure mandate, and thus created nine categories of exemptions. § 552(b). These exemptions, however, “must be narrowly construed in light of FOIA's dominant objective of disclosure, not secrecy.” *Maricopa Audubon Soc'y. v. U.S. Forest Serv.*, 108 F.3d 1082, 1085 (9th Cir. 1996).

Accordingly, because FOIA carries a presumption in favor of disclosure, and indeed, because, “FOIA requesters face an information asymmetry given that the agency possesses the requested information and decides whether it should be withheld or disclosed,” *COMPTEL v. U.S. Federal Comm'n.*, 910 F. Supp. 2d 100, 111 (D.D.C. 2012) (internal citations omitted), agencies bear the

burden of justifying the withholding of any records that are responsive to a FOIA request. 5 U.S.C. §552 (a)(4). An agency must provide “a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *See King v. Dept. of Justice*, 830 F.2d 210, 219 (D.C. Cir. 1987) (agency must provide); *see also Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 861 (D.C. Cir. 1980) (holding an agency’s disclosure of “who wrote the [document], to whom it was addressed, its date, and a brief description” was “patently inadequate” to establish exemption under FOIA).

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. *See FOIA Improvement Act of 2016* (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

### **III. FOIA REQUIRES AGENCIES TO CONDUCT A SEARCH WHEN REQUESTERS REASONABLY DESCRIBE THE RECORDS SOUGHT**

The Agency has failed to show it conducted a reasonable search in response to a FOIA request (FOI Case No. 60127) which specifically described the records sought.

FOIA requires that a requester “reasonably describe” the records sought in sufficient detail that an agency professional familiar with the subject matter can locate the records with a “reasonable amount of effort.” *Ferri v. DOJ*, 573 F. Supp. 852, 859 (W.D. Pa. 1983). After a valid request has been made to the agency, that agency must “make reasonable efforts to search for records.” § 552 (a)(3)(A)(C). The term “search” here means “to review, manually *or* by automated means, agency records for the purpose of locating those records which are responsive to a request.” *Id.* § (a)(3)(A)(D) (emphasis added).

The records sought in this FOIA request are fully explained in Ex. 1. Generally, they are records which contain information about alleged ties to foreign adversaries by people living in the United States, and records relating to investigations of those alleged ties. *See Ex. 1*. The request includes specific people with alleged ties, specific matters which may have been investigated, and specific government employees who may have responsive records. *See id.*

Agency has failed to identify the offices it is searching, its methods of search, and the search terms used. As such, it has not met its burden of showing it conducted a reasonable search.

#### **IV. AGENCY FAILED TO ISSUE A FINAL DETERMINATION WITHIN THE STATUTORY REQUIREMENT**

The Agency failed to issue a final determination, despite having a statutory obligation to do so. The statutory deadline for response to this request was June 7, 2023. § 552(a)(6)(A)(i).

Under the FOIA, all federal agencies are required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. FOI Case No.: 60127 sought the disclosure of agency records and was properly made.

The Agency here is a federal agency subject to FOIA. When an agency will not process a FOIA request in accordance with the Act's time constraints, FOIA requires the court overseeing the agency's response to order timely production, as "unreasonable delays in disclosing non-exempt documents violate the intent and purpose of FOIA, and the courts have a duty to prevent [these] abuses." *Payne Enters. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988)).

Included within the scope of this request are one or more records, or portions thereof, that are not exempt under FOIA. The sensitivity of a request does not warrant an extended timeline. "[C]ourts often find that one to two months is sufficient time for an agency to process broad FOIA requests that may involve classified or exempt material." *Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 40 (D.D.C. 2006).

In the words of then Judge Kavanaugh, "a 'determination' does not require actual *production* of the records to the requester at the exact same time that the 'determination' is communicated to the requester." *CREW v FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013). If the Agency had issued such a determination the Requester could be assured that the records would be available, depending on the circumstances, "within days or a few weeks of a 'determination,' not months or years." *Id.* Instead, the Agency has failed to issue such a determination, and as such the Requester is entirely unaware of the timeline for the processing of the request, or whether the request will be processed at all.

#### **V. THE AGENCY ERRONEOUSLY DENIED REQUESTER'S FEE WAIVER**

In its letter on May 19, 2023, Agency stated the following:

Provisions of the FOIA allow us to recover part of the cost of complying with your request. **We shall charge you for records** in accordance with the Department of Health and Human Services (HHS) FOIA Regulations as they apply to "other"; i.e., **you will be charged for duplication at 10-cents per page although the first 100 pages are free**; there is **no charge for search or review** time. Please be advised that the HHS FOIA **Regulations allow us to charge for**

**search time** even if we do not locate any responsive records or if we determine that some or all of the responsive records are exempt under one of the FOIA's nine exemptions. Because we are **uncertain that applicable fees will exceed our minimum charge** (\$25.00), **we are not addressing your request for a fee waiver** at this time. However, if it is determined that there will be fees associated with processing your request, we will contact you at that time.

Ex. 3 (bolding added).

Despite the language at the end stating it is not a decision on the fee waiver, the language clearly indicates such a decision. The letter states the Agency will charge "10-cents per page." *Id.* However, FOIA states if a public service fee waiver is granted "documents *shall* be furnished without any charge or at a charge reduced below the fees established." § 552(a)(4)(A)(iii) (emphasis added). In order to reach a determination of 10¢ per page as it did in its letter, the Agency necessarily must reach a decision about whether the duplication fee, one of the fees referenced in § 552(a)(4)(A)(iii) "shall be furnished without any charge or at a charge reduced below the fees established." Because the Agency has determined the 10¢ fee will apply, Requester appeals the decision not to grant a public interest fee waiver.

As explained in detail in the request, the Requester is uniquely qualified to disseminate the information and education is a central part of its mission. The information here is of vital importance to the public. The "China Initiative" is likely having a disparate impact on Asian Americans and Requester seeks records to show as much. This showing is of vital public interest. Unfortunately, because the Agency did not explain the basis for its decision not grant the waiver it is difficult to explain in greater detail why this is of a vital importance to the public necessary to grant the waiver.

Under HHS regulations, a fee waiver is

[T]he waiver reduction of fees if a requester is able to demonstrate standards set fourth in the FOIA and this part are satisfied, including that disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not in the commercial interest of the requester.

45 C.F.R. § 5.3.

This language matches closely to 5 U.S.C. § 552(a)(4)(A)(iii) which requires granting of the waiver if the public interest requirements are met. Here, Requester is a nonprofit organization focusing on racial justice for Asian Americans. The waiver standard is "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1281, 1284 (9th Cir. 1987). Here, Requester intends to undertake a detailed analysis of the records sought in order to determine the level of disparate impact the China Initiative has on Asian Americans. Ex. 1.

Requester is a nonprofit which regularly distributes information about the legal treatment of Chinese and Chinese Americans in English and Chinese. For example, on April 24, 2023, Requester published an analysis of proposed laws meant to limit the ability of Chinese companies to purchase farmland in the United States. *See* <https://caldausa.org/blogs/f/%E5%8D%8E%E4%BA%BA%E9%9D%A2%E5%AF%B9%E7%BE%8E%E5%9B%BD%E6%AD%A7%E8%A7%86%E6%80%A7%E7%AB%8B%E6%B3%95%E7%9A%84%E6%8C%91%E6%88%98%E4%B8%8E%E5%BA%94%E5%AF%B9>. It specifically criticized the passage of these laws despite the small amount of farmland actually owned by Chinese companies. The analysis of laws pending around the country and their impact on Chinese and Chinese Americans is of vital public interest. This is the type of work Requester seeks to accomplish with the information gained from Agency documents.

## VI. CONCLUSION

As described above, the Agency has failed to conduct a reasonable search in response to a FOIA request that specifically described the records sought. Accordingly, the Agency must conduct an adequate search for responsive records and produce all responsive records by a certain date. In so doing, the Agency must also provide an estimated date of completion of its release of the records. 5 U.S.C. § 552 (a)(7)(B). The Agency also failed to issue a final determination, despite having a statutory obligation to do so. The records sought here are in the public interest and a fee waiver has been requested. Despite meeting the standard to receive such a waiver, Agency has seemingly denied the request (while confusingly asserting it has not decided the request). This decision is being appealed as well.

Please notify me of the date you receive this FOIA Appeal and the number you assign to identify this FOIA Appeal. I expect your timely resolution of this matter. Do not hesitate to contact me with any questions regarding this appeal. Please contact me at [peter@sorensonfoialaw.com](mailto:peter@sorensonfoialaw.com) or Sorenson Law Office, PO Box 10836, Eugene, Oregon 97440.

C. Peter Sorenson

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Enclosures:

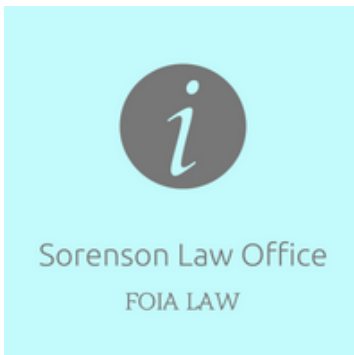
Ex. 1. Requester's Request dated May 9, 2023

Ex. 2. Agency Acknowledgement dated May 9, 2023 assigning FOIA Case No.: 60127

Ex. 3. Agency Denial dated May 19, 2023.

**Exhibit 1**





May 9, 2023

NIH FOIA Office  
Building 31 Room 5B35  
31 Center Drive, MSC 2107  
Bethesda, MD 20892

**SENT VIA ONLINE PORTAL:** <https://foiportal.nih.gov>.

Dear Chief FOIA Officer,

I am writing on behalf of my client, Chinese American Legal Defense Alliance (“CALDA”). CALDA is a nonprofit organization registered in New Jersey and California. Their contact address for this request is: 7901 Stoneridge Drive #208, Pleasanton, CA 94588; and email address is [czhu@dehengsv.com](mailto:czhu@dehengsv.com).

## **I. REQUEST**

CALDA, pursuant to the Freedom of Information Act (“FOIA”), makes the following requests:

1. All records since January 1, 2014, that discuss any investigations and/or cases against any professors of a U.S. university regarding any of the following subjects:
  - their possible failure to disclose their ties or affiliations with any country that is considered an enemy or adversary of the United States (e.g. China, Russia, North Korea or Iran); or
  - their possible failure to disclose their income received from a country that is considered an enemy or adversary of the United States.

2. All records since January 1, 2014, that discuss any investigations and cases against the following professors:
  - Prof. Anming Hu of University of Tennessee;
  - Prof. Feng “Franklin” Tao of University of Kansas;
  - Prof. Mingqing Xiao of Southern Illinois University;
  - Prof. Gang Chen of Massachusetts Institute of Technology; or
  - Prof. Xiaoxin Xi of Temple University.
3. All records since January 1, 2014, containing a periodic summary of investigations and cases against any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
4. All emails to or from Matthew Olsen, Assistant Attorney General for National Security, former Director of the National Counterterrorism Center, since January 1, 2014, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
5. All emails to or from John C. Demers, former Assistant Attorney General for National Security, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
6. All records that discuss or describe communications with the University of Kansas, Cleveland Clinic, Massachusetts Institute of Technology, University of Tennessee, Temple University, Southern Illinois University, or National Aeronautics and Space Administration concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.

7. All records, reports, training materials, policy directives, and emails to and from the Department of Justice concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
8. All records, reports, training materials, policy directives, and emails to and from the Department of Justice concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
9. All records, reports, training materials, policy directives, and emails to and from the Federal Bureau of Investigation concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
10. All records, reports, training materials, policy directives, and emails to and from the U.S. Customs and Border Protection concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
  - their possible ties or affiliation with China;
  - their possible theft of U.S. technology or trade secrets for China;
  - their possible acts of espionage for China;
  - their possible failure to disclose their ties or affiliations with China; or
  - their possible failure to disclose their income received from China.
11. For all the above requests, the term “a U.S. university” also includes a higher education institution, a post-secondary education institution, or a third-level or tertiary education institution.

## **II. TIME FRAME OF THIS REQUEST**

For all requests listed above, the time frame is identified for the creation of or receipt of records to include January 1, 2014 through the time that the agency conducts its search for responsive records.

### III. INFORMATION HELPFUL TO FULFILLING THIS REQUEST

In November of 2018, the Department of Justice (DOJ) announced the start of the “China Initiative.” Then-Attorney General Jeff Sessions stated that: “This Initiative will identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively.”<sup>1</sup> Intense publicity campaigns by the FBI to Corporate America<sup>2</sup> and Academia<sup>3</sup> followed to justify and mobilize a whole-of-government effort with massive federal dollars and resources.

The FBI also implemented threat awareness sessions at universities, circulating information singling out China as a threat and labeling students, faculty, and researchers as ‘non-traditional collectors’.<sup>4</sup>

According to a Bloomberg News analysis of the 50 indictments displayed on the China Initiative webpage, the program hadn’t “been very successful at catching spies.”<sup>5</sup> Most of the cases listed by December 17, 2021, involved individual profiteering or career advancement by the accused, rather than state-directed spying. Despite this, many of these indictments portray the alleged thefts as for the benefit of China. Seton Hall University law professor Margaret Lewis described this as “a conflation of individual motives with a country’s policy goals” that has led to the criminalization of “China-ness.”*Id.*

Disturbingly, the “China Initiative” amplified a new xenophobic label of “non-traditional collectors,” which was first used by FBI Director Christopher Wray.<sup>6</sup> This term prompted concern from Asian Americans and civil rights groups across the country. For example, a group of 14 advocacy organizations signed a letter to Director Wray expressing their concerns that the “well-intentioned public policies might nonetheless lead to troubling issues of potential bias, racial profiling, and wrongful prosecution.”<sup>7</sup>

Furthermore, civil rights leaders have raised concerns about the “China Initiative” and have called for its immediate end. In January 2021, the Asian Pacific American Justice (APA Justice), along with the Brennan Center for Justice and the Asian Americans Advancing Justice (AAJC), sent a letter to then President-Elect Biden that was signed by almost 70 other organizations raising concerns about the “China Initiative” and calling for its end.<sup>8</sup>

<sup>1</sup> “Attorney General Jeff Session’s China Initiative Fact Sheet”, November 1, 2018, <https://www.justice.gov/opa/speech/file/1107256/download>

<sup>2</sup> <https://www.fbi.gov/file-repository/china-risk-to-corporate-america-2019.pdf/view>

<sup>3</sup> <https://www.fbi.gov/file-repository/china-risk-to-academia-2019.pdf/view>

<sup>4</sup> Greenfield, Nathan M. (September 25, 2021). “Professor acquittal – Is China Initiative out of control?” University World News. Archived from the original on April 3, 2022. Retrieved July 5, 2022.

<sup>5</sup> Prasso, Sheridan (December 14, 2021). “China Initiative Set Out to Catch Spies. It Didn’t Find Many”. *Bloomberg News*. Archived from the original on December 14, 2021. Retrieved January 22, 2022.

<sup>6</sup> David Choi, “FBI director calls China out on one of the biggest threats to the US”, Mar 21, 2018, <https://www.businessinsider.com/fbi-china-espionage-chris-wray-2018-3>

<sup>7</sup> “Open Letter To FBI Director Christopher Wray”, March 1, 2018, <https://advancingjustice-aaajc.org/sites/default/files/2018-03/OPEN%20LETTER%20TO%20FBI%20DIRECTOR%20CHRISTOPHER%20WRAY.pdf>

<sup>8</sup> “Letter to President-elect Joe Biden on Justice Department’s ‘China Initiative,’” AAJC, January 5, 2021, <https://advancingjustice-aaajc.org/sites/default/files/2021-01/Letter%20to%20President-elect%20Biden%20Re%20the%20China%20Initiative.pdf>

Importantly, within the Asian American community, there is a significant amount of anecdotal evidence regarding profiling of Asian Americans. Former University of Tennessee Knoxville (UTK) Professor Anming Hu<sup>9</sup> was the first case of an academic to go to trial under the “China Initiative” in June 2021. The trial revealed the zeal of the misguided “China Initiative” and FBI agent Kujtim Sadiku to criminalize Professor Hu with reckless and deplorable tactics<sup>10</sup> of spreading false information to cast him as a spy for China and press him to become a spy for the U.S. government. When these efforts failed, the DOJ brought charges against Professor Hu for intentionally hiding his ties to a university in China, which also fell apart upon cross examination of UTK officials during the trial. After the presiding judge declared a mistrial with a hung jury, a juror commented<sup>11</sup> that “[i]t was the most ridiculous case.” About the FBI, she added: “If this is who is protecting America, we’ve got problems.” Despite these backdrops, the DOJ announced its intent to retry the case, including the utterly ironic allegation that Professor Hu made false statements to federal agents.

This case prompted further scrutiny from the U.S. Congress. On June 18, 2021, three Members of Congress sent a letter to the Inspector General of the Department of Justice requesting information about Professor Anming Hu’s case and the practices of the “China Initiative” more broadly. Then, on July 30, 2021, over 90 Members of Congress from both the House of Representatives and the Senate sent a letter to Attorney General Merrick Garland requesting information about the “China Initiative.”<sup>12</sup> In this letter, they “request whether, under the ‘China Initiative,’ there is a written or unwritten policy, program, pattern or practice to target people based on their race, ethnicity or national origin.”

The Initiative has created a sense among Asian Americans in academia of feeling “uneasy,” “profil[ed],” “targeted,” and “fear[ful].”<sup>13 14</sup> In fact, the issue has preceded the case of Professor Anming Hu. In February 2020, the Subcommittee on Civil Rights and Civil Liberties of the House Oversight Committee launched an investigation into the Federal Bureau of Investigation’s (FBI) handling of probes of ethnically Chinese scientists.<sup>15</sup> This investigation was based on concerns that the FBI was targeting and discriminating against scientists of Chinese ethnicity.

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<sup>9</sup> <https://www.apajustice.org/anming-hu.html>

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<https://www.knoxnews.com/story/news/crime/2021/06/14/federal-agents-falsely-accused-university-of-tennessee-professor-spying-china/7649378002/>

<sup>11</sup> <https://theintercept.com/2021/06/23/anming-hu-trial-fbi-china/>

<sup>12</sup> “Rep. Lieu And 90 Members Of Congress Urge DOJ Probe Into Alleged Racial Profiling Of Asians”, July 30, 2021,

<https://lieu.house.gov/media-center/press-releases/rep-lieu-and-90-members-congress-urge-doj-probe-alleged-racial-profiling>

<sup>13</sup> Jodi Xu Klein, “Fear mounts that Chinese-American scientists are being targeted amid US national security crackdown,” *South China Morning Post*, July 3, 2019, <https://www.scmp.com/news/china/diplomacy/article/3017013/fear-mounts-chinese-american-scientists-are-being-targeted>

<sup>14</sup> Jeff Tollefson, “Chinese American scientists uneasy amid crackdown on foreign influence,” *Nature*, June 3, 2019, <https://www.nature.com/articles/d41586-019-01605-9>

<sup>15</sup> “Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists,” *House Oversight Committee*, February 20, 2020, <https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>

On June 30, 2021, Representative Jamie Raskin, Chair of the House Oversight Subcommittee on Civil Rights and Civil Liberties, and Representative Judy Chu, Chair of the Congressional Asian Pacific American Caucus (CAPAC), held a Congressional roundtable on this issue entitled: “Researching while Chinese American: Ethnic Profiling, Chinese American Scientists and a New American Brain Drain.”<sup>16</sup>

The DOJ publishes press releases regarding updates to cases that are considered “China Initiative” cases.<sup>17</sup> Based on the press releases on the DOJ website, it appears that investigations relating to the “China Initiative” are conducted – at the very least – by the Federal Bureau of Investigation (FBI), the National Security Division (NSD), Department of Health and Human Services (HHS) including but not limited to their Office of Inspector General, and the various United States Attorneys’ Offices in the states where the charges are eventually made. Additionally, other federal agencies appear to also be involved with these investigations including but not limited to, the National Institute of Health (NIH), the Federal Drug Administration (FDA), National Aeronautics and Space Agency (NASA), Department of Energy (DOE), and other agencies associated with federal funding and grants for research, including funding from the National Science Foundation (NSF). Some of these investigations are assisted by various American academic institutions. Furthermore, based on the charging documents linked to the press release page on the DOJ website, our request includes the most common federal charges brought against those accused in cases seemingly related to enforcement of the “China Initiative.”

The USD (R&E) is composed of three major entities, one of which is the Directorate for Research and Technology (DDR&E (R&T)).<sup>18</sup> The DDR&E (R&T) is responsible for the “oversight of the labs, Federally Funded Research and Development Centers (FFRDC), University Affiliated Research Centers (UARC), and academic research.”<sup>19 20</sup> As stated on its website, the DDR&E (R&T) has a goal to take a “balanced approach between maintaining scientific collaboration and protecting American scientific advances from illicit exploitation.”<sup>21</sup> Thus, the USD (R&E) is likely involved in the implementation of the “China Initiative” and likely to have records responsive to this request.

In addition to the USD (R&E), the Defense Advanced Research Projects Agency (DARPA) is also likely involved in the implementation of the “China Initiative.” Whereas demonstrated above, much of the work conducted in the name of the “China Initiative” is done through the enforcement of a particular set of federal laws relating to the allocation and administration of federal grants and work visas for scientific research in academia and the

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<sup>16</sup> “House Oversight Committee, Roundtable Led By Reps. Raskin And Chu Hears About Effects Of Ethnic Profiling Against Chinese American Scientists,” *House Oversight Committee*, June 30, 2021, <https://raskin.house.gov/2021/6/roundtable-led-by-reps-raskin-and-chu-hears-about-effects-of-ethnic-profiling-against-chinese-american-scientists>

<sup>17</sup> General information and press releases for the “China Initiative” can be found here: “Information About The Department Of Justice's China Initiative And A Compilation Of China-related Prosecutions Since 2018”, *Department of Justice*,

<https://www.justice.gov/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>

<sup>18</sup> <https://www.cto.mil/enterprise/>

<sup>19</sup> *Id.*

<sup>20</sup> <https://rt.cto.mil/>

<sup>21</sup> *Id.*

commercial sector. DARPA works closely with academic, corporate, and governmental partners.<sup>22</sup> DARPA’s website indicates that “universities are an integral part of the innovation ecosystem, and DARPA seeks robust engagement directly with potential university partners,” and provides several links for academics to apply for grant funding.<sup>23</sup>

The DARPA website also states that, “[i]n order to identify and mitigate undue foreign influence, as required by Under Secretary of Defense for Research and Engineering (USD (R&E)), DARPA has established a policy and process to identify potential foreign influenced conflicts of interest or commitment.”<sup>24</sup> Therefore, the Office of the Secretary of the Defense and Joint Staff should direct its counterparts, the USD (R&E), DARPA, and others involved in the administration of federal grants, to conduct a search for records responsive to this request.

#### **IV. HOW RESPONSIVE RECORDS SHOULD BE PROVIDED**

CALDA requests 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. 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. *See* 5 U.S.C. §552 (a)(3)(B).

#### **V. APPLICATION FOR EXPEDITED PROCESSING**

In this case, CALDA contends that there has been and will be a substantial loss of due process rights to CALDA’s members and to the Chinese American community in general. The subject matter of this request has been and continues to be a subject of widespread and exceptional media interest which raises questions of the government’s integrity which affect public confidence.

CALDA requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.”<sup>25</sup>

##### **A. The Urgency of Obtaining the Requested Records**

The records requested are urgently needed to inform the public about possible ongoing civil rights violations being carried out by the government in its pursuit of the “China Initiative.” Beyond the government’s likely discriminatory prosecutions under this initiative, the effect of the unlawful discrimination is likely having a chilling effect on the collaboration and free association rights of Asian Americans, especially concerning their roles and opportunities in academic and scientific institutions. Thus, it’s no coincidence that former China Initiative Steering Committee member and former U.S. Attorney for the District of Massachusetts, Andrew Lelling, stated that the initiative’s purpose was to have a “chilling effect on collaboration with the Chinese.”<sup>26</sup>

<sup>22</sup> <https://www.darpa.mil/work-with-us/for-universities>

<sup>23</sup> <https://www.darpa.mil/work-with-us/for-universities>

<sup>24</sup> *Id.*

<sup>25</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II)

<sup>26</sup> Catherine Matacic, “U.S. attorneys warn of upcoming ‘spike’ in prosecutions related to China ties”, Feb. 7, 2020,

Consequently, history has demonstrated that when certain countries of origin become a focus of national security issues, innocent people in the United States with perceived ethnic or cultural ties to the targeted country, can easily become victims of unlawful discriminatory behavior. As explained in the section above (III. “Information Helpful to Fulfilling this Request”), this discrimination appears to already be taking place and requires immediate transparency and action to stop it. Therefore, this FOIA request is extremely time sensitive.

This request will shed light on government actions that are negatively affecting a significant public interest. As thoroughly cited and discussed in the section above (III. “Information Helpful to Fulfilling this Request”) numerous civil rights groups and Congressional Members and Committees have demonstrated very real concerns over the negative consequences the “China Initiative” has – and continues to have – on Asian Americans. These concerns have already been exemplified by the numerous cases cited above where individuals were seemingly targeted by the justice system based primarily on their ethnicity, and not the evidence, because time and time again the necessary evidence was never produced. These types of examples highlight concerns that innocent people are currently being swept up in counter-intelligence initiatives, which is reminiscent of a “new Red Scare.”<sup>27</sup>

Therefore, there is a compelling need for the information requested in this FOIA action because it would provide the public and government officials the clarity and context to properly scrutinize and alter how investigations under the new “China Initiative” are being conducted. Thus, it would help answer urgent questions regarding racial profiling prompted by the “China Initiative;” a government activity that’s affecting a significant public interest.

### **B. CALDA’s Primary Purpose for the Request is to Inform the Public about the Government’s Activity**

CALDA is the United States’ first and only non-profit organization dedicated to providing free and direct legal representation to all Chinese Americans who have suffered racial discrimination and hatred. Their mission is to seek justice and racial equality through litigation and other legal actions. While justice is achieved directly through their litigation process, racial equity is achieved through their public relation and public awareness campaigns that reveal the injustices exemplified by their litigation.

CALDA has many different means in which to widely disseminate the information it receives and generates from the records released by this request. Their main media channels include the social media platform WeChat. There, they have the ability to reach out to hundreds of thousands of Chinese Americans. Additionally, CALDA’s website ([www.caldausa.org](http://www.caldausa.org)) can reach out to millions of Chinese Americans. CALDA also has access to public relations firms that can publish stories on traditional national media platforms within the United States.

With regard to the “China Initiative,” CALDA is also working directly with multiple nationwide nonprofits including Asian Americans Advancing Justice, the ACLU, the Cato

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<https://www.sciencemag.org/news/2020/02/us-attorneys-warn-upcoming-spike-prosecutions-related-china-ties>

<sup>27</sup> “Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists,” *House Oversight Committee*, February 20, 2020,

<https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>



Institute, and APA Justice. All these organizations have proven their capability and willingness to help disseminate the information CALDA receives or generates from its own litigation and FOIA efforts. Lastly, CALDA's board members are active in the dissemination of information relating to racial justice and equity. Many of them have been making presentations on different media platforms that are viewed by tens of thousands of people.

Therefore, the records, and the information that CALDA generates from this FOIA request, will quickly and widely be disseminated to the public. In doing so, it can create the transparency and political will necessary to alter the government's activity which continues to negatively affect a significant public interest; the unwarranted and unlawful discrimination of Asian Americans under the direction of the "China Initiative."

## **VI. PUBLIC INTEREST FEE WAIVER REQUESTED**

Under the Freedom of Information Act, a requester seeking a fee waiver must demonstrate with reasonable specificity that the requested information is likely to contribute significantly to the public understanding of government operations and activities. *See* 5 U.S.C. § 552. When considering a public interest fee waiver request, courts generally consider (1) the substance of the request, (2) the informative value of the information, (3) the requester's ability to disseminate the information, and (4) the likelihood that the information will contribute significantly to the public understanding. *Public Emples. for Env'tl. Responsibility v. United States DOC*, 968 F. Supp. 2d 88, 100 (D.D.C 2013).

Under FOIA fees are assessed in accordance with the Department of Justice FOIA/PA regulations, based on three categories of requestors:

1. Commercial requesters—charged for search time, document review, and duplication;
2. News media, educational, and scientific requesters—charged for duplication only after the first 100 pages; and
3. All other requesters—charged for search time (after two hours) and duplication (the first 100 pages are free).

Generally, "requester category" means one of the three categories in which agencies place requesters for the purpose of determining whether a requester will be charged fees for search, review and duplication; categories include commercial requesters, noncommercial scientific or educational institutions or news media requesters, and all other requesters. The term "fee waiver" means that processing fees will be waived, or reduced, if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a primarily commercial interest. The DOJ website further states that no search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

Here, CALDA's FOIA request, and the history and objectives of the CALDA organization, demonstrate its qualifications to receive a Public Interest Fee Waiver. First, as described in the sections above, the substance of the request is designed to expose the discriminatory effect of the government's actions surrounding the implementation of the "China Initiative."

Secondly, also described above, the information sought is highly valuable because the request is designed to show that the government's actions in pursuit of implementing the "China Initiative" are likely – directly or indirectly – having a discriminatory effect upon Asian Americans. The records released because of this request are likely to demonstrate the disparate discriminatory impact the "China Initiative" has had upon Asian Americans. Therefore, the release and analysis of these records will very likely create the transparency and political will necessary to create procedural safeguards to protect Asian Americans from the unnecessary and unlawful discrimination within the justice system, as well as in academic and scientific institutions.

Thirdly, and also described in the section above, CALDA is perfectly situated to widely disseminate the records sought, as well as the information generated from the analysis of the records sought. CALDA has demonstrated its ability and intent to widely disseminate any information derived from this request through its media apparatus as well as other organizations it works closely with.

Finally, the information sought is very likely to significantly contribute to the public understanding of the disparate impact the "China Initiative" has had on Asian Americans. Records released from this request will illustrate whether there has been an uptick in serious federal charges against Asian Americans since the start of the "China Initiative." By requesting records before and after the start of the "China Initiative," it will allow a thorough analysis of the effect the "China Initiative" has had on Asian Americans, and whether that increased scrutiny has been justified, or has been improperly prompted by discriminatory stereotypes.

In the event that our waiver is not granted and you comply with all time requirements, we are willing to pay up to \$40 for the records sought. See paragraph VIII for more information.

## **VII. 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).

## **VIII. CONSEQUENCES OF AGENCY FAILURE TO COMPORT**

An effect of the 2007 Amendments was to impose consequences on agencies that fail to comport with FOIA's requirements. See S.Rep. No. 110-59. To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that "[a]n agency shall not assess search fees ... if the agency fails to comply with *any time limit*" of FOIA. § 552(a)(4)(A)(viii) (emphasis added). *Bensman v National Park Service*, 806 F.Supp.2d 31 (DCD 2011).

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 my office 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.

## **IX. AUTHORIZATION**

The Board of Directors of CALDA has authorized the Sorenson Law Office to make this request on their behalf. CALDA has also authorized the Sorenson Law Office to receive records on behalf of CALDA.

If any other authorizations or forms are needed for processing the request, the release of responsive records, the request for expedited processing, or request for the public interest fee

waiver, please let us know as soon as possible. We are more than happy to supply the agency with all necessary documentation required to complete this request as requested.

#### **X. ESTIMATED DATE OF COMPLETION REQUESTED**

CALDA specifically requests the agency to provide an estimated date of completion for this request.

#### **XI. CONTACT**

Please provide a receipt for this request and provide a tracking number so that we may inquire about the status of this request.

If you have any questions regarding this FOIA request, or need help locating documents, or if I can be of any other assistance, please feel free to contact me via email at: [peter@sorensonfoialaw.com](mailto:peter@sorensonfoialaw.com).

Thank you in advance for your assistance.

Best,

C. Peter Sorenson  
Sorenson Law Office  
PO Box 10836  
Eugene, Oregon 97440

**Exhibit 2**



Haley Mendez <haley@sorensonfoialaw.com>

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**Fwd: Status Update for Request #60127**

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**Haley Mendez** <haley@sorensonfoialaw.com>  
Draft

Tue, May 9, 2023 at 4:59 PM

----- Forwarded message -----

From: <foia\_noreply@nih.gov>  
Date: Tue, May 9, 2023 at 1:02 PM  
Subject: Status Update for Request #60127  
To: <petesorenson@gmail.com>

Dear C. Peter Sorenson,

The status of your FOIA request #60127 has been updated to the following status 'Received'. To log into the NIH FOIA Public Portal click on the Application URL below.

<https://foiaportal.nih.gov>

Sincerely,

National Institutes of Health

**Exhibit 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 email: [peter@sorensonfoialaw.com](mailto:peter@sorensonfoialaw.com)

May 19, 2023

C. Peter Sorenson  
Sorenson Law Office  
PO Box 10836  
Eugene, Oregon 9744

Re: FOI Case No. 60127

Dear Mr. Sorenson:

This acknowledges your Freedom of Information Act (FOIA) request addressed to the National Institutes of Health (NIH) sent on May 9, 2023, which was received in this office the same day.

You requested the following:

1. All records since January 1, 2014, that discuss any investigations and/or cases against any professors of a U.S. university regarding any of the following subjects:
  - their possible failure to disclose their ties or affiliations with any country that is considered an enemy or adversary of the United States (e.g. China, Russia, North Korea or Iran); or
  - their possible failure to disclose their income received from a country that is considered an enemy or adversary of the United States.
2. All records since January 1, 2014, that discuss any investigations and cases against the following professors:
  - Prof. Anming Hu of University of Tennessee;
  - Prof. Feng “Franklin” Tao of University of Kansas;
  - Prof. Mingqing Xiao of Southern Illinois University;



- Prof. Gang Chen of Massachusetts Institute of Technology; or
- Prof. Xiaoxin Xi of Temple University.

3. All records since January 1, 2014, containing a periodic summary of investigations and cases against any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

4. All emails to or from Matthew Olsen, Assistant Attorney General for National Security, former Director of the National Counterterrorism Center, since January 1, 2014, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

5. All emails to or from John C. Demers, former Assistant Attorney General for National Security, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

6. All records that discuss or describe communications with the University of Kansas, Cleveland Clinic, Massachusetts Institute of Technology, University of Tennessee, Temple University, Southern Illinois University, or National Aeronautics and Space Administration concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

7. All records, reports, training materials, policy directives, and emails to and from the

Department of Justice concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

8. All records, reports, training materials, policy directives, and emails to and from the Department of Justice concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

9. All records, reports, training materials, policy directives, and emails to and from the Federal Bureau of Investigation concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

10. All records, reports, training materials, policy directives, and emails to and from the U.S. Customs and Border Protection concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;
- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

11. For all the above requests, the term “a U.S. university” also includes a higher education institution, a post-secondary education institution, or a third-level or tertiary education institution.

You also requested expedited processing.

The FOIA, 5 U.S.C. §552(a)(6)(E), requires agencies to consider requests for expedited processing and grant them whenever a “compelling need” is shown and in other cases as determined by the agency. The term “compelling need” is defined as (1) involving “an imminent threat to the life or physical safety of an individual,” or (2) in the case of a request made by “a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” The compelling need standard is “intended to be narrowly applied.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001).

Unfortunately, your request does not meet the standard of “compelling need”. Therefore, I am denying your request for expedited processing.

We are querying the appropriate NIH offices for records responsive to your request. If any documents responsive to your request are located, they will be reviewed for releasability, and all releasable information will be sent to you. We will do everything possible to comply with your request in a timely manner. Please contact the NIH FOIA Office at [NIHFOIA@od.nih.gov](mailto:NIHFOIA@od.nih.gov) or 301-496-5633 for additional information or to inquire about the status of your request.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the Department of Health and Human Services (HHS) FOIA Regulations as they apply to “other”; i.e., you will be charged for duplication at 10-cents per page although the first 100 pages are free; there is no charge for search or review time. Please be advised that the HHS FOIA Regulations allow us to charge for search time even if we do not locate any responsive records or if we determine that some or all of the responsive records are exempt under one of the FOIA’s nine exemptions. Because we are uncertain that applicable fees will exceed our minimum charge (\$25.00), we are not addressing your request for a fee waiver at this time. However, if it is determined that there will be fees associated with processing your request, we will contact you at that time.

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  
Public Affairs Specialist  
Office of Communications and Public Liaison  
Building 31, Room 5B52S  
31 Center Drive  
Bethesda, MD 20814  
301-496-5077 (phone)  
301-496-0818 (fax)  
[nihfoia@od.nih.gov](mailto:nihfoia@od.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](mailto:ogis@nara.gov) (email)

In addition, you have the right to appeal this determination to deny you expedited processing of your request. 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 C of the HHS FOIA Regulations

Page 5 – Sorenson (60127)

<http://www.nih.gov/icd/od/foia/cfr45.htm>) to the Assistant Secretary for Public Affairs, at:  
<https://requests.publiclink.hhs.gov/App/Index.aspx>

Sincerely,

Gorka Garcia-Malene  
Freedom of Information Officer, NIH