

# **EXHIBIT 3**



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**SENT VIA E-MAIL ATTENTION KATHY HILL:**  
**[FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)**

April 26, 2023

Arianne Perkins  
Department of Health and Human Services (HHS)  
Freedom of Information Act Office  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Ms. Perkins:

I write in response to your April 4, 2023 letter (“Letter”) seeking clarification to my Freedom of Information Act (“FOIA”) Request Number 2023-00616-FOIA-OS (“Request”). This response serves as an appeal to your constructive denial of the Request and offers additional information as an attempt to allow your office the opportunity to search for responsive documents. I offer the proposed accommodations in this letter as a good-faith effort to assist the Department in its duty to pull responsive records to the Request. Nothing in the offered accommodations should be interpreted as a waiver of any rights, privileges, or entitled documents.

Your constructive denial of the Request masked as an effort to “obtain clarification” is baseless because the Request clearly contains the information you are seeking clarity on. Letter at 2. You err. With respect, FOIA, HHS regulations, and caselaw require nothing more to make a valid FOIA Request. There simply is no authority to require provision of the level of detail you desire.

Nonetheless, you have identified three additional subjects of information you seek to allow your office to conduct a search for responsive records. Your letter states, “if we get the missing information [reproduced below], we can run the search.” Letter at 3. You wrote further, “if all the parameters (timeframes, key words, etc.) are the same, we can run the search against multiple custodians simultaneously.” *Id.* You specifically sought the following additional information:

1. “The agencies, offices, or individuals involved. . . .
2. A more detailed description of the subject, title, or description of the records sought, including search terms.
3. Author, recipient, case number, file designation, or other reference number, if available.”

**The Request Identified Specific Custodians and a Limited Time Period**

You have specifically requested we “provide additional information on [t]he agencies, offices, or individuals involved” as well as “[a] more detailed description of the subject, title, or description of the records sought, including search terms.” Letter at 2.

The request expressly provided the requested information by naming specific custodians as well as the Department components to search as seen in the language from our request below. The Request wrote:

“Please limit the search for this request to the following time period: January 20, 2021 to the present. Please conduct a search of the following, but not limited to, custodians:

- Xavier Becerra;
- Andrea Palm;
- Samuel R. Bagenstos;
- Melanie Egorin;
- Kevin Barstow;
- Rose Sullivan;
- Elizabeth Letter;
- Peter Rechter;
- Tara Ganapathy;
- Daria Berstell;
- JoAnn Martinez;
- Jennifer Schmalz;
- Kamara Jones;
- Caroline Ciccone;
- John Kraus;
- May Malik; and
- the Executive Secretariat

In addition, please include the following Department components in any search: Office of the Secretary, Office of the Deputy Secretary, Office for the Assistant Secretary for Legislative Affairs, Office of the Assistant Secretary for Financial Resources, Office of the Assistant Secretary for Public Affairs, the Executive Secretariat, and the Office of the General Counsel.”

The Request clearly articulated specific custodians whose records we sought. As an accommodation, and in the interest of beginning the pull of records, please pull the records of the identified custodians. This accommodation does not waive your requirement to pull addition specific custodians within the offices listed in the original Request.

**Additional Information to Assist the Gathering of Responsive Records**

The HHS regulation asking for “[t]he subject, title, or description of the records sought” does not require us to provide the level of detail you are soliciting. Neither FOIA nor the HHS regulations require providing “the domain names for each entity in the list[.]” Letter at 3. It is sufficient to simply list the names of the “agencies, offices, or individuals involved” as the HHS regulation states, which we did as previously stated.

Despite not be required to offer such an accommodation, I write to offer three ways to help the Department begin the collection of responsive records. First, please begin a search of all correspondence between the individuals listed below and any “house.gov” or “senate.gov” domain name containing the terms: (1) “covid” AND “origins”, (2) “origins” AND “letter”, or (3) “origins” AND “documents.” Please include any internal communications in those email “families” that accompany the original communication with the congressional domain name.

- Samuel R. Bagenstos;
- Melanie Egorin;
- Kevin Barstow;
- Rose Sullivan;
- Elizabeth Letter;
- Peter Rechter;
- Tara Ganapathy;
- Daria Berstell;
- JoAnn Martinez;
- Jennifer Schmalz;

Second, the Letter requests clarification by way of “author, recipient, case number, file destination, or other reference number, if available” presumably to help the Department identify the congressional and media inquiries about COVID origins for which to pull responsive material. As an initial matter, please begin searching for responsive records connected to the letters to HHS or HHS component offices (e.g. NIH, CDC, FDA, etc.) produced in Appendix C of the Request. While these letters are not an exhaustive list of letters the Department has received on the origins of COVID, these letters and the corresponding responsive records can serve as a starting point for the records pull.

Third, please see the proposed search terms, authors, and recipients to begin a more generalized search. The list below is an accommodation to allow the Department to run a search and does waive the Department’s obligation to produce all responsive records.

*Proposed Initial Search Terms*

- “origins” or “COVID” AND “Letter”
- “origins” or “COVID” AND “Congress”
- “origins” or “COVID” AND “Senator” or “Sen.”
- “origins” or “COVID” AND “Representative” or “Rep.” or “Congressman”

- “origins” or “COVID” AND “Chairman”
- “origins” or “COVID” AND “Ranking Member” or “RM”
- “origins” or “COVID” AND “oversight”
- “origins” or “COVID” AND “investigation”
- “Ping Chen”
- “gain of function”
- “EcoHealth Alliance”
- “Wuhan Institute of Virology” or “WIV”

*Proposed Initial Author, Recipient, and Domain Searches*

- Senate.gov
- House.gov
- Washington Post
- New York Times
- Wall Street Journal
- Politico
- The Hill
- FoxNews
- Breitbart
- CNN
- CBS
- NBC
- ABC
- Yahoo
- The Daily Caller
- The Daily Signal
- Pro Publica
- BBC
- The Daily Mail
- Nature
- The Atlantic
- The Intercept
- The Guardian
- National Review
- Reuters
- Substack

Thank you in advance for considering the proposed accommodations. Please begin the search for responsive documents immediately. If you have any questions, or feel you need clarification of this request please contact me at [oversightproject@heritage.org](mailto:oversightproject@heritage.org).

Sincerely,

Mike Howell  
Director and Author at The Daily  
Signal  
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