

BuzzFeed News

REPORTING TO YOU

May 4, 2020

Peter Aldhous,
Science Reporter,
BuzzFeed News
415 800 3471
peter.aldhous@buzzfeed.com

FOIA Officer
NIAID
Room 6G51
5601 Fishers Lane
Rockville, MD 20892
foia@niaid.nih.gov

Dear FOIA officer,

This is a request under the Freedom of Information Act, 5 USC 552.

I am a journalist working on behalf of BuzzFeed, reporting on research relevant to the threat to human health from animal coronaviruses, and in particular the NIAID's funding in this area to the EcoHealth Alliance and the recent decision to terminate that grant.

I request the following records:

- Emails, memos, letters, text messages, and directives sent to and from NIAID director Anthony Fauci regarding Project Number: 2R01AI110964-06 "UNDERSTANDING THE RISK OF BAT CORONAVIRUS EMERGENCE" (see https://projectreporter.nih.gov/project_info_details.cfm?aid=9819304&icde=49778456, PI: Peter Daszak of the EcoHealth Alliance) from April 1 2020 through the date the search for responsive records is conducted.

I request these records in electronic format, such as PDF documents.

Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)):

(A) An agency shall—

(i) withhold information under this section only if—

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law; and

(ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information. .

NIAID should not fail to meet the requirements of Section 552(a)(8) when processing my request and release responsive records to me in full or at least in part.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee benefit

As a member of the media, I am entitled to be placed in the "news media, educational, or scientific requesters" category. As such, I should only be charged for duplication fees beyond the first 100 pages. Further, I assert that this request is in the public interest, because it is likely to contribute significantly to public understanding of the operations and activities of the government, and therefore request a fee waiver.

Fee waiver

Please waive any applicable fees. Release of the information is not primarily in my commercial interest and will contribute significantly to public understanding of government operations and activities. 5 U.S.C. § 552(a)(4)(A)(iii). Release of these records will explain to the public the decision to end a research project that experts are calling vital to understanding the current coronavirus pandemic and preventing another one (see <https://www.npr.org/sections/goatsandsoda/2020/04/29/847948272/why-the-u-s-government-stopped-funding-a-research-project-on-bats-and-coronaviru>).

Request for Expedited Processing

Please provide expedited processing of this request which concerns a matter of urgency. As a science reporter, I am primarily engaged in disseminating information. The public has an urgent need for information about the handling and termination of this project because it will bring information about a research effort investigating threats like the novel coronavirus that has killed tens of thousands of US citizens. The government's decision to terminate the project has clear and urgent implications for public health. The project could yield vital information for understanding the origins of the COVID-19 pandemic, and for drug design and testing. Also, if there were genuine concerns that the outbreak may have originated in an accidental release from a lab funded under this project, that is information the public has an urgent need to know.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone or email, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Aldhous', with a horizontal flourish at the end.

Peter Aldhous

on behalf of BuzzFeed



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.aldhous@buzzfeed.com

May 22, 2020

Peter Aldhous
121 2nd Street, 3rd Floor
San Francisco, CA 94105

Re: FOI Case No. 54141

Dear Mr. Aldhous:

This acknowledges your May 4, 2020, Freedom of Information Act (FOIA) request addressed to National Institute for Allergies and Infectious Diseases (NIAID) FOIA Office, which was received in this office that same day. You requested copies of emails, memos, letters, text messages, and directives sent to and from NIAID director Anthony Fauci regarding Project Number: 2R01AI110964-06 "UNDERSTANDING THE RISK OF BAT CORONAVIRUS EMERGENCE," from April 1 2020 through May 5, 2020.

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).

In support of your request, you state that, "The public has an urgent need for information about the handling and termination of this project because it will bring information about a research effort investigating threats like the novel coronavirus that has killed tens of thousands of US citizens." I have determined that your request for expedited processing does meet the criteria under the FOIA. You demonstrated that there exists an urgency to inform the public concerning actual or alleged Federal Government activity. Therefore, I am granting your request for expedited processing.

Exhibit B

Page 2 – Aldous (54141)

We are searching the files of the NIAID 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 NIAID FOIA Office at foia@niaid.nih.gov or 301-496-9737 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 news media requesters; 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

Stephanie Clipper
Public Affairs Specialist
Office of Communications and Public Liaison
Building 31, Room 5B35
31 Center Drive
Bethesda, MD 20814
301-496-1828 (phone)
301-496-0818 (fax)
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)

Sincerely,

Gorka Garcia-
malene -S



Digitally signed by
Gorka Garcia-malene -S
Date: 2020.05.22
16:32:01 -04'00'

Gorka Garcia-Malene
Freedom of Information Officer, NIH



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.aldhous@buzzfeed.com

June 18, 2020

Peter Aldhous
121 2nd Street, 3rd Floor
San Francisco, CA 94105

Re: FOI Case No. 54141

Dear Mr. Aldhous:

This is the final response to your Freedom of Information Act (FOIA) request dated May 4, 2020, addressed to the FOIA Office, National Institute of Allergy and Infectious Diseases, (NIAID), National Institutes of Health (NIH), which was received in that office on the same date. You requested a copy of Emails, memos, letters, text messages, and directives sent to and from NIAID director Anthony Fauci regarding Project Number: 2R01AI110964-06 "Understanding the Risk of Bat Coronavirus Emergence" PI: Peter Daszak of EcoHealth Alliance. (Date Range for Record Search: From 4/1/2020 To 5/4/2020)

NIAID forwarded all records responsive to your request to the NIH FOIA Office. The records you requested involve pending investigations. I have determined to withhold those records pursuant to Exemption 7(A), 5 U.S.C. § 552, and section 5.31 (g)(l) of the HHS FOIA Regulations, 45 CFR Part 5. Exemption 7(A) permits the withholding of investigatory records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings.

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:

Assistant Secretary for Public Affairs
Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs, Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

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

Exhibit C

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

Stephanie Clipper
Public Affairs Specialist
Office of Communications and Public Liaison
Building 1 Room 331
1 Center Drive
Bethesda, MD 20892
301-496-5633 (phone)
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**

Digitally signed by Gorka
Garcia-malene -S
Date: 2020.06.18
11:09:18 -04'00'

Gorka Garcia-Malene
Freedom of Information Officer, NIH

BuzzFeed News

REPORTING TO YOU

Jun 15, 2020

Peter Aldhous,
Science Reporter,
BuzzFeed News
415 800 3471
peter.aldhous@buzzfeed.com

Freedom of Information Act Appeal

Re: NIH FOI Case No. 54141

Assistant Secretary for Public Affairs
Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs, Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Chief FOIA Officer,

This is an appeal to the denial of my FOIA request referenced above.

I appeal NIH's decision in its totality.

As to any records located in investigative files for pending investigations, the agency may not assert Exemption 7(A) without conducting a document-by-document review to determine whether release of the records would interfere with ongoing law enforcement proceedings.

The United States District Court for the District of Columbia has noted in an opinion that an agency is obligated "to conduct record-level reviews at the administrative level before refusing to produce records contained in its investigative files." *Tipograph v. Dep't of Justice*, Case No. 13-cv-239 (CRC) (D.D.C. Mar. 18, 2015).

I request that the NIH review the records at issue again and provide me with segregable material that would not interfere with an ongoing investigation.

I have attached my original request and the response letter from NIH.

Sincerely,

Peter Aldhous

on behalf of BuzzFeed

The appeal for NIH FOI Case No. 54141 was shipped Jun 26 and USPS tracking shows it arrived Jul 6:

Tracking Number: 9400111899563347880905

Your item was delivered to an individual at the address at 11:28 am on July 6, 2020 in WASHINGTON, DC 20201.

USPS Premium Tracking™ Available 

Status

 **Delivered**

July 6, 2020 at 11:28 am
Delivered, Left with Individual
WASHINGTON, DC 20201

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