

# United States Senate

WASHINGTON, DC 20510

July 27, 2022

Lawrence A. Tabak, D.D.S., PhD.  
Acting Director  
National Institutes of Health  
900 Rockville Pike  
Bethesda, MD 20892

Dr. Tabak:

I write in response to recent revelations regarding the National Institute of Health (NIH)'s processing of Freedom of Information Act (FOIA) requests. It has come to my attention that NIH may be improperly withholding information from the public related to COVID-19 for political reasons.

FOIA provides the public a legal right to agency records unless the material falls within a narrow set of identified exceptions.<sup>1</sup> Congress enacted FOIA to ensure the Executive Branch is transparent and accountable to the American people. Attorney General Merrick Garland recently reaffirmed the importance of FOIA, notifying agencies that the Justice Department would not defend nondisclosure decisions of agencies that failed to apply a presumption of openness.<sup>2</sup> The Attorney General recognized, “[FOIA] has been a vital tool for advancing the principles of open government and democratic accountability that are at the heart of who we are as public servants.”<sup>3</sup>

Unfortunately, NIH has repeatedly disregarded its responsibilities under FOIA and the American people's right to agency records. For almost two years, public interest groups and media organizations have been forced to engage in protracted litigation to obtain documents related to NIH's involvement in COVID-19.<sup>4</sup> The records NIH has produced have been heavily redacted.

Of particular concern is NIH's recent admission in Court that the agency is withholding portions of emails between employees because they “could be used out of context and serve to amplify the already prevalent misinformation regarding the origins of the coronavirus pandemic.”<sup>5</sup> This suggests NIH is censoring the information it releases to the public about the origins of the pandemic.

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<sup>1</sup> 5 U.S.C. 552

<sup>2</sup> <https://www.justice.gov/ag/page/file/1483516/download>

<sup>3</sup> <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and>

<sup>4</sup> <https://www.newsweek.com/publics-business-ought-public-opinion-1697029>

<sup>5</sup> <https://disinformationchronicle.substack.com/p/nih-tries-sealing-name-of-chinese>

For these reasons, I request you provide my office with the following information no later than 5:00PM on August 3, 2022:

1. A detailed index of all information withheld pursuant to a FOIA request, either in part or in whole, because such information “could be used out of context and serve to amplify the already prevalent misinformation regarding the origins of the coronavirus pandemic.”
2. A detailed description of the process by which the agency determines what information “could be used out of context and serve to amplify the already prevalent misinformation regarding the origins of the coronavirus pandemic”, including all individuals involved in making such determination.
3. A list of all changes since January 2020 to NIH’s FOIA review and/or approval process for agency and/or agency component records, including, but not limited to, temporary and informal policies.
4. A list of all instances since January 2020 where the NIH Director, Acting Director, and/or head of an agency component was involved in reviewing/clearing a FOIA response before release to the requestor.
5. A list of all instances since January 2020 where the NIH Director, Acting Director, and/or head of an agency component participated in any matter related to a FOIA request for records in which they were directly or indirectly personally involved.
6. A description of what role, if any, the NIH Director, Acting Director, and head of an agency component has in the FOIA process, including, but not limited to, any authority for such individuals to withhold information from production under a valid FOIA request.

The American people have a right to a transparent and open government. I appreciate your attention to this critical matter.

Sincerely,



Rand Paul, M.D.  
U.S. Senator

Cc: The Honorable Merrick Garland, Attorney General of the United States