

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JIMMY TOBIAS,)
)
 Plaintiff,)
)
 v.)
)
 NATIONAL INSTITUTES OF HEALTH,)
 Office of the Director)
 900 Rockville Pike)
 Bethesda, Maryland 20892)
)
 U.S. DEPARTMENT OF HEALTH AND)
 HUMAN SERVICES,)
 Office of the General Counsel)
 200 Independence Ave., SW, Room 713-F)
 Washington, DC 20201)
)
 Defendants.)

COMPLAINT

1. Plaintiff JIMMY TOBIAS brings this suit to force Defendants NATIONAL INSTITUTES OF HEALTH and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES to conduct a reasonable search, issue a determination, and produce communications and other records regarding the COVID-19 pandemic, which would shed light on the policies and actions taken by officials to battle the outbreak.

PARTIES

2. Plaintiff JIMMY TOBIAS is an independent reporter who has written for *The Guardian* and *The Nation*, among other media outlets, and is the FOIA requester in this case.

3. Defendant NATIONAL INSTITUTES OF HEALTH (“NIH”) is a federal agency and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”) is a federal agency and is subject to the Freedom of Information Act, 5 U.S.C. § 552. HHS is the parent agency of NIH.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

JUNE 13, 2023 FOIA REQUEST TO NIH

7. On June 13, 2023, Plaintiff submitted a FOIA request to NIH for the following records:

Any emails, documents or other records sent, received or otherwise in possession of Dr. Fauci, Dr. Francis Collins, Dr. Hugh Auchincloss and/or Dr. David Morens that references any of the following WIV-affiliated scientists: Peter Daszak, Shi Zhengli, Ben Hu, Yu Ping, and/or Yan Zhu. WIV, as referenced above, refers to the Wuhan Institute of Virology.

This request seeks records produced since January 2019.

8. A true and correct copy of the original FOIA request, along with subsequent correspondence, is attached as Exhibit 1.

9. On June 14, 2023, NIH acknowledged receipt of the FOIA request and assigned reference number 60281 to the matter. *Id.*

10. On June 14, 2023, NIH sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

11. NIH did not send any further correspondence to Plaintiffs regarding this request.

12. NIH did not seek any extensions to respond to this request.

13. As of the date of this filing, NIH has not issued a determination on Plaintiff’s request.

14. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

JULY 21, 2023 FOIA REQUEST TO NIH

15. On July 21, 2023, Plaintiff submitted a FOIA request to NIH for the following records:

Any and all communications, including email attachments, between Dr. Francis Collins and Clare Thomas, a senior editor at the Nature Publishing Group. This request also seeks any emails sent or received by Dr. Collins that reference Clare Thomas. This request seeks records produced between January 20, 2020, and the date this request is processed.

16. A true and correct copy of the original FOIA request, along with subsequent correspondence, is attached as Exhibit 2.

17. On July 24, 2023, NIH acknowledged receipt of the FOIA request and assigned reference number 60454 to the matter. *Id.*

18. On July 24, 2023, NIH sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

19. NIH did not send any further correspondence to Plaintiffs regarding this request.

20. NIH did not seek any extensions to respond to this request.

21. As of the date of this filing, NIH has not issued a determination on Plaintiff’s request.

22. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

AUGUST 14, 2023 FOIA REQUEST TO NIH

23. On August 14, 2023, Plaintiff submitted a FOIA request to NIH for the following records:

Any and all written or electronic communications, including email attachments, sent, or received by Lawrence Tabak and/ or Hugh

Auchincloss that contain one or more of the following key words: "Morens", "NARA", "National Archives", "Intercept", and/or "Tobias". This request seeks records produced since July 1, 2023.

24. A true and correct copy of the original FOIA request, along with subsequent correspondence, is attached as Exhibit 3.

25. On August 15, 2023, NIH acknowledged receipt of the FOIA request and assigned reference number 60551 to the matter. *Id.*

26. On August 15, 2023, NIH sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

27. NIH did not send any further correspondence to Plaintiffs regarding this request.

28. NIH did not seek any extensions to respond to this request.

29. As of the date of this filing, NIH has not issued a determination on Plaintiff’s request.

30. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

MARCH 8, 2023 FOIA REQUEST TO NIAID AT NIH

31. On March 8, 2023, Plaintiff submitted a FOIA request to the National Institute of Allergy and Infectious Diseases (hereinafter “NIAID”), a component of NIH, for the following records:

Any and all electronic communications sent or received by Anthony Fauci that contains the following key word: "Redfield". This request seeks records produced between January 1, 2020, and March 20, 2020.

32. A true and correct copy of the request, along with subsequent correspondence, is attached as Exhibit 4.

33. On March 9, 2023, NIH NIAID acknowledged receipt of the FOIA request and assigned reference number 59832 to the matter. *Id.*

34. On March 9, 2023 NIH NIAID sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

35. On March 14, 2023, NIH NIAID further acknowledged receipt of the request and stated that it would “do everything possible to comply with your request in a timely manner.”

36. A true and correct copy of the letter is attached as Exhibit 5.

37. On March 14, 2023, NIH NIAID asked for clarification regarding whether Plaintiff sought documents where Dr. Robert Redfield’s name appears in the body of a communication and/or news clippings, mass mailings, and Google Alerts.

38. On March 15, 2023, Plaintiff confirmed that he sought the communications mentioning Dr. Redfield and informed the agency that it could exclude news clips, spam, and Google alerts from the search. Ex 4.

39. On April 13, 2023, Plaintiff asked NIH NIAID to provide an estimated date of completion for the request. *Id.*

40. On April 14, 2023, NIH NIAID estimated “another 4-6 months” to complete the request.

41. A true and correct copy of the correspondence is attached as Exhibit 6.

42. On May 19, 2023, NIH NIAID stated that the request was “being processed” and that it would take longer due to “unusual circumstances.” *Id.*

43. On September 29, 2023, NIH NIAID estimated “another 2-3 months” to complete the request. Ex 4.

44. On November 3, 2023, NIH NIAID estimated “another 2-3 months” to complete the request. *Id.*

45. On December 5, 2023, NIH NIAID estimated “another 2-3 months” to complete the request. *Id.*

46. On December 8, 2023, NIH NIAID confirmed that the request was not currently in litigation, and stated the request was “being processed.” *Id.*

47. On February 8, 2024, NIH NIAID estimated “approximately 3 more months or so” for a final response to be issued. *Id.*

48. On March 12, 2024, NIH NIAID estimated “another 3-5 months” to complete the request. *Id.*

49. NIH did not send any further correspondence to Plaintiffs regarding this request.

50. As of the date of this filing, NIH has not issued a determination on Plaintiff’s request.

51. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

JULY 20, 2023 FOIA REQUEST TO NIAID AT NIH

52. On July 20, 2023, Plaintiff submitted a FOIA request to the NIAID, a component of NIH, for the following records:

Any and all written or electronic communication between Senior Advisor David Morens one or more of the following individuals: Peter Daszak of the EcoHealth Alliance, Kristian Andersen of Scripps, Robert Garry of Tulane, Edward Holmes of the University of Sydney, virologist Angela Rasmussen, and/or Jeremy Farrar of the Wellcome Trust. This request seeks records produced between January 1, 2021 to the date this request is processed. According to recent Congressional statements and news reporting, Dr. Morens has indicated he has also used a private Gmail account to communicate with outside parties. As a result, I ask that you also include his Gmail account in search for records.

53. A true and correct copy of the request, along with subsequent correspondence, is attached as Exhibit 7.

54. On July 20, 2023, NIH NIAID acknowledged receipt of the FOIA request and assigned reference number 60442 to the matter. *Id.*

55. On July 20, 2023, NIH NIAID sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

56. On July 25, 2023, NIH NIAID informed Plaintiff that it was combining the request with another FOIA request submitted by Plaintiff with the reference number 60136.

57. FOIA request number 60136, submitted by Plaintiff to NIH, sought the following records:

Any and all written or electronic communication between Senior Advisor David Morens one or more of the following individuals: Peter Daszak of the EcoHealth Alliance, Kristian Andersen of Scripps, Robert Garry of Tulane, and/or Jeremy Farrar of the Wellcome Trust. This request seeks records produced between January 1, 2020 and January 1, 2021.

58. Plaintiff later amended request 60136 to exclude responses including news clips, mass mailings, spam, or Google Alerts. Plaintiff also clarified in the amended request that the official(s) may have been using a personal account for official communications, and asked NIH to ensure these communications were included in the search for records.

59. A true and correct copy of 60136 is included in NIH message sent on July 25, 2023, which is included in Exhibit 7.

60. On August 11, 2023, NIH NIAID informed Plaintiff that, contrary to its previous communications, it would continue processing request 60442 individually, and not in combination with request 60136.

61. A true and correct copy of the correspondence is attached as Exhibit 8.

62. On November 16, 2023, NIH NIAID estimated “another 4-6 months” to complete the request. Ex 7.

63. On December 21, 2023, NIH NIAID estimated “another 4-6 months” to complete the request. *Id.*

64. On January 25, 2024, NIH NIAID estimated “another 4-6 months” to complete the request. *Id.*

65. On March 4, 2024, NIH NIAID estimated “another 4-6 months” to complete the request. *Id.*

66. On April 8, 2024, NIH NIAID estimated “another 4 months” to complete the request. *Id.*

67. NIH did not send any further correspondence to Plaintiffs regarding this request.

68. As of the date of this filing, NIH has not issued a determination on Plaintiff’s request.

69. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

JULY 31, 2023 FOIA REQUEST TO NIAID AT NIH

70. On July 31, 2023, Plaintiff submitted a FOIA request to the NIAID, a component of NIH, for the following records:

Any written or electronic communications, including email attachments and text messages, sent or received by Anthony Fauci, Francis Collins, Lawrence Tabak, David Morens, and/or Hugh Auchincloss that reference Yusen Zhou, also known as Zhou Yusen, who was a decorated Chinese scientist affiliated with the People's Liberation Army, the Wuhan Institute of Virology, and other Chinese biomedical and research institutions . You can read more about Zhou here: <https://nypost.com/2021/06/04/chinese-scientist-filed-covid-vaccine-patent-after-contagion-emerged-report/>

71. A true and correct copy of the request, along with subsequent correspondence, is attached as Exhibit 9.

72. On July 31, 2023, NIH NIAID acknowledged receipt of the FOIA request and assigned reference number 60488 to the matter. *Id.*

73. On July 31, 2023 NIH NIAID sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

74. On August 9, 2023, NIH NIAID asked Plaintiff to provide a date range for the request. *Id.*

75. On August 10, 2023, Plaintiff stated that the date range for the request is January 1, 2020, to the date the request is processed. *Id.*

76. On August 25, 2023, Plaintiff followed up to confirm the date range for the request and asked for an estimated date of completion. *Id.*

77. On December 26, 2023, NIH NIAID stated “This request is with the NIH FOIA office.” NIH NIAID did not provide an estimated date of completion for the request. *Id.*

78. NIH did not send any further correspondence to Plaintiffs regarding this request.

79. As of the date of this filing, NIH has not issued a determination on Plaintiff’s request.

80. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

OCTOBER 13, 2023 FOIA REQUEST TO NIAID AT NIH

81. On October 13, 2023, 2023, Plaintiff submitted a FOIA request to the NIAID, a component of NIH, for the following records:

Any and all written or electronic communications, including attachments, sent or received by Anthony Fauci, Hugh Auchincloss and/or David Morens that contain one or more of the following key words: "Worobey", "Pekar", "Hotez" and/or "Crits-Cristoph". This includes any email exchanges with individuals whose last names are "Worobey", "Pekar", "Hotez", or "Crits-Cristoph". This request seeks records produced since January 1, 2022.

82. A true and correct copy of the request, along with subsequent correspondence, is attached as Exhibit 10.

83. On October 15, 2023, NIH NIAID acknowledged receipt of the FOIA request and assigned reference number 60843 to the matter. *Id.*

84. On October 15, 2023, NIH NIAID sent a message to Plaintiff stating it would “review your request and contact you regarding next steps.” *Id.*

85. On October 16, 2023, NIH NIAID further acknowledged receipt of the request and stated that it would “do everything possible to comply with your request in a timely manner.”

86. A true and correct copy of the letter is attached as Exhibit 11.

87. On November 6, 2023, NIH NIAID informed Plaintiff that it had identified 1,200 responsive emails, and asked if Plaintiff was willing to “help narrow the scope of the request” for faster processing. Ex 10.

88. On November 7, 2023, Plaintiff stated he was willing to exclude news articles “as long as the articles aren’t being commented upon by any of the individuals in this request.” Plaintiff further narrowed the request by reducing the date range for the search to January 1, 2022 to August 31, 2022. *Id.*

89. On November 8, 2023, NIH NIAID acknowledged the narrowed request. *Id.*

90. On December 13, 2023, NIH NIAID stated the request was “still being processed” and estimated that Plaintiff would receive a response “in a few months.” *Id.*

91. On January 16, 2024, NIH NIAID informed Plaintiff that “Kara Citarella is now processing the request” and should be contacted for future updates. *Id.*

92. On January 18, 2024, NIH NIAID estimated “another 4 months to complete.” *Id.*

93. On February 22, 2024, NIH NIAID again estimated “another 4 months to complete.” *Id.*

94. On April 3, 2024, NIH NIAID again estimated “another 4 months to complete.” *Id.*

95. NIH did not send any further correspondence to Plaintiffs regarding this request.

96. As of the date of this filing, NIH has not issued a determination on Plaintiff's request.

97. As of the date of this filing, NIH has failed to make any responsive records promptly available to Plaintiff.

**COUNT I – NIH'S FOIA VIOLATION
JUNE 13, 2023 FOIA REQUEST TO NIH**

98. The above paragraphs are incorporated by reference.

99. Plaintiff's FOIA request seeks the disclosure of agency records and was properly made.

100. Defendant NIH is a federal agency subject to FOIA.

101. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

102. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.

103. Defendant NIH has failed to issue a complete determination within the statutory deadline.

104. Defendant NIH has failed to produce all non-exempt records responsive to the request.

**COUNT II – NIH'S FOIA VIOLATION
JULY 21, 2023 FOIA REQUEST TO NIH**

105. The above paragraphs are incorporated by reference.

106. Plaintiff's FOIA request seeks the disclosure of agency records and was properly made.

107. Defendant NIH is a federal agency subject to FOIA.

108. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

109. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.

110. Defendant NIH has failed to issue a complete determination within the statutory deadline.

111. Defendant NIH has failed to produce all non-exempt records responsive to the request.

**COUNT III – NIH’S FOIA VIOLATION
AUGUST 14, 2023 FOIA REQUEST TO NIH**

112. The above paragraphs are incorporated by reference.

113. Plaintiff’s FOIA request seeks the disclosure of agency records and was properly made.

114. Defendant NIH is a federal agency subject to FOIA.

115. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

116. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.

117. Defendant NIH has failed to issue a complete determination within the statutory deadline.

118. Defendant NIH has failed to produce all non-exempt records responsive to the request.

**COUNT IV – NIH’S FOIA VIOLATION
MARCH 8, 2023 FOIA REQUEST TO NIAID AT NIH**

119. The above paragraphs are incorporated by reference.

120. Plaintiff's FOIA request seeks the disclosure of agency records and was properly made.

121. Defendant NIH is a federal agency subject to FOIA.

122. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

123. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.

124. Defendant NIH has failed to issue a complete determination within the statutory deadline.

125. Defendant NIH has failed to produce all non-exempt records responsive to the request.

**COUNT V – NIH'S FOIA VIOLATION
JULY 20, 2023 FOIA REQUEST TO NIAID AT NIH**

126. The above paragraphs are incorporated by reference.

127. Plaintiff's FOIA request seeks the disclosure of agency records and was properly made.

128. Defendant NIH is a federal agency subject to FOIA.

129. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

130. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.

131. Defendant NIH has failed to issue a complete determination within the statutory deadline.

132. Defendant NIH has failed to produce all non-exempt records responsive to the request.

**COUNT VI – NIH’S FOIA VIOLATION
JULY 31, 2023 FOIA REQUEST TO NIAID AT NIH**

133. The above paragraphs are incorporated by reference.
134. Plaintiff’s FOIA request seeks the disclosure of agency records and was properly made.
135. Defendant NIH is a federal agency subject to FOIA.
136. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
137. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.
138. Defendant NIH has failed to issue a complete determination within the statutory deadline.
139. Defendant NIH has failed to produce all non-exempt records responsive to the request.

**COUNT VII – NIH’S FOIA VIOLATION
OCTOBER 13, 2023 FOIA REQUEST TO NIAID AT NIH**

140. The above paragraphs are incorporated by reference.
141. Plaintiff’s FOIA request seeks the disclosure of agency records and was properly made.
142. Defendant NIH is a federal agency subject to FOIA.
143. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
144. Defendant NIH has failed to conduct a reasonable search for records responsive to the request.

145. Defendant NIH has failed to issue a complete determination within the statutory deadline.

146. Defendant NIH has failed to produce all non-exempt records responsive to the request.

WHEREFORE, Plaintiff asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records promptly;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiffs attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: April 15, 2024

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorneys for Plaintiff
JIMMY TOBIAS

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