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Pro hac vice application forthcoming

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Attorneys for Plaintiff US RIGHT TO KNOW

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

US RIGHT TO KNOW, a California Non-Profit Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,

Defendant.

Case No. 3:20-cv-9117

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Freedom of Information Act

INTRODUCTION

1
2 1. This action, through which Plaintiff US Right to Know (“USRTK” or “Plaintiff”) seeks
3 access to government records held by Defendant United States Department of Education (“Education
4 Department,” “Agency,” or “Defendant”) is premised upon, and consequent to, violations of the federal
5 Freedom of Information Act (“FOIA”), 5 U.S.C. section 552 *et seq.*, and Education Department FOIA
6 regulations promulgated thereunder, 34 C.F.R. Subpart C – “Procedures for Requesting Access to
7 Agency Records and Disclosure of Agency Records.” This action challenges the unlawful failure of the
8 Defendant to abide by the statutory requirements of the FOIA and the Agency’s own implementing
9 regulations.

10 2. Defendant is unlawfully withholding from public disclosure information sought by
11 USRTK, information to which USRTK is entitled and for which no valid disclosure exemption applies
12 or has been properly asserted. In particular, Defendant has violated, and remains in violation of, the
13 statutory mandates imposed by the FOIA by: (Count I) failing to provide a timely final determination on
14 USRTK’s FOIA Request; (Count II) unlawfully withholding records from public disclosure for which
15 no valid disclosure exemption applies or has been properly asserted, or to provide the reasonably
16 segregable portions of those records; (Count III) unlawfully failing to grant USRTK’s request for a fee
17 waiver under the FOIA; and (Count IV) failing to provide an “estimated date of completion” despite
18 multiple requests.

19 3. The records requested by USRTK are likely to contribute significantly to the
20 understanding of the operations or the activities of the government. USRTK is a 501(c)(3) nonprofit
21 organization and, by its nature, has no commercial interest in the requested records.

22 4. USRTK seeks declaratory relief establishing that the Defendant has violated the FOIA
23 and that such actions entitle USRTK to relief thereunder. USRTK also seeks injunctive relief directing
24 Defendant to conduct a reasonably adequate search for records and to promptly provide responsive
25 material, to reasonably segregate portions of non-exempt records, and to provide proper justifications for
26 any disclosure exemptions that are applied. Finally, USRTK requests that the Court award it its
27 reasonable attorneys’ fees and costs incurred in bringing this action.

1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction pursuant to 5 U.S.C. section 552(a)(4)(B). That provision of
3 the FOIA grants jurisdiction to “the district court of the United States in the district in which the
4 complainant resides, or has his principal place of business[.]” USRTK both resides and maintains its
5 principal place of business in the Northern District of California.

6 6. The Court also has federal question jurisdiction pursuant to 28 U.S.C. section 1331
7 because this action arises under the FOIA and the Declaratory Judgment Act, 28 U.S.C. section 2201 et
8 seq.

9 **INTRADISTRICT ASSIGNMENT**

10 7. Pursuant to Local Rule 3-2(c), this case is properly brought in the San Francisco Division
11 of the Northern District of California because a substantial part of the events and omissions which give
12 rise to the claims alleged herein occurred in the County of San Francisco.

13 8. Under the FOIA, 5 U.S.C. section 552(a)(4)(B), jurisdiction vests in the district court
14 where “the complainant resides” or “has its principal place of business.”

15 9. Plaintiff resides in the County of San Francisco.

16 10. Plaintiff has its principal place of business in the County of San Francisco.

17 11. As such, under the L.R. 3-2(c), (d), intradistrict assignment to the San Francisco division
18 is proper.

19 **PARTIES**

20 12. Plaintiff USRTK is a 501(c)(3) nonprofit corporation organized under the laws of the
21 State of California. USRTK is a public interest, investigative research group focused on promoting
22 transparency for public health. USRTK works nationally and globally to expose corporate wrongdoing
23 and government failures that threaten the integrity of food systems, the environment, and human health.

24 15. Defendant is an “agency” under the FOIA, the records sought are “records” under the
25 FOIA, and because Defendant is in possession and control of the records sought by USRTK, Defendant
26 is subject to the FOIA pursuant to 5 U.S.C. section 552(f).

27 //

1 **LEGAL FRAMEWORK**

2 16. The FOIA requires U.S. government agencies to “promptly” make public records
3 available to any person if that person makes a request which (1) reasonably describes the records sought
4 and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

5 17. The FOIA requires an agency to issue a final determination on any such information
6 request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i). In issuing a
7 final determination, an agency is required to inform the requester of three things: (1) the agency’s
8 determination of whether or not it must comply with the request; (2) the reasons for its decision; and (3)
9 notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

10 18. The FOIA allows an agency to extend the twenty-day determination deadline, however,
11 by ten working days when “unusual circumstances” exist and when the agency so notifies a requester in
12 writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 34 C.F.R. § 5.21(e). A notice informing a requester of the
13 invocation of the “unusual circumstances” provision must specify the applicable “unusual
14 circumstances.” *Id.*

15 19. Permissible “unusual circumstances” are limited to: (1) the need to search for and collect
16 the requested records from field facilities or other establishments that are separate from the office
17 processing the request; (2) the need to search for, collect, and appropriately examine a voluminous
18 amount of separate and distinct records which are demanded in a single request; or (3) the need for
19 consultation, which shall be conducted with all practicable speed, with another agency having a
20 substantial interest in the determination of the request or among two or more components of the agency
21 having substantial subject-matter interest therein. 5 U.S.C. § 552(a)(6)(B)(iii); 34 C.F.R. § 5.21(e)(1)-
22 (3).

23 20. An agency is entitled to one ten-business day extension. 5 U.S.C. § 552(a)(6)(B)(i). The
24 written notice provided to the requester must specify the specific unusual circumstances justifying the
25 extension and the date on which a final determination is expected to be dispatched. *Id.*; 34 C.F.R. §
26 5.21(e).

27 21. In some circumstances, the FOIA allows an agency to invoke an extension beyond ten
28

1 days. To invoke a longer extension, the FOIA requires an agency to provide written notification to the
2 requester that (1) offers the requester an opportunity to limit the scope of the request so that it may be
3 processed within that time limit, or (2) offers the requester an opportunity to arrange with the agency an
4 “alternative time frame” for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii); 34 C.F.R. § 5.21(e).

5 22. As part of invoking an “alternative time frame” extension, the agency must also make
6 available to the requester its FOIA Public Liaison, who is tasked to resolve any dispute between the
7 requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii).

8 23. FOIA Public Liaisons “shall serve as supervisory officials” and “shall be responsible for
9 assisting in reducing delays, increasing transparency and understanding of the status of requests, and
10 assisting in the resolution of disputes.” 5 U.S.C. § 552(l); 34 C.F.R. § 5.21(f).

11 24. Even when an “unusual circumstances” extension is made, the agency must still notify
12 the requester of its expected date on which a final determination will be dispatched. 5 U.S.C. §
13 552(a)(6)(B)(i).

14 25. “Exceptional circumstances” for failure to comply with applicable time limits “does not
15 include a delay that results from predictable agency workload of requests under this section, unless the
16 agency demonstrates reasonable progress in reducing its backlog of pending requests.” 5 U.S.C. §
17 552(a)(6)(C)(ii).

18 26. If an agency fails to provide a final determination on a FOIA request within the statutory
19 timeframe, the requester is deemed to have exhausted its administrative remedies and may immediately
20 file suit against the agency. 5 U.S.C. § 552(a)(6)(C)(i).

21 27. The FOIA also requires agencies to provide “an estimated date on which the agency will
22 complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C. § 552(a)(6)(B)(i).

23 28. Agencies shall make reasonable efforts to maintain their records so they are reproducible
24 for FOIA purposes, and “shall make reasonable search efforts” for responsive records. 5 U.S.C. §
25 552(a)(3)(B), (C). The term “search” “means to review, manually or by automated means, agency
26 records for the purpose of locating those records which are responsive to a request.” 5 U.S.C. §
27 552(a)(3)(D).

1 the Office of the Chancellor for the University of Texas System. The April 24, 2020 letter is attached
2 hereto as Exhibit B.

3 37. USRTK has no commercial interest or value in records responsive to the Request.

4 38. The records requested by USRTK are likely to contribute significantly to the public
5 understanding of the operations and activities of the government, especially as they pertain to the origins
6 of the SARS-CoV-2 virus and the COVID-19 pandemic in the United States. In April 2020, the
7 Department of Education launched an investigation into the financial ties between the University of
8 Texas Medical Branch and entities in China, including the Wuhan Institute of Virology (“WIV”) and
9 other Chinese state and research institutions. The WIV may have information regarding the source of the
10 novel coronavirus SARS-CoV-2, which is the cause of the disease COVID-19. Federal law (Section 117
11 of the Higher Education Act) requires universities to disclose contracts and gifts from foreign sources to
12 the Department of Education worth at least \$250,000.

13 39. USRTK has a demonstrated track record of obtaining and disseminating information
14 obtained under the FOIA and state public records laws concerning public health. Since 2015, USRTK
15 has obtained, posted online, and reported on thousands of industry and government documents gathered
16 via public records requests. USRTK’s work has contributed to three New York Times investigations, ten
17 academic papers, nine articles in the BMJ, one of the world’s top medical journals, and global media
18 coverage documenting how food and chemical corporations impact public health and the environment.
19 USRTK’s staff has expertise in investigative journalism and advanced research, especially as it concerns
20 impacts on human health.

21 40. USRTK shares its findings with media outlets, public health and medical journals, and
22 through its own library of information, available online at: <http://www.usrtk.org>. Many of USRTK’s
23 documents are available through the USRTK Agrichemical Collection of the UCSF Chemical Industry
24 Documents Archive, available online at:
25 <https://www.industrydocuments.ucsf.edu/chemical/collections/usrtk-agrichemical-collection/>, and the
26 USRTK Food Industry Collection of the UCSF Food Industry Documents Archive, available online at:
27 <https://www.industrydocuments.ucsf.edu/food/collections/usrtk-food-industry-collection/>.

1 41. The Request was received and acknowledged by the Education Department via email on
2 July 7, 2020, and assigned tracking number 20-01981-F.

3 42. Having received no further response or acknowledgment, on August 17, 2020, USRTK
4 wrote an email to the FOIA public liaison for the Education Department, requesting information about
5 the processing of the Request, the expected date of completion on the Request, and whether USRTK
6 could help expedite the Request.

7 43. On August 18, 2020, the Education Department’s “FOIA Manager” sent USRTK an
8 email stating that the “Request” was “pending,” but provided no formal estimated date of completion.

9 44. On September 10, 2020, USRTK wrote again to the Education Department, asking the
10 Agency to provide an estimated completion date on the Request.

11 45. On September 12, 2020, long after the FOIA’s twenty-day determination deadline
12 expired, the Education Department issued a “20-Day Notification” letter to USRTK. That letter did not
13 identify a date upon which the Agency would complete processing on the Request. It also failed to
14 inform USRTK of whether the Agency would comply with the Request, the reasons therefore, or apprise
15 USRTK of its administrative appeal rights. At no point did that letter purport to invoke the FOIA’s
16 “unusual circumstances” exception to the statute’s twenty-day determination deadline.

17 46. The Education Department’s September 12, 2020 “20-Day Notification” letter was not a
18 “determination” within the meaning of the FOIA, because it did not apprise USRTK of (1) the Agency’s
19 determination of whether or not it must comply with the request; (2) the reasons for the Agency’s
20 decision; and (3) notice of the right of USRTK to appeal the determination to the head of the Agency. 5
21 U.S.C. § 552(a)(6)(A)(i).

22 47. On September 30, 2020, the Agency provided USRTK with an email outlining the
23 “status” of the FOIA Request. That email did not identify an estimated date of completion on which the
24 Agency would produce records or otherwise complete processing of the Request.

25 48. On October 1, 2020, USRTK sent a formal request to Tiffany Tucker at the Education
26 Department’s FOIA Service Center requesting, again, that the Agency provide USRTK with a date by
27 which it will complete action on the FOIA Request pursuant to 5 U.S.C. section 552(a)(7)(B)(ii).

1 49. Ms. Tucker replied on October 1, 2020, stating that she was “working” with the Office of
2 the General Counsel “to get an estimated date of completion.”

3 50. On October 8 and October 13, 2020, USRTK wrote again to Ms. Tucker, asking again
4 that the Education Department provide the legally required estimated date of completion for the
5 Request.

6 51. To date, no further communication has been received by USRTK from the Education
7 Department about the Request.

8 52. To date, no estimated date of completion has been provided to USRTK by the Education
9 Department.

10 53. To date, the Agency has not provided USRTK with a lawful “determination” that informs
11 USRTK of (1) the Agency’s determination of whether or not to comply with the Request; (2) the reasons
12 for its decision; and (3) notice of the right of USRTK to appeal to the head of the agency. 5 U.S.C. §
13 552(a)(6)(A)(i).

14 54. The Agency has not shown due diligence in responding to the request. 5 U.S.C.
15 § 552(a)(6)(C)(i).

16 55. To date, the Agency has failed to issue a decision on USRTK’s request for a waiver of
17 fees associated with the processing of the Request.

18 56. To date, the Agency has not produced a single record responsive to the Request.

19 57. USRTK has constructively exhausted all administrative remedies required by the FOIA. 5
20 U.S.C. § 552(a)(6)(A), (a)(6)(C).

21 58. USRTK has been forced to retain the services of counsel and to expend funds litigating
22 Defendant’s unlawful actions and omissions under the FOIA.

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CAUSES OF ACTION

COUNT I

**VIOLATIONS OF THE FREEDOM OF INFORMATION ACT
AND EDUCATION DEPARTMENT REGULATIONS:**

FAILURE TO PROVIDE TIMELY FINAL DETERMINATION

59. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

60. USRTK has a statutory right to have Defendant process its FOIA request in a manner that complies with the FOIA. USRTK's rights in this regard were violated by the Education Department's failure to provide a timely and legally adequate final determination.

61. To date, USRTK has not received any written communication from the Education Department about whether the Agency will comply with the FOIA Request, the Agency's reasons for making that decision, and any right of USRTK to administratively appeal that decision. 5 U.S.C. § 552(a)(6)(A)(i).

62. Based on the nature of USRTK's organizational activities, USRTK will continue to employ FOIA's provisions to request information from Defendant in the foreseeable future. These activities will be adversely affected if Defendant is allowed to continue violating FOIA's response deadlines.

63. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court, Defendant will continue to violate the rights of USRTK to receive public records under the FOIA.

64. Defendant's failure to make a final determination on USRTK's FOIA Request within the statutory timeframe has prejudiced USRTK's ability to timely obtain public records.

COUNT II

VIOLATION OF THE FREEDOM OF INFORMATION ACT:

UNLAWFUL WITHHOLDING OF NON-EXEMPT PUBLIC RECORDS

65. The allegations made in all preceding paragraphs are realleged and incorporated by

1 reference herein.

2 66. USRTK has a statutory right to have Defendant process its FOIA request in a manner that
3 complies with FOIA.

4 67. USRTK's rights in this regard were violated when Defendant failed to promptly provide
5 public, non-exempt records to USRTK, 5 U.S.C. sections 552(a)(3)(A), 552(b), to provide a reasonable
6 estimate of the volume of withheld records, 5 U.S.C. section 552(a)(6)(F), and to reasonably segregate
7 all non-exempt portions of otherwise exempt material. 5 U.S.C. § 552(b).

8 68. Defendant is unlawfully withholding public disclosure of information sought by USRTK,
9 information to which it is entitled and for which no valid disclosure exemption applies.

10 69. USRTK has constructively exhausted its administrative remedies with respect to this
11 claim.

12 70. USRTK is entitled to injunctive relief to compel production of all non-exempt,
13 responsive records.

14 71. Based on the nature of USRTK's organizational activities, USRTK will undoubtedly
15 continue to employ FOIA's provisions to request information from Defendant in the foreseeable future.

16 72. USRTK's organizational activities will be adversely affected if Defendant is allowed to
17 continue violating FOIA's response deadlines as it has in this case.

18 73. Unless enjoined and made subject to a declaration of USRTK's legal rights by this Court,
19 Defendant will continue to violate the rights of USRTK to receive public records under the FOIA.

20 **COUNT III**

21 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

22 **FAILURE TO TIMELY APPROVE USRTK'S FEE WAIVER REQUEST**

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24 74. The allegations made in all preceding paragraphs are realleged and incorporated by
25 reference herein.

26 75. USRTK has a statutory right to have Defendant process its FOIA request in a manner that
27 complies with FOIA.

28 76. USRTK's rights in this regard were violated by Defendant's unlawful delay in informing

1 USRTEK of its decision concerning USRTEK's request for a fee waiver.

2 77. Based on the nature of USRTEK's organizational activities, USRTEK will continue to
3 employ FOIA's provisions to request information from Defendant in the foreseeable future. These
4 activities will be adversely affected if Defendant is allowed to continue violating the FOIA's
5 requirements and deadlines for fee waiver requests.

6 78. USRTEK's request for a waiver of all fees associated with the FOIA Request is
7 appropriate and satisfies all elements required for approval of a fee waiver.

8 79. Unless enjoined and made subject to a declaration of USRTEK's legal rights by this Court,
9 Defendant will continue to violate the rights of USRTEK to receive public records under the FOIA.

10 80. Defendant's failure to make a timely determination on USRTEK's fee waiver request has
11 prejudiced USRTEK's ability to timely obtain public records.

12 **COUNT IV**

13 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**

14 **FAILURE TO PROVIDE ESTIMATED DATE OF COMPLETION**

15 81. The allegations made in all preceding paragraphs are realleged and incorporated by
16 reference herein.

17 82. USRTEK has a statutory right to have Defendant process its FOIA request in a manner that
18 complies with FOIA.

19 83. USRTEK's rights in this regard were violated by Defendant's unlawful failure to provide
20 an estimated date of completion, as required by the FOIA, 5 U.S.C. section 552(a)(7)(B)(ii).

21 84. USRTEK made multiple, repeated requests that Defendant provide an estimated date of
22 completion over the many months following the Agency's acknowledgment of the FOIA Request. At no
23 time has Defendant provided an estimated date of completion despite these multiple requests.

24 85. Based on the nature of USRTEK's organizational activities, USRTEK will continue to
25 employ FOIA's provisions to request information from Defendant in the foreseeable future. These
26 activities will be adversely affected if Defendant is allowed to continue violating the FOIA's
27 requirements for providing USRTEK with an estimated date of completion on its FOIA requests.
28

1 86. Unless enjoined and made subject to a declaration of USRTK’s legal rights by this Court,
2 Defendant will continue to violate the rights of USRTK to receive public records under the FOIA.

3 87. Defendant’s failure to make a timely determination on USRTK’s fee waiver request has
4 prejudiced USRTK’s ability to timely obtain public records.

5 **REQUEST FOR RELIEF**

6 Wherefore, USRTK prays that this Court:

7 1. Order Defendant to promptly provide USRTK all of the information sought in this action
8 and to immediately disclose the requested documents in unredacted format unless an exemption is
9 properly claimed and properly applies.

10 2. Declare Defendant’s failure to provide USRTK with a final determination as unlawful
11 under the FOIA.

12 3. Declare Defendant’s failure to promptly provide USRTK with all non-exempt records as
13 unlawful under the FOIA.

14 4. Declare Defendant’s failure to timely approve USRTK’s request for a waiver of all fees
15 associated with the FOIA Request unlawful, and order Defendant to approve USRTK’s fee waiver
16 request.

17 5. Declare Defendant’s failure to provide USRTK with an estimate date of completion, as
18 required by 5 U.S.C. section 552(a)(7)(B)(ii), unlawful under the FOIA.

19 5. Award USRTK its reasonable attorneys’ fees and costs pursuant to 5 U.S.C.
20 section 552(a)(4)(E) or 28 U.S.C. section 2412.

21 6. Grant such other and further relief to USRTK as the Court may deem just and proper.

22 DATED: December 17, 2020

SHUTE, MIHALY & WEINBERGER LLP

23
24
25 By: /s/
LAURA D. BEATON

26 Attorneys for Plaintiff US RIGHT TO KNOW

27
28 1320063.1

Exhibit A to Complaint

US Right to Know v. United States Department of Education
Case No. 3:20-cv-9117



July 6, 2020

U.S. Department of Education
Office of the Executive Secretariat
400 Maryland Ave., SW, LBJ 7W104
Washington, DC 20202-4500
Attn: FOIA Service Center

VIA e-mail: EDFOIAManager@ed.gov

RE: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *et seq*, to the United States Department of Education (“ED”) pertaining to records recently obtained by ED from the University of Texas’ Medical Branch (UTMB) at Galveston under Section 117 of the Higher Education Act of 1965 (20 U.S.C. § 1011f).

For this FOIA request, we are specifically seeking copies of the following records cited in the April 24, 2020 [letter](#) from the ED Office of the General Counsel to the UT System’s Chancellor:

1. Each gift or donation agreement, contract, and/or conditional gift or donation agreement or contract to which UTMB and the Wuhan Maximum Containment Laboratory (MCL), the Wuhan Institute of Virology, or the Chinese Academy of Sciences are parties.
2. A complete list identifying and providing the last known contact information for UTMB’s faculty and staff (including full and part time employees and contractors) involved in the administration, direction, or scientific and/or other research cooperation, fund raising, or any other efforts involving the Wuhan MCL, the Wuhan Institute of Virology, or the Chinese Academy of Sciences.
3. All records (including but not limited to emails and true copies of contracts and/or gift or donation agreements) of, regarding, or relating to the Wuhan MCL, the Chinese Academy of Sciences, Wuhan and MCL researcher Shi Zhengli or Shi Zheng-Li.

The relevant time frame for the above records is from January 1, 2012 through the present.

The scope of the search should encompass all individual hard drives, shared drives, e-mail accounts and/or communication devices (including personal e-mail accounts and communication devices) that would be reasonably likely to maintain responsive records.

We request that you disclose the listed documents and materials as they become available to you, without waiting until all the documents have been assembled.

Exposing what the food industry *doesn't* want us to know

If documents are denied in whole or in part, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld. We request that excised material be "blacked out" rather than "whited out" or cut out and that the remaining non-exempt portions of documents be released as provided under the Freedom of Information Act. Please send a memo (with a copy or copies to me) to the appropriate unit(s) in your office to assure that no records related to this request are destroyed.

Please advise of any destruction of records and include the date of and authority for such destruction. As we expect to appeal any denials, please specify the office and address to which an appeal should be directed.

U.S. Right to Know is requesting a waiver of or, at a minimum, a reduction in fees related to this request. We are a 501(c)(3) nonprofit research organization based in Oakland, California. As a public interest organization, we have no commercial interest in the records that are the subject of this FOIA request and would derive no financial benefit from their disclosure. Our research has been featured many times in newspapers such as *New York Times* and *The Guardian*, as well as in medical and public health journals such as *BMJ*. As with our prior work, we intend to disseminate newsworthy information to the general public by way of academic or media articles, or fact sheets, relying upon any records released in response to this FOIA request. These records, which are not publicly available at present, may shed light on the potential origins of the SARS-CoV2 virus as well as on interactions between U.S. biosafety facilities and their employees, operating both within the U.S. and abroad, with entities linked with the Wuhan MCL, Wuhan Institute of Virology and the Chinese Academy of Sciences. Such disclosure is in the public interest because it is likely to contribute to the public's understanding of the extent to which U.S. taxpayer dollars and resources might be facilitating dual use research of concern on coronaviruses and other dangerous pathogens in China. Further, documentation of such influence is important, and is in the public interest because it concerns how the U.S. public's resources are allocated, whether or not they are being wasted or squandered, and whether the public interest is being served.

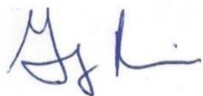
We ask, if fees are assessed, that they not exceed \$25 without first contacting our office for authorization.

Please send the documents electronically in PDF format to Sainath Suryanarayanan at sainath@usrtk.org.

Please call, rather than write Gary Ruskin, if there are any questions or if you need additional information. He can be reached at (415) 944-7350.

Thank you for your help in filling this FOIA request.

Sincerely,



Gary Ruskin
Executive Director



Sainath Suryanarayanan
Researcher

Exhibit B to Complaint

US Right to Know v. United States Department of Education
Case No. 3:20-cv-9117



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

April 24, 2020

James B. Milliken, Chancellor
Office of the Chancellor
The University of Texas System
210 West 7th St.
Austin, TX 78701

Re: Notice of 20 U.S.C. § 1011f Investigation and Record Request/University of
Texas System

Dear Chancellor Milliken:

Section 117 of the Higher Education Act of 1965 (20 U.S.C. § 1011f) requires institutions of higher education (IHEs), including the University of Texas System (UT), to fully report statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with a foreign source to the U.S. Department of Education (Department). These reports are posted at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

According to UT's Medical Branch (UTMB), it is responsible for the operation of the Galveston National Laboratory (GNL) under UTMB's Institute for Human Infections and Immunity. GNL, in turn, has substantial contractual relations with a maximum biocontainment laboratory (MCL) in Wuhan, China (Wuhan MCL) (also known as the Wuhan Institute of Virology) which is upon information and belief owned by the Chinese government's Chinese Academy of Sciences. See <https://www.utmb.edu/gnl/news/2018/11/28/scientific-diplomacy-and-international-cooperation-key-say-bsl4-directors>; <https://nationalinterest.org/blog/coronavirus/wuhan-institute-virology-origin-coronavirus-or-conspiracy-nonsense-144082>; <https://www.foxnews.com/world/wuhan-laboratory-china-coronavirus-controversy>. On November 28, 2018, GNL claimed in SCIENCE Magazine:

We direct a newly constructed MCL in Wuhan, China (Z.Y.) and an established MCL in the United States (J.W.L), in Galveston, Texas. In preparation for the opening of the new China MCL, we engaged in short- and long-term personnel exchanges focused on biosafety training, building operations and maintenance, and collaborative scientific investigations in biocontainment. We succeeded in transferring proven best practices to the new Wuhan facility. Both labs recently signed formal cooperative agreements that will streamline future scientific and operational collaborations on dangerous pathogens, although funding for research and the logistics of exchanging specimens are challenges that we have yet to solve.

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<https://www.utmb.edu/gnl/news/2018/11/28/scientific-diplomacy-and-international-cooperation-key-say-bsl4-directors>.

Between June 6, 2014, and June 3, 2019, UT reported approximately twenty-four contracts with various Chinese state-owned universities and ten contracts with Huawei Technologies, all purportedly worth a reported total of \$12,987,896. It is not clear, however, whether UT has in fact reported all gifts from or contracts with or relating to the Wuhan MCL, the Wuhan Institute of Virology, and/or all other foreign sources, including agents and instrumentalities of the government of the Peoples' Republic of China. Therefore, to verify UT's compliance with Section 117, the Department requests that your Institution produce the following records within thirty (30) days. Unless otherwise noted, the relevant time frame for these requests is January 1, 2012 through the present.

1. True copies of each gift or donation agreement, contract, and/or conditional gift or donation agreement or contract to which your Institution and the Wuhan MCL, the Wuhan Institute of Virology, or the Chinese Academy of Sciences are parties.
2. True copies of each gift or donation agreement, contract, and/or conditional gift or donation agreement or contract with or between your Institution and any of the following:
 - a. BGp Inc.
 - b. Educational Advisors Deda Co. Ltd.
 - c. Xi'an Jintong University
 - d. University of Beijing
 - e. University of Shanghai
 - f. Dalian Auto Tech. Inc.
 - g. Huawei Technologies Co. Ltd.
 - h. Tafel New Energy Tech Co. Ltd.
 - i. Zhejiang Normal University
 - j. ATEC Shenzhen Expressway Engineering
 - k. Huawei Software Technologies Co. Ltd.
 - l. Beijing Normal University
 - m. Nanjing University
 - n. China University of Mining and Technology
 - o. Chengdu Technological University
 - p. Sichuan University
 - q. Southwest Jiaotong University
 - r. Jilin University
 - s. South China University of Technology
 - t. China University of Petroleum
 - u. Southwest Petroleum University
 - v. Shandong University of Science and Technology
 - w. The Communist Party of China, its agents, employees, representatives, and instrumentalities (including but not limited to the agents, employees, representatives, and instrumentalities of entities such as the Communist Party of

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China's Central Committee, Central Office, and Politburo Standing Committee; the General Office of the Central Military Commission; the Chinese Ministry of Education; the Chinese Ministry of Science and Technology; the People's Liberation Army; the Chinese Ministry of State Security; the Chinese Ministry of Industry and Information Technology; the Chinese Ministry of Foreign Affairs; the Chinese Ministry of National Defense; the Central Bank of the People's Republic of China; and any People's Republic of China province, autonomous region, or municipality)

3. A complete list identifying and providing the last known contact information for your Institution's faculty and staff (including full and part time employees and contractors) involved in the administration, direction, or scientific and/or other research cooperation, fund raising, or any other efforts involving (a) the Wuhan MCL; and/or (b) persons employed by or agents for any of the entities listed in section 2(a)-(w) above. The geographic location of your Institution's faculty and staff and/or of the persons employed by or agents for any of the listed entities is not determinative of your obligations hereunder (e.g. *all* employees, agents, lobbyists, and attorneys of or for the listed entities must also be identified and disclosed regardless of citizenship and place of residence). Provided contact information should include names, position(s) held, email addresses, mailing addresses, phone numbers, and a brief description of the administration, direction, scientific and/or other research cooperation, fund raising, and/or other efforts associated with the listed person.
4. A complete list identifying and providing last known contact information for your Institution's administrators, contractors, or other personnel with responsibility for and/or oversight of faculty and staff involved in any capacity with the Wuhan MCL. The geographic location of the administrators, contractors, or other personnel at the time of cooperation or other execution of efforts is in no way determinative of such involvement. Provided contact information should include names, specific responsibilities, position(s) held, email addresses, mailing addresses, and phone numbers.
5. All records (including but not limited to emails and true copies of contracts and/or gift or donation agreements) of, regarding, or relating to (a) the Wuhan MCL, the Chinese Academy of Sciences, Wuhan MCL researcher Shi Zhengli, and Eric Yuan, Chief Executive Officer of Zoom Communications; and/or (b) any gift, contract, or conditional gift or contract from or with the Communist Party of China, its agents, employees, representatives, and instrumentalities.
6. All records (including but not limited to emails and true copies of contracts and/or gift or donation agreements) of, regarding, or related to gifts, contracts and/or restricted or conditional gifts or contracts to or with the Institution from or with any foreign source. The time frame for this request is January 1, 2016, to the present.

The Department requests that UT produce records as follows:

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- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata. Electronic records should be produced in native format. For e-mails, please place responses in one .pst file per employee. For .pdf files, please provide searchable file format and not image file format.
- All email searches should be conducted by the agency's information technology department, or its equivalent, and not by the individuals whose records are being searched. Please provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.
- To the extent practicable, please produce all records in a searchable electronic format and not hardcopies. Should you have any questions about the method or format of production please contact the undersigned to coordinate.

As used in this Notice of Investigation and Information Request:

“Agent” has its plain and ordinary meaning, indicating that a person, organization, or entity, is acting on behalf of another person, organization, or entity, whether that agency is disclosed or undisclosed.

“Contract” has the meaning given at 20 U.S.C. § 1011f(h)(1).

“Faculty” refers to all teaching positions at the university (including professors of all ranks, teachers, lecturers, and/or researchers whether in a classroom, laboratory, or other educational environment – whether physically or electronically present).

“Foreign source” has the meaning given at 20 U.S.C. § 1011f(h)(2).

“Gift” has the meaning given at 20 U.S.C. § 1011f(h)(3).

“Institution” has the meaning given at 20 U.S.C. § 1011f(h)(4) and for the purposes of this request includes all UT campuses and facilities. Section 117 requires that when an institution receives the benefit of a gift from or a contract with a foreign source in the applicable amount, even if by an agent (e.g., employee) and through an intermediary (e.g., non-profit organization), it must disclose the gift or contract to the Department. Where a legal entity (e.g., centers, boards, foundations, research groups, partnerships, or non-profit organizations, whether or not organized under the laws of the United States and including, by way of example and not limitation, UTMB and GNL) operates substantially for the benefit or under the auspices of an IHE, there is a rebuttable presumption that when that legal entity receives money or enters into a contract with a foreign source, it is for the benefit of the institution, and, thus, must be disclosed.

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“Record” means all recorded information, regardless of form or characteristics, made or received, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristics.

“Restricted or conditional gift or contract” has the meaning given at 20 U.S.C. § 1011f(h)(5).

“Staff” refers to all members of the university involved in administration of the university and its obligations and commitments (including deans of all ranks, administration officials, and support personnel).

“Wuhan MCL” refers to the maximum biocontainment laboratory in Wuhan, China, as referenced in GNL documents, and which may also be known as the Wuhan Institute of Virology.

If UT asserts attorney-client or attorney-work product privilege for a given record, then it must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the claim’s validity. Please note that no other privileges apply. UT’s record and data preservation obligations are outlined at Exhibit A.

Please note that Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an IHE has failed to fully comply with the law, the Secretary of Education may, among other things, request that the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. Please further note there may also be other penalties triggered by the knowing and intentional submission of false reports and/or information.

The Department recognizes that the COVID-19 virus may have a significant impact on certain UT operations. Nonetheless, the critical importance of the Department’s investigation into the accuracy of UT’s foreign source reporting with respect to the Wuhan MCL and other Chinese Communist Party-related persons and entities is not diminished. Accordingly, the Department expects UT’s timely response to this investigation.


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This investigation is being directed by the Department's Office of the General Counsel. To arrange transmission of the requested information, or should you have any other questions, please contact:

Paul R. Moore, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., S.W., Room 6E300
Washington, D.C. 20202
Paul.Moore@ed.gov

Sincerely yours,

4/24/2020

 Reed D. Rubinstein

Signed by: Reed Rubinstein
Reed D. Rubinstein
Principal Deputy General Counsel delegated
the authority and duties of the General Counsel

Attachment

EXHIBIT A

RECORD PRESERVATION REQUIREMENTS

This investigation requires preservation of all information from your institution's computer systems, removable electronic media, filing systems, and other locations relating to the matters that are the subject of the Notice of Investigation. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to records maintained in the ordinary course of business and that are covered by the Notice of Investigation. Also, you should preserve information available on the following platforms, whether in your possession or the possession of a third party, such as an employee or outside contractor: databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). You should also preserve all hard copies of records regardless of location.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, you must take every reasonable step to preserve relevant records. "Reasonable steps" with respect to these records include:

- Notifying in writing all potential custodians and IT personnel who may have relevant records of their preservation obligations under this investigation.
- Discontinuing all data and document destruction policies.
- Preserving all metadata.
- Preserving relevant records and/or hardware unless an exact replica of the file (a mirror image) is made.
- Preserving passwords, decryption procedures (and accompany software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software.
- Maintaining all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist, with all metadata. This includes preserving:

- Active data (i.e., data immediately and easily accessible today).
- Archived/journaled data (i.e., data residing on backup tapes or other storage media).
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques).
- Legacy data (i.e., data created on old or obsolete hardware or software).