DANIEL C. SNYDER (Oregon State Bar No. 105127)
Pro hac vice application forthcoming
LAW OFFICES OF CHARLES M. TEBBUTT, P.C.
941 Lawrence Street
Eugene, Oregon 97401
Telephone: (541) 344-3505
Facsimile: (541) 344-3516
dan@tebbuttlaw.com

LAURA D. BEATON (California State Bar No. 294466)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Beaton@smwlaw.com

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 FOOD AND DRUG ADMINISTRATION

and

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 3:21-cv-00884

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Freedom of Information Act

INTRODUCTION

1. This action, through which Plaintiff US Right to Know ("USRTK" or "Plaintiff") seeks access to government records held by Defendants United States Department of Health and Human Services and United States Food and Drug Administration (individually, "FDA") (collectively "Defendants") is premised upon, and consequent to, violations of the federal Freedom of Information Act ("FOIA"), 5 U.S.C. section 552 *et seq*., and FDA FOIA regulations promulgated thereunder, 21 C.F.R. Part 20 – "PUBLIC INFORMATION." This action challenges the unlawful failure of the Defendants to abide by the statutory requirements of the FOIA and the FDA's implementing regulations.

2. Defendants are unlawfully withholding from public disclosure information sought by USRTK, information to which USRTK is entitled and for which no valid disclosure exemption applies or has been properly asserted. In particular, Defendants have violated, and remain in violation of, the statutory mandates imposed by the FOIA by: (Count I) failing to provide a timely final determination on USRTK's FOIA Request; (Count II) unlawfully withholding records from public disclosure for which no valid disclosure exemption applies or has been properly asserted, or to provide the reasonably segregable portions of those records; (Count III) failing to grant USRTK's request for a fee waiver under the FOIA; and (Count IV) failing to provide an "estimated date of completion."

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

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

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. section 552(a)(4)(B). That provision of

the FOIA grants jurisdiction to "the district court of the United States in the district in which the complainant resides, or has his principal place of business[.]" USRTK both resides and maintains its principal place of business in the Northern District of California.

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

INTRADISTRICT ASSIGNMENT

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

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

9. Plaintiff resides in the County of San Francisco.

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

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

PARTIES

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

13. Defendant United States Department of Health and Human Services is an agency of the United States executive branch and is administered by the Secretary of Health and Human Services.

14. Defendant United States Food and Drug Administration is a federal agency that is part of the Department of Health and Human Services. FDA is responsible for protecting and promoting public health.

15. Defendants both qualify as an "agency" under the FOIA, the records sought are "records"

under the FOIA, and because Defendants are in possession and control of the records sought by USRTK, Defendants are subject to the FOIA pursuant to 5 U.S.C. section 552(f).

LEGAL FRAMEWORK

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

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

18. The FOIA allows an agency to extend the twenty-day determination deadline, however, by ten working days when "unusual circumstances" exist and when the agency so notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 21 C.F.R. § 20.41(b)(3). A notice informing a requester of the invocation of the "unusual circumstances" provision must specify the applicable "unusual circumstances." *Id.*

19. Permissible "unusual circumstances" are limited to: (1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. 5 U.S.C. § 552(a)(6)(B)(iii); 21 C.F.R. § 20.41(b)(3)(ii).

20. An agency is entitled to one ten-business day extension. 5 U.S.C. § 552(a)(6)(B)(i). The written notice provided to the requester must specify the specific unusual circumstances justifying the extension and the date on which a final determination is expected to be dispatched. *Id.*; 21 C.F.R. §

20.41(b)(3)(i)(A).

21. In some circumstances, the FOIA allows an agency to invoke an extension beyond ten days. To invoke a longer extension, the FOIA requires an agency to provide written notification to the requester that (1) offers the requester an opportunity to limit the scope of the request so that it may be processed within that time limit, or (2) offers the requester an opportunity to arrange with the agency an "alternative time frame" for processing the request. 5 U.S.C. § 552(a)(6)(B)(ii); 21 C.F.R. § 20.41(b)(3)(i)(B).

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

23. FOIA Public Liaisons "shall serve as supervisory officials" and "shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes." 5 U.S.C. § 552(l).

24. Even when an "unusual circumstances" extension is made, the agency must still notify the requester of its expected date on which a final determination will be dispatched. 5 U.S.C. § 552(a)(6)(B)(i); 21 C.F.R. § 20.41(b)(3)(i)(A).

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

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

27. The FOIA also requires agencies to provide "an estimated date on which the agency will 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).

28. Agencies shall make reasonable efforts to maintain their records so they are reproducible for FOIA purposes, and "shall make reasonable search efforts" for responsive records. 5 U.S.C. §

552(a)(3)(B), (C). The term "search" "means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request." 5 U.S.C. § 552(a)(3)(D).

29. In furnishing records responsive to a request under the FOIA, an agency may, for a limited set of categories of information, exclude or withhold such information from disclosure. 5 U.S.C. § 552(b). However, even where proper justification exists for withholding such information, the agency must provide the remaining portions of records that are reasonably segregable from the properly withheld portions thereof. *Id.*

30. Except in certain circumstances, when an agency produces a record in response to a FOIA request but withholds a portion thereof, the agency must indicate the volume of information withheld and the exemption under which such information has been withheld. *Id.*; 5 U.S.C. § 552(a)(6)(F).

31. An agency that withholds public records from a requestor under the FOIA bears the burden of sustaining the legality of its action. 5 U.S.C. § 552(a)(4)(B).

32. Requesters under the FOIA may ask that an agency waive fees associated with any request for records "if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(E)(iii).

33. An agency may only charge certain fees depending on the category of requester. For non-commercial requesters such as USRTK, fees "shall be limited to reasonable standard charges for document search and duplication." 5 U.S.C. § 552(a)(4)(E)(ii)(III).

34. Agencies are prohibited from assessing search fees if the agency fails to comply the FOIA's twenty-day determination deadline or any lawful extension under the statute's "unusual circumstances" provisions. 5 U.S.C. § 552(a)(4)(A)(viii).

STATEMENT OF OPERATIVE FACTS

35. USRTK submitted a FOIA Request (the "Request") to FDA on July 21, 2020. The Request sought a waiver of all fees associated with processing the Request. A copy of the Request is

attached hereto as Exhibit A.

36. The Request seeks agency records involving communications involving a specific set of FDA employees and containing specific keywords, including but not limited to "Wuhan Institute of Virology."

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

38. The records requested by USRTK are likely to contribute significantly to the public understanding of the operations and activities of the government, especially as they pertain to the origins of the SARS-CoV-2 virus and the COVID-19 pandemic in the United States.

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

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

41. The Request was received and acknowledged by FDA via email on July 22, 2020, and assigned tracking number "2020-5341."

42. On August 20, 2020, FDA's "Office of International Programs," a division within FDA, informed USRTK by email that it had completed processing of the Request and did not locate any

responsive records.

43. On September 10, 2020, USRTK wrote by email to Sarah Kotler, the Director of the "Division of Freedom of Information" at FDA, asking for a status update concerning the Request. Ms. Kotler directed that communication to the FDA's "Center for Biologics Evaluation and Research (CBER)."

44. On September 11, 2020, Cathy Wilusz, the Consumer Safety Officer at the Center for Biologics Evaluation and Research, responded by email to USRTK's September 10 correspondence. In that email, Ms. Wilusz informed USRTK that its request was "in the process of being triaged to be placed in the proper FOIA queue for processing." Ms. Wilusz asked USRTK to contact Beth Brockner Ryan for future status update regarding the request.

45. On September 16, 2020, Ms. Brockner Ryan wrote by email to USRTK, informing Plaintiff that its Request had been placed onto the Center for Biologic Evaluation and Research's "Complex FOIA track," and estimating that it will be "at least 18-24 months before it is up in the queue for processing." Furthermore, that estimate was "just for the time to reach the front of the queue for processing and does not include time for processing the records/disclosure review."

46. Having received no further response or official "determination" on the Request, on October 7, 2020, USRTK served a formal correspondence by email to Ms. Brockner Ryan. That correspondence requested that the FDA issue a lawful "determination" on the Request within the twenty-day timeframe required by the FOIA. It also requested that FDA provide an estimated completion date for the Request.

47. To date, no further communication has been received by USRTK from FDA about the Request.

48. To date, no estimated date of completion has been provided to USRTK by FDA.

49. To date, FDA has not provided USRTK with a timely and lawful "determination" that informs USRTK of (1) FDA's determination of whether or not to comply with the Request; (2) the reasons for its decision; and (3) notice of the right of USRTK to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

50. At no time has the FDA lawfully invoked the FOIA's "unusual circumstances" exception to the FOIA's twenty-day determination deadline.

51. FDA has not shown due diligence in responding to the request. 5 U.S.C. § 552(a)(6)(C)(i).

52. To date, FDA has failed to issue a decision on USRTK's request for a waiver of fees associated with the processing of the Request.

53. To date, FDA has not produced a single record responsive to the Request.

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

55. USRTK has been forced to retain the services of counsel and to expend funds litigating Defendants' unlawful actions and omissions under the FOIA.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT AND FDA REGULATIONS:

FAILURE TO PROVIDE TIMELY FINAL DETERMINATION

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

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

58. To date, USRTK has not received any written communication from FDA 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); 21 C.F.R. § 20.41(b).

59. Based on the nature of USRTK's organizational activities, USRTK will continue to employ FOIA's provisions to request information from Defendants in the foreseeable future. These

activities will be adversely affected if Defendants are allowed to continue violating FOIA's response deadlines.

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

61. Defendants' 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

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

63. USRTK has a statutory right to have Defendants process its FOIA request in a manner that complies with FOIA.

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

65. Defendants are unlawfully withholding public disclosure of information sought by USRTK, information to which it is entitled and for which no valid disclosure exemption applies.

66. USRTK has constructively exhausted its administrative remedies with respect to this claim.

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

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

69. USRTK's organizational activities will be adversely affected if Defendants are allowed to continue violating FOIA's response deadlines as it has in this case.

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

COUNT III

VIOLATION OF THE FREEDOM OF INFORMATION ACT:

FAILURE TO TIMELY APPROVE USRTK'S FEE WAIVER REQUEST

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

72. USRTK has a statutory right to have Defendants process its FOIA request in a manner that complies with FOIA.

73. USRTK's rights in this regard were violated by Defendants' unlawful delay in informing USRTK of its decision concerning USRTK's request for a fee waiver.

74. Based on the nature of USRTK's organizational activities, USRTK will continue to employ FOIA's provisions to request information from Defendants in the foreseeable future. These activities will be adversely affected if Defendants are allowed to continue violating the FOIA's requirements and deadlines for fee waiver requests.

75. USRTK's request for a waiver of all fees associated with the FOIA Request is appropriate and satisfies all elements required for approval of a fee waiver.

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

77. Defendants' failure to make a timely determination on USRTK's fee waiver request has prejudiced USRTK's ability to timely obtain public records.

COUNT IV

VIOLATION OF THE FREEDOM OF INFORMATION ACT:

FAILURE TO PROVIDE ESTIMATED DATE OF COMPLETION

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

79. USRTK has a statutory right to have Defendants process its FOIA request in a manner that complies with FOIA.

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

81. USRTK formally requested that Defendants provide an estimated date of completion following FDA's acknowledgment of the FOIA Request.

82. At no time have Defendants provided an estimated date of completion.

83. Based on the nature of USRTK's organizational activities, USRTK will continue to employ FOIA's provisions to request information from Defendants in the foreseeable future. These activities will be adversely affected if Defendants are allowed to continue violating the FOIA's requirements for providing USRTK with an estimated date of completion on its FOIA requests.

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

85. Defendants' failure to make a timely determination on USRTK's fee waiver request has prejudiced USRTK's ability to timely obtain public records.

REQUEST FOR RELIEF

Wherefore, USRTK prays that this Court:

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

2. Declare Defendants' failure to provide USRTK with a final determination as unlawful under the FOIA.

3. Declare Defendants' failure to promptly provide USRTK with all non-exempt records as unlawful under the FOIA.

4. Declare Defendants' failure to timely approve USRTK's request for a waiver of all fees associated with the FOIA Request unlawful, and order Defendants to approve USRTK's fee waiver request.

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

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

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

DATED: February 4, 2021.

SHUTE, MIHALY & WEINBERGER LLP

By: /s/
LAURA D. BEATON

Attorneys for Plaintiff US RIGHT TO KNOW

1335505.1

Exhibit A to Complaint

U.S. Right to Know v. United States Food and Drug Administration & United States Department of Health and Human Services

Case No. 3:21-cv-00884
N.D. Cal. (February 4, 2021)

U.S. RIGHT TO KNOW

July 21, 2020

Food and Drug Administration
Division of Freedom of Information
Office of the Executive Secretariat, OC
5630 Fishers Lane, Room 1035
Rockville, MD 20857

RE: Freedom of Information Act request

Dear FOIA Officer:

This request under the Freedom of Information Act, 5 U.S.C. § 552, *et seq*, to the U. S. Food & Drug Administration ("FDA") consists of three parts regarding the following employees:

1. Vanessa Shaw-Dore, Director, Office of Global Policy and Strategy, China Office
2. Latasha Robinson, Deputy Director, Office of Global Policy and Strategy, China Office
3. Peter Marks, Director, Center for Biologics Evaluation and Research (CBER)
4. Carolyn Wilson, Associate Director of Research, CBER
5. David S. Cho, Senior Scientist for Emerging & Pandemic Threat Preparedness, CBER
6. Sanjai Kumar, Laboratory of Emerging Pathogens, Office Of Blood Research And Review, CBER
7. Marion F. Gruber, Director, Office of Vaccines Research and Review, CBER
8. Phillip R. Krause, Deputy Director, Office of Vaccines Research and Review, CBER
9. Konstantin Chumakov, Associate Director for Research, Office of Vaccines Research and Review, CBER
10. Jerry P. Weir, Division of Viral Products, Office of Vaccines Research and Review, CBER
11. Zhiping Ye, Laboratory of Pediatric & Respiratory Viral Diseases, Office of Vaccines Research and Review, CBER
12. Michael Schmitt, Laboratory of Respiratory & Special Pathogens, Office of Vaccines Research and Review, CBER
13. Muhammad Shahabuddin, Laboratory of Biochemistry, Virology and Immunology, Office of Compliance and Biologics Quality, CBER
14. Bryan Wilson, Director, Office of Tissues and Advanced Therapies, CBER
15. Rachael Anatol, Deputy Director, Office of Tissues and Advanced Therapies, CBER
16. Suzanne L. Epstein, Associate Director for Research, Office of Tissues and Advanced Therapies, CBER
17. Andrew Byrnes, Gene Transfer and Immunogenicity Branch, Office of Tissues and Advanced Therapies, CBER

For this FOIA request we are seeking copies of records created, received and/or in the possession of FDA, including cross-references. Specifically, we are seeking records that reflect communications – whether in writing or verbal communications that were later reduced to writing (including any emails

and their attachments, non-email correspondence, or other forms of communication) – to, from, or in the possession of the above-named individuals -- containing any of the following keywords or domains:

Part I of this request pertains to communications containing any of the following keywords or domains:

- East China Normal University
- Wuhan Institute of Virology OR WIV OR @wh.iov.cn
- Wuhan Center for Disease Control and Prevention
- Wuhan University State Key Laboratory of Virology OR SKLV OR @whu.edu.cn
- Wuhan University Institute of Medical Virology
- EcoHealth Alliance OR EcoHealth OR @ecohealthalliance.org
- Christophe Mérieux Laboratory located in Beijing

Part II of this request pertains to communications containing any of the following *combinations* of keywords:

- "Global Health Security Agenda" AND "China" OR "GHSA" AND "China"
- "Coalition for emerging preparedness innovations" AND "China" OR "CEPI" AND "China" OR "@cepi.net" AND "China"
- "PREDICT 2" AND "China" OR "USAID" AND "China"
- "China" AND "biothreat"
- "China" AND "bioincident"
- "China" AND "Dual Use Research" OR "China" AND "DURC" OR "China" AND "GOF"
- "China" AND "US Army Medical Research Institute of Infectious Diseases" OR "China" AND "USAMRIID"

For Part III, please search for all email correspondence to or from above listed employees– including attachments, CC and BCC – and the following person(s):

- Dennis Carroll OR dcarroll@usaid.gov
- Sina Bavari OR sina.bavari.civ@mail.mil
- Shi Zheng-Li OR Shi Zhengli OR zlshi@wh.iov.cn
- Fang Li OR lifang@umn.edu
- Yuan Zhiming OR yzm@wh.iov.cn
- Anthony Fauci OR afauci@niaid.nih.gov
- Peter Daszak OR daszak@ecohealthalliance.org
- William Karesh OR Billy Karesh OR karesh@ecohealthalliance.org
- Jonathan Epstein OR epstein@ecohealthalliance.org
- Jonna Mazet OR jkmazet@ucdavis.edu
- George Gao OR gaof@im.ac.cn
- Linfa Wang OR linfa.wang@duke-nus.edu.sg
- Christian Bréchot OR cbrechot@usf.edu
- Ralph Baric OR rbaric@email.unc.edu
- Ian Lipkin OR wil2001@columbia.edu
- James Le Duc OR jwleduc@utmb.edu
- Thomas Ingelsby OR tinglesby@jhu.edu

We respectfully request that in conducting its searches implicating e-mail correspondence the FDA ensures that the scope encompasses emails to or from the FDA personnel named above, including e-mails on which they or anyone else was carbon copied ("CC") or blind carbon copied ("BCC").

FDA may limit the timeframe to January 1, 2017, or the earliest date after which such records exist, and up until the date upon which FDA begins conducting searches for responsive records.

The scope of the searches should not be limited to FDA-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management. 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.

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 the *New York Times* and *The Guardian*, as well as in medical and public health journals such as the *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 activities of the FDA and its employees in relation to biosafety research networks operating both within the U.S. and abroad, and specifically linked to China. 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 dangerous pathogens in China. Further, documentation of such influence is important, and is in the public interest because it concerns how taxpayer 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,

Sainath Suryanarayanan, PhD
Staff Scientist

Gary Ruskin
Executive Director