



June 15, 2022

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

Via email: FOIARequest@hhs.gov

RE: Freedom of Information Act appeal, FOIA case number 58433

Dear Ms. Lovenheim:

This letter is an appeal under the Freedom of Information Act. On June 1, 2022 US Right to Know filed a Freedom of Information Act request to the National Library of Medicine (NLM), which is a part of the National Institutes of Health (NIH).¹ We requested a search of nucleic acid and amino acid sequence queries input into the National Center for Biotechnology Information (NCBI) Basic Local Alignment Search Tool (BLAST) server from January 1, 2016 to September 30, 2019 to see if any queries matched or contained the sequences in our FOIA request. We also requested all query inputs that resulted in SARS, bat-SL-CoVZXC21, bat-SL-CoVZC45, BtCoV/4991, Ra4991, or RaTG13 as one of the top 5 alignment results. In response, NLM Government Information Specialist Valery Gheen wrote on June 9, 2022 that “NLM and the National Center for Biotechnology Information (NCBI) has no responsive records for the time period listed in your request.”²

We appeal this FOIA denial by the National Library of Medicine (NLM). The denial provides no information as to why NLM and NCBI found no responsive records related to our request. The denial states that “we believe that an adequate search of appropriate files was conducted for the records you requested,” but does not explain what searches were carried out.

As part of this appeal, we respectfully request a description of whether, how, and on what media BLAST query inputs and any underlying information are stored. We also respectfully request answers to the following questions: (1) How did NLM and/or NCBI determine that there are no responsive records to our FOIA request? (2) What searches

¹ See Attachment #1.

² See Attachment #2.

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were conducted for records in response to our FOIA request? (3) Are there documented query inputs from the time period requested, but none that match the sequences in the request? (4) Are BLAST query inputs only stored for a limited time? If so, how long are they stored? (5) If such data is stored or able to be accessed or reconstructed, are all queries from all servers and platforms stored? If not, which data is stored?

If it is more convenient or preferable to answer these questions within the context of a meeting or teleconference, then we would like to arrange such a meeting or teleconference.

This information we are requesting is important to the public interest because it could potentially provide new clues about the origins of the Covid-19 pandemic. It could help scientists determine whether a lab may have had SARS-CoV-2 or a progenitor in its possession before the first known cases were documented. It is common practice to compare experimental nucleic acid or amino acid sequences to sequences in the NCBI database to see if they are related to previously identified sequences. If the Covid-19 pandemic began as a result of a lab leak, there is a chance that the lab in possession of the virus may have conducted such a query.

As a public interest, public health 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.

We formally request that the NIH promptly disclose any and all records responsive to our FOIA request and appeal.

Please do not hesitate to contact us to discuss any aspect of this appeal. You can email Karolina Corin at karolina@usrtk.org or you can call Gary Ruskin at (415) 944-7350.

Thank you for your consideration of this appeal.

Sincerely,



Karolina Corin, PhD
Staff Scientist



Gary Ruskin
Executive Director

Attachment 1:

**US Right to Know
Freedom of Information Act Request
submitted on June 1, 2022
to the National Library of Medicine,
which is part of the National Institutes of Health**



June 1, 2022

Marianne Manheim
National Library of Medicine
Room 6054
6705 Rockledge Dr.
Bethesda, MD 20817

Via email: nhlbifoiarequest@nhlbi.nih.gov

RE: Freedom of Information Act request

Dear Ms. Manheim:

This is a three-part request under the Freedom of Information Act, 5 U.S.C. § 552, et seq., to the National Center for Biotechnology Information (NCBI), which is a part of the National Library of Medicine (NLM) within the National Institutes of Health (NIH).

Part I. We request the full nucleotide and amino acid sequences of all Basic Locator Alignment Search Tool (BLAST) query inputs that result in one of the following as one of the top 5 alignments:

1. A SARS coronavirus nucleotide or amino acid sequence (e.g. [GenBank AY278741.1](#), [NCBI NC_004718.3](#), [GenBank AY278554.2](#), etc)
2. A bat SARS-like coronavirus isolate [bat-SL-CoVZXC21](#) nucleotide or amino acid sequence (GenBank MG772934.1).
3. A bat SARS-like coronavirus isolate [bat-SL-CoVZC45](#) nucleotide or amino acid sequence (GenBank MG772933.1).
4. A [BtCoV/4991](#), Ra4991, or RaTG13 nucleotide or amino acid sequence.

Part II. We request all protein sequence alignment queries that have one or more of the following sequences contained within them:

RdRp Amino Acid Sequences

1. SADAQSFLNRVCGVSAARLTPCGTGTSTDVVYRAFDIYNDKVA
2. EDDNLIDSYFVVKRHTFSNYQHEETIYNLLK
3. IDSYFVVKRHTFSNYQHEETIYNLLKDCPAVAKHDFKFRID
4. QALLKTVQFCDAMRNAGIVGVLTLDNQDLNGNWYDFGDFIQT
5. MRNAGIVGVLTLDNQDLNGNWYDFGDFIQTTPGSGVPVV

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6. LTAESHVDTDLTKPYIKWDLLKYDFTEERLKL
7. HVDTDLTKPYIKWDLLKYDFTEERLKLFD RYFKYWDQTYHPNCV
8. ENPHLMGWDYPKCDRAMPNMLRIMASLVLARKHTTCCSLS
9. DTDFVNEFYAYLRKHFSMMILSDDAVVCFNSTYASQ
10. CFNSTYASQGLVASIKNFKSV

Spike Protein and Furin Site Amino Acid Sequences

11. MFVFLVLLPLVSSQCVNLTTTRTQLPPAYTNSFTRGVVYYPDKVFR
12. LHSTQDLFLPFFSNVTWFHAIHVSGTNGTKRFDNPVLPFNDGVYFASTEKSN
13. FGTTLDSKTQSLIVN NATNVVIKVCEFQFCNDPFLGVVYHKNNKSWME
14. NNCTFEYVSQPFLMDLEGKQGNFKNLREFVFKNIDGYFKIYSKHTPI
15. ALEPLVDLPIGINITRFQTL LALHRSYLTPGDSSSGWTAGAAAYYVG
16. NENGTITDAVDCALDPLSETKCTLKSFTVEKGIYQTSNFRVQPTES
17. FGEVFNATRFASVYAWNRKRISNCVADYSVLYNSASFSTFKCYGVSP
18. ADSFVIRGDEV RQIAPGQTGKIADYNYKLPDDFTGCVIAWNSNN
19. FRKSNLKPFERDISTEIYQAGSTPCNGVEGFNCYFPLQSYGFQPTN
20. SFELLHAPATVCGPKKSTNLVKNKCVNFNFNGLTGTGVLTESNKK
21. TTDAVRDPQTLEILDITPCSFGGVSVITPGTNTSNQVAVLYQDVNC
22. TPTWRVYSTG SNVFQTRAGCLIGAEHVNNSYECDIPIGAGICASYQTQTN
23. CASYQTQTN SPRRARSVAS
24. IAYTMSLGAENSVAYSNN SIAIPTNFTISVTTEILPVSMTKTS
25. TECSNLLLQYGSFCTQLNRALTGIAVEQDKNTQEVFAQVKQIYKT
26. ILPDPSKPSKRSFIEDLLFNKVTLADAGFIKQYGDCLGDIAARD

27. PLLTDEMIAQYTSALLAGTITSGWTFGAGAALQIPFAMQMAYRFNGI
28. KLIANQFNNSAIGKIQDLSSTASALGKLQDVVNQNAQALNNTLVKQ
29. DILSRLDKVEAEVQIDRLITGRLQSLQTYVTQQLIRAAEIRASAN
30. SKRVDFCGKGYHLSFPQSAPHGVVFLHVTYVPAQEKNFTTAPAI
31. FVSNGTHWFVTQRNFYEPQIITDNTFVSGNCDVVIGIVNNTVYDP
32. DKYFKNHTSPDVLGDISGINASVVNIQKEIDRLNEVAKNLNES
33. IKWPWYIWLGFIAGLIAIVMVTIMLCCMTSCCSCLKGCCSCG

Part III. We request all nucleotide sequence alignment queries that have one or more of the following sequences contained within them:

RdRp Nucleic Acid Sequences

1. TCAGCTGATGCACAATCGTTTTTAAACGGGTTTGCGGTGTAAGTGCAGCCCGTCTTACAC
CGTGCGGCACAGGCACTAGTACTGATGTCGTATACAGGGCTTTTGACATCTACAATGATA
2. AAGTAGCTGGTTTTGCTAAATTCCTAAAACTAATTGTTGTCGCTTCCAAGAAAAGGAC
GAAGATGACAATTTAATTGATTCTTACTTTGTAGTTAAGAGACACACTTTCTCTAACTACC
3. AACATGAAGAAACAATTTATAATTTACTTAAGGATTGTCCAGCTGTTGCTAAACATGAC
TTCTTTAAGTTTAGAATAGACGGTGACATGGTACCACATATATCACGTCAACGTCTTACTA
4. AATACACAATGGCAGACCTCGTCTATGCTTTAAGGCATTTTGATGAAGGTAATTGTGAC
ACATTAAGAAATACTTGTACATACAATTGTTGTGATGATGATTATTTCAATAAAAAGG
5. ACTGGTATGATTTTGTAGAAAACCCAGATATATTACGCGTATACGCCAACTTAGGTGAA
CGTGACGCCAAGCTTTGTTAAAAACAGTACAATTCTGTGATGCCATGCCAAATGCTGGTA
6. TTGTTGGTGTACTGACATTAGATAATCAAGATCTCAATGGTAACTGGTATGATTTTCGGT
GATTTCATACAAACCACGCCAGGTAGTGGAGTTCCTGTTGTAGATTCTTATTATTCATTGT
7. TAATGCCTATATTAACCTTGACCAGGGCTTTAACTGCAGAGTCACATGTTGACACTGACT
TAACAAAGCCTTACATTAAGTGGGATTTGTTAAAATATGACTTCACGGAAGAGAGGTTAA
8. AACTCTTTGACCGTTATTTTAAATATTGGGATCAGACATACCACCCAAATTGTGTTAACT
GTTTGGATGACAGATGCATTCTGCATTGTGCAAACTTAATGTTTTATTCTCTACAGTGT
9. TCCCACCTACAAGTTTTGGACCACTAGTGAGAAAAATATTTGTTGATGGTGTTCATTTG
TAGTTTCAACTGGATACCACTTCAGAGAGCTAGGTGTTGTACATAATCAGGATGTAACT

10. TACATAGCTCTAGACTTAGTTTTAAGGAATTACTTGTGTATGCTGCTGACCCTGCTATGC
ACGCTGCTTCTGGTAATCTATTACTAGATAAACGCACTACGTGCTTTTCAGTAGCTGCAC
11. TTACTAACAATGTTGCTTTTCAAAGTGTCAAACCCGGTAATTTTAAACAAAGACTTCTATG
ACTTTGCTGTGTCTAAGGGTTTCTTTAAGGAAGGAAGTTCTGTTGAATTTAAACACTTCT
12. TCTTTGCTCAGGATGGTAATGCTGCTATCAGCGATTATGACTACTATCGTTATAATCTAC
CAACAATGTGTGATATCAGACAACACTACTATTTGTAGTTGAAGTTGTTGATAAGTACTTTG
13. ATTGTTACGATGGTGGCTGTATTAATGCTAACCAAGTCATCGTCAACAACCTAGACAAA
TCAGCTGGTTTTCCATTTAATAAATGGGGTAAGGCTAGACTTTATTATGATTCAATGAGTT
14. ATGAGGATCAAGATGCACTTTTCGCATATACAAAACGTAATGTCATCCCTACTATAACTC
AAATGAATCTTAAGTATGCCATTAGTGCAAAGAATAGAGCTCGCACCGTAGCTGGTGTCT
15. CTATCTGTAGTACTATGACCAATAGACAGTTTCATCAAAAATTATTGAAATCAATAGCC
GCCACTAGAGGAGCTACTGTAGTAATTGGAACAAGCAAATTCTATGGTGGTTGGCACAACA
16. TGTAAAAACTGTTTATAGTGATGTAGAAAACCCTCACCTTATGGGTTGGGATTATCCT
AAATGTGATAGAGCCATGCCTAACATGCTTAGAATTATGGCCTCACTTGTTCCTGCTCGCA
17. AACATACAACGTGTTGTAGCTTGTACACCGTTTCTATAGATTAGCTAATGAGTGTGCTC
AAGTATTGAGTGAAATGGTCATGTGTGGCGTTCACTATATGTTAAACCAGGTGGAACCT
18. CATCAGGAGATGCCACAACCTGCTTATGCTAATAGTGTTTTTAAACATTTGTCAAGCTGTCA
CGGCAAATGTTAATGCACTTTTATCTACTGATGGTAACAAAATTGCCGATAAGTATGTCC
19. GCAATTTACAACACAGACTTTATGAGTGTCTCTATAGAAATAGAGATGTTGACACAGAC
TTTGTGAATGAGTTTTACGCATATTTGCGTAAACATTTCTCAATGATGATACTCTCTGACG
20. ATGCTGTTGTGTGTTTCAATAGCACTTATGCATCTCAAGGTCTAGTGGCTAGCATAAAG
AACTTTAAGTCAGTTCTTTATTATCAAAACAATGTTTTTATGTCTGAAGCAAAATGTTGGA
21. CTGAGACTGACCTTACTAAAGGACCTCATGAATTTTGCTCTCAACATACAATGCTAGTTA
AACAGGGTGATGATTATGTGTACCTTCCTTACCCAGATCCATCAAGAATCCTAGGGGCGG
22. GCTGTTTTGTAGATGATATCGTAAAAACAGATGGTACACTTATGATTGAACGGTTCGTG
TCTTTAGCTATAGATGCTTACCCACTTACTAAACATCCTAATCAGGAGTATGCTGATGTCT
23. TTCATTTGTACTTACAATACATAAGAAAGCTACATGATGAGTTAACAGGACACATGTTA
GACATGTATTCTGTTATGCTTACTAATGATAACACTTCAAGGTATTGGGAACCTGAGTTTTA
TGAGGCTATGTACACACCGCATAACAGTCTTACAG
24. TAACATGCTTAGAATTATGGCCTCACTTGTTCCTTGCTCGCAAACATACAACGTGTTGTAG
CTTGTACACCGTTTCTATAGATTAGCTAA

25. CTTGTACACCGTTTCTATAGATTAGCTAATGAGTGTGCTCAAGTATTGAGTGAAATGG
TCATGTGTGGCGGTTCACTATATGTTAAACC

26. TGAAATGGTCATGTGTGGCGGTTCACTATATGTTAAACCAGGTGGAACCTCATCAGGAG
ATGCCACAACCTGCTTATGCTA

27. CACCTCATACCACTTATGTACAAAGGACTTCCTTGGAAATGTAGTGCCTATAAAGATTGTA
CAAATGTTAAGTGACACACTTAAAAATCTCTCTGACAGAGTCGTATTTGTCTTATGGGCA

28. CAAATGTTAAGTGACACACTTAAAAATCTCTCTGACAGAGTCGTATTTGTCTTATGGGC
ACATGGCTTTGAGTTGACATCTATGAAGTATTTTGTGAAAATAGGACCTGAGCGCACCTGT

29. CATGGCTTTGAGTTGACATCTATGAAGTATTTTGTGAAAATAGGACCTGAGCGCACCTG
TTGTCTATGTGATAGACGTGCCACATGCTTTTCCACTGCTTCAGACACTTATGCCTGTTGG

30. TGTCTATGTGATAGACGTGCCACATGCTTTTCCACTGCTTCAGACACTTATGCCTGTTGG
CATCATTCTATTGGATTTGATTACGTCTATAATCCGTTTATGATTGATGTTCAACAATGG

Spike Protein Nucleic Acid Sequences:

31. TCAGTGTGTTAATCTTACAACCAGAACTCAATTACCCCTGCATACACTAATTCTTTCAC
ACGTGGTGTATTATTACCCTGACAAAGTTTTTCCAGATCCTCAGTTTTA

32. CTTGTTCTTACCTTTCTTTTCCAATGTTACTTGGTTCCATGCTATAACATGTCTCTGGGAC
CAATGGTACTAAGAGGTTTGATAACCCTGTCCTACCATTAAATGATGGTGTATTATTTTGC

33. TTCCACTGAGAAGTCTAACATAATAAGAGGCTGGATTTTTTGGTACTACTTTAGATTTCGA
AGACCCAGTCCCTACTTATTGTTAATAACGCTACTAATGTTGTTATTAAAGTCTGTGAATT

34. TCAATTTTGTAAATGATCCATTTTTTGGGTGTTTATTACCACAAAACAACAAAAGTTGGA
TGGAAAGTGAGTTCAGAGTTTATTCTAGTGCGAATAATTGCACTTTTGAATATGTCTCTCA

35. CCTTTTCTTATGGACCTTGAAGGAAAACAGGGTAATTTCAAAAATCTTAGGGAATTTGT
GTTTAAGAATATTGATGGTTATTTTAAAATATATTCTAAGCACACGCCTATTAATTTAGT

36. GCGTGATCTCCCTCAGGGTTTTTTCGGCTTTAGAACCATTTGGTAGATTTGCCAATAGGTAT
TAACATCACTAGGTTTCAAACCTTACTTGCTTTACATAGAAGTTATTTGACTCCTGGTGA

37. TTCTTCTTCAGGTTGGACAGCTGGTGTGCAGCTTATTATGTGGGTATCTTCAACCTAG
GACTTTTCTATTAAAATATAATGAAAATGGAACCATACAGATGCTGTAGACTGTGCACTTG
ACCCTCTCTCAGAAACAAGTGTACGTTGAAATCCTTCACTGTAGAAAAAGGAATCTA

38. CAACCAACAGAATCTATTGTTAGATTTCCCTAATATTACAACTTGTGCCCTTTTGGTGAA
GTTTTTAACGCCACCAGATTTGCATCTGTTTATGCTTGGAACAGGAAGAGAATCAGCAACTG
TGTGCTGATTATTCTGTCCTATATAATTCGCATC

39. ATTTTCCACTTTTAAAGTGTTATGGAGTGTCTCCTACTAAATTAATGATCTCTGCTTTAC
TAATGTCTATGCAGATTCATTTGTAATTAGAGGTGATGAAGTCAGACAAATCGCTCCAGGGC
AAACTGAAAAGATTGCTGATTATAATTATAAATTACCAGATGATTTTACAGGCTGCGT

40. TATAGCTTGAATTCTAACAATCTTGATTCTAAGGTTGGTGGTAATTATAATTACCTGT
ATAGATTGTTTAGGAAGTCTAATCTCAAACCTTTTGAGAGAGATATTTCAACTGAAATCTA

41. TTTCCTTTACAATCATATGGTTTCCAACCCACTAATGGTGTGGTTACCAACCATACAGA
GTAGTAGTACTTTCTTTTGAAGTCTACATGCACCAGCAACTGTTTGTGGACCTAAAAAGTC
TACTAATTTGGTTAAAAACAAATGTGTCAATTTCAACTTCAATGGTTTAAACAGGCACAGGTG
TTCTTAC

42. TGAGTCTAACAAAAAGTTTCTGCCTTTCCAACAATTTGGCAGAGACATTGCTGACACTAC
TGATGCTGTCCGTGATCCACAGACACTTGAGATTCTTGACATTACCCATGTTCTTTTGGTG
GTGTCAGTGTATAACACCAGGAACAAATACTTCTAACCAGGTTGCTGTTCTTTATCA

43. GGATGTTAACTGCACAGAAGTCCCTGTTGCTATTCATGCAGATCAACTTACTCCTACTTG
GCGTGTATTCTACAGGTTCTAATGTTTTTCAAACACGTGCAGGCTGTTTAAATAGGGGCTG
AACATGTCAACAACTCATATGAGTGTGACATACCCATTGGTGCAGGTATATGCGCTAG

44. TTGGTGCAGAAAATTCAGTTGCTTACTCTAATAACTCTATTGCCATACCCACAAATTTTA
CTATTAGTGTACCACAGAAATCTACCAGTGTCTATGACCAAGACATC

45. AGTAGATTGTACAATGTACATTTGTGGTGATTCAACTGAATGCAGCAATCTTTTGTGTC
AATATGGCAGTTTTTGTACACAATTAACCGTGCTTTAACTGGAATAGCT

46. ACAAGACAAAAACACCCAAGAAGTTTTTGCACAAGTCAAACAAATTTACAAAACACCAC
CAATTAAGATTTTGGTGGTTTTAATTTTTTACAAATATTACCAGATCCATCAAACCAAGC
AAGAGGTCATTTATTGAAGATCTACTTTTCA

47. AAAGTGACACTTGCAGATGCTGGCTTCATCAAACAATATGGTGATTGCCTTGGTGATAT
TGCTGCTAGAGACCTCATTTGTGCACAAAAGTTTAAACGGCCTTACTGTTTTGCCACCTTGTCT
CACAGATGAAATGATTGCTCAATA

48. CACTTCTGCACTGTTAGCGGGTACAATCACTTCTGGTTGGACCTTTGGTGCAGGTGCTGC
ATTACAAATACCATTTGCTATGCAAATGGCTTATAGGTTTAAATGGTATTGGAGTTACACA

49. GAATGTTCTCTATGAGAACCAAAAATTGATTGCCAACCAATTTAATAGTGCTATTGGCA
AAATTCAAGACTCACTTTCTTCCACAGCAAGTGCCTTGGAAAACCTTCAAGATGTGGTCAA

50. TTCAAGTGTTTTAAATGATATCCTTTTACGTCTTGACAAAGTTGAGGCTGAAGTGCAAA
TTGATAGGTTGATCACAGGCAGACTTCAAAGTTTGCAGACATATGTGACTCAACAATTAAT

51. TAGAGCTGCAGAAATCAGAGCTTCTGCTAATCTTGCTGCTACTAAAATGTCAGAGTGTG
TACTTGGACAATCAAAAAGAGTTGATTTTTGTGGAAAGGGCTATCATCTTATGTCCTTCCC

52. TCAGTCAGCACCTCATGGTGTAGTCTTCTTGCATGTGACTTATGTCCCTGCACAAGAAAA
GAACTTCACAACCTGCTCCTGCCATTTGTCATGATGGAAAAGCACACTTTCCTCGTGAAGG

53. TGTCTTTGTTTCAAATGGCACACACTGGTTTGTAACACAAAGGAATTTTATGAACCACA
AATCATTACTACAGACAACACATTTGTGTCTGGTAACTGTGATGTTGTAATAGGAATTGT

54. CAACAACACAGTTTATGATCCTTTGCAACCTGAATTAGACTCATTCAAGGAGGAGTTAG
ATAAATATTTTAAGAATCATAATCACCAGATGTTGATTTAGGTGACATCTCTGGCATTAA

55. TGCTTCAGTTGTAAACATTCAAAAAGAAATTGACCGCCTCAATGAGGTTGCCAAGAATT
TAAATGAATCTCTCATCGATCTCCAAGAACTTGGAAGTATGAGCAGTATATAAAATGGCC

56. ATGGTACATTTGGCTAGGTTTATAGCTGGCTTGATTGCCATAGTAATGGTGACAATTA
TGCTTTGCTGTATGACCAGTTG

For all parts above, we request the full query as input by the user accessing the NCBI BLAST server for the blastn or blastp suites. This includes all queries using the NCBI webpage, as well as those made through other interfaces such as RESTful interfaces and cloud platforms like Google Cloud Platform and Amazon Web Services/Amazon Cloud.

The NCBI/NLM can limit the timeframe for this request from January 1, 2016 to September 30, 2019. As part of our FOIA request, please include the date and time of each and every query and all identifying information about it, such as the originating institution, IP address, and geographical location.

We request that you disclose this data as it becomes available to you, without waiting until all query inputs have been assembled. If sequences are denied in whole or in part, please specify which exemption(s) is (are) claimed for each sequence denied. 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 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.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *NARA v. Favish*, 541 U.S. 157, 171 (2004) quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide

public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as U.S. Right to Know access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Patrick Leahy).

I. U.S. Right to Know Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

Thus, the NIH must consider six factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns "the operations or activities of the Federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably broad audience of persons interested in the subject, (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. *Id.* § 2.107(1)(2), (5) whether a commercial interest exists and its magnitude, and (6) the primary interest in disclosure. As shown below, U.S. Right to Know meets each of these factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns information about the origins of the COVID-19 pandemic which may be held within NIH's databases and online analytic platforms. This request asks for records associated with SARS-CoV-2 progenitors that may not have been disclosed to the public.

This FOIA will provide U.S. Right to Know and the public with crucial knowledge of SARS-CoV-2 that may be contained within NIH's data or information management systems. It is clear that a federal agency's knowledge of health, safety and security threats, both foreign and in the U.S., is a specific and identifiable activity of the government, and in this case, it is the executive branch agency of the NIH. *Judicial Watch*, 326 F.3d at 1313 ("[R]easonable

specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, U.S. Right to Know meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow U.S. Right to Know to convey to the public information about the NIH’s data platforms that can be used to study and understand the COVID-19 pandemic. Once the information is made available, U.S. Right to Know will analyze it and present it to the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of the NIH’s activities and operations in relation to understanding and mitigating pandemics.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons’ Understanding of the origins of the COVID-19 pandemic.

The requested records will contribute to public understanding of whether the NIH’s data platforms and repositories are consistent with its mission and purpose “to develop, maintain, and renew scientific human and physical resources that will ensure the Nation’s capability to prevent disease.” As explained above, the records will contribute to public understanding of this topic.

Activities of the NIH generally, and specifically its oversight of pandemics such as the COVID-19 pandemic as well as associated data, are areas of interest to a reasonably broad segment of the public. U.S. Right to Know will use the information it obtains from the disclosed records to educate the public at large about this topic. See *W. Watersheds Proj. v. Brown*, 318 F. Supp.2d 1036, 1040 (D. Idaho 2004) (finding that “WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment”).

Through U.S. Right to Know’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F. Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dept. of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev.*, 405 F. Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community

legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to easily evaluate the requested records, which are not currently in the public domain. See *Cnty. Legal Servs.*, 405 F. Supp.2d at 560 (because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”^[1]

Disclosure of these records is not only “likely to contribute,” but is certain to contribute to public understanding of NIH’s work toward understanding the COVID-19 pandemic, mitigating the risk of future such pandemics, and managing publicly accessible databases that can be used to understand and study pandemics.

II. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

U.S. Right to Know is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of the worth and usefulness of NIH’s public online data and analysis platforms that can be used to study pathogens with pandemic potential, as compared to the level of public understanding that existed prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about this subject matter.

The records are also certain to shed light on the NIH’s faithfulness to its own mission and purpose. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, U.S. Right to Know meets this factor as well.

III. Obtaining the Requested Records is of No Commercial Interest to U.S. Right to Know.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to U.S. Right to Know’s role of educating the general public. Founded in 2014, U.S. Right to Know is a 501(c)(3) nonprofit public interest, public health organization (EIN: 46-5676616). U.S. Right to Know has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. U.S. Right to Know’s Primary Interest in Disclosure is the Public Interest.

As stated above, U.S. Right to Know has no commercial interest that would be furthered by disclosure. Although even if it did have an interest, the public interest would far outweigh any pecuniary interest.

U.S. Right to Know is a non-profit organization that informs, educates, and counsels the public regarding corporate wrongdoing and government failures that threaten the integrity of our food system, our environment, and our health. U.S. Right to Know has been substantially involved in the activities of numerous government agencies for over seven years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In granting U.S. Right to Know's fee waivers, agencies have recognized: (1) that the information requested by U.S. Right to Know contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that U.S. Right to Know possesses the expertise to explain the requested information to the public; (4) that U.S. Right to Know possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes U.S. Right to Know as an established expert in the field of public health. U.S. Right to Know's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure, are well established.

U.S. Right to Know intends to use the records requested here similarly. U.S. Right to Know's work appears frequently in news stories online and in print, radio and TV, including reporting in outlets such as *The New York Times* and *The Guardian*, as well as medical and public health journals such as the *BMJ*. Many media outlets have reported about the food and chemical industries using information obtained by U.S. Right to Know from federal agencies. In 2021, more than 525,000 people visited U.S. Right to Know's extensive website, and viewed pages a total of one million times. More than 9,300 people follow U.S. Right to Know on Facebook where there are regular postings about transparency in issues of public health and the environment. U.S. Right to Know and its staff regularly tweet to a combined following of more than 50,000 on Twitter. U.S. Right to Know intends to use any or all of these media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the NIH's functions is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney*, 19 F.3d 807. U.S. Right to Know need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for U.S. Right to Know to show how it distributes information to the public generally. *Id.*

Please send the documents electronically in PDF format to Karolina Corin at karolina@usrtk.org.

Please do not hesitate to contact us if you want to discuss how to carry out any part of this FOIA request.

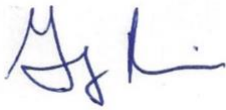
If there are any problems with this FOIA request, or if you need additional information about it, please call, rather than write, Gary Ruskin. He can be reached at (415) 944-7350.

Thank you very much for your help in filling this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Corin', with a horizontal line extending to the right.

Karolina Corin, PhD
Staff Scientist

A handwritten signature in blue ink, appearing to read 'Gary Ruskin', with a horizontal line extending to the right.

Gary Ruskin
Executive Director

Attachment 2:

**The National Library of Medicine's response to
US Right to Know's
Freedom of Information Act Request,
received on June 9, 2022**



DEPARTMENT OF HEALTH & HUMAN SERVICES

National Institutes of Health
National Library of Medicine
FOIA/PA Office, RKL 1, 4th Floor
6705 Rockledge Drive
Bethesda, MD 20892

June 9, 2022

Karoline Corin
U.S. Right to Know
4096 Piedmont Ave. #963
Oakland, CA 94611

Re: FOIA Case Number: 58433

Dear Dr. Corin:

This is our final response to your Freedom of Information Act (FOIA) request addressed to National Library of Medicine (NLM), National Institutes of Health (NIH), dated June 1, 2022 and received June 2, 2022. You requested:

1. The full nucleotide and amino acid sequences of all Basic Locator Alignment Search Tool (BLAST) query inputs that result in one of the following as one of 5 alignments listed in your letter;
2. All protein sequence alignment queries that have one or more of the 33 sequences in your letter contained within them;
3. All nucleotide sequence alignment queries that have one or more of the 56 sequences in your letter contained within them.

For all parts above, you requested the full query as input by the user accessing the NCBI BLAST server for the blastn or blastp suites. Your request also included all queries using the NCBI webpage, as well as those made through other interfaces such as RESTful interfaces and cloud platforms like Google Cloud Platform and Amazon Web Services/Amazon Cloud. You agreed to limit the time frame for this request from January 1, 2016 to September 30, 2019, but requested that as part of your FOIA request, the date and time of each and every query and all identifying information about it, such as the originating institution, IP address, and geographical location be provided.

NLM and the National Center for Biotechnology Information (NCBI) has no responsive records for the time period listed in your request. While we believe that an adequate search of appropriate files was conducted for the records you requested, you have the right to appeal this determination that no records exist which would be responsive to your request. Should you wish to do so, your appeal must be sent within ninety (90) days of the date of this letter, following the procedures outlined in Subpart F of the HHS FOIA Regulations (<https://www.federalregister.gov/documents/2016/10/28/2016-25684/freedom-of-information-regulations>) to:

Assistant Secretary for Public Affairs/Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201
FOIARequest@hhs.gov
FAX: 202-690-8320

Please feel free to call the analyst processing your request, Nikki Meadows, on 301-496-9737 for additional information or to inquire about your request.

If you are not satisfied with the processing and handling of this request, you may contact the NLM FOIA Public Liaison and/or the Office of Government Information Services (OGIS):

NLM FOIA Public Liaison

Marianne Manheim
Rockledge I, 4th Floor
Bethesda, MD 20892
301-496-9739 (phone)
301-402-3604 (fax)
marianne.manheim@nih.gov (email)

OGIS

National Archives and Records Admin.
8601 Adelphi Rd – OGIS
College Park, MD 20740-6001
1-877-684-6448 (toll-free)
202-741-5769 (fax)
ogis@nara.gov (email)

In certain circumstances, provisions of the FOIA and HHS FOIA Regulations allow us to recover part of the cost of responding to your request. Because the cost is below the \$25 minimum, there is no charge for the enclosed materials.

Thank you for your interest in the NLM.

Sincerely,
/S/
Valery Gheen
Government Information Specialist, NLM