

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

US RIGHT TO KNOW
4096 Piedmont Avenue, # 963
Oakland, CA 94611-5221

Plaintiff,

V.

Civil Case No. 1:23-cv-343

NATIONAL NUCLEAR SECURITY
ADMINISTRATION
Albuquerque, NM 87116

and

U.S. DEPARTMENT OF ENERGY
1000 Independence Avenue SW
Washington, DC 20585

Defendants.

COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT

Plaintiff US RIGHT TO KNOW (“USRTK”) for its complaint against Defendant NATIONAL NUCLEAR SECURITY ADMINISTRATION (“NNSA”) and the U.S. DEPARTMENT OF ENERGY (“DoE”), alleges as follows:

- 1) This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel production of records and/or a lawful response on the part of the Defendants to a February 28, 2023 request for certain described agency records, which was addressed to the Department of Energy and transferred to the National Nuclear Security Administration on March 10, 2023.
- 2) NNSA is a constituent part of the US Department of Energy, such that DoE essentially “transferred” the FOIA request at issue to itself. Although Defendants have each

acknowledged Plaintiff's request, they have entirely failed in any way to act on such request and have failed to issue a timely or lawful "determination" regarding the request.

- 3) The records Plaintiff seeks in this case are central to a matter of timely, current political and legal deliberations, and are of great public interest and policy and legal significance. Specifically, the records relate to the origins of the COVID-19 pandemic.
- 4) A true and correct copy of the FOIA request that is at issue is attached hereto as Exhibit A.
- 5) A true and correct copy of the DoE's response to the FOIA request that is at issue is attached hereto as Exhibit B. In that response, DoE purported to "transfer" the request to NNSA, but did not make any "determination" with respect to the request or inform USRTK of any administrative appellate rights.
- 6) A true and correct copy of the NNSA's acknowledgement of the "transferred" request is attached hereto as Exhibit C.
- 7) Since the date of the NNSA's letter referenced above, Plaintiff has received no further communications from NNSA.
- 8) Plaintiff requested fee waiver on multiple bases, but Defendants have not made any determination relating to the Plaintiff's fee waiver request(s). Nor have defendants made a determination to properly and timely process the Plaintiff's request.
- 9) Defendants' failure to timely provide Plaintiff with the requested records or to timely make a determination within the 20-day time limit established under, *inter alia*, 5 U.S.C.S. § 552(a)(6)(A)(i), violates FOIA. This violation is made plain in *Citizens for Responsibility and Ethics in Washington (CREW) v. Federal Election Commission*, 711 F.3d 180 (D.C. Cir. 2013). That case explains that a FOIA "determination" requires

more than a mere letter acknowledging the existence of a request and that the failure to timely make a “determination” renders a case ripe for judicial review.

- 10) Defendants’ failure to respond in any meaningful way, whatsoever, to Plaintiff’s request, despite the passage of approximately two months, has constructively exhausted all of Plaintiff’s administrative remedies, leaving Plaintiff no choice but to file this lawsuit to compel Defendants to comply with the law regarding release of agency records and the making of a determination.
- 11) In this context, Plaintiff asks this Court to compel Defendants to search for and release records responsive to its FOIA request, and to provide an index of any claimed exempt material for purposes of further judicial review.

PARTIES

- 12) Plaintiff USRTK is a nonprofit investigative research group focusing on promoting transparency for public health. It works globally to expose corporate wrongdoing and government failures that threaten our health, environment, or food system. Since 2015, it has obtained, posted online, and shared with the media, thousands of industry and government documents, including many obtained through judicial enforcement of open records laws. Tens of thousands of pages of documents obtained by USRTK are now available online for free public access.
- 13) Defendant U.S. Department of Energy (“DoE”) is a federal agency headquartered in Washington, DC. It is sued for its own actions as well as the actions of its constituent organization known as the National Nuclear Security Administration.
- 14) Defendant National Nuclear Security Administration is a part of the U.S. Department of Energy. It operates from various locations across the United States, and its General Counsel’s office is located in Albuquerque, New Mexico.

JURISDICTION AND VENUE

- 15) This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the District of New Mexico, which is where the records at issue in this case are likely situated and is the location where such records are being processed for release to Plaintiff. Additionally, jurisdiction is proper under 28 U.S.C. § 1331, because the resolution of disputes under FOIA presents a federal question.
- 16) Venue is proper in the U.S. District Court for the District of New Mexico under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because the records are likely managed from within the environs of Albuquerque, New Mexico (insofar as correspondence indicates the request at issue was “transferred” to the NNSA and relevant correspondence since that “transfer” has been marked with an Albuquerque return address) and because defendants are each a federal agency or a component part of a federal agency with an office or offices in this District.

STATUTORY BACKGROUND

- 17) FOIA provides that a requesting party is entitled to a substantive agency response within twenty working days, including a determination of whether the agency intends to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Within that deadline, the agency must also “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents,” and “inform the requester that it can appeal whatever portion of” the agency’s “determination” is adverse to the requestor. *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013); *accord Shermco Industries v. Secretary of U.S. Air Force*, 452 F. Supp. 306, 317 (N.D. Tex. 1978).
- 18) 5 U.S.C.S. § 552(a)(6)(A) prescribes that the 20-day time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the

requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester, § 552(a)(6)(A)(ii)(I), and agencies may also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. § 552(a)(6)(A)(ii)(II). In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period. Neither apply here because Defendants did not seek additional information from Plaintiff regarding the request at issue in this suit.

19) Defendants each owed USRTK a response to its FOIA request, including a "determination" as that term is defined in *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013), within 20 days of their receipt of the request (or at the latest 30 days from receipt of the request, if Defendants had demonstrated "unusual circumstances" truly prevented an earlier response). To date, however, Defendants have provided no substantive response or "determination" with respect to the request at issue.

20) In *Bensman v. National Park Service*, 806 F. Supp. 2d 31 (D.D.C. 2011), this Court noted: "[The effect of] the 2007 Amendments was to impose consequences on agencies that do not act in good faith or otherwise fail to comport with FOIA's requirements. See S. Rep. No. 110-59. To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that '[a]n agency shall not assess search fees... if the agency fails to comply with *any time limit*' of FOIA" (*emphasis added*).

21) Defendants are now past their statutory period for issuing determinations on the above-described request. Further, that time has elapsed without the Defendants having provided any substantive response to Plaintiff's request. Among the consequences of Defendants' violation(s) of the statutory time limits of FOIA, including their failure to timely respond

to the request filed by the Plaintiff with DoE and transferred to NNSA, is that Defendants cannot now seek fees.

- 22) On information and belief, Defendants are improperly failing to search for records in a timely fashion or unlawfully delaying conducting an adequate search for responsive records. As a result, Defendants have constructively denied Plaintiff access to records under FOIA and/or are denying Plaintiff access to agency records and a lawful determination with respect to such records in violation of FOIA.

FIRST CLAIM FOR RELIEF

Duty to Produce Records – Declaratory Judgment

- 23) Plaintiff re-alleges paragraphs 1-22 as if fully set out herein.
- 24) On information and belief, records responsive to Plaintiff's FOIA request at issue in this action exist and are in the possession of the Defendants or of one of the Defendants.
- 25) Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business.
- 26) Plaintiff has a statutory right to the information it seeks and that Defendants have unlawfully withheld.
- 27) Plaintiff is not required to pursue administrative remedies, or alternatively has constructively exhausted such remedies.
- 28) Plaintiff asks this Court to enter a judgment declaring that:
- a. Plaintiff is entitled to records responsive to its FOIA request described above, and any attachments thereto, but Defendants failed to provide them; and that
 - b. Defendants' processing of Plaintiff's FOIA request described above is not in accordance with the law, and does not satisfy Defendants' obligations under FOIA; and that

- c. Defendants must now produce records responsive to Plaintiff's request and must do so at no cost to the Plaintiff.

SECOND CLAIM FOR RELIEF
Duty to Produce Records – Injunctive Relief

- 29) Plaintiff re-alleges paragraphs 1-28 as if fully set out herein.
- 30) Plaintiff is entitled to injunctive relief compelling Defendants to search for and produce the records responsive to the FOIA request described in this pleading without cost to the Plaintiff.
- 31) Plaintiff asks the Court to enter an injunction ordering Defendants to search for and produce to Plaintiff, within 10 business days of the date of the order, the requested records sought in Plaintiff's FOIA request described above, and any attachments thereto.
- 32) Plaintiff asks the Court to order the parties to consult regarding withheld documents and to file a status report to the Court within 30 days after plaintiff receives the last of the produced documents, addressing defendant's preparation of a *Vaughn* log and a briefing schedule for resolution of remaining issues associated with Plaintiff's challenges to Defendant's withholdings, if any, and any other remaining issues.

THIRD CLAIM FOR RELIEF
Costs And Fees – Injunctive Relief

- 33) Plaintiff re-allege paragraphs 1-32 as if fully set out herein.
- 34) Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
- 35) This Court should enter an injunction or other appropriate judgment or order requiring the Defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiff requests the declaratory and injunctive relief herein sought, and an award for its attorney fees and costs and such other and further relief as the Court shall deem proper.

Respectfully submitted this 24th day of April, 2023

US RIGHT TO KNOW

By Counsel:

/s/Matthew D. Hardin

Matthew D. Hardin, NM Federal Bar No. 23-124

Hardin Law Office

1725 I Street NW, Suite 300

Washington, DC 20006

Phone: (202) 802-1948

Email: MatthewDHardin@protonmail.com



U.S. RIGHT TO KNOW

Pursuing truth and transparency for public health

February 28, 2023

FOIA Request Service Center
U.S. Department of Energy
1000 Independence Avenue, SW
Mail Stop MA-46
Washington, DC 20585

Via email: FOIA-Central@hq.doe.gov

RE: Freedom of Information Act request

Dear FOIA Officer:

This is a two-part request under the Freedom of Information Act, 5 U.S.C. § 552, et seq., to the U. S. Department of Energy (DOE).

Part I. We request all unclassified intelligence findings or briefings by the Lawrence Livermore National Laboratory (LLNL)'s Intelligence Programs ("Z Program", or "Z-Division") related to the origin of COVID-19 and/or SARS-CoV-2.

Part II. We request the production of documents pertaining to the following DOE employees at the Lawrence Livermore National Laboratory (LLNL):

- Huban Gowadia Associate director for Global Security
- David Rakestraw Senior program manager, Global Security Directorate
- Nils Carlson Senior fellow & Manager, LLNL Intelligence Programs

We request all unclassified email communication from the above-named individuals -- including attachments, CC and BCC -- related to the structure of SARS-CoV-2 and/or the origins of COVID-19.

The time period covered by both parts of this request is from May 1, 2022 to the present.

We request that you disclose these 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 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 DOE 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 the operations and activities of the DOE. This request is about the DOE’s knowledge of the origins of the COVID-19 pandemic.

This FOIA will provide U.S. Right to Know and the public with crucial insight into the activities of the DOE in relation to the US Government’s efforts to understand the origins of the COVID-19 pandemic. It is clear that a federal agency’s oversight 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 DOE. *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 DOE’s activities in relation to the origins of COVID-19. 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 DOE’s operations and activities.

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 DOE’s actions relating to concerns about origins of COVID-19 were consistent with its priority to “ensure America’s security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions.” As explained above, the records will contribute to public understanding of this topic.

Activities of the DOE generally, and specifically its activities to investigate the origins of the COVID-19 pandemic 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[1]

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of DOE’s activities toward finding the origins of the COVID-19 pandemic. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about this pressing issue.

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 what the DOE knows about the origins of the COVID-19 pandemic, as compared to the level of public understanding that existed prior to the disclosure.. The records are also certain to shed light on the DOE’s compliance with 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 eight 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 2022, more than 725,000 people visited U.S. Right to Know's extensive website, and viewed pages more than one million times. U.S. Right to Know and its staff regularly tweet to a combined following of nearly 50,000 on Twitter, and more than 9,600 people follow U.S. Right to Know on

Facebook, 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 DOE's duties 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 Hana Mensendiek at hana@usrtk.org. If you need additional information please write Hana at the email address above.

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

Sincerely,



Hana Mensendiek
Investigator



Gary Ruskin
Executive Director



Department of Energy
Washington, DC 20585



March 9, 2023

Hana Mensendiek
U.S. Right To Know
4096 Piedmont Avenue, Suite 963
Oakland, CA 94611-5221

Via email: hana@usrtk.org

Re: HQ-2023-00636-F

Dear Ms. Mensendiek,

This is in response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

Part I. We request all unclassified intelligence findings or briefings by the Lawrence Livermore National Laboratory (LLNL)'s Intelligence Programs ("Z Program", or "Z-Division") related to the origin of COVID-19 and/or SARS-CoV-2.

Part II. We request the production of documents pertaining to the following DOE employees at the Lawrence Livermore National Laboratory (LLNL): 1.) Huban Gowadia, Associate director for Global Security; 2.) David Rakestraw Senior program manager, Global Security Directorate; and 3.) Nils Carlson, Senior fellow & Manager, LLNL Intelligence Programs.

We request all unclassified email communication from the above-named individuals – including attachments, CC and BCC – related to the structure of SARS-CoV-2 and/or the origins of COVID- 19.

The time period covered by both parts of this request is from May 1, 2022 to the present

Any records which may be responsive to your request are under the jurisdiction of DOE's National Nuclear Security Agency (NNSA). For this reason, I have transferred the request to NNSA to conduct a search of its files for responsive records and provide you with a response.

If you have questions about the processing of your request under NNSA, you may contact Ms. Christina Hamblen, FOIA officer at that location, at foiofficer@nnsa.doe.gov, at 866-747-5994, or by mail at U.S. Department of Energy, NNSA Albuquerque Complex, Office of General Counsel, FOIA/PA, P.O. Box 5400, Albuquerque, NM 87185.



You may contact DOE's FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955 or by mail at MA-46/Forrestal Building 1000 Independence Avenue, S.W. Washington, D.C. 20585 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

This is the final response that you will receive regarding your request from this office. You may contact Ike Mpamaugo of my staff with any questions about this letter at:

MA-46/Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
202-586-5955

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C.
Morris

Digitally signed by
Alexander C. Morris
Date: 2023.03.09
16:55:47 -05'00'

Alexander C. Morris
FOIA Officer
Office of Public Information



Department of Energy
National Nuclear Security Administration
Office of the General Counsel
P.O. Box 5400
Albuquerque, NM 87185-5400



March 14, 2023

SENT VIA EMAIL

hana@usrtk.org

Hana Mensendiek
U.S. Right To Know
4096 Piedmont Avenue, Suite 963

RECEIPT OF FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Mensendiek:

This letter acknowledges the receipt of your February 28, 2023, Freedom of Information Act (FOIA) request. Your request stated the following:

“Part I. We request all unclassified intelligence findings or briefings by the Lawrence Livermore National Laboratory (LLNL)’s Intelligence Programs (“Z Program”, or “Z-Division”) related to the origin of COVID-19 and/or SARS-CoV-2.

Part II. We request the production of documents pertaining to the following DOE employees at the Lawrence Livermore National Laboratory (LLNL):

- Huban Gowadia Associate director for Global Security
- David Rakestraw Senior program manager, Global Security Directorate
- Nils Carlson Senior fellow & Manager, LLNL Intelligence Programs

We request all unclassified email communication from the above-named individuals – including attachments, CC and BCC – related to the structure of SARS-CoV-2 and/or the origins of COVID-19.

The time period covered by both parts of this request is from May 1, 2022, to the present.”

Your request was transferred from the Department of Energy (DOE) and was received in this office on March 10, 2023.

It is the practice of the National Nuclear Security Administration, in accordance with the Departmental policy, to process FOIA requests in the approximate order of the date received by

Ms. Hana Mensendiek

(2)

FOIA 23-00112-M

this office. Your request is out for a search for the responsive record(s). A number of requests received prior to yours are pending, and your request will be processed in turn. We will make every effort to respond to your request as quickly as possible. However, we estimate that we will not be able to provide responsive records in 20 working days, as we need more time to complete the search, review the record(s) for release, and prepare a response to you, as some requests, depending on the volume of records, the complexity of the search, and/or the sensitivity of the subject matter, require additional time to complete. Reformulating or otherwise narrowing the scope of your request may result in a quicker processing time.

Due to the current events surrounding COVID-19, the agency is working with an extremely limited staff. Field offices, laboratories, and other program offices are performing mission critical work on an extremely reduced workforce. Furthermore, many of our records are located off site and require in person handling. Therefore, our FOIA process will be severely delayed, and you may experience a longer delay in the processing of your request. We thank you for your patience during these unprecedented times.

With respect to your request for a fee waiver, pursuant to 10 CFR § 1004.9(a)(6), fees are not charged where they would amount to \$15.00 or less. We have not determined, at this time, the costs of processing your request; however, your request for a waiver will be considered if it is later determined that costs would exceed \$15.00.

If you have questions concerning the processing of your request, please contact me by e-mail at Delilah.Perez@nnsa.doe.gov, or write to the address above. Please reference Control Number FOIA 23-00112-M.

You may also contact NNSA's FOIA Public Liaison, Christina H. Hamblen, FOIA Officer, Office of the General Counsel, at 1-866-747-5994, or by mail at Department of Energy, National Nuclear Security Administration, Office of the General Counsel, PO Box 5400, Albuquerque, NM 87185, for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Delilah Perez
Government Information Specialist

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

US Right to Know

Plaintiff

v.

National Nuclear Security Administration, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

US Attorney's Office for the District of New Mexico
Attn: Civil Process Clerk
P.O. Box 607
Albuquerque, New Mexico 87103

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew D. Hardin
Hardin Law Office
1725 I Street NW, Suite 300
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

US Right to Know

Plaintiff

v.

National Nuclear Security Administration, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

US Attorney General
950 Pennsylvania Ave NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew D. Hardin
Hardin Law Office
1725 I Street NW, Suite 300
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

US Right to Know

Plaintiff

v.

National Nuclear Security Administration, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

National Nuclear Security Administration
Office of General Counsel
P.O. Box 5400
Albuquerque, NM 87185-5400

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew D. Hardin
Hardin Law Office
1725 I Street NW, Suite 300
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

US Right to Know

Plaintiff

v.

National Nuclear Security Administration, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

US Department of Energy
Attn: Samuel Walsh, General Counsel
1000 Independence Ave. SW
Washington, DC, 20585

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew D. Hardin
Hardin Law Office
1725 I Street NW, Suite 300
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

US Right to Know

(b) County of Residence of First Listed Plaintiff Alameda, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew D Hardin / Hardin Law Office / 202-802-1948
1725 I Street NW, Suite 300, Washington DC 20006

DEFENDANTS

National Nuclear Security Administration

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 USC 552 et seq.

Brief description of cause:

Failure to comply with Freedom of Information Act, including failure to make determination and to produce documents.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 24, 2023

/s/ Matthew D. Hardin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____