

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
U.S. RIGHT TO KNOW,)	
)	
Plaintiff,)	
v.)	Civil Action No. 21-2936 (TSC)
)	
NATIONAL INSTITUTES OF HEALTH,)	
)	
Defendant.)	
_____)	

JOINT STATUS REPORT

Now come the parties in the above captioned matter, U.S. Right to Know (“Plaintiff”) and the National Institutes of Health (“Defendant” or “NIH”) and submit this joint status report pursuant to the Court’s Minute Order dated August 11, 2023.

1. Plaintiff brought this action against Defendant under the Freedom of Information Act via Complaint on September 8, 2021, seeking to compel a response to nine FOIA requests Plaintiff filed:

- October 5, 2020 (FOIA Case No. 55201);
- November 3, 2020 (FOIA Case No. 55344);
- November 5, 2020 (FOIA Case No. 55351);
- December 18, 2020 (FOIA Case No. 55569) [appealed/remanded January 29, 2021];
- December 18, 2020 (FOIA Case No. 55570) [appealed/remanded on February 23 2021];
- March 25, 2021 (FOIA Case No. 56077);

- April 21, 2021 (FOIA Case No. 56212) [portal response only];
- April 29, 2021 (FOIA Case No. 56247)
- and May 11, 2021 (FOIA Case No. 56301).

2. As reported in the August 4, 2023 joint status report (ECF No. 27), Defendant had produced four tranches of documents to Plaintiff. The first production of 1,260 pages went out on Monday, February 27, 2023. This was a partial production with respect to request 55569. The second production of 6,698 pages went out on March 6, 2023. These were productions with respect to requests 55570 and 56212.

3. The thirteenth production of 501 pages went out on May 13, 2024.

4. Productions will continue to be processed every succeeding month hereafter, on or about the 12th of each month, until complete.

5. Defendant will continue to make regularly scheduled productions each month pursuant to the Court's mandated processing rate set forth in the Court's August 11, 2023 Minute Order.

6. Once Defendant releases all non-exempt records, the parties will confer and attempt to narrow or resolve any substantive issues of disagreement.

7. Pursuant to the Court's August 11, 2023 Minute Order, the next joint status report will be filed on June 20, 2024.

PLAINTIFF'S REPORT

8. Plaintiff is concerned by growing evidence that the NIH may not be complying with the Federal Records Act and the Freedom of Information Act in its responses to FOIA requests, and especially those related to the origins of COVID-19 or high-risk virology research, which are at issue in this matter.

9. For example, at a May 16, 2024 hearing before the U.S. House of Representatives Select Subcommittee on the Coronavirus Pandemic, the chairman of the House Committee on Oversight and Accountability, James Comer, read aloud from emails of David Morens, a senior advisor to the director of the National Institute of Allergy and Infectious Disease. “I learned from our FOIA lady here how to make emails disappear after I am FOIA’d but before the search starts. So I think we are all safe. Plus I deleted most of those earlier emails after sending them to Gmail.”

10. Chairman Comer also read another email written by David Morens: “We are all smart enough to know to never have smoking guns. And if we did we wouldn’t put them in emails. And if we found them we would delete them.” (<https://oversight.house.gov/hearing/overseeing-the-overseers-a-hearing-with-nih-deputy-director-lawrence-tabak/>)

DEFENDANT’S STATEMENT

11. Defendant objects to Plaintiff’s foregoing report in paragraphs 8-10 as irrelevant and not at all applicable to the instant FOIA request. NIH has been abiding by this Court’s August 11, 2023 Minute Order and has been making monthly productions of records and information to Plaintiff in accordance with the Freedom of Information Act. The NIH FOIA Officer is not aware of any of the alleged actions described in Plaintiff’s foregoing report and requests that the Court not take them into any consideration.

Dated: May 20, 2024

Respectfully Submitted,

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