



agencies' responses and disseminates both its findings and the requested records to the American public to inform them about "what their government is up to."

4. Defendant U.S. Department of Health and Human Services is an agency of the U.S. Government and is headquartered at 200 Independence Avenue, S.W., Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On April 22, 2020, Plaintiff sent a FOIA request to the National Institute of Allergy and Infectious Diseases ("NIAID") at the National Institutes of Health ("NIH"), a component of U.S. Department of Health and Human Services, seeking access to the following:

1. All internal NIAID communications regarding the Wuhan Institute of Virology in Wuhan, China.
2. All agreements, contracts and related documents between NIAID and the Wuhan Institute of Virology.
3. All records, including agreements, funds disbursement records and related NIAID communications regarding a reported \$3.7 million in grants provided by NIH to the Wuhan Institute of Virology.

The date range for the records request is January 1, 2013 to April 22, 2020.

The request was submitted via the public portal, available at <https://foiaportal.nih.gov>.

6. By email dated April 28, 2020, bearing timestamp 2:37 PM, Defendant requested clarification as to items 1 and 3 of the FOIA request. Specifically, it requested as to item 1 that Plaintiff identify the offices or staff members whose records are requested to be searched for communications related to the Wuhan Institute of Virology. As to item 3, Defendant requested that Plaintiff confirm it seeks a copy of the grant identified by ID Number R01AI110964 and titled "Understanding the Risk of Bat Coronavirus Emergence."

7. By email dated the same day as the request and bearing timestamp 3:51 PM, Plaintiff responded to Defendant's request for clarification. As to item 1, Plaintiff confirmed that the request seeks internal communications of the following officials: Anthony Fauci, M.D.; Hugh Auchincloss, M.D.; John J. McGowan, Ph.D.; H. Clifford Lane, M.D.; Robert W. Eisinger, Ph.D.; Gregory K. Folkers, M.S., M.P.H.; Gray Handley, M.S.P.H.; and David M. Morens, M.D. Plaintiff also confirmed that as to item 3, it seeks a copy of the grant with ID Number R01A110964, titled "Understanding the Risk of Bat Coronavirus Emergence."

8. By letter dated April 29, 2020, Defendant acknowledged receipt of the request and Plaintiff's clarifications described in paragraph 7 above and indicated the request had been assigned FOIA Case No. 54052.

9. By letter dated August 7, 2020, transmitted via email, Defendant issued a final response and informed Plaintiff that all records requested are being withheld pursuant to Exemption 7(A), 5 U.S.C. § 552 and section 5.31 (g)(1) of the HHS FOIA Regulations, 45 CFR Part 5, denying access to all requested records. Defendant further informed Plaintiff, by same letter, that Plaintiff has the right to appeal the agency's final determination to deny access to the requested information in the agency's possession.

10. By letter dated August 10, 2020, Plaintiff appealed the agency's determination and challenged Defendant's decision to deny Plaintiff access to the requested information in the agency's possession. The appeal was submitted via certified mail.

11. By letter dated January 4, 2021, Defendant acknowledged receipt of Plaintiff's appeal and indicated that the appeal had been assigned Case No. 2021-00064-A-PHS.

12. By letter dated January 29, 2021, Defendant informed Plaintiff that it had decided to reverse the initial determination and remand Plaintiff's appeal to the NIH for a new final

determination. Defendant informed Plaintiff that on remand, “the NIH will issue a new determination in response to [Plaintiff’s] initial request.”

13. As of the date of this Complaint and since remanding the case on appeal, Defendant had failed to: (i) make a final determination whether to comply with Plaintiff’s request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

**COUNT I**  
**(Violation of FOIA, 5 U.S.C. § 552)**

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Defendant is in violation of FOIA.

16. Plaintiff is being irreparably harmed by Defendant’s violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

17. Plaintiff has no adequate remedy at law.

18. To trigger FOIA’s administrative exhaustion requirement, Defendant was required to make a new, final, determination on Plaintiff’s request by March 1, 2021 at the latest. Because Defendant failed to make a final determination on Plaintiff’s request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all records responsive to Plaintiff’s FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff’s FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff’s FOIA request and a *Vaughn* index of any responsive

records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 16, 2021

Respectfully submitted,

/s/ Ramona R. Cotca  
Ramona R. Cotca (D.C. Bar No. 501159)  
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