

FREEDOM OF INFORMATION ACT REQUEST
EXPEDITED PROCESSING REQUESTED

VIA ONLINE PORTAL

August 3, 2021

Gorka Garcia-Malene
Freedom of Information Act Officer
National Institutes of Health
Building 31 Room 5B35
9000 Rockville Pike
Bethesda, Maryland 20892

Re: *Documents Regarding the 2015 Paper (IR#0541)*

Dear Mr. Garcia-Malene:

This firm represents the Informed Consent Action Network (“ICAN”). On behalf of ICAN, please provide the following records to foia@sirillp.com in electronic form:

At a July 20, 2021 Senate hearing at which Dr. Fauci appeared and had an exchange with Senator Rand Paul regarding a paper titled *A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence* (the “paper”),¹ Dr. Fauci stated: “This paper that you are referring to was judged by qualified staff up and down the chain as not being gain-of-function.”²

Please provide any and all documents reflecting the judgment and/or conclusions by the “qualified staff” to which Dr. Fauci was referring which concluded that the paper is “not ... gain-of-function.”

Expedited Processing

ICAN requests expedited processing for this request. ICAN is “primarily engaged in disseminating information to the general public” and there is an “urgency to inform the public

¹ The exchange referred to above can be viewed at <https://www.youtube.com/watch?v=IqUOcVwRUtc> (last visited 7/31/2021).

² A copy of the paper can be viewed here <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4797993/> (last visited 7/28/2021).

concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, ICAN’s mission is to raise public awareness about public health and safety and to provide the public with information to give informed consent regarding related health interventions and precautions.

There is an urgent need for the public to understand the origins of SARS-CoV-2 as well as the potential funding involved with same. As the Director of the U.S. National Institute of Allergy and Infectious Disease, Dr. Anthony Fauci has played and continues to play a critical public role in the country’s response to the SARS-CoV-2 pandemic, frequently appearing in the media to discuss the government’s response to the pandemic³ and its investigation into the origin.⁴ His appearances and statements regarding the pandemic receive intense and ongoing media and public interest, and his role in the potential etiology and funding of SARS-CoV-2⁵ is of immediate and intense public interest in the media and in the scientific community.

At a Senate hearing on May 11, 2021, Dr. Fauci stated that “the NIH has not ever and does not now fund gain-of-function research in the Wuhan Institute of Virology.”⁶ However, the paper states that it “was supported by grants from the National Institute of Allergy & Infectious Disease . . . of the US National Institutes of Health . . .”⁷ and Senator Paul has stated that it appears to meet the National Institute of Health’s definition of “gain-of-function” research.⁸ The public has an urgent interest in learning about the judgments and conclusions that resulted in Dr. Fauci’s testimony that the paper’s content and referenced studies did not meet the definition of “gain-of-function” research, particularly because the response to the pandemic has significant implications on the liberties and everyday lives of nearly every individual in this country. The public, whose taxes funded any NIH grants, is entitled to understand the US government’s role in and responsibility for the origins of the virus.

³ See, e.g., <https://www.cnn.com/2021/07/25/politics/anthony-fauci-covid-19-unvaccinated-cnntv/index.html> (quoting Dr. Fauci saying that the United States is “going in the wrong direction”); <https://www.9news.com/video/news/nation-world/dr-fauci-addresses-delta-covid-variant-vaccine-efficiency/507-0bb21a1b-bcec-406f-846b-dcb903a77e6b> (discussing infection with SARS-CoV-2 after vaccination) (last visited 7/30/2021); <https://news.yahoo.com/cdc-didn-t-change-anthony-000430540.html> (quoting Dr. Fauci saying that “[t]he CDC hasn’t changed, and the CDC hasn’t really flip-flopped at all”) (last visited 7/31/2021).

⁴ See, e.g., <https://www.cnn.com/2021/07/17/politics/fauci-covid-natural-origins-theory/index.html> (quoting Dr. Fauci saying “[t]he most likely explanation” for the origin of SARS-CoV-2 “is a natural evolution from an animal reservoir to a human”) (last visited 7/30/2021); <https://www.cnn.com/2021/05/24/politics/fauci-donald-trump-coronavirus/index.html> (quoting Dr. Fauci stating that he is “perfectly in favor of any investigation that looks into the origin of the virus”) (last visited 7/31/2021); <https://www.forbes.com/sites/jackbrewster/2021/06/16/heres-what-dr-fauci-has-said-about-covids-origins-and-the-lab-leak-theory/?sh=2b62984ea853> (timeline of Dr. Fauci’s comments about the origin of covid) (last visited 7/31/2021).

⁵ See, e.g., <https://nypost.com/2021/05/25/fauci-admits-nih-funding-of-wuhan-lab-denies-gain-of-function/> (admitting “a modest collaboration with very respectable Chinese scientists who were world experts on coronavirus”) (last visited 7/30/2021).

⁶ See <https://www.c-span.org/video/?c4962333/senator-paul-dr-fauci-clash-research-funding-wuhan-lab> (last visited July 31, 2021).

⁷ See <https://www.youtube.com/watch?v=IqUOcVwRUtc> (last visited 7/31/2021).

⁸ See <https://www.nih.gov/news-events/gain-function-research-involving-potential-pandemic-pathogens> (defining “gain-of-function” as “a type of research that modifies a biological agent so that it confers new or enhanced activity to that agent”) (last visited July 31, 2021).

The Senate hearing in which Dr. Fauci made this claim has also been the subject of intense media scrutiny, in particular his assertion that the work described in the paper has been judged up and down the chain and is not considered gain-of-function.⁹

Fees and charges for this search are to be waived pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) since ICAN is a not-for-profit 501(c)(3) organization and its mission is to raise public awareness about public health safety and provide the public with information to give informed consent regarding related health interventions. As part of its mission, ICAN investigates and disseminates information regarding public health safety issues, including through their website, and through press events and releases. ICAN is seeking the information in this FOIA request to allow it to contribute to its mission. The information requested in this FOIA request will not contribute to any commercial activities.

Please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We, therefore, request that we be provided with all non-exempt portions which are reasonably segregable. We further request that you describe any deleted or withheld material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please also separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements may help to avoid unnecessary appeal and litigation. ICAN of course reserves all rights to appeal the withholding or deletion of any information.

Access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter. Failure to respond in a timely manner shall be viewed as a denial of this request and ICAN may immediately file an administrative appeal.

If you would like to discuss our requests or any issues raised in this letter, please feel free to contact me at (212) 532-1091 or via email at foia@sirillp.com during normal business hours. Thank you for your time and attention to this matter.

Very truly yours,



Aaron Siri, Esq.
Elizabeth A. Brehm, Esq.
Gabrielle Palmer, Esq.

⁹ See <https://edition.cnn.com/2021/07/20/politics/anthony-fauci-rand-paul-debate/index.html> (last visited August 2, 2021); <https://www.msn.com/en-us/news/politics/dr-fauci-goes-off-on-lying-rand-paul-you-dont-know-what-youre-talking-about%2%80%9D/ar-AAMnhZd?ocid=uxbndlbing> (last visited August 2, 2021); <https://www.usatoday.com/story/news/politics/2021/07/20/anthony-fauci-rand-paul-covid-origins/8027390002/> (last visited August 2, 2021).