

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION,
600 14th Street, NW
Fifth Floor
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,
2201 C Street, NW
Washington, DC 20520

Defendant.

Civil Action No.: 21-2253

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against Defendant U.S. Department of State (“State”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

3. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. AFL is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans,

and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public. All of the records produced by State will be made publicly available on AFL's website for citizens, journalists, and scholars to review and use. AFL's principal office is located in the District of Columbia.

5. State is an agency of the federal government within the meaning of 5 U.S.C. § 552(f) and has possession and control of the records AFL seeks.

BACKGROUND

6. The COVID-19 pandemic has devastated millions of Americans. According to the Centers for Disease Control, well over six hundred thousand American citizens have died from the virus.

7. The economic, mental health, and social impact of stay-at-home orders, mask mandates, remote learning for millions of children, indefinite telework, layoffs, trillions in taxpayer funded bailouts and stimulus, and the defenestration of the small business sector will be felt for decades.

8. As early as November 2019, U.S. intelligence services strongly suspected the COVID-19 virus originated in the Wuhan Institute of Virology in Wuhan, China. *See* Michael R. Gordon, *et al.*, *Intelligence on Sick Staff at Wuhan Lab Fuels Debate on Covid-19 Origin*, WALL STREET JOURNAL (May 23, 2021) <https://www.wsj.com/articles/intelligence-on-sick-staff-at-wuhan-lab-fuels-debate-on-covid-19-origin-11621796228>; Lee Smith, *The Thirty Tyrants*, TABLET MAGAZINE (Feb. 3, 2021) <https://www.tabletmag.com/sections/news/articles/the-thirty->

tyrants. The Wuhan Institute of Virology was, at all times relevant, closely connected to the Chinese Communist Party (“CCP”) and the CCP’s People’s Liberation Army (“PLA”).

9. In or about April 2020, shortly after the scope and scale of the pandemic became clear, the U.S. Department of Health and Human Services and the U.S. Department of Education consulted on separate investigations into U.S. taxpayer funding (directly authorized, upon information and belief, by the National Institutes of Health’s director Dr. Anthony Fauci) and support from U.S.-based institutions of higher education, respectively, for the Wuhan Institute of Virology and the potentially dangerous activities carried on there. *See, e.g.*, Jerry Dunleavy, *Republicans argue Fauci emails show NIH funded gain-of-function research at Wuhan Lab*, WASHINGTON EXAMINER (July 30, 2021) <https://www.msn.com/en-us/news/politics/republicans-argue-fauci-emails-show-nih-funded-gain-of-function-research-at-wuhan-lab/ar-AAMKlko>; Ltr. from Reed D. Rubinstein, Principal Deputy Gen. Counsel, Off. of Gen. Counsel, U.S. Dep’t of Educ., to James B. Milliken, Chancellor, Univ. of Tex. Sys. at 2 (Apr. 24, 2020) <https://www2.ed.gov/policy/highered/leg/ut-apr24-2020.pdf>. This funding and support had been provided in reckless disregard for the Wuhan Institute of Virology’s known connections to the CCP and the PLA.

10. According to a recent Congressional report, “the preponderance of evidence” suggests COVID-19 was released from the Wuhan Institute of Virology sometime prior to September 12, 2019. Then, “[r]esearchers at the [Wuhan Institute of Virology], officials within the [CCP], and potentially American citizens directly engaged in efforts to obfuscate information related to the origins of the virus and to suppress public debate of a possible lab leak.” Minority Staff of H. Foreign Affairs Comm., 117th Cong., Rep. on The Origins of COVID-19: An investigation of the Wuhan Institute of Virology at 4 (Aug. 2021) <https://gop->

foreignaffairs.house.gov/wp-content/uploads/2021/08/ORIGINS-OF-COVID-19-REPORT.pdf

(the “House Report”).

11. According to the House Report:

[T]he [CCP] and the World Health Organization (WHO) went to great lengths to cover up the initial epidemic, and how their cover-up likely turned what could have been a local outbreak into a global pandemic. The CCP detained doctors in order to silence them, and disappeared journalists who attempted to expose the truth. They destroyed lab samples, and hid the fact there was clear evidence of human-to-human transmission. And they still refuse to allow a real investigation into the origins. At the same time, the WHO, under Director General Tedros, failed to warn the world of the impending pandemic. Instead, he parroted CCP talking points, acting as a puppet of General Secretary Xi.

In this addendum, we have uncovered further evidence of how top scientists at the [Wuhan Institute of Virology] and Dr. Peter Daszak, an American scientist, furthered that cover-up. Their actions include bullying other scientists who questioned whether the virus could have leaked from a lab; misleading the world about how a virus can be modified without leaving a trace; and, in many, instances directly lying about the nature of the research they were conducting, as well as the low-level safety protocols they were using for that research. These actions not only delayed an initial investigation into the possibility of a lab leak costing valuable time, but provide further proof the virus likely leaked from the [Wuhan Institute of Virology].

House Report at 6.

12. The Trump Administration tasked a group at State to investigate the origins of the pandemic. Upon information and belief, the tasking included determining whether the research leading to the creation of COVID-19 was indeed part of or connected to CCP/PLA bioweapon programs.

13. Leaders of the Democratic Party, including members of the Biden Administration and Congress, routinely ridiculed former President Trump for suggesting that the virus may have originated in the Wuhan Institute of Virology and may have been used to benefit the CCP. *See Zachary Cohen, et al., Trump contradicts US intel community by claiming he’s seen evidence*

coronavirus originated in Chinese lab, CNN (May 1, 2020) <https://www.cnn.com/2020/04/30/politics/trump-intelligence-community-china-coronavirus-origins/index.html>; Ethan Siegel, *No, Science Clearly Shows That COVID-19 Wasn't Leaked From A Wuhan Lab*, FORBES (May 20, 2021) <https://www.forbes.com/sites/startswithabang/2021/05/20/no-science-clearly-shows-that-covid-19-wasnt-leaked-from-a-wuhan-lab/?sh=4cad20de5585>.

14. But on May 26, 2021, President Biden issued the following statement:

[S]hortly after I became President, in March, I had my National Security Advisor task the Intelligence Community to prepare a report on their most up-to-date analysis of the origins of COVID-19, including whether it emerged from human contact with an infected animal or from a laboratory... I have now asked the Intelligence Community to redouble their efforts to collect and analyze information that could bring us closer to a definitive conclusion, and to report back to me in 90 days. As part of that report, I have asked for areas of further inquiry that may be required, including specific questions for China. I have also asked that this effort include work by our National Labs and other agencies of our government to augment the Intelligence Community's efforts. And I have asked the Intelligence Community to keep Congress fully apprised of its work.

Pres. Joseph R. Biden, Jr., Stmt. on the Investigation into the Origins of COVID-19 (May 26, 2021) <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/26/statement-by-president-joe-biden-on-the-investigation-into-the-origins-of-covid-19/>.

15. At the same time, the Biden Administration also apparently ordered State to stop its independent investigation into COVID-19's origin. *See* Brooke Singman & Jennifer Griffin, *Biden State Department quietly ended team's work probing COVID origin*, FOX NEWS (May 26, 2021) <https://www.foxnews.com/politics/biden-state-department-shut-down-team-covid-origin-investigation>.

16. Although the Biden Administration has never explained why the State investigation was shut down, multiple Congressional and media reports document the close commercial and

other relationships between key high-ranking Biden Administration officials and the CCP. *See* Majority Staff of S. Comm. on Homeland Sec. and Governmental Aff. & S. Comm. on Fin., 116th Cong., Rep. on Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns (2020) https://www.hsgac.senate.gov/imo/media/doc/HSGAC_Finance_Report_FINAL.pdf; Majority Staff of S. Comm. on Fin. & S. Comm. on Homeland Sec. and Governmental Aff., Rep. Supp. on Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns (Nov. 18, 2020) <https://www.finance.senate.gov/imo/media/doc/2020-11-18%20HSGAC%20-%20Finance%20Joint%20Report%20Supplemental.pdf>; Jonathan Guyer & Ryan Grim, *Meet The Consulting Firm That's Staffing The Biden Administration*, THE INTERCEPT (July 6, 2020) <https://theintercept.com/2021/07/06/westexec-biden-administration/>; The Republican Study Comm., *Biden on China—Bad Policies, Bad Personnel* (Mar. 2021) https://banks.house.gov/uploadedfiles/rsc_china_memo.docx.pdf; Yuichiro Kakutani, *Biden-Linked Firm WestExec Scrubs China Work From Website*, WASHINGTON FREE BEACON (Dec. 2, 2020) <https://freebeacon.com/elections/biden-linked-firm-westexec-scrubs-china-work-from-website/>. Upon information and belief, at least some of these officials have been overseeing or involved in assessing intelligence information regarding the origins of COVID-19 and the CCP's responsibility for the pandemic.

AFL'S FOIA REQUEST

17. To better understand how and why the Biden Administration has prevented State officials from investigating COVID-19's origins, AFL submitted a FOIA request to State on May 28, 2021. *See* Exhibit A.

18. In its May 28, 2021, request, AFL sought:

- A. All records, including but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the State Department's decision to cease, end, or terminate any investigation into the origins of the COVID-19 pandemic.

The timeframe for this request is January 20, 2021, to the date the requested records are processed.

- B. All records, including but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the origins of the COVID-19 virus and the COVID-19 pandemic, from, to, or in the possession of any of the following custodians:

1. Antony Blinken
2. Wendy Sherman
3. Brian McKeon
4. C.S. Eliot Kang
5. Derek H. Chollet
6. Timothy Betts
7. Robert Faucher
8. Lisa Peterson
9. Richard Albright
10. John Godfrey
11. Jonathan Moore
12. Carol Perez
13. Todd Brown (Acting Assistant Secretary for Diplomatic Security)
14. Victoria Nuland
15. Robert Godec
16. Sung Kim (Acting Assistant Secretary for East Asian and Pacific Affairs)
17. Donald Lu
18. Julie Chung
19. Jennifer Hall Godfrey
20. Kin Moy
21. Angeli Achrekar
22. Diana Shaw
23. Richard Visek
24. Asel Roberts
25. Robert Forden
26. Any person employed by or affiliated with the Office of the Secretary

27. The Department of State White House Liaison

The timeframe for this request is January 20, 2021, to the date the requested records are processed.

- C. All email communications between any “who.eop.gov” email address and any State Department employee regarding, referring, or relating to ending, terminating, or otherwise cutting off the State Department’s investigations into the origins of the COVID-19 virus and the COVID-19 pandemic.

The timeframe for this request is January 20, 2021, the date the requested records are processed.

19. AFL submitted its FOIA request to State by e-mail, sending it to FOIARquest@state.gov. *See id.*

20. On May 28, 2021, AFL received an e-mail from State acknowledging receipt of the FOIA request and assigning it reference number F-2021-06884. *See Exhibit B.*

21. In this e-mail, State represented that it would not be able to respond to the request within the 20 days required by statute. *See id.* State also informed AFL that it would make a determination regarding AFL’s fee waiver request at a later date. *See id.*

22. Having received no further response from State, AFL sent an e-mail to State on July 20, 2021, requesting a status update about the May 28, 2021, request. *See Exhibit C.*

23. On July 21, 2021, AFL received an e-mail from State, stating that it would “follow-up with you as soon as possible to provide a response.” *Id.*

24. After receiving no further response from State, AFL sent e-mails to State on August 2, 2021, and August 3, 2021, requesting a status update. *See Exhibits D & E.*

25. On August 4, 2021, AFL received an e-mail from State, stating that the request was “in process.” *Exhibit F.*

26. To date, AFL has received no further response from State about its May 28, 2021 FOIA request.

27. As Justice Thurgood Marshal wrote, “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

28. By failing to respond to AFL’s request, State is depriving AFL and the public of vital information needed to determine whether the Government is willfully refusing to investigate the origins of COVID-19, thereby putting all Americans at risk of future pandemics.

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

29. AFL repeats paragraphs 1-28.

30. State is an agency of the federal government within the meaning of 5 U.S.C. § 552(f).

31. By letter dated May 28, 2021, AFL submitted a FOIA request to State.

32. AFL’s FOIA request complied with all applicable statutes and regulations.

33. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b).

34. State has failed to respond to AFL’s request within the statutory time-period. *See* 5 U.S.C. § 552(a)(6).

35. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

36. By failing to release any responsive, non-exempt records, or otherwise offer a reasonable schedule for production, State has violated FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by the request, as described in the foregoing paragraphs, must be disclosed pursuant to 5 U.S.C. § 552.
- ii. Order State to conduct searches immediately for all records responsive to AFL's FOIA request and demonstrate that they employed search methods reasonably likely to lead to the discovery of responsive records.
- iii. Order State to produce by a date certain all non-exempt records responsive to AFL's FOIA request.
- iv. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E).
- v. Grant AFL such other and further relief as this Court deems proper.

August 25, 2021

Respectfully submitted,

/s/ Brian J. Field

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