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KANSAS

United States Senate

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August 23, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Xavier Becerra
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra:

In light of yesterday's announcement that Dr. Anthony Fauci will step down from his leadership position at the National Institutes of Health (NIH) and from his White House advisor role, I write with this official notice for you to immediately take steps to preserve all records and information related to Dr. Anthony Fauci and Dr. Francis Collins currently within the U.S. Department of Health and Human Services (HHS) and component agencies.¹ I encourage you to review all applicable statutes and regulations to ensure compliance with all federal records preservation obligations relevant to congressional oversight, including all HHS component agencies like the NIH. This request applies to all documents, records, memoranda, research, correspondence, or other communication or any portion thereof relevant to any involvement of Dr. Fauci or Dr. Collins.

HHS and component agencies, including NIH in particular, continue to obstruct numerous congressional investigations through refusal to provide responsive information.² In addition to withholding information from Congress, private parties note that NIH refuses to comply with Freedom of Information Act (FOIA) requests until forced to do so by court order.³ All NIH record-keeping practices must be closely examined, in addition to investigating accusations of NIH destroyed records, potential HHS OIG conflicts of interest, concerns over NIH self-policing, and reported failures of NIH to ensure required reporting of clinical trial results.

It is imperative that all HHS and component employees and officials are advised of their legal responsibilities to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Federal Records Act and related regulations, to include electronic messages involving official business that are sent using both official and personal accounts or

¹ See 44 U.S.C. §§ 3101-3107 (Chapter 31, Records Management by Federal Agencies); 44 U.S.C. §§ 3301-3314 (Chapter 33, Disposal of Records); and 36 C.F.R., Chapter XII, Subchapter B (Records Management); 44 U.S.C. § 2911; 18 U.S.C. § 2071; 44 U.S.C. § 3301(a)(2) (defining "records" as inclusive of "all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form"); and 44 U.S.C. § 2911 (requiring disclosure of official business conducted on nonofficial electronic messaging accounts).

² <https://republicans-oversight.house.gov/wp-content/uploads/2022/02/Letter-to-NIH-Follow-Up1.pdf>

³ <https://theintercept.com/2022/02/20/nih-coronavirus-research-wuhan-redacted/>

devices, burner phones, including records created using text messages, phone-based message applications, or encryption software. In your position as the head of HHS, I remind you about your obligation to ensure the preservation of all records and that any employee who conceals, destroys, or attempts to conceal or destroy a federal record may be subject to fine and imprisonment for up to three years.

I ask that you immediately confirm that HHS is preserving these records by providing all orders, notices, and guidance given to all HHS staff regarding preservation of information related to these matters and individuals.

Below I have expanded on notable concerns with NIH's record keeping practices. While only recent egregious examples of NIH's failure to meet record-keeping requirements are mentioned in this letter, even one should instigate immediate oversight action by HHS.

Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "R. W. Marshall". The signature is written in a cursive style with a large initial "R" and "W".

Roger Marshall, M.D.
U.S. Senator

Notable Recent Concerns with NIH's Record Keeping

NIH Accused of Records Destruction

HHS may have already failed its obligation to meet its record preservation requirements based on a recent letter of inquiry from the National Archives Records Administration (NARA) to NIH about allegations involving unauthorized NIH disposition of records involving shredding notes and other documents pertaining to NIH grants to EcoHealth Alliance, a nonprofit organization that funneled NIH grant funds to the Wuhan Institute of Virology (WIV) in China to conduct risky viral coronavirus gain-of-function research before the COVID-19 pandemic outbreak.⁴

Specifically, NARA requested NIH to investigate the allegation related to documents referencing the Chinese Communist Party-run lab and its work with the U.S. government during the Obama administration and documents related to grant decisions. NARA requested NIH to report a description of the destroyed records and any efforts made to salvage, recover or restore the destroyed records.⁵ The NARA also asked NIH to investigate the allegations against its organization without any indication that NARA referred the allegations to the U.S. Department of Justice or to the HHS Office of the Inspector General (HHS OIG).⁶ This is alarming and goes to my later point of NIH self-policing.

Potential HHS Office of Inspector General Conflicts of Interest

I am also concerned that the component of HHS with NIH oversight responsibility, the HHS OIG, may have a conflict of interest related to Dr. Fauci and will be unable to objectively investigate the NIH administration of grants to EcoHealth. The HHS OIG assigned a cadre of special agent criminal investigators to provide exclusive executive protection services to Dr. Fauci which continue to this day. This unusual relationship may have already impacted the OIG's neutrality in needed examination of NIH records and actions. In May 2022, an HHS OIG spokesperson clarified to a journalist that HHS OIG is conducting an audit – not an investigation – into NIH grants awarded to EcoHealth, even though NIH had already concluded many months ago that EcoHealth was not in compliance with federal grant laws and policies.^{7, 8}

NIH Self-Policing

In the absence of serious oversight from the HHS OIG, NIH has been left to self-police in several areas, most alarmingly when it comes to risky viral gain-of-function research. On Friday August 19, 2022, NIH informed Congress that due to material grant non-compliance, NIH was terminating a currently suspended grant awarded to the WIV through EcoHealth Alliance, a nonprofit organization that funneled NIH grant funds to the WIV in China to conduct risky viral coronavirus gain-of-function research before the COVID-19 pandemic outbreak.⁹ NIH further advised that Dr. Fauci's NIH institution, the National Institute of Allergy and Infectious Diseases (NIAID), would work with EcoHealth to explore renegotiating the remainder of its currently suspended award without the involvement of the WIV.¹⁰

⁴ <https://www.archives.gov/files/records-mgmt/resources/ud-2022-0027-hhs-nih-open-letter.pdf>

⁵ *Id.*

⁶ *Id.*

⁷ <https://disinformationchronicle.substack.com/p/while-her-own-agents-protect-anthony>

⁸ <https://int.nyt.com/data/documenttools/nih-eco-health-alliance-letter/512f5ee70ce9c67c/full.pdf>

⁹ <https://republicans-oversight.house.gov/wp-content/uploads/2022/08/NIH-EHA-Production-8.19.22.pdf>

¹⁰ *Id.*

It is questionable how NIAID will work with EcoHealth to continue scientific research in China when EcoHealth's business model is dependent on the use of foreign and other laboratories because it does not operate its own. Additionally, EcoHealth's president, Dr. Peter Daszak, represented to NIH that EcoHealth any of the supporting grant project research records, samples or data.¹¹ All records related to NIH's administration its grant awards to EcoHealth need to be investigated and all related records must be preserved.

NIH Failed to Ensure Required Reporting of Clinical Trial Results

A recent HHS OIG report concluded that NIH did not ensure clinical trial results were reported in accordance with federal requirements.¹² The clinical trials reviewed required results to be submitted in 2019 or 2020, which could include trials conducted for COVID-19 therapeutics and vaccines.¹³ Of note is that NIH admittedly decided to not use its enforcement authority to ensure compliance by internal NIH scientists and external researchers.¹⁴

¹¹ [https://s.wsj.net/public/resources/documents/EcoHealth%20letter%20\(1\).pdf](https://s.wsj.net/public/resources/documents/EcoHealth%20letter%20(1).pdf)

¹² https://oig.hhs.gov/oas/reports/region6/62107000.pdf?mkt_tok=ODUwLVRBQS01MTEAAAGGT8p8MzeJvVgzs aocOvJNN4jod05mqP5ARS2YMSNOz1JLLsCrSQ0eIZLroYHaIz5iFV4hzkA5GSx9KRDpZvY2AUsNyohzkhyiA Pt0WBbRpZen

¹³ *Id.*

¹⁴ *Id.*