

United States Senate
WASHINGTON, DC 20510

July 29, 2021

The Honorable Gary Peters
Chairman
Senate Committee on Homeland
Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Peters:

We have sent two letters to the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), and the National Institutes of Health (NIH) invoking 5 U.S.C. § 2954. This law requires federal agencies to produce documents when five members of this Committee request the information.¹ To date, despite their statutory obligations to do so, these agencies have refused to comply with our requests. We, therefore, ask that you hold this administration accountable and show your support for Congress' right to information by initiating proceedings to serve subpoenas to compel compliance with our lawful demands.

On May 19, 2021, we invoked 5 U.S.C. § 2954 in a letter to HHS and CDC requesting all documents related to coordination between CDC, the American Federation of Teachers, and the National Education Association in drafting federal school reopening guidance.² Instead of being transparent and responsive to this request, HHS has only produced a small subset of records that it had already made public through the Freedom of Information Act (FOIA) process. Further, even though FOIA redactions do not apply to congressional oversight, these records contained the exact same FOIA markings as the public documents.³

On June 11, 2021, we again invoked our authority under 5 U.S.C. § 2954 when we requested HHS and NIH to produce unredacted copies of Dr. Anthony Fauci's emails, some of which had already been made public through heavily redacted FOIA releases.⁴ Once again, HHS refused to be transparent and, on July 27, 2021, sent us what they claimed was the same

¹ 5 USC § 2954 states ("An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Governmental Affairs of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.").

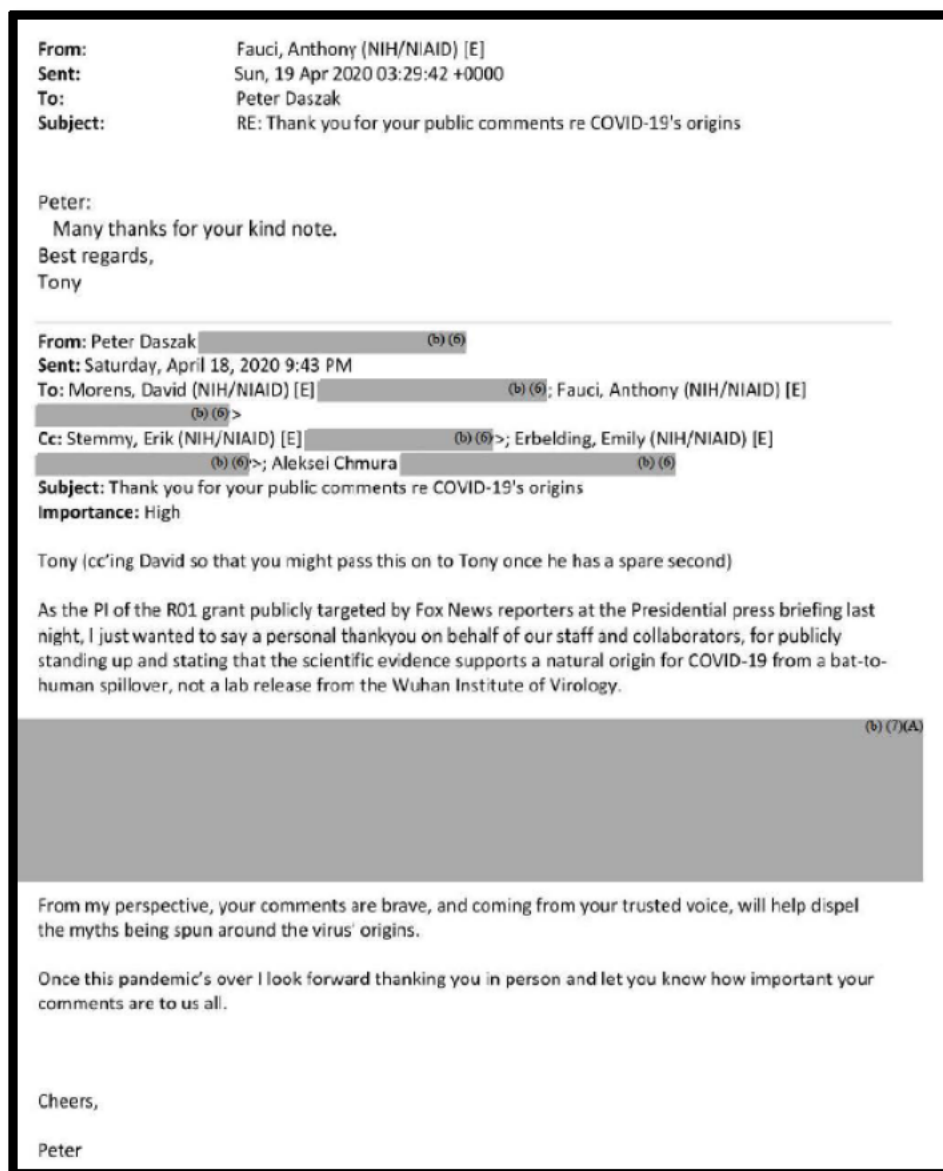
² Letter to Xavier Becerra, Secretary, Department of Health and Human Services, and Rochelle Walensky, Director, Centers for Disease Control and Prevention, from Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, et al. May 19, 2021 (enclosed).

³ See Production from Department of Health and Human Services to Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, et al. June 25, 2021.

⁴ Letter to Xavier Becerra, Secretary, Department of Health and Human Services, and Francis Collins, Director, National Institutes of Health, from Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, et al. June 11, 2021 (enclosed).

heavily redacted documents it already released through the FOIA process.⁵ However, after an initial review of the Fauci documents, it appears that HHS may have forgotten to apply at least one FOIA redaction to a paragraph in an email.

On April 18, 2020, Peter Daszak, the president of EcoHealth Alliance, sent Dr. Fauci an email with the subject line: "Thank you for your public comments re COVID-19's origins." Below is an image of that email that HHS produced to a FOIA requestor:⁶



⁵ See Production from Department of Health and Human Services to Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, et al. July 27, 2021.

⁶ Email from Peter Daszak, President, EcoHealth Alliance, to Anthony Fauci, Director, National Institute for Allergy and Infectious Diseases, Apr. 18, 2020, available at <https://www.documentcloud.org/documents/20793561-leopold-nih-foia-anthony-fauci-emails>. (containing redactions pursuant to FOIA exemption (b)(7)(a)).

In this public FOIA document, HHS redacted an entire paragraph in Daszak's email claiming that it contains records related to an open law enforcement investigation.⁷

However, in the documents HHS produced to us, this paragraph was unredacted, exposing the information HHS previously shielded from the American people. The paragraph stated:⁸

It's been a very hard few months as these conspiracy theorists have gradually become politicized and hardened in their stance. Especially because the work we've been doing in collaboration with Chinese virologists has given us incredible insight into the risks that these viruses represent, so that we can directly help protect our nation from bat-origin coronaviruses. We're fighting to keep the communications open with our Chinese colleagues, so that we can better address future pandemics like COVID-19.

The paragraph above does not appear to contain any information that "could reasonably be expected to interfere with [law] enforcement proceedings."⁹ This example calls into question HHS's redaction process not only for FOIA requests from the public but also for documents produced to Congress.

For example, in both the public FOIA production and HHS's production to our letter, HHS redacted nearly the entirety of a February 1-2, 2020 email chain where Dr. Fauci, NIH officials, and non-government scientists detailed their discussion on a February 1, 2020 teleconference on COVID-19.¹⁰ HHS claims that these FOIA redactions are necessary to protect deliberative information.¹¹ However, given the inappropriate FOIA redaction applied in the example above, how can anyone trust that HHS's assertion is valid? Moreover, no FOIA redactions should ever appear in documents that are meant to be responsive to congressional oversight.

Despite repeated outreach from staff to engage in the required accommodations process, HHS has refused to confirm whether a search for responsive documents has even occurred. Further, these agencies have also refused to provide our offices any justification as to why they produced documents to the Committee containing FOIA markings and redactions.

These agencies' apparent contempt for legitimate congressional oversight and the law is unacceptable. This administration cannot be allowed to ignore congressional oversight nor determine what information is fit for Congress' review. We must ensure that all federal agencies are fully transparent and responsive to this Committee's requests, particularly when the members

⁷ FOIA Exemption (b)(7)(A) shields from publication "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(a).

⁸ Production from Department of Health and Human Services to Ron Johnson, Ranking Member, Permanent Subcommittee on Investigations, July 27, 2021, JohNIH-00002151.

⁹ 5 U.S.C. § 552(b)(7)(a).

¹⁰ *Id.* at JohNIH-00001264-00001274.

¹¹ 5 U.S.C. § 552(b)(5).

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invoke 5 U.S.C. § 2954. We call on you to stand up for this Committee's and Congress' constitutional and statutory authority and respectfully request that you initiate proceedings to serve subpoenas to HHS, CDC, and NIH to compel compliance with our lawful demands stated in our May and June letters.

Sincerely,



Ron Johnson
Ranking Member
Permanent Subcommittee
on Investigations



Rand Paul
U.S. Senator



James Lankford
U.S. Senator



Rick Scott
U.S. Senator



Josh Hawley
U.S. Senator

Enclosures