



May 31, 2022

NIH FOIA Public Liaison  
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/via email/

**Re: Appeal of FOIA Case Number 56843**

Dear Ms. Standing-Ojo:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, we hereby appeal the denial of my FOIA request 56843, regarding the records pertaining to the effort by the National Institutes of Health to investigate over 500 U.S.-based scientists and researchers believed to have connections to China.<sup>1</sup>

The agency's response suggests that our request was too broad to undertake a search. We disagree. To be valid, a request need only "reasonably describe" the records it seeks so that knowledgeable agency employees will be able to determine "precisely what records are being requested. *Yeager v. DEA*, 678 F.2d 315, 322 (D.C. Cir. 1982). Similarly, an agency cannot reject a request on the grounds that a search would be burdensome. And the fact that a request may yield a great many responsive records is immaterial, so long as the agency can identify

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<sup>1</sup> Matthew Impelli, "Over 500 U.S. Scientists Under Investigation for Being Compromised by China", *Newsweek*, April 23, 2021, <https://www.newsweek.com/over-500-us-scientists-under-investigation-being-compromised-china-1586074>

which records to produce. *Id.* As is the case with any FOIA or Privacy Act request, the official legal definition of a “record” is codified at 44 U.S.C. § 3301. That is exactly the standard that applies here.

Moreover, the FOIA statute does not require a requester to know, much less provide, detailed, specific office or component descriptions for a FOIA request to be statutorily valid. As the D.C. Circuit has held, it is “inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information.” *Vaughn v. Rosen*, 484 F.2d 820, 823, 828 (D.C. Cir. 1973) (imposing a “substantial burden on an agency seeking to avoid disclosure” to alleviate this problem).

Like almost all FOIA requesters, we are at an “informational disadvantage.” *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 57 F. Supp. 3d 48, 52 (D.D.C 2014). Accordingly, we hereby appeal The National Institutes of Health’s denial on the aforementioned basis.

We submitted our original request on August 2, 2021. It took nine months for us to receive a denial response on May 13, 2022. It only happened after we reported<sup>2</sup> the non-response to the Office of Science and Technology Policy at the White House in April. We hope that you agree that this is not an acceptable standard for responding to public FOIA requests.

Signed,

/s/ Steven Pei

/s/ Vincent Wang

/s/ Jeremy Wu

Co-organizers, APA Justice Task Force

<https://www.apajustice.org/>

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<sup>2</sup> APA Justice, Summary and Addendum Addressing Immediate and Systemic Issues - Implementation of NSPM-33, April 6, 2022. <https://bit.ly/3ub2YXR>