



November 9, 2023

The Honorable Brad Wenstrup  
Chairman  
Select Subcommittee on the Coronavirus Pandemic  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, DC 20515

The Honorable James Comer  
Chairman  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Cathy McMorris Rodgers  
Chair  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Morgan Griffith  
Chair  
Subcommittee on Oversight and Investigations  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Brett Guthrie  
Chair  
Subcommittee on Health  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Wenstrup, Chair Comer, Chair McMorris Rodgers, Chair Griffith, and Chair Guthrie:

I write in response to your November 2, 2023, letter regarding your committees' inquiry into the origins of the COVID-19 pandemic, as well as the November 2, 2023, subpoena issued by the House Select Subcommittee on the Coronavirus Pandemic (select subcommittee) for Department of Health and Human Services (HHS or Department) Assistant Secretary for Legislation Melanie Egorin to appear for a deposition on November 16, 2023.

The record shows that HHS has made significant accommodations to the committees' requests in this inquiry while balancing and protecting legitimate Executive Branch interests. As another accommodation, and to further underscore our efforts to work with you in good faith, we are offering additional responsive information in satisfaction of the committees' questions regarding the Department's processes for responding to your oversight requests. We continue to believe that the constitutionally mandated accommodation process remains the best means of ensuring that the legitimate needs of the committees and the Executive Branch are addressed in this inquiry. The course of this inquiry provides no need to short-circuit that "dynamic process"<sup>1</sup> by resorting to compulsion of testimony. As such, we respectfully request that the select subcommittee withdraw its subpoena to Assistant Secretary Egorin as unnecessary.

<sup>1</sup> United States v. AT&T, 567 F.2d 121, 130 (D.C. Cir. 1977).

### The Department's Robust Record of Responsiveness

Let me begin by highlighting the extraordinary steps we have already taken to respond to the voluminous requests you have made of us. To date, your committees alone have issued hundreds of requests to the Department for documents or information during this Congress. Many of these requests have been broad and complex. All of them have required appropriate time and attention to address.

Since the start of this Congress, we have responded to your committees' inquiries regarding the origins of the COVID-19 pandemic by producing thousands of pages of documents, across dozens of productions. Of particular note, in response to your September 14, 2023, letter, the Department provided a production of documents or information every week for five consecutive weeks. Each of these responses met interim deadlines identified by the committees and included documents or information specifically identified as your top priorities.

At the same time the committees were requesting—and we were providing—an array of documents in this matter, you also asked us to make numerous Department officials available to the committees for transcribed interviews on a rapid timeline. We worked cooperatively with the committees to schedule those transcribed interviews and currently have at least one transcribed interview scheduled nearly every week through the end of the year.

Likewise, the Department has worked in good faith to make numerous senior Department officials available to testify before your committees on a variety of other oversight matters. These individuals have included the Secretary, the then-Director of the Centers for Disease Control and Prevention, and the Acting Director of the National Institutes of Health.<sup>2</sup> We have also arranged for a series of briefings, for both Members and committee staff, in response to the specific issues identified as your oversight priorities.<sup>3</sup> And we have devoted considerable time and resources to provide more than 30 substantive letters, covering a range of complex issues, in

---

<sup>2</sup> See, e.g., Hearing before the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations on “Stopping the Exploitation of Migrant Children: Oversight of HHS' Office of Refugee Resettlement” (July 26, 2023); Hearing before the House Select Subcommittee on the Coronavirus Pandemic on “Oversight of CDC Policies and Decisions During the COVID-19 Pandemic” (June 13, 2023); Hearing before the House Committee on Energy and Commerce, Subcommittee on Health and Subcommittee on Oversight and Investigations on “The Federal Response to COVID-19” (Feb. 8, 2023).

<sup>3</sup> See, e.g., Briefing for House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations staff from NIH (Sept. 21, 2023); Briefing for House Select Subcommittee on the Coronavirus Pandemic staff from NIH (Sept. 6, 2023); Briefing for House Select Subcommittee on the Coronavirus Pandemic staff from CDC (Aug. 25, 2023); Briefing for the Honorable Morgan Griffith, Chair, House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations from CDC and FDA (Aug. 24, 2023); Briefing for House Select Subcommittee on the Coronavirus Pandemic staff and House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations staff from NIH (June 27, 2023); Briefing for House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations staff from NIH (June 23, 2023); Briefing for House Committee on Oversight and Accountability staff from FDA (May 22, 2023); Briefing for House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations staff from ORR (May 19, 2023); Briefing for House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations staff from NIH (May 12, 2023); Briefing for House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations staff from ORR (Mar. 27, 2023); Briefing for House Committee on Oversight and Accountability staff from CMS (Mar. 23, 2023); Briefing for House Committee on Energy and Commerce staff from CDC (Mar. 10, 2023).

response to your committees' oversight inquiries. These regular, voluntary accommodations, tailored to your stated priorities, reflect the Department's good-faith commitment to the constitutionally mandated accommodation process.

Of course, your committees are not alone in issuing oversight requests to the Department. The Department must balance all these competing requests from both chambers of Congress as it engages in the accommodation process. This is precisely why we have made overtures to your staff to engage in practical discussions regarding prioritization of your various inquiries and priorities.

### The Committees' Misconceptions Regarding the Department's Good-Faith Cooperation

Your November 2 letter asserts various bases for "suspect[ing]" that the Department has made an insufficient effort to respond to your many requests. In each instance, however, your letter misrepresents the Department's engagement with the committees. We welcome the opportunity to correct the record.

First, at no point has the Department "misled" the committees regarding your request for a transcribed interview with Assistant Secretary Egorin. To the contrary, the committees' September 14 letter expressly stated that the request for a transcribed interview with the Assistant Secretary would be "withdrawn" if the Department provided certain requested information regarding its internal and ongoing processes for responding to the committees' document requests. The Department was fully transparent about the extenuating circumstances necessitating its request to reschedule the interview.<sup>4</sup> And before the interview, we provided information directly responsive to your request regarding Departmental processes in a September 21 letter and an October 11 supplemental letter. We thus believed—and continue to believe—that the information provided appropriately accommodated the committees' stated interests. Consistent with your September 14 letter, our provision of information obviated any purported need for a transcribed interview.

Indeed, after receiving the Department's October 11 letter, committee staff agreed to postpone the transcribed interview request and accepted the Department's offer to meet and discuss any request for specific information or documents that had not been addressed by the Department's responses to date.<sup>5</sup> Following that meeting, the committees never reapproached the Department regarding its request for a transcribed interview.

Second, consistent with longstanding practice across administrations, the Department has worked in good faith to protect personally identifiable information and other sensitive information

---

<sup>4</sup> It is irresponsible for the committees to disclose Assistant Secretary Egorin's medical status in a publicly released letter—and, separately, in a press release—without even seeking her consent. At no point did the committees approach the Department about potentially disclosing this information publicly. A subcommittee ostensibly established to explore issues involving the coronavirus pandemic ought not treat this type of personal medical information so carelessly. This type of conduct underscores why the Department must consider appropriate steps to protect personal information as it engages in the accommodation process.

<sup>5</sup> See email from select subcommittee staff to Department staff (Oct. 11, 2023).

included in the documents we produced. Throughout recent months, we have seen substantial threats and harassment directed toward Department officials. The Department has a responsibility to take these threats seriously—and a corresponding interest in protecting the safety and privacy of individuals identified in Department records by applying targeted redactions to protect personally identifiable information. Should you believe you need any additional information corroborating these concerns, we are willing to provide further information in an appropriate setting.

In any case, we are unaware of a single document produced in this matter that contains redacted information regarding HHS that we have declined to show the committees unredacted upon request.<sup>6</sup> We thus fail to see how any of the minimal redactions contained in the thousands of pages of documents we have produced have frustrated any informational interest of Congress or the committees' ability to conduct oversight. To the extent you have an interest in any content that we have redacted, we remain happy to meet and confer on a path forward.

Finally, as detailed above, the Department has made extraordinary efforts to accommodate the hundreds of oversight requests your committees alone have issued during the current Congress. Simply put, the Department's record amply demonstrates good-faith accommodation. Your resort to compulsory process—particularly when directed at the individual at the Department who is taking such extraordinary steps to respond to your extensive requests—serves only to chill the professional working relationship between the Department and the committees. We remain willing to continue engaging in the accommodation process and ask that the committees do so as well.

#### The Committees' Failure to Engage Seriously and in Good Faith with the Department

Your November 2 letter presents an inaccurate account of the October 20 meeting between the Department and committee staff.

As you know, the Department and the committees arranged the October 20 meeting to discuss your September 14 letter. In that letter, the committees identified certain priority requests and sought additional information regarding the Department's internal process for responding to your inquiries. During the meeting, the Department explained that responding to process inquiries regarding past productions would divert limited time and resources from our ongoing efforts to respond to your significant substantive priority requests—not to mention the many other substantive requests the committees have issued during the current Congress. We thought it was important to engage in that practical discussion about prioritization, precisely because the committees had recently made unwarranted threats to seek compulsory process. Although the committees were unable to articulate how their demands regarding the Department's internal processes for responding to oversight requests furthered any legitimate legislative interest, we

---

<sup>6</sup> Indeed, after the Department provided the committees access to a nonpublic list of officials who serve on an HHS review committee, these names were made public over the Department's stated objections and concerns. While we appreciate the committees' professed desire to "condemn unequivocally" threats toward Department officials, it is the Department's obligation to responsibly protect the safety and privacy of individuals identified in the Department's records.

nonetheless voluntarily engaged in discussions on this topic—an accommodation that was made in an effort to build trust and mutual respect.

We explained that we had relied on a variety of methods to identify potentially responsive documents. Those methods included targeted collection of specific documents identified as being highest priority by committee staff; the identification and collection of responsive documents from materials previously compiled by the Department; and the production of documents newly collected from current and former officials. In light of the methods we had employed, which we described to the committees, we explained that the specific process information you sought would not accurately reflect our efforts to identify, collect, and produce responsive materials. At the conclusion of the meeting, which went beyond the time allotted, committee staff agreed to propose certain search terms and/or custodians. The Department agreed to conduct searches based on those proposals and then confer with the committees regarding further prioritization.

The Department voluntarily offered committee staff a meeting with the Assistant Secretary as a show of mutual respect and good faith, and with the hope that the committees would respond in kind. Yet the committees chose to abandon the approach to which we agreed on October 20 and instead issued a premature and unannounced subpoena—on the same day our staff spent multiple hours with committee staff to facilitate a transcribed interview in response to this inquiry. That conduct does not reflect the good-faith engagement the accommodation process requires. It serves only to undermine the professional working relationship between the Department and your committees.

Furthermore, your November 2 letter does not meaningfully assist the Department in targeting the documents of most interest to the committees. Most notably, your letter proposes that we conduct searches using a list of more than 120 “search terms, names, and entities.”<sup>7</sup> Beyond including extremely general terms like “coronavirus,” “China,” and “COVID-19,” this list encompasses numerous terms, such as “nature,” “market,” “lab,” “novel,” “genome,” and “sequence,” that would no doubt capture a substantial volume of unresponsive and irrelevant material.<sup>8</sup> And nearly all of these terms, as well as the custodians proposed by the committees, bear no apparent relationship to the requests currently identified by the committees as top priorities, which focus on specific publications, teleconferences, and other discrete communications. The proposal in your November 2 letter cannot be squared with the committees’ expressed needs and would make it almost impossible for the Department to identify relevant materials for the committees in a timely manner.

### The Select Subcommittee’s Subpoena is Unnecessary

---

<sup>7</sup> It is unclear what distinction, if any, the committees are attempting to make between a “search term,” as opposed to the “names” and “entities” in Appendix III that also appear to be proposed terms for which to search.

<sup>8</sup> The committees’ proposed search terms would, for example, capture any document that mentions a “lab director” or includes any offhand reference to the “COVID-19 pandemic,” while searching for files from custodians whose daily work relates to laboratory research and who served at a public health agency during the height of the COVID-19 pandemic.

As I have explained, we have sought in good faith to accommodate the committees' requests. We have repeatedly provided information to the committees regarding our process for responding to your inquiries. Yet, in seeking to compel the testimony of Assistant Secretary Egorin, the select subcommittee requests additional information regarding: (1) "How many new or unique searches or pulls of information were conducted by the Department;" (2) "What were the dates of these searches or pulls;" (3) "What was the list of search terms used for these pulls;" and (4) "What was the list of custodial inboxes searched."

Although the Department is providing additional responsive information, the present subpoena implicates strong constitutional interests of the Executive Branch. Compelled disclosure of testimony regarding the internal processes by which agencies respond to congressional oversight, regardless of whether it contains deliberative content, raises "significant separation of powers concerns" by "significantly impairing the Executive Branch's ability to respond independently and effectively to matters under congressional review."<sup>9</sup> In responding to requests from Congress, it is essential that agency officials are free to communicate without fear of interference or intimidation. As such, so-called "oversight of oversight" chills the candor of Executive Branch internal deliberations, introduces an unfair imbalance to the oversight process, and ultimately disserves both branches.<sup>10</sup>

Notwithstanding these serious constitutional concerns, we are providing yet another extraordinary accommodation to the committees and supplementing our prior responses. The Appendix attached to this letter details the custodians and search terms for each production identified by the committees.<sup>11</sup> In addition to drawing on responsive materials previously collected, the Department newly collected documents beginning in March 2023, continuing through our present efforts to respond to your requests.

Given that the Department has now provided the information sought by the committees regarding its internal processes, compelling this information through a deposition subpoena is unnecessary. The Department is also aware that current House of Representatives and House Committee on Oversight and Accountability rules prohibit agency counsel from attending depositions.<sup>12</sup> Excluding agency counsel would necessarily risk "undermin[ing] the Executive Branch's ability to protect its confidentiality interests in the course of the constitutionally mandated accommodation process[.]"<sup>13</sup> That risk is especially acute here because the subpoenaed testimony concerns congressional oversight of the processes by which the Department responded to a congressional oversight inquiry—an area that involves "heightened" Executive Branch confidentiality interests.<sup>14</sup> As such, a congressional subpoena seeking to

---

<sup>9</sup> 36 Op. O.L.C. 4-5 (2012).

<sup>10</sup> *See, e.g.*, 36 Op. O.L.C. 5-6 (2012).

<sup>11</sup> *See* Letter from The Honorable Brad Wenstrup et al., Chair, Select Subcommittee on the Coronavirus Pandemic, to the Honorable Xavier Becerra, Secretary, Department of Health and Human Services (Sept. 14, 2023).

<sup>12</sup> H. Res. 5, §3(k)(3), 118th Cong. (2023); H. Comm. on Oversight & Reform, 118th Cong., Rule 15(e) (2023).

<sup>13</sup> 41 Op. O.L.C. \_\_\_, \*5 n.6 (Jan. 18, 2017).

<sup>14</sup> 36 Op. O.L.C. 4-6 (2012).

require a witness to appear without agency counsel is “legally invalid and not subject to civil or criminal enforcement.”<sup>15</sup>

Accordingly, we respectfully request the select subcommittee withdraw its subpoena as a show of reciprocal good faith. Indeed, it is doubtful that Assistant Secretary Egorin could provide at a deposition any meaningful information regarding the committees’ stated concerns beyond what is set forth in this and the Department’s prior letters on this matter.

\* \* \*

The Department stands ready to continue addressing the committees’ various requests, consistent with the accommodation process. We look forward to continuing our productive working relationship with the committees in your efforts to “inform potential legislation to improve pandemic preparedness, strengthen grant processes and oversight, and enhance biosafety and biosecurity of laboratory and field research.”<sup>16</sup>

Sincerely,

Samuel R.  
Bagenstos -S

Digitally signed by Samuel R.  
Bagenstos -S  
Date: 2023.11.09 19:33:54  
-05'00'

Samuel R. Bagenstos  
General Counsel  
U.S. Department of Health and Human  
Services

cc: The Honorable Raul Ruiz, M.D.  
Ranking Member  
Select Subcommittee on the Coronavirus Pandemic

The Honorable Jamie Raskin  
Ranking Member  
Committee on Oversight and Accountability

The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce

The Honorable Kathy Castor

---

<sup>15</sup> 43 Op. O.L.C. \_\_, \*2 (May 23, 2019).

<sup>16</sup> Letter from The Honorable Brad Wenstrup et al., Chair, Select Subcommittee on the Coronavirus Pandemic, to the Honorable Xavier Becerra, Secretary, Department of Health and Human Services (Sept. 14, 2023).

Ranking Member  
Subcommittee on Oversight and Investigations

The Honorable Anna Eshoo  
Ranking Member  
Subcommittee on Health



**Appendix**

**Requested Information Regarding Certain Productions by the Department of Health and Human Services to the House of Representatives Select Subcommittee on the Coronavirus Pandemic**

<b>Production Date</b>	<b>Custodian(s)</b>	<b>Search Term(s)</b>
Feb. 21, 2023	Anthony Fauci HHS (EcoHealth Alliance Grant Materials)	[Jeremy Farrar]@wellcome.ac.uk
March 10, 2023	HHS (EcoHealth Alliance Grant Materials)	N/A (Targeted Collection)
March 24, 2023	HHS (EcoHealth Alliance Grant Materials) David Christian Hassell (Calendars)	N/A (Targeted Collection)
April 7, 2023	HHS (EcoHealth Alliance Grant Materials)	N/A (Targeted Collection)
April 21, 2023	Anthony Fauci Francis Collins Michael Lauer (Targeted Collection) David Christian Hassell (Calendars)	“Kristian G. Andersen” AND (“SARS-CoV-2” OR “coronavirus”) “Jeremy Farrar” AND (“SARS-CoV-2” OR “coronavirus”) “Kristian G. Andersen” AND (“SARS-CoV-2” OR “coronavirus”) AND (“teleconference” OR “call” OR “meeting”) “Jeremy Farrar” AND (“SARS-CoV-2” OR “coronavirus”) AND (“teleconference” OR “call” OR “meeting”) “Proximal Origins” “Nature Magazine” “article” AND “origins”
May 5, 2023	Anthony Fauci Francis Collins David Christian Hassell (Calendars)	“Kristian G. Andersen” AND (“SARS-CoV-2” OR “coronavirus”) “Jeremy Farrar” AND (“SARS-CoV-2” OR “coronavirus”) “Kristian G. Andersen” AND (“SARS-CoV-2” OR “coronavirus”) AND (“teleconference” OR “call” OR “meeting”) “Jeremy Farrar” AND (“SARS-CoV-2” OR “coronavirus”) AND (“teleconference” OR “call” OR “meeting”) “Proximal Origins” “Nature Magazine” “article” AND “origins”

Production Date	Custodian(s)	Search Term(s)
May 19, 2023	Anthony Fauci Francis Collins David Christian Hassell (Calendars)	“Kristian G. Andersen” AND (“SARS-CoV-2” OR “coronavirus”) “Jeremy Farrar” AND (“SARS-CoV-2” OR “coronavirus”) “Kristian G. Andersen” AND (“SARS-CoV-2” OR “coronavirus”) AND (“teleconference” OR “call” OR “meeting”) “Jeremy Farrar” AND (“SARS-CoV-2” OR “coronavirus”) AND (“teleconference” OR “call” OR “meeting”) “Proximal Origins” “Nature Magazine” “article” AND “origins”
May 30, 2023	Lawrence Tabak John Burklow Adrienne Hallett	“2R01AII10964-06” “Understanding the Risk of Bat Coronavirus Emergence” “Peter Daszak” “EcoHealth Alliance”
June 2, 2023	David Christian Hassell (Calendars)	N/A (Targeted Collection)
June 8, 2023	Erik Stemmy Cliff Lane (Targeted Collection)	Email communications to/from Kevin Olival, William Karesh, Peter Daszak, EcoHealth Alliance
June 26, 2023	Anthony Fauci Hugh Auchincloss Cliff Lane Bob Eisinger Greg Folkers Gray Handley David Morens	“Wuhan Institute” WIV
July 21, 2023	Lawrence Tabak John Burklow Adrienne Hallett	“2R01AII10964-06” “Understanding the Risk of Bat Coronavirus Emergence” “Peter Daszak” “EcoHealth Alliance”
Aug. 1, 2023	Lawrence Tabak John Burklow Adrienne Hallett	“2R01AII10964-06” “Understanding the Risk of Bat Coronavirus Emergence” “Peter Daszak” “EcoHealth Alliance”

Production Date	Custodian(s)	Search Term(s)
Sept. 5, 2023	Lawrence Tabak John Burklow Adrienne Hallett	"2R01AI110964-06" "Understanding the Risk of Bat Coronavirus Emergence" "Peter Daszak" "EcoHealth Alliance"
Sept. 21, 2023	HHS (EcoHealth Alliance Grant Materials)	N/A (Targeted Collection)
Sept. 22, 2023	Gray Handley	N/A (Targeted Collection)
Sept. 28, 2023	Anthony Fauci Eric Stemmy	Email Communications to/from Peter Daszak, EcoHealth Alliance
Oct. 5, 2023	Anthony Fauci Francis Collins Peng Chen (Targeted Collection) Email Communications to/from Wuhan Institute of Virology (Targeted Collection)	"Kristian G. Andersen" AND ("SARS-CoV-2" OR "coronavirus") "Jeremy Farrar" AND ("SARS-CoV-2" OR "coronavirus") "Kristian G. Andersen" AND ("SARS-CoV-2" OR "coronavirus") AND ("teleconference" OR "call" OR "meeting") "Jeremy Farrar" AND ("SARS-CoV-2" OR "coronavirus") AND ("teleconference" OR "call" OR "meeting") "Proximal Origins" "Nature Magazine" "article" AND "origins"
Oct. 12, 2023	Lawrence Kerr	N/A (Targeted Collection)
Oct. 19, 2023	Ping Chen	WeChat Communications regarding COVID-19