



June 18, 2024

The Honorable Christi A. Grimm  
Inspector General  
Office of the Inspector General  
P.O. Box 23489  
Washington, DC 20026  
Christi.Grimm@oig.hhs.gov

**Request for Investigation: Federal Records Act and Freedom of Information Act Violations**

Dear Ms. Grimm,

America First Legal Foundation (hereinafter “AFL”) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. AFL frequently files Freedom of Information Act (“FOIA”) requests and is interested in ensuring that records are properly preserved. Accordingly, we write to request that the Office of the Inspector General open an investigation regarding recent disclosures containing evidence of legal violations by the National Institutes of Allergy and Infectious Disease (hereinafter “NIAID”) and potentially by Dr. Anthony Fauci, the former Director of NIAID.

We previously wrote to your office regarding a federal employee named Dr. David Morens, who served as Senior Scientific Advisor to Dr. Anthony Fauci.<sup>1</sup> AFL is concerned that Dr. Morens failed to comply with federal laws regarding recordkeeping. To illustrate, Dr. Morens stated in an email that he “tr[ies] to always communicate on gmail [*sic*] because [his] NIH email is FOIA’d constantly,”<sup>2</sup> implying that this would allow him to communicate in secret. In another email, he explains that his Gmail account was “hacked” and he was forced to resume using his NIH

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<sup>1</sup> Letter from Reed. D. Rubinstein, Director of Investigations, America First Legal Foundation, to Christi Grimm, Inspector General, U.S. Dep’t of Health and Hum. Servs. (July 27, 2023) (available at <https://bit.ly/4eikFtr>).

<sup>2</sup> Letter from Rep. Brad Wenstrup, Chairman, House Select Subcomm. on the Coronavirus Pandemic, to Dr. David Morens, Senior Sci. Advisor, Nat’l Inst. of Allergy and Infectious Diseases at 2 (Jun. 29, 2023) (available at <https://bit.ly/44tRsWS>).

account for sensitive matters, but he reassured his contact that he would “delete anything [he doesn’t] want to see in the New York Times.”<sup>3</sup>

At the time AFL brought Dr. Morens’ conduct to the attention of your office, it was not clear whether the misconduct went beyond Dr. Morens and included other agency leaders and was therefore impacting the conduct of the agency, or whether Dr. Morens was acting alone. Since then, it has become abundantly clear that Dr. Fauci and other high-level agency staff were involved in the same or substantially similar misconduct, the sole purpose of which was to bypass federal law.

Specifically, the House Select Subcommittee on the Coronavirus Pandemic (hereinafter “the Subcommittee”) obtained additional emails from Dr. Morens that implicate Dr. Fauci in the same type of serious wrongdoing.<sup>4</sup> On April 21, 2021, Dr. Morens wrote “PS, i forgot to say there is no worry about FOIAs. I can either send stuff to Tony [Fauci] on his private gmail [*sic*], or hand it to him at work or at his house. He is too smart to let colleagues send him stuff that could cause trouble.” On May 13, 2021, Dr. Morens wrote that he had connected a reporter to Dr. Fauci via a “secret back channel.”<sup>5</sup>

Other documents revealed that officials in the NIAID FOIA office taught Dr. Morens how to destroy records before they were captured by a FOIA search, thus defeating public oversight of the agency.<sup>6</sup> When Dr. Morens testified before the committee, he said he “may have” sent documents related to COVID-19 to Dr. Fauci’s personal email account.<sup>7</sup>

This pattern of consciously evading federal law extended beyond Dr. Morens and to other members of Dr. Fauci’s inner circle. Dr. Fauci’s chief of staff, Greg Folkers, also sought to evade the FOIA. However, he did so by intentionally misspelling keywords likely to be the subject of FOIA requests to ensure his emails would be missed in searches and thus not disclosed. For example, Mr. Folkers rendered the name “EcoHealth” as “Ec~Health” to avoid FOIA.

The revelations that Dr. Fauci’s senior scientific advisor, his chief of staff, and the FOIA office at the agency Dr. Fauci led were all engaged in systematically avoiding the FOIA and that at least one of those individuals explicitly implicated Dr. Fauci in this pattern, led the Subcommittee to call Dr. Fauci to testify on June 3, 2024. Dr. Fauci could not recall conducting official business via his personal email account but

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<sup>3</sup> *Id.*

<sup>4</sup> Letter from Rep. Brad Wenstrup, Chairman, House Select Subcomm. on the Coronavirus Pandemic, to Dr. Anthony Fauci, Director of the Nat’l Inst. of Allergy and Infectious Diseases (May 29, 2024).

<sup>5</sup> *Id.*

<sup>6</sup> Press Release, House Select Subcomm. on the Coronavirus Pandemic, New COVID Select Memo Details Allegations of Wrongdoing and Illegal Activity by Dr. Fauci’s Senior Scientific Advisor (May 22, 2024) (available at <https://bit.ly/3Rmwfdq>).

<sup>7</sup> *Id.*

stopped short of a full denial.<sup>8</sup> While it does not seem credible that Dr. Fauci was personally unaware of the wrongdoing by his inner circle and his agency FOIA office, his denial of recollection is ultimately irrelevant. The pattern justifies your office's immediate investigation into the agency and its record-handling practices.

Your office is authorized to investigate Federal Records Act violations by the Department of Health and Human Services and its components.<sup>9</sup> Under 5 U.S.C. § 404(d), if your office discovers evidence indicating a violation of federal law, you must report that violation to the Attorney General. In this case, the evidence suggests violations of 44 U.S.C. § 3105, requiring executive branch agencies enforce safeguards against the removal or loss of records, one of which shall include making it known to officials and employees of the agency (1) that records in the custody of the agency are not to be improperly alienated or destroyed, and (2) the penalties provided by law for the unlawful removal or destruction of records; 44 U.S.C. § 3106(a), providing that the Secretary "shall notify the Archivist of any actual, impending, or threatened" unlawful deletion, erasure, or other destruction of agency records, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery thereof; and 18 U.S.C. § 2071(b), providing that a person who willfully or unlawfully conceals or destroys a federal record is subject to fines, imprisonment, and forfeiture of his office.

Thank you in advance for your attention to this matter, and please do not hesitate to reach out to us if you have any additional questions about this matter.

Sincerely,

/s Jacob Meckler

Counsel

America First Legal Foundation

cc: National Archives and Records Administration, Records Management Oversight and Reporting Program

Hon. Brad Wenstrup, Chairman, House Select Subcommittee on the Coronavirus Pandemic

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<sup>8</sup> Press Release, House Select Subcomm. on the Coronavirus Pandemic, Chairman Wenstrup Opens Hearing with Dr. Anthony Fauci (Jun. 3, 2024) (available at <https://bit.ly/3XFvU9J>).

<sup>9</sup> 5 U.S.C. § 402(b); 5 U.S.C. § 401(1). *See also*, *Landmark Legal Foundation v. E.P.A.*, 272 F. Supp. 2d 59, 63 (D.D.C. 2003). AFL has also written to your office regarding the Centers for Disease Control's policy of deleting emails in violation of the same records preservation laws. *See* Letter from Reed D. Rubinstein, Director of Investigations, America First Legal Foundation, to Christi Grimm, Inspector General, U.S. Dep't of Health and Hum. Servs. (Mar. 29, 2023), (available at <https://bit.ly/3Ohd5EJ>).

Hon. Paul Ruiz, Ranking Member, House Select Subcommittee on the Coronavirus Pandemic

Hon. James Comer, Chairman, House Committee on Oversight and Accountability

Hon. Jamie Raskin, Ranking Member, House Committee on Oversight and Accountability