

U.S. Sen. Johnson, colleagues: Demand Chairman Peters hold Biden administration accountable, serve subpoenas to get answers for the American people

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WASHINGTON – On Thursday, Sen. Ron Johnson (R-Wis.), Ranking Member of the Permanent Subcommittee on Investigations, along with Senators Rand Paul (R-Ky.), James Lankford (R-Okla.), Rick Scott (R-Fla.), and Josh Hawley (R-Mo.) wrote a [letter](#) to Sen. Gary Peters (D-Mich.) regarding letters sent to the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), and the National Institutes of Health (NIH) in which they invoked a statute requiring those agencies to respond to the requests. To date, the agencies have refused to comply with requests despite the statutory obligations to do so. The senators are demanding Chairman Peters hold the Biden administration accountable and show support for Congress' right to information. They request he initiate proceedings to serve subpoenas to compel compliance from the agencies.

In a [May 19](#) letter, the senators requested all documents relating to coordination between the CDC, the American Federation of Teachers, and the National Education Association in drafting federal school reopening guidance. In the [June 11](#) letter, the senators requested the HHS and the NIH produce unredacted copies of Dr. Anthony Fauci's emails.

“These agencies’ apparent contempt for legitimate congressional oversight and the

law is unacceptable,” **the senators wrote** to Chairman Peters. “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 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.”

Further, on July 27, 2021, the HHS sent what it claimed was the same heavily redacted documents it already released through the FOIA process. However, after an initial review of the Fauci documents, it appears that the HHS may have forgotten to apply at least one FOIA redaction to a paragraph in an email. In the public FOIA document, the HHS redacted an entire paragraph in Peter Daszak’s email, claiming that it contains records related to an open law enforcement investigation.

However, in the documents the HHS produced, the paragraph was unredacted, exposing the information the HHS previously hid from the American people. The paragraph does not appear to contain any information related to an open law enforcement investigation. The redaction calls into question the HHS’s redaction process not only for FOIA requests from the public but also for documents produced to Congress.

A copy of the letter can be found [here](#) and below.

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 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]

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]

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 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.