

August 5, 2024

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Hon. Brad R. Wenstrup, D.P.M.
Chairman
Select Subcommittee on the Coronavirus Pandemic
Congress of the United States
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Wenstrup:

We have the honor and privilege to represent Ms. Margaret Moore in relation to your request for her to appear for a transcribed interview before the staff of the Select Subcommittee on the Coronavirus Pandemic. Ms. Moore had a distinguished career of over thirty-five years at the National Institutes of Health (NIH). She retired in 2021 from the National Institute of Allergy and Infectious Diseases (NIAID) Freedom of Information Act (FOIA) Office. She is now a private citizen trying to enjoy her retirement, volunteering in her community twice a week, gardening, and spending time with family and friends.

We understand that the Select Subcommittee is focused on Dr. David Morens's document retention practices and use of his personal e-mail for government work while serving as a Senior Advisor to the Director at NIAID. With respect to Ms. Moore, we understand the focus is on her communications with Dr. Morens concerning FOIA. In particular, the Select Subcommittee's letter to Ms. Moore seeking an interview quoted an email Dr. Morens apparently wrote to Peter Daszak and Gerald Keusch (and, crucially, not to Ms. Moore): "i learned from our foia lady here how to make emails disappear after i am foied but before the search starts, so i think we are all safe."¹ As you are well aware, the Select Subcommittee asked Dr. Morens about this e-mail and what "tips" Ms. Moore allegedly gave him "about avoiding FOIA," and Dr. Morens testified under oath: "Well, she gave me none about avoiding FOIA. **That was a joke She didn't give me advice about how to avoid FOIA I was making a joke with Peter.**"² Dr. Morens proceeded to testify at length, under oath:

¹ Hon. B. Wenstrup ltr. to M. Moore (May 31, 2024) (emphasis added).

² Dr. D. Morens Testimony before the Select Subcommittee on the Coronavirus Pandemic (May 22, 2024).

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May I tell you what [Ms. Moore] told me? . . .

Um, I was worried, because I was getting so many FOIAs, I was worried that personal things were going to get into it. So I went and talked to her and says how does this work? Because at that point in time, I had no involvement in FOIAs. What happened if -- if I was going to be FOIA-ed, the FOIA office would notify me and say, do we have your permission to do an FOIA investigation? And I'd say yes, and that's the end of what I heard.

But I was worried that these personal things would get caught up in it. So I asked her how it worked. And she said, well, you really don't have to worry about personal things because when there's a FOIA request, we, the FOIA office, negotiate to limit the scope of what they're looking for to, among other things, make sure that inadvertent stuff doesn't get in there.³

Dr. Morens never testified that Ms. Moore instructed him on how to delete documents or avoid FOIA. To the contrary, Dr. Morens was asked: "Did the NIH FOIA office instruct you on how to delete emails or avoid FOIA?"⁴ To which he testified under oath: "No."⁵ Dr. Morens also testified that "[y]ou can't delete an email . . . from an NIH computer system. They're all retained and can be accessed for any purpose, including a FOIA."⁶

Unfortunately, after Dr. Morens's clear testimony under oath, you wrote a letter to Ms. Moore explaining that "it appears that you instructed or aided Dr. Morens on how to destroy official records" and that Dr. Morens's "actions may . . . constitute federal crimes."⁷ Moreover, Senator Rand Paul wrote to Attorney General Merrick Garland "urg[ing] the U.S. Department of Justice (DOJ) to open an investigation into the alleged improper concealment and intentional destruction of records by Dr. David Morens."⁸ Senator Paul then gave an interview where he stated that he has suggested to the Select Subcommittee "that the FOIA lady be brought in."⁹ Going further, Senator Paul stated his belief that "the idea that someone whose job is to facilitate Freedom of Information Act and to comply with it was actively teaching people how to evade the Freedom of Information Act and to destroy evidence. These are felony crimes. And I think if you really had

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Hon. B. Wenstrup ltr. to M. Moore (May 31, 2024) (emphasis added).

⁸ Hon. R. Paul ltr. to Hon. M. Garland (May 22, 2024).

⁹ Hon. R. Paul interview with B. Nickels (June 13, 2024).

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a prosecutor worth their salt, Morens would have already been indicted and charged, and the FOIA lady in all likelihood would.”¹⁰

In light of these spurious allegations and threats of prosecution, Ms. Moore has no choice but to decline your invitation to sit for an interview. Ms. Moore has cooperated with the Select Subcommittee through counsel to find an alternative to her sitting for an interview, including expediting her own FOIA request for her own documents, which she provided to the Select Subcommittee voluntarily. These documents show her faithful, dedicated attention to complying with the multitude of FOIA requests that inundated the NIAID FOIA office during the COVID-19 pandemic.

Despite the documents showing Ms. Moore complying with FOIA and Dr. Morens’s testimony about a perfectly innocent conversation with Ms. Moore, the Select Subcommittee has indicated it plans to issue a subpoena for Ms. Moore’s testimony should she decline the request. The Select Subcommittee has also shared with us via e-mail the topics for which it seeks Ms. Moore’s testimony. Should such a subpoena issue, and keeping in mind that “one of the basic functions of the privilege is to protect [the] *innocent*,” *Grunewald v. United States*, 353 U.S. 391, 421 (1957) (emphasis in original), Ms. Moore would have no choice but to assert her right under the Fifth Amendment of the United States Constitution not to be forced to address such topics. *See also Ohio v. Reiner*, 532 U.S. 17, 21 (2001) (per curiam) (“[W]e have never held . . . that the privilege is unavailable to those who claim innocence.”). Moreover, to issue such a subpoena in this context would potentially violate the D.C. Rules of Professional Conduct because the subpoena would cause “a witness to be called for the sole purpose of harass[ment].”¹¹

We remain available to discuss the matter with your staff.

Sincerely,



William J. Vigen
Ronald M. Jacobs

cc: The Honorable Raul Ruiz, M.D., Ranking Member

¹⁰ *Id.*

¹¹ D.C. Legal Ethics Opinion 358 (2011). The opinion goes on to explain that “such conduct by a staff lawyer might constitute assisting another in violating the rules,” and “participation in the hearing itself” or “such related activities as preparing subpoenas also could subject a lawyer to sanctions.” *Id.*