

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WHITE COAT WASTE PROJECT
901 M Street NW #830,
Washington, DC 20001

Plaintiff,

v.

THE UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,
810 Vermont Avenue, NW
Washington DC 20420,

Defendant.

Civ. No. 17-cv-2264

**Complaint for Declaratory and Injunctive
Relief**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, seeking the release of records related to experiments conducted on dogs at the Stokes Veterans Affairs Medical Center (Stokes VAMC).

Jurisdiction and Venue

2. This Court has jurisdiction over the parties and subject matter pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff White Coat Waste Project, Inc. (WCW) is a bipartisan taxpayer watchdog organization pursuant to Section 501(c)(3) of the Internal Revenue Code, with its headquarters located at 901 M St NW #830, Washington, DC, 20001. WCW's mission is

to unite animal-lovers and liberty-lovers to expose and end wasteful taxpayer-funded animal experiments. WCW is the requester of the information at issue in this case.

5. Defendant Department of Veterans Affairs is an agency of the United States. The Department has possession, custody, and control of the records WCW seeks.

Statement of Facts

Background

6. The Animal Welfare Act (AWA) and the Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy) require that every research facility that uses animals for laboratory research—including in federal facilities—must have an Institutional Animal Care and Use Committee (IACUC), which evaluates the facility's use and care of animals used in experiments.

7. The AWA's implementing regulations require every research facility that uses animals for laboratory research—including in federal facilities—to maintain certain records. *See, e.g.*, 9 CFR 2.35.

WCW's FOIA Request No. 17-07246-F

8. On April 3, 2017, WCW sent a FOIA request to Stokes VAMC seeking: (1) A current census of all dogs actively held and used in the Stokes VAMC laboratories (including each animal's ID number, breed, name, color and distinctive markings, date of birth, source, USDA pain category, and assigned protocol); (2) Photographs and videos of these or other dogs used in Stokes VAMC labs (from January 1, 2010 to the present); (3) Active IACUC-approved protocols to which these dogs are assigned; and (4) Animal welfare incident reports association with the aforementioned projects (from January 1, 2010 to the present).

9. The Department assigned this request number 17-07246-F.

10. In the initial response to this request, on April 18, 2017, the Department stated that it “ha[s] no responsive records to disclose for this request.”

11. Because both publically-available procurement documents mandated by the Federal Funding Accountability and Transparency Act of 2006 and statements that Stokes VAMC employees made to the media suggested that the facility did have responsive documents, on April 26, 2017, WCW administratively appealed the Department’s claim that it had no responsive records.

12. As WCW expected, the Department had responsive records.

13. On July 25, 2017, in response to WCW’s administrative appeal, the Department produced 14 pages of heavily-redacted documents consisting primarily of medical records and adoption papers.

14. That same day, WCW emailed the agency to note that the agency failed to produce the requested research protocols—even in redacted format—despite documents in the limited production themselves referencing an existing animal research protocol.

15. In response, the Department finally admitted the protocols exist and asserted that the Department was withholding the protocols in full pursuant to the deliberative process privilege.

16. On September 6, 2017, WCW administratively appealed the Department’s response to WCW’s April 3, 2017 FOIA request for a second time. This time WCW administratively appealed the total withholding of the animal research protocols, as well the redactions in the actually-produced documents, pursuant to the deliberative process privilege (though

Exemption 5), as well as the redactions pursuant to Exemption 6 of the names of the principal investigators and the source of the dogs.

17. The U.S. Postal Service tracking records reflect that the Department received WCW's September 6, 2017 administrative appeal on September 12, 2017.

18. On September 15, 2017, the Department sent a letter acknowledging receipt of WCW's administrative appeal. The letter stated that the agency was "unable to offer an estimate to when your appeal will be completed."

19. WCW has exhausted all applicable administrative remedies.

20. The Department continues to wrongfully withhold the requested records from WCW.

WCW's FOIA Request No. 17-08302-F

21. After receiving the Department's initial response to request number 17-07246-F stating that the Department did not have any responsive requests, WCW sent a related FOIA request to Stokes VAMC on May 1, 2017 seeking: (1) Invoices for all dogs purchased or otherwise procured by Stokes VAMC (from January 1, 2016- present); (2) Acquisition and disposition records for all dogs purchased or otherwise procured by Stokes VAMC (from January 1, 2016-present); (3) Complete animal use and veterinary records for all dogs used in Stokes VAMC experiments (from January 1, 2016-present); (4) Active IACUC-approved Stokes VAMC protocol/s for the use of dogs; (5) Animal welfare incident reports associated with the use of dogs at Stokes VAMC (from January 1, 2014-present); (6) All emails and other records associated with the adoption of any dogs from Stokes VAMC (January 1, 2016-present); (7) Inactive IACUC-approved protocol/s for the use of dogs (from January

1, 2015-present); and (8) Photographs and videos of dogs used in Stokes VAMC labs (from January 1, 2010-present).

22. The Department assigned this request the tracking number “FOIA Request No. 17-08302-F.”

23. In response to this request, on August 3, 2017, the Department produced 169 heavily-redacted responsive pages.

24. As with request number 17-07246-F, the Department withheld in full all active and inactive IACUC-approved protocols for the use of dogs.

25. On September 20, 2017, WCW administratively appealed the total withholding of the animal research protocols, as well the redactions in the actually-produced documents of (1) “all information pertaining to the active protocol,” pursuant to Exemption 5; (2) information related to “the cost associated with the line items, individual cost, total amount of invoice, company’s name, company’s address, [and] invoice number” pursuant to Exemption 4; and (3) the names of the principal investigators and company names pursuant to Exemption 6.

26. The U.S. Postal Service tracking records reflect that the Department received WCW’s September 20, 2017 administrative appeal on September 25, 2017.

27. On October 2, 2017, the Department sent a letter acknowledging receipt of WCW’s administrative appeal. The letter stated that the agency was “unable to offer an estimate to when your appeal will be completed.”

28. WCW has exhausted all applicable administrative remedies.

29. The Department continues to wrongfully withhold the requested records from WCW.

Count I: Violation of FOIA

30. Plaintiff realleges and incorporates by reference the allegations in each of the preceding paragraphs of this Complaint.

31. The Department has wrongfully withheld agency records requested by WCW.

32. WCW has exhausted applicable administrative remedies with respect to the Department's wrongful withholding of the requested records.

33. WCW and the public have been and will continue to be irreparably harmed until the Department is ordered to comply with WCW's FOIA request.

34. WCW is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

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Request for Relief

WHEREFORE, WCW respectfully requests that this Court:

- (1) Declare the Department's failure to comply with FOIA to be unlawful;
- (2) Enjoin the Department from continuing to withhold the public records responsive to WCW's FOIA request and otherwise order the Department to produce the requested public records without further delay;
- (3) Grant WCW an award of attorney fees and other litigation costs reasonably incurred in this action, to the extent permitted by law; and
- (4) Grant WCW such other and further relief which the Court deems proper.

Date: November 1, 2017

Respectfully submitted,

/s/ Matthew Strugar
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