

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WHITE COAT WASTE PROJECT
7288 Hanover Green Dr.
Mechanicsville, VA 23111

Plaintiff,

v.

THE UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Ave SW
Washington, DC 20201

Defendant.

Civ. No. 19-3839

**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 the United States Department of Health and Human Services' experiments on primates.

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, located at 7288 Hanover Green Drive, Mechanicsville, VA, 23111. 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 United States Department of Health and Human Services (HHS) is an agency of the United States. HHS has possession, custody, and control of the records WCW seeks.

6. The National Institute of Health (NIH) is a component of HHS.

7. The National Institute of Mental Health (NIMH) is a component of NIH.

Statement of Facts

8. WCW is engaged in a years'-long campaign to end wasteful animal experiments conducted by federal agencies. This lawsuit relates to two Freedom of Information Act requests by WCW to HHS.

FOIA Request 51252

9. On June 20, 2019, WCW made a FOIA request to NIMH seeking copies of all associated funding applications; Institutional Animal Care and Use Committee (IACUC)-approved protocols, reviews and amendments; and complete raw and unedited videos, edited videos, photographs, and animal welfare noncompliance incident reports with associated documents related to the following publications by NIMH experimenters:

- Pujara, M. S., Rudebeck, P. H., Ciesinski, N. K., & Murray, E. A. (2019). Heightened defensive responses following subtotal lesions of macaque orbitofrontal cortex. *Journal of Neuroscience*, 39(21), 4133–4141; and

- Taubert, J., Flessert, M., Wardle, S. G., Basile, B. M., Murphy, A. P., Murray, E. A., & Ungerleider, L. G. (2018). Amygdala lesions eliminate viewing preferences for faces in rhesus monkeys. *Proceedings of the National Academy of Sciences*, 115(31), 8043–8048.

10. NIH assigned this request case number 51252.

11. On September 13, 2019, WCW emailed Lisa Alberts at NIMH to inquire why the agency's FOIA portal stated that the request was listed as "On Hold - Need Info/Clarification" and stating that no one had followed up with WCW seeking additional information or clarification.

12. WCW and NIMH then entered into negotiations about the request. NIMH requested WCW "to exclude the location and names of secondary staff" from responsive documents and WCW agreed. NIMH also asked to initially produce samples of video recordings from each of the experiments. NIMH also stated that it recently completed a search for similar video content that involved the same experiments but with different animals and that NIMH could produce those video recordings "much more quickly." WCW agreed to both proposals (obtaining the similar video content more quickly and proceeding with samples of the videos related to its request) but reserved its right to seek all of the responsive video.

13. WCW continued to follow up with NIMH throughout September and October of 2019 but, to date, WCW has not received any responsive records from NIMH.

14. As of the filing of this Complaint, WCW has not received a final determination and response from NIMH with regard to case number 51252.

15. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), WCW is deemed to have exhausted its administrative remedies with regard to case number 51252 because the agency has failed to comply with the statutory time limit.

16. HHS continues to wrongfully withhold the requested records from WCW.

FOIA Request 52793

17. On September 9, 2019, WCW made a FOIA request to NIMH seeking copies of all IACUC-approved protocols, with associated reviews and amendments; most recent approved project budgets; acquisition and disposition records for primates used (from January 1, 2018 to the present); animal welfare noncompliance incident reports (from January 1, 2018 to the present); and complete raw and unedited videos, edited videos, photographs, related to the following publications by NIMH experimenters:

- Functional Anatomy of Face Processing in the Primate Brain (MH002918-10); P.I. Leslie G. Ungerleider, PhD.;
- Functional Anatomy of Perceptual and Attentional Systems in the Primate Brain (MH002035-38); P.I. Leslie G. Ungerleider, PhD.;
- Neurophysiology of Visual Perception (MH002838-15); P.I. David A. Leopold, PhD.;
- The Neural Basis of Functional MRI Responses (MH002896); P.I. David A. Leopold, PhD.;
- Neural Coding of Visual Stimuli (MH002032-42); P.I. Barry J. Richmond, PhD.; and

- Neural Mechanisms of Motivation and Reward (MH002619-27); P.I. Barry J. Richmond, PhD.

18. NIH assigned this request case number 52793.

19. On September 13, 2019, WCW emailed Lisa Alberts at NIMH to inquire why the agency's FOIA portal stated that the request was listed as "On Hold - Need Info/Clarification" and stating that no one had followed up with WCW seeking additional information or clarification.

20. On September 17, 2019, Alberts responded requesting additional information related to the Neural Basis of Functional MRI Responses project, which WCW provided that day.

21. The next day, Alberts wrote again stating that the request may involve a large video catalog and asked if WCW would like to get samples of responsive videos as a quicker alternative, as WCW had agreed to do with FOIA Request 51252. WCW agreed to that proposal the same day, while reserving its right to seek all of the responsive video.

22. WCW continued to follow up with NIMH throughout September and October of 2019 but, to date, WCW has not received any responsive records from NIMH.

23. As of the filing of this Complaint, WCW has not received a final determination and response from NIMH with regard to case number 52793.

24. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), WCW is deemed to have exhausted its administrative remedies with regard to case number 52793 because the agency has failed to comply with the statutory time limit.

25. HHS continues to wrongfully withhold the requested records from WCW.

Count I: Violation of FOIA

1. WCW realleges and incorporates by reference the allegations in each of the preceding paragraphs of this Complaint.

2. HHS has wrongfully withheld agency records requested by WCW, in violation of FOIA.

3. WCW and the public have been and will continue to be irreparably harmed until HHS is ordered to comply with WCW's FOIA requests.

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

Request for Relief

WCW respectfully requests that this Court:

(1) Declare HHS's failure to comply with FOIA to be unlawful;

(2) Enjoin HHS from continuing to withhold the public records responsive to WCW's FOIA requests and otherwise order HHS to produce the requested public records without further delay;

(3) Grant WCW an award of attorney's 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: December 27, 2020

Respectfully submitted,

/s/ Matthew Strugar
Matthew Strugar (D.C. Bar No. 1010198)

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