

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 Way, S.W.
Washington DC 20201,

Defendant.

Civ. No. 22-cv-2622

**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 the Food and Drug Administration's (FDA) experiments on animals.

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 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 Department of Health and Human Services (DHHS) is an agency of the United States. The FDA is a component of DHHS. DHHS and the FDA have possession, custody, and control of the records WCW seeks.

Statement of Facts

WCW's FOIA Request No. 2022-542

6. On January 14, 2022, WCW submitted a FOIA request to the FDA seeking copies of any active protocols involving Non-Human Primates.

7. The FDA acknowledged the request on January 21, 2022 and assigned this request number 2022-542.

8. On April 25, 2022, after inquiries about the status from WCW, the agency responded that its goal was to produce the records by May 1, 2022.

9. On May 31, 2022, the agency followed up again and said the request would be expedited.

10. To date, WCW has not received any further response or production, or any denial letter, related to this request.

11. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 2022-542.

12. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), WCW is deemed to have exhausted its administrative remedies with regard to request number 2022-542 because the agency has failed to comply with the statutory time limit.

13. The FDA (through DHHS) continues to wrongfully withhold the requested records from WCW.

WCW's FOIA Request No. 2019-7531

14. On August 19, 2019, WCW submitted a FOIA request to the FDA seeking certain records related to the FDA's use of primate for experiments in connection with federal contract ID 75F40118P20141. The request specified that it sought: 1) the contract and statement of work; 2) IACUC-approved protocols; including review and amendments; complete raw and unedited videos, edited videos, photographs; and 4) animal welfare noncompliance incident reports with associated documents.

15. The agency partially fulfilled this request on October 7, 2019 but the cover letter with the partial fulfillment noted that part of the request had been sent to the FDA's Center for Biologics Evaluation and Research (CBER) to process.

16. WCW then followed up with CBER multiple times seeking an update on its request.

17. On May 27, 2022, CBER informed WCW that a final response would be forthcoming "in the next 18–24 months."

18. To date, WCW has not received any further response or production, or any denial letter, related to this request.

19. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 2019-7531.

20. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), WCW is deemed to have exhausted its administrative remedies with regard to request number 2019-7531 because the agency has failed to comply with the statutory time limit.

21. The FDA and CDER (through DHHS) continues to wrongfully withhold the requested records from WCW.

WCW's FOIA Request No. 2022-1027

22. On February 4, 2022, WCW submitted a FOIA request to the FDA seeking certain records related to the FDA's procurement of dogs. It sought, in connection with purchase order 75F40121P00533: 1) the contract and statement of work; 2) procurement and shipping records for all dogs obtained under the contract (including, but not limited to invoices, certificates of veterinary inspection, other health certificates, shipping manifests, routing and contact sheets, and CDC notifications; 3) records of illnesses or deaths associated with each shipment; 4) photos and videos of the shipments and/or dogs received; and IACUC-approved protocols related to the purchase.

23. The agency partially fulfilled this request on March 17, 2022, but informed WCW that the Center for Veterinary Medicine would fulfill the remainder for the request.

24. To date, WCW has not received any further response or production, or any denial letter, related to this request.

25. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 2022-1027.

26. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), WCW is deemed to have exhausted its administrative remedies with regard to request number 2022-1027 because the agency has failed to comply with the statutory time limit.

27. The FDA and Center for Veterinary Medicine (through DHHS) continues to wrongfully withhold the requested records from WCW.

Count I: Violation of FOIA

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

29. DHHS has wrongfully withheld agency records requested by WCW.

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

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

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

Request for Relief

WHEREFORE, WCW respectfully requests that this Court:

- (1) Declare DHHS's failure to comply with FOIA to be unlawful;
- (2) Enjoin DHHS from continuing to withhold the public records responsive to WCW's FOIA request and otherwise order DHHS 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: August 30, 2022

Respectfully submitted,

/s/ Matthew Strugar _____
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