

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-3240

**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 National Institute of Allergy and Infectious Diseases' (NIAID) 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, 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 National Institute of Health (NIH) is a component of DHHS. NIAID is a component of NIH. DHHS, NIH, and the NIAID have possession, custody, and control of the records WCW seeks.

Statement of Facts

WCW's FOIA Request No. 57396

6. On November 19, 2021 WCW submitted a FOIA request to NIAID seeking copies of documents related to NIAID Intermural project AI001089, Viral Hemorrhagic Fevers: Disease Modeling and Transmission, P.I. Heinrich Ulrich Feldmann, MD, PhD. In particular, WCW's request sought

- Current IACUC-approved protocols, with associated reviews and amendments;
- IACUC meeting minutes related to this project (January 1, 2018-present);
- Acquisition and disposition records for primates used (January 1, 2018-present);
- Animal welfare noncompliance incident reports (January 1, 2018-present);
- Complete raw and unedited videos, edited videos and photographs.

7. NIAID acknowledged the request on November 29, 2021 and assigned this request number 57396.

8. On July 5, 2022, NIAID wrote to WCW and asked if it would agree to the agency redacting “all telephone numbers, building names, room numbers, the names of secondary individuals (e.g. administrative support/clerical/clinical staff), financial information (e.g. level of effort, consulting arrangements), and information pertaining to IACUC members other than the Chair, Attending Veterinarian and Institutional Official from the requested documents.” WCW agreed.

9. On July 26, 2022, NIAID wrote to WCW and asked if it would agree to the agency redacting “all decisions in ACUC meeting minutes that have been Tabled for Designated Member Review.” WCW agreed.

10. On September 28, 2022, NIAID wrote to WCW and asked if it would agree to the agency redacting “all names from [its] request.” WCW agreed to redacting the names, emails, and phone number all *secondary* personnel.

11. On October 11, 2022, NIAID wrote to WCW and asked if agree to the agency redacting “anything that could identify specific individuals from any responsive videos or photos.” WCW agreed.

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

13. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 57396.

14. 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 57396 because the agency has failed to comply with the statutory time limit.

15. NIAID (through DHHS) continues to wrongfully withhold the requested records from WCW.

WCW's FOIA Request No. 57336

16. On November 9, 2021, WCW submitted a FOIA request to the FDA seeking records “related to NIAID’s current intramural non-human primate (NHP) research where at least one NHP is categorized in USDA Pain Column E.” Specifically, the request sought

- Latest IACUC-approved protocols, including reviews and amendments;
- IACUC meeting minutes;
- Animal welfare noncompliance incident reports; and,
- Complete raw and unedited videos, edited videos, and photographs.

17. NIAID acknowledged the request on November 10, 2021 and assigned this request number 57336.

18. On March 8, 2022, NIAID wrote to WCW and asked if it would agree to the agency redacting certain personal information. WCW agreed.

19. On May 3, 2022, NIAID wrote to WCW and asked if it would agree to the agency redacting proprietary information and pre-decisional/deliberate information and drafts. WCW declined to agree to those redactions in order to preserve its rights to challenge any such redactions in the future.

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

21. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 57336.

22. 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 57336 because the agency has failed to comply with the statutory time limit.

23. NIAID (through DHHS) continues to wrongfully withhold the requested records from WCW.

Count I: Violation of FOIA

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

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

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

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

28. 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: October 24, 2022

Respectfully submitted,

/s/ Matthew Strugar _____
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