

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-3426

**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)-funded toxicology experiments on dogs.

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. 56916

6. On August 20, 2021 WCW submitted a FOIA request to NIAID seeking copies of the following documents related to NIH's contracts and grants for experiments on dogs:

1. Any correspondence (including emails, complete email chains, calendar invitations, and their attachments) about canine testing of the vaccine candidate LFGuard between NIAID staff, and between the NIAID and any of the following external parties (January 1, 2019 - September 15, 2020):

- PAI Life Sciences,
- University of Georgia, and/or
- University of Georgia Research Foundation¹

7. NIAID acknowledged the request on August 26, 2021 and assigned this request number 56916.

8. WCW corresponded with NIAID from August 2021 through June 2022 regarding the status of this request, but since but since March 29, 2021, the the request has been "awaiting the consult" with another agency.

¹ This request also included a component seeking records related to another project, for which the agency has produced responsive records.

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

10. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 56916.

11. 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 56916 because the agency has failed to comply with the statutory time limit.

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

WCW's FOIA Request No. 57648

13. On January 14, 2022, WCW submitted a FOIA request to NIAID seeking copies of all contracts and statements of work for NIAID-commissioned drug toxicity testing on dogs from January 1, 2018 to the present.

14. NIAID acknowledged the request on January 20, 2022 and assigned this request number 57648.

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

16. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 57648.

17. 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 57648 because the agency has failed to comply with the statutory time limit.

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

WCW's FOIA Request No. 58831

19. On August 11, 2022, WCW submitted a FOIA request to NIAID seeking copies of the following documents related to NIH's award HHSN272201100030C to Unither Virology, LLC (DBA Emergent Virology, LLC or Emergent Biosolutions, Inc.) for dog experiments:

- Contract and Statement of Work;
- Final Report(s)
- IACUC-approved protocols; including reviews and amendments;
- Physical or electronic submissions to the COR, including but not limited to:
 - o Complete "Pre-Meeting Packets", and
 - o Laboratory notebooks
- 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);
- complete raw and unedited videos, edited videos, and photographs; and
- animal welfare noncompliance incident reports with associated documents.

20. NIAID acknowledged the request on August 15, 2022 and assigned this request number 58831.

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

22. As of the filing of this Complaint, WCW has not received a final determination and response regarding request number 58831.

23. 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 58831 because the agency has failed to comply with the statutory time limit.

24. NIAID (through DHHS) continues to wrongfully withhold the requested records

Count I: Violation of FOIA

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

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

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

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

29. 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 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 requests 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: November 8, 2022

Respectfully submitted,

/s/ Matthew Strugar _____
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