

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC.,)
501 Front Street)
Norfolk, VA 23510)

Plaintiff,)

vs.)

UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
200 Independence Avenue, S.W.)
Washington, D.C. 20201,)

Case No.

NATIONAL INSTITUTES OF HEALTH,)
9000 Rockville Pike)
Bethesda, MD 20892, and)

NATIONAL INSTITUTE OF MENTAL)
HEALTH,)
6001 Executive Boulevard)
Bethesda, MD 20892,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT

1. In this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, Plaintiff People for the Ethical Treatment of Animals (“PETA”) seeks information regarding the treatment of nonhuman primates and other animals in experiments funded or overseen by Defendants United States Department of Health and Human Services (“HHS”), National Institutes of Health (“NIH”), and National Institute of Mental Health (“NIMH”) (collectively “Defendants”). As detailed below, Plaintiff has sought this information through seven FOIA requests submitted between January 28, 2020, and October 1, 2020 (collectively “the Requests”). However, Plaintiff’s Requests have been languishing without any final response from Defendants for between 5 and 14 months—far longer than the twenty working day deadline that Congress established in FOIA. By failing to produce to Plaintiff all non-exempt information responsive to Plaintiff’s FOIA requests, Defendants have improperly withheld this information in violation of FOIA.

2. The information that Defendants have improperly withheld is critical to Plaintiff’s ongoing efforts to educate the public about how Defendants are implementing their statutory responsibilities and spending taxpayer money on animal experimentation, and especially on experiments on nonhuman primates. Defendants have spent tens of millions of dollars of taxpayer money over the past several years subjecting primates to certain painful, frightening, and unnecessary experiments and surgical procedures which have not resulted in any new treatments or cures for human mental illness.

3. All of PETA’s Requests were submitted to NIMH with the intent of understanding and educating the public about the agency’s activities by obtaining information about the nature, methods, justifications, and results of the animal experiments that the agency has funded, and which are the focus of the Requests, which the public has a right to know pursuant to the FOIA.

4. Defendants constructively denied the Requests by failing to make determinations and provide responsive records for the Requests within the timeframes the FOIA mandates.

5. PETA has constructively exhausted all administrative remedies and informal avenues to obtain the requested records, and is therefore entitled to judicial review of this matter, as Defendants have failed to provide responsive information or issue a final response to the Requests within the deadlines established by the FOIA.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is properly vested in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

8. PETA is a Virginia non-stock corporation and an animal protection charity dedicated to protecting animals—including those used in experiments—from neglect, abuse, and all forms of cruelty. PETA undertakes these efforts through investigations, research, animal rescues, legislation, and public education. PETA submitted the Requests at issue. PETA has an office at 1536 16th St NW, Washington, DC 20036.

9. Defendant HHS is a federal agency subject to the FOIA, and, upon information and belief, has possession, custody or control of information responsive to some or all of the Requests.

10. Defendant NIH is a component of HHS, is a federal agency subject to the FOIA, and, upon information and belief, has possession, custody or control of information responsive to some or all of the Requests.

11. Defendant NIMH is a component of NIH, is a federal agency subject to the FOIA, and has possession, custody or control of information responsive to some or all of the Requests.

STATUTORY FRAMEWORK

12. “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citations omitted). The FOIA was enacted to “permit access to official information long shielded unnecessarily from public view” by creating a “right to secure such information from possibly unwilling official hands.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). “[D]isclosure, not secrecy, is the dominant objective of the Act.” *John Doe*, 493 U.S. at 152 (citation omitted).

13. The FOIA requires agencies of the federal government to conduct a reasonable search for requested records and to release them to a requester, unless one of nine specific statutory exemptions applies to the requested information. 5 U.S.C. § 552(a)(3), (b).

14. The FOIA requires federal agencies to release all non-exempt segregable information that is requested. *Id.* § 552(b).

15. Upon receiving a FOIA request, an agency generally has twenty working days to respond, *id.* § 552(a)(6)(A)(i).

16. In “unusual circumstances,” an agency may extend the FOIA’s standard deadline by an additional ten working days and, in these circumstances, must specify “the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

17. A requester has exhausted administrative remedies “if the agency fails to comply” with FOIA’s statutory deadlines. *Id.* § 552(a)(6)(C)(i). In that event, the FOIA authorizes the requester to invoke the jurisdiction of a federal court to obtain the requested information. *Id.* § 552(a)(4)(B).

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

18. As part of its mission to protect animals from inhumane treatment, PETA regularly engages in efforts to educate the public regarding the treatment of animals in scientific and medical experiments, particularly experiments funded through U.S. taxpayer dollars. Because Defendants NIH and NIMH engage in and/or fund experiments that treat animals inhumanely, PETA regularly submits FOIA requests to obtain information about how these federal agencies use public resources in ways that affect animals.

19. Over the past thirty years, Defendants NIH and NIMH have funded numerous experiments, and authorized or approved federal employees to conduct experiments, that cause irreparable damage and significant pain and distress to non-human primates. These experiments involve highly invasive brain surgeries that systematically destroy portions of primates' brains to determine what impacts these brain surgeries have on primates' behavior and cognition. Such experiments often involve the removal of a portion of a primate's skull to expose the brain, and the injection of toxins to cause permanent brain damage or the physical removal of brain tissue. In some such experiments, primates with damaged brains are then exposed to stimuli designed to provoke fear or another strong emotional reaction, such as exposure to fake snakes or other facsimiles of animals that primates instinctively fear.

20. Highly invasive experiments that permanently damage primates' brains cause irreparable harm to treated primates, as well as significant pain and suffering. For example, records that PETA previously obtained from NIMH through FOIA requests reveal that primates subjected to experiments involving brain surgery display "stereotypic behaviors," which are repetitive motions that indicate trauma, or pull out their fur, another sign of trauma. Additionally, despite the fact that the primates involved in these experiments are social animals who require regular interaction in order to maintain their health and well-being, primates subject to these experiments

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