

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NEW ENGLAND ANTI-VIVISECTION SOCIETY,  
D/B/A RISE FOR ANIMALS  
333 Washington Street Suite 850  
Boston, MA 02108

Plaintiff,

v.

THE UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
200 Independence Way, S.W.  
Washington DC 20201,

Defendant.

Civ. No.

**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 experiments on primates from the National Institute of Mental Health (NIMH).

**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 New England Anti-Vivisection Society, doing business as Rise for Animals (Rise), is a national animal rights organization pursuant to Section 501(c)(3) of the Internal Revenue Code, with its headquarters located at 333 Washington Street Suite 850, Boston MA 02108. Rise is on a mission to end animal

experimentation in our lifetime. Plaintiff is the requester of the information at issue in this case.

5. Defendant Department of Health and Human Services (HHS) is an agency of the United States.

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.

8. NIMH has possession, custody, and control of the records Plaintiff seeks.

### **Statement of Facts**

9. On January 9, 2020, Plaintiff submitted this FOIA request to NIMH:

At the 2019 Marmoset Bioscience Symposium, NIMH postdoc fellow Gurueswar Nagarajan and P.I. Yogita Chudasama presented a poster talk entitled “Cingulotomy alters postnatal development of vocalizations in infant marmosets.” (For your reference, I'm attaching the official summary/abstract of this presentation.)

We hereby request the following documents regarding this study:

1) The full IACUC-approved protocol, including all IACUC-approved addenda and modifications to the protocol, as well as all of the protocol's appendices, annexes, attachments, and accompanying documents.

2) The most recent annual progress report from the P.I. to the IACUC. This includes all appendices, annexes, attachments, and accompanying documents.

3) All notifications of adverse events, unexpected or unanticipated outcomes, protocol deviations, animal welfare concerns, and unanticipated animal deaths reported in relation to this study.

4) All photographs, video recordings, and audio recordings from this study (in their original formats and resolutions).

Since we don't know when this study began, we're setting the time frame much earlier than is probably necessary: January 1, 2014, to present.

10. On January 16, 2020, NIMH acknowledged receipt of this request and assigned it FOIA Request Case No. 53363.

11. To date, Plaintiff has not received any production or any denial letter related to this request.

12. As of the filing of this Complaint, Plaintiff has not received a final determination and response from NIMH with regard to FOIA Request Case No. 53363.

13. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff is deemed to have exhausted its administrative remedies with regard to FOIA Request Case No. 53363 because the agency has failed to comply with the statutory time limit.

14. NIMH continues to wrongfully withhold the requested records from Plaintiff.

#### **Count I: Violation of FOIA**

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

16. NIMH has wrongfully withheld agency records requested by Plaintiff.

17. Plaintiff has exhausted applicable administrative remedies with respect to NIMH's wrongful withholding of the requested records.

18. Plaintiff and the public have been and will continue to be irreparably harmed until NIMH is ordered to comply with Plaintiff's FOIA request.

19. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

## **Request for Relief**

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare NIMH's failure to comply with FOIA to be unlawful;
- (2) Enjoin NIMH from continuing to withhold the public records responsive to Plaintiff's FOIA request and otherwise order NIMH to produce the requested public records without further delay;
- (3) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action, to the extent permitted by law; and
- (4) Grant Plaintiff such other and further relief which the Court deems proper.

Date: November 23, 2020

Respectfully submitted,

/s/ Matthew Strugar \_\_\_\_\_  
Matthew Strugar (D.C. Bar No. 1010198)  
Law Office of Matthew Strugar  
3435 Wilshire Blvd., Suite 2910  
Los Angeles, CA 90010  
323-696-2299  
matthew@matthewstrugar.com