

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PROTECT THE PUBLIC’S TRUST )  
712 H Street, N.E. )  
Suite 1682 )  
Washington, D.C. 20002, )

Plaintiff, )

v. )

Civil Case No. 1:22-cv-01937

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

Defendant. )

\_\_\_\_\_ )

**COMPLAINT**

1. Plaintiff Protect the Public’s Trust brings this action against the National Institutes of Health under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.
3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

4. Plaintiff Protect the Public’s Trust (“PPT”) is an unincorporated association of retired and former public servants and concerned citizens that is dedicated to restoring public trust in government by promoting the fair and equal application of the rules and standards of

ethical conduct to all public servants. *See* D.C. Code § 29–1102(5). Consistent with Justice Brandeis’s aphorism that “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” PPT seeks to promote transparency and broadly disseminate information so that the American people can evaluate the integrity and ethical conduct of those who act in their name. Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT* (1914), <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

5. Defendant National Institutes of Health (“NIH” or “the Department”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Department has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

#### **STATEMENT OF FACTS**

6. On December 4, 2021, PPT submitted a FOIA request (attached as Exhibit A) to the Department seeking the following records:

We are requesting copies of records relating to discussions about a study titled “Enhanced Attraction of Sand Fly Vectors of *Leishmania Infantum* to Dogs Infected with Zoonotic Visceral Leishmaniasis,” as well as communications about the reaction to published allegations that NIH grants funded research involving beagles. In order to assist this search, we specifically request the following records:

1. All records created on or after June 15, 2021 that include the following search terms (including the complete email chain and any attachments where such terms appear anywhere in the email chain, not just the specific email that includes the requested search term):
  - “Leishmania”;
  - “Leishmaniasis”;
  - “Sand fly” or “sand flies”;
  - “Dog” or “dogs”;
  - “Beagle” or “beagles”;
  - “R21A1130485”;
  - “209336/Z/17/7”
  - “Ifhem Chelbi”;

- “Khouloud Maghraoui”;
- “Sami Zhioua”;
- “Saifedine Cherni”;
- “Imen Labidi”;
- “Abhay Satoskar”;
- “James G. C. Hamilton”;
- “Elyes Zhioua”;
- “White Coat Waste”;
- “Beth Reinhard”;
- “Yasmeen Abutaleb”;
- “Leighton Woodhouse” or
- “Glenn Greenwald”;

In the possession of the following components of the Office of the Director and/or agents or employees of the following components:

- Immediate Office of the Director;
- Executive Secretariat;
- Science Outreach and Policy;
- Office of Communications and Public Liaison (including, but not limited to the Public Information Office and Public Affairs Office);
- Office of Extramural Research (including, but not limited to, the Division of Communication and Outreach and the Office of Laboratory Animal Welfare); or
- The NIH Ethics Office.

2. All records of communications occurring on or after June 15, 2021 between any of the following people:

- Ifhem Chelbi;
- Khouloud Maghraoui;
- Sami Zhiou;
- Saifedine Cherni;
- Imen Labidi;
- Abhay Satoskar;
- James G. C. Hamilton; or
- Elyes Zhioua;

and any person employed by or acting on behalf of the following components of Office of the Director:

- Immediate Office of the Director;
- Executive Secretariat;
- Science Outreach and Policy;

- Office of Communications and Public Liaison (including, but not limited to, the Public Information Office and Public Affairs Office);
- Office of Extramural Research (including, but not limited to, the Division of Communication and Outreach and the Office of Laboratory Animal Welfare); or
- The NIH Ethics Office.

7. As Attorney General Garland has made clear, FOIA is “a vital tool for ensuring transparency, accessibility, and accountability in government” whose “‘basic purpose . . . is to ensure an informed citizenry,’ which is ‘vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed.’” Merrick Garland, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines 1* (Mar. 15, 2022),

<https://www.justice.gov/ag/page/file/1483516/download> (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)) (“Garland Memo”).

8. The release of these documents is in the public interest because they will help the public understand NIH’s role in funding the study titled “Enhanced Attraction of Sand Fly Vectors of *Leishmania Infantum* to Dogs Infected with Zoonotic Visceral Leishmaniasis,” as well as the role (if any) of senior NIH officials in requesting that the study author’s “correct” their initial attribution statements. On July 15, 2021, this study was published with a note from its authors thanking NIH for providing funding for the study. On November 11, 2021, the authors “corrected” this study to effectively assert that NIH did not in fact provide funding. In the time between the initial publication and correction, the study became a matter of intense public controversy, including prompting a bipartisan inquiry from members of Congress. See Christian Spencer, *Bipartisan Legislators Demand Answers from Fauci on ‘Cruel’ Puppy Experiments*, The Hill (Oct. 22, 2021), <https://thehill.com/changing-america/well-being/medical-advances/578086->

[bipartisan-legislators-demand-answers-from-fauci/](#). The documents requested concern the time period after the study's release on July 15, 2021, and will contribute significantly to the public's understanding of whether the study's authors changed their statement regarding funding by NIH in response to pressure from NIH officials, as well as why the authors may have initially thanked NIH.

9. On December 4, 2021, the Department sent a "status update" designating Plaintiff's request as "FOIA request #57488" and "update[ing]" the status of Plaintiff's request to "Received."
10. Plaintiff reached out at least two times regarding the status of request 57488, including on April 6, 2022, and June 3, 2022.
11. Plaintiff has received no response from NIH.
12. As the Garland Memo makes clear, "Timely disclosure of records is also essential to the core purpose of FOIA." Garland Memo at 3.
13. At this time, it has been more than 200 days since Plaintiff submitted its FOIA request. This is well beyond the statutory period for federal agencies to make a determination with respect to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B).
14. At this time, the Department has not made a determination of whether it will comply with Plaintiff's request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). The Department has not substantively responded to Plaintiff's request or engaged with Plaintiff, in spite of several attempts to open a dialog, let alone produced responsive documents to the Plaintiff, communicated to the Plaintiff the scope of the documents it intends to produce and withhold, along with the reasons for such

withholding, or informed Plaintiff of its ability to appeal any adverse portion of its determination.

15. Given these facts, it appears that absent litigation the Department has not and does not intend to meet its statutory obligations to provide the requested records.
16. Through the Department's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review.

### **COUNT I**

#### **Violation of FOIA, 5 U.S.C. § 552** **Wrongful Withholding of Non-Exempt Responsive Records**

17. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
18. PPT properly requested records within the possession, custody, and control of the Department.
19. The Department is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
20. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
21. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to segregate exempt information in otherwise non-exempt records responsive to the PPT FOIA request.
22. The Department's failure to provide all non-exempt responsive records violates FOIA.

23. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

Protect the Public's Trust respectfully requests this Court:

- (1) Assume jurisdiction in this matter, and maintain jurisdiction until the Department complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to PPT's FOIA request and indexes justifying the withholding of all or part of any responsive records withheld under claim of exemption.
- (3) Enjoin the Defendant from continuing to withhold any and all non-exempt responsive records.
- (4) Award the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (5) Grant PPT other such relief as the Court deems just and proper.

Dated: July 5, 2022

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST  
By Counsel:

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