September 22, 2009

Rick Bogle
5133 Maher Avenue
Madison, WI 53716

Re: Public Records Request

Dear Mr. Bogle,

On August 15, 2009, you wrote me an email seeking the following documents:

1. Copies of any and all correspondence with NIH (the National Institutes of Health or an agency thereof) between July 1, 2007 and July 1, 2008 regarding any NIH "Major Action."

2. Copies of any and all correspondence with NIH between July 1, 2007 and July 1, 2008 concerning any actual or potential violation of regulations regarding NIH "Major Actions."

3. Copies of any notices or reports from NIH, NIH officials or NIH-designated officials received by the university between July 1, 2007 and July 1, 2008 regarding NIH "Major Actions" by UW affiliated researchers, staff, employees, agents, or other individuals working on a University of Wisconsin, Madison campus or in a University of Wisconsin, Madison owned or operated building or laboratory.

Attached please find correspondence between UW-Madison and NIH between the dates of July 1, 2007 and July 1, 2008 regarding an NIH Major Action violation. This is the only NIH Major Action violation within the dates you requested. Aside from the attached correspondence, we have no other "notices or reports" from NIH between July 1, 2007 and July 1, 2008 regarding any Major Actions.

Some of the documents provided have been redacted in part. Specifically, the names of investigators and select agents have been redacted. Per § 212(h) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, no federal agency may disclose, under the Freedom of Information Act, information that identifies the name of a select agent or the identity of a specific person using that select agent. The Wisconsin Public Records law exempts from disclosure any record that is specifically exempted from disclosure by federal law. See § 19.36(1), Wis. Stats.

Additionally, other materials have been redacted or not included which bear upon an ongoing UW-Madison investigation into potential misconduct by an employee, or which could identify, directly or indirectly, the identity of that employee. To the extent that a request seeks records related to a pending investigation of misconduct connected with

employment, such records are exempt from disclosure under the public records law. See Wis. Stat. § 19.36 (10)(b).

Finally, the cell phone number of a prior employee has been redacted because that number is not readily available to the public and, as such individual is no longer a UW-Madison employee and is no longer using such cell phone for UW-Madison business, publication of the cell phone number would be an invasion of privacy.

To the extent that this response may amount to a denial of your request, I am required to inform you that it may be subject to review by mandamus under § 19.37(1), Wis. Stats., or upon application to the Attorney General or District Attorney.

Sincerely,

James Turk
Biological Safety Officer
University of Wisconsin-Madison

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THE UNIVERSITY of WISCONSIN MADISON

7 April 2008

[redacted]

RE: Additional Information Concerning Restricted Experiments

Dear [redacted]

On 17 January 2008 we sent a memo to [redacted] informing you of experiments involving the insertion of antibiotic resistance genes into [redacted] performed in the laboratory of [redacted] This issue came to light when [redacted] at the request of the UW Office of Biological Safety (OBS) and the UW Institutional Biosafety Committee (IBC), sought to determine all the antibiotic markers that were being used (or had been used) in [redacted] laboratory. We received a faxed copy of a memo from [redacted] (dated 26 March 2008) requesting additional information and documentation. Further descriptions on the nature and extent of the experiments and our entity's response to the disclosure are detailed below.

Concerning the introduction of [redacted] into [redacted]

The [redacted] experiments described in our letter to [redacted] in our January 17 memo had not been submitted by [redacted] for review by the IBC nor would the experiments have been approved if submitted due to the fact that they could compromise treatment options. Three individuals in the laboratory introduced [redacted] into [redacted] beginning in May 2007. The [redacted] experiments began when a graduate student working with [redacted] was seeking a second antibiotic selection marker to create a double deletion mutant. The student asked another individual in the lab working with [redacted] if they might have an additional marker. The [redacted] gene was identified that conferred resistance to [redacted] The student, without consulting with the PI, tested it in [redacted] as a preliminary experiment and the gene conferred resistance to [redacted] Subsequently, two additional individuals asked the student to try the marker in their gene knockout experiments.

As stated above, the experiments began in May 2007 and continued through October 2007. These individuals performed one animal experiment each whereby the [redacted] mutants were grown up in broth and injected into mice using 4 mice per study to confirm the attenuations. The mice were euthanized and all contaminated material was autoclaved. Following the usual procedure, the animal carcasses were incinerated after autoclaving.

A total of 21 vials of stored cultures, comprising the entire remaining stock, were autoclaved for 1.5 hours at 250-270°F at a pressure of 15 psi. Autoclaving of the materials, which occurred on three separate dates, was verified using Comply steam

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chemical integrator test strips in each load and witnessed by a second individual. A complete list of the materials involved and documentation of the destruction is attached.

Concerning the introduction of [redacted] into [redacted]
In 2004, a scientist in the laboratory created a [redacted] library using a commercially available transposon insertion system modified to contain the [redacted] resistance gene. The success of the library prompted the individual without consultation to use the same commercial [redacted] insertion system containing the [redacted] resistance gene [redacted] to make a second knockout in one of the previous [redacted] mutants. The library was created in approximately 2 months, but work was suspended because of other research priorities. The library was produced, inventoried and stored in a freezer, but the work of evaluating the library was never performed. No animal work was performed with this system. The description of this work had not been described in any protocol submitted to the IBC until 29 January 2008. The IBC, after reviewing the protocol at its 6 February 2008 meeting, denied approval and ordered the immediate destruction of strains harboring resistance to [redacted]. The majority of the library was autoclaved (2 hours at >250°F and a pressure of 15 psi) on 11 February 2008 and witnessed by two additional individuals including [redacted]. The remaining stock was destroyed on 4 April 2008. A complete list of the materials involved and documentation of the destruction is attached.

Further Description of UW-Madison Response
The incidents described above show a fundamental lack of understanding by members of [redacted] research group of the NIH [redacted] regulations concerning restricted experiments. The [redacted] research group has updated their biological safety training program to prevent this from occurring in the future. The biological training program now includes discussion of the use of antibiotic resistance genes in [redacted] when new individuals receive biosafety training and at the laboratory's annual refresher training. Discussion focuses on: the NIH guidelines covering the use of antibiotic resistance markers in [redacted] discussion of why the use of antibiotic resistance markers can not be used in [redacted] even for preliminary experiments; and discussion of the proper process for approval of the use of antibiotic resistance markers in [redacted] Each lab member must read the current version of the biosafety protocol and document their understanding of exactly what has been approved. A training session, covering these topics, was attended by all members of [redacted] research group on 12 February 2008 (see attached documentation).

The IBC and OBS have also instituted measures to help prevent such incidents from happening in the future. Campus-wide these measures include a two-pronged approach to improve both collection of information from PIs and our education of PIs and researchers of the necessity of supplying this information, both from a safety and compliance perspective:

- Updating the Protocol form to emphasize the requirement. The relevant section of the new protocol form is attached.
- Further education of researchers – including covering the topic in an upcoming issue of our quarterly publication BioSide Lines (a draft of the article is attached) which goes to all PIs with biological safety protocols and all personnel in our training database, and is distributed through departmental offices for departments that perform biological research.

- Covering of the issue in the annual [redacted] annual refresher training.

In addition, the IBC discussed the guidance document from NIH OBA regarding Major Actions [redacted] at the 7 November 2007 meeting including the necessity to consider whether introduction of antibiotic resistance might compromise treatment in other countries. The recently released revision of this guidance document was discussed at the 2 April 2008 meeting.

Additional methods to prevent further incidents that were discussed at the 2 April 2008 IBC meeting but not yet implemented include:

- Modifying the biosafety protocol to include an appendix to be completed by PIs that work with microbial pathogens. This table would list antibiotic resistance traits that are approved by the IBC for introduction to each microbial pathogen handled in the laboratory and would be amended as necessary with regular re-training of staff for any changes.
- Amplifying the discussion of antibiotic resistance traits including compliance standards in the OBS' Basic Biosafety and Advanced Biosafety training.

Let me know if you have any questions or concerns or need further clarification regarding this response.

Sincerely,

[redacted]

cc: J. Woods, IBC Chair
W. Mellon, RO

Destruction of [redacted] containing antibiotic resistance

Strain	Mutant	# Vials	Volume/vial	Date of Destruction
[redacted]		1	1 ml	1/3/2008
		2	1.5 ml	3/4/2008
		18	15 ml/18 vials	3/5/2008
		2880	1 ml	2/11/2008
		243	1 ml	4/4/2008