

CHELSEA RHODES and,)
)
 PEOPLE FOR THE ETHICAL)
 TREATMENT OF ANIMALS)
 A Foreign Corporation)
)
 Petitioners,)
)
 vs.)
)
 BOARD OF REGENTS OF THE)
 UNIVERSITY OF WISCONSIN)
 c/o Jane Radue, Secretary)
 1860 Van Hise Hall)
 1220 Linden Dr.)
 Madison, Wisconsin 53706)
 and,)
)
 RICHARD R. LANE, records custodian)
 396 Enzyme Institute,)
 University of Wisconsin Madison,)
 1710 University Avenue,)
 Madison, Wisconsin 53726.)
)
 Respondents.)

Case No:

Other Extraordinary Writ
Classification Code: 30954

PETITION FOR WRIT OF MANDAMUS

Petitioners, CHELSEA RHODES and PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (hereinafter “PETA”), by their attorneys Penn Rakauski, and Leslie Hamilton for their claims under Wis. Stats., §19.31, *et. seq.* against Respondents BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN and RICHARD R. LANE, herein allege as follows:

PARTIES

1. The Petitioner, People for the Ethical Treatment of Animals (hereinafter PETA), is a foreign corporation with its headquarters at 501 Front Street, Norfolk, VA 23510. PETA is registered to do business in the State of

Wisconsin. With more than 2 million members and supporters, PETA is the largest animal rights organization in the world. PETA focuses its attention on the four areas in which the largest numbers of animals suffer the most intensely for the longest periods of time: on factory farms, in laboratories, in the clothing trade, and in the entertainment industry.

2. PETA, through its employee, Chelsea Rhodes, submitted an open records request, pursuant to Wis. Stat. § 19.31 *et seq.*, to the Respondents, and is the “requester” within the definition of the Wisconsin Open Records law, Wis. Stat. § 19.32(3).
3. The Respondent, the Board of Regents of the University of Wisconsin System (hereinafter the Board of Regents), is established pursuant to Chapter 36 of the Wisconsin Statutes with its principal address 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin, 53706. The Board of Regents is an “authority” as that term is defined in Wis. Stats. §19.32 and used in Wis. Stats. §§19.31 – 19.39 (the “Open Records Law”).
4. The Respondent, Richard R. Lane (“Lane”), is the Associate Director of UW’s Research Animal Resources Center (“RARC”) and is the “legal custodian” of the records at issue in this case as that term is used in the Open Records Law.

VENUE

5. Venue is proper under Wis. Stat. § 801.50 (2) and § 801.50(3).

FACTS

6. On January 16, 2009, PETA, though petitioner Rhodes wrote to Dr. Eric Sandgren Director, Research Animal Resources Center, at UW and requested

several categories of public records relating to UW's publicly-funded eye movement experiments conducted on live cats and nonhuman primates.

PETA's request was made pursuant to the Wisconsin Public Records Law (Wis. Stats. §§19.32 et seq.) (See Exhibit 1 attached hereto).

7. The records PETA requested pertain to UW's compliance with the federal Animal Welfare Act ("AWA"), 7 U.S.C. §§ 2131 *et seq.*, and include records of UW's Institutional Animal Care and Use Committee (herein after IACUC), a federally-mandated oversight committee whose primary responsibility is to determine that experiments that use live animals comply with the requirements of the AWA.

8. Specifically PETA requested the following public records (from 2007 through date of fulfillment):

- All IACUC-approved protocols regarding eye movement research on live non-human primates and cats;
- All protocol revision request forms submitted to the IACUC related to the requested protocols;
- All photographic and videographic records pertaining to the requested protocols;
- All noncompliance complaints pertaining to the requested protocols;
- Sick/dead animal reports (morbidity/mortality reports) pertaining to the requested protocols; and
- IACUC investigation notes and reports pertaining to the requested protocols.

(Exhibit 1).

9. On February 24, 2009, Richard Lane, agreed to provide some of the requested records upon receipt of payment and advised that UW would not produce other records and information within its possession and control pursuant to exemptions in the Wisconsin Open Records law.

(A copy of Lane's February 24, 2009 response is attached hereto as Exhibit 2).

10. On April 9, 2009 PETA requested that Lane clarify UW's position as to exactly what it would and would not produce pursuant to PETA's public records request. (A copy of PETA's request is attached hereto as Exhibit 3).
11. On April 13, 2009, UW through Lane responded to PETA's request for clarification. UW claimed that three categories of the records requested by PETA were exempt from the Open Records law and would, therefore, not be released pursuant to PETA's Open Records request. Specifically, Lane advised that the following records would be withheld in their entirety:
 - a. Photographic and videographic records;
 - b. Noncompliance complaints; and
 - c. IACUC investigation reports and notes.

UW raised no objection to the release of the remaining three categories of records, which it had agreed to produce upon receipt of payment in its Feb. 24, 2009 letter. (A copy of Lane's letter is attached hereto as Exhibit 4).
12. On May 5, 2009, PETA sent full payment for the records that UW agreed to release. At this time, PETA also made it clear that payment and acceptance of these materials in no way constituted a waiver of its rights to pursue a mandamus action for the balance of the requested records. (A copy of PETA's letter is attached hereto as Exhibit 5).
13. On June 29, 2009, PETA sent an e-mail to Lane inquiring as to when it could expect to receive the records that UW previously agreed to release. (See Exhibit 6, attached hereto).

14. On July 1, having received no response from Lane, PETA sent an e-mail to Dr. Sandgren, who replied via e-mail that UW “should have a resolution by next week.” (A copy of the e-mail correspondence dated June 29 and July 1 is attached hereto as Exhibit 6).
15. On July 15, 2009, more than two months after PETA sent payment for the records, PETA received from UW some, but not all, of the records that UW previously agreed to release. The records that PETA received from UW were substantially redacted. In its cover letter accompanying the records, UW did not provide an estimated date for release of the balance of the records it had previously agreed to release. (A copy of UW’s cover letter is attached hereto as Exhibit 7).
16. Subsequently, additional records were released by UW to PETA on August 5, September 10, and September 17, 2009.
17. On September 24, 2009 UW released to PETA additional records, and informed PETA that these records were the last that UW would provide in response to PETA’s original public records request. (A copy of the September 24 letter is attached hereto as Exhibit 8).
18. UW substantially redacted information from the records received by PETA (Examples of redactions are attached hereto as Exhibit 9).
19. UW failed to identify on the face of records from which it redacted information: 1) which category of information has been redacted; and 2) which exemption it claims applies to each individual redaction. By failing to provide any description of the information it redacted and by not citing the specific

exemption to Wisconsin's Open Records law which permits the redaction, UW has made it impossible in many instances for PETA to assess the validity of the redaction. (See Exhibit 9 and Exhibit 10—Example of PETA's interpretation of UW's redactions).

20. In its cover letters dated July 15 (Exhibit 7) and September 24, 2009 (Exhibit 8) UW stated that it redacted the following information:
 - Locations where research animals are housed and research activities are performed (information which PETA does not seek);
 - Security procedures (information which PETA does not seek);
 - Unspecified “personally-identifiable information pertaining to research staff”;
 - Names of “research collaborators and research material suppliers”;
 - Unspecified “unpublished data”; and “Personal notes intended for the preparer or the preparer’s supervisor”

21. To the extent that PETA can determine, UW has redacted the following information *in addition to* information it expressly stated it redacted in its letters dated July 15 and September 24:
 - Names of principal investigators (the researchers who prepare the grant applications and research protocols and oversee the experiments)
 - Research protocol numbers;
 - National Institutes of Health (“NIH”) grant numbers;
 - Recent publications by experimenters, as set forth in research protocols;
 - Training and experience of personnel, as set forth in research protocols;
 - Vendors and other sources of animals/material suppliers.

22. The UW redacted the information set forth in paragraphs 20 and 21, claiming that the unspecified “personally-identifiable information pertaining to research staff” can be withheld pursuant to § 19.35(1)(g) of the Public Records Law. The cited statutory provision pertains to “a record which has been or will be

promptly published with copies offered for sale or distribution” and thus is not even remotely applicable.¹ UW also claims that this information, along with the names of “research collaborators and material suppliers” can be withheld based on the public interest in preventing harassment of these individuals. (See Exhibits 7, 8).

23. UW also redacted the information set forth in paragraphs 20 and 21, claiming that unspecified “unpublished data” can be withheld pursuant to § 19.36(5) of the Public Records Law which exempts trade secrets. UW also based its redaction of the “unpublished data” on the public interest in “maintaining academic freedom of researchers to determine how and when their research data is published and enabling the patenting of investigations.” (*Id.*)
24. Further, the UW redacted information set forth in paragraphs 20 and 21, on the basis that the information constitutes “personal notes” and thus does not meet the definition of a record set forth in § 19.32(2) of the Public Records Law. (*Id.*)
25. UW also maintains that it has the right to withhold in their entirety all photographic and videographic records because: “any such records constitute unpublished proprietary research data. As such they are not subject to release (Wis. Stat §19.36(5)).” UW claims that under the “balancing test inherent in the public records law, we have made a specific determination that the public interest in maintaining academic freedom of researchers to determine how and/or when their research data is published and enabling patenting of

¹ Section 19.35(1)(am)(2), not cited by UW, pertains to personally-identifiable information but it applies only to individuals who seek public records that contain information about *themselves*, and is limited to the express conditions set forth therein, none of which apply and none of which are asserted by UW.

researchers' inventions outweighs the public interest in accessing unpublished data." (*Id.*)

26. Finally, UW claims that it has the right to withhold in their entirety all noncompliance complaints and IACUC investigation notes and reports because: "the records responsive to this portion of the request are either exempt from release at this time, per section 19.36(10) (b), Wisconsin Statutes,² or are exempt from disclosure altogether as personal notes...section 19.32(2) Wisconsin Statutes." (*Id.*)
27. On September 3, 2009, as a direct result of UW's stonewalling and failing to provide records in accordance with the Public Records Act, PETA, through its attorneys, petitioned the Dane County District Attorney to file an action for a Writ of Mandamus against UW to compel UW to comply with the mandates of Wisconsin Open Records law (See Exhibit 11 attached hereto).
28. On October 8, 2009 Dane County District Attorney Blanchard informed counsel that he would not pursue a mandamus action against UW. (See Exhibit 12 attached hereto).
29. As set forth in Paragraph 7 above, Sections 2143(b) and (c) of the federal AWA direct each research facility to appoint an Institutional Animal Care and Use Committee (IACUC) whose primary responsibility is to determine that experiments that use live animals comply with the requirements of the AWA, including the requirements that distress and pain endured by the animals used

² Section 19.36(10) (b) exempts "information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation."

in experiments is avoided or minimized, that non-animal alternatives are considered by the experimenter, and that experiments are not unnecessarily duplicative. The protocol and protocol revision request forms are the main tools used by the IACUC to fulfill these mandates. Photographs and videos are sometimes used by research facilities to document the experimental process and serve as evidence of compliance with the approved protocol. The remaining categories of records – noncompliance complaints, sick/dead animal reports, and IACU investigation notes and reports – shed additional light on non-compliance with the federal AWA.

30. Accordingly, under Wisconsin law, the Open Records Act, and federal statute there is no basis for UW to withhold any of the requested information.

RESPONDENTS VIOLATED THE WISCONSIN OPEN PUBLIC RECORDS ACT

31. Petitioners incorporate by reference all allegations set forth in the paragraphs above.
32. Petitioner in any claim for a writ of mandamus must plead and prove the following:
 - a. a clear legal right to the relief requested;
 - b. that respondents have an affirmative duty to perform the actions the petitioner seeks the court to order;
 - c. the as a result of the respondent's failure to perform its duty under the law, petitioner has been harmed; and
 - d. there is no other adequate legal remedy available to the petitioner.

33. The Wisconsin Open Records Law (Wis. Stat. § 19.31 *et. Seq.*) has, by the state supreme court, long been construed with the presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.
34. The Open Records law provides that the petitioner has the legal right to inspect any record except as otherwise provided by law (§ 19.31(1)).
35. Respondents in their July 15, 2009 and September 24, 2009 correspondence to petitioners (Exhibits 7, 8) confirm they are in possession and control of full and complete records and information responsive to all of the petitioners' requests.
36. Respondents have violated the Wisconsin Open Records law by failing to fully fill the Petitioner's request, despite the fact they have responsive documents and materials, Wis. Stat. § 19.35(4)(a).
37. Respondents have violated the Wisconsin Open Records law by failing to fully fill the Petitioner's request "as soon as practical and without delay", Wis. Stat. § 19.35(4) (a).
38. Respondents' violations of the Wisconsin Open Records law are arbitrary and capricious. By failing to fully respond to Petitioners' requests as required to by the Wisconsin Open Records law, the Respondents have caused and will continue to cause injury to the Petitioners by depriving them and the public of their rights under the law.

RELIEF REQUESTED

39. WHEREFORE, Petitioners request that the Court grant the following relief pursuant to Wis. Stat. § 19.31 *et. seq.*:
- a. An order declaring the Respondents violated the Wisconsin Open Records law, Wis. Stat. § 19.31 *et. Seq.*, and Wis. Stat. §806.04;
 - b. A mandamus order directing the Respondents to produce to the Petitioners any and all records and responsive information, Wis. Stat. § 19.37(1)(a);
 - c. An award to Petitioners of reasonable attorneys' fees, damages of not less than \$100, punitive damages, and other costs related to this Petition, Wis. Stat. § 19.37(2) & (3); and
 - d. Any and all other relief as the Court deems fair and equitable.

Dated ____ day of April, 2010

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