

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND

RISE FOR ANIMALS )  
(formerly NEW ENGLAND )  
ANTI-VIVISECTION SOCIETY) )  
333 Washington Street )  
Suite 850 )  
Boston, Massachusetts 02108 )  
(617) 523-6020, )

and )

ANIMAL LEGAL DEFENSE FUND )  
525 East Cotati Avenue )  
Cotati, CA 94931 )  
(707) 795-2533, )

Plaintiffs, )

v. )

ANIMAL AND PLANT HEALTH )  
INSPECTION SERVICE )  
4700 River Road )  
Riverdale, MD 20737, )

Civ. No.

and )

UNITED STATES DEPARTMENT OF )  
AGRICULTURE )  
1400 Independence Avenue, S.W. )  
Washington, D.C. 20250, )

Defendants. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA” or “Act”), 5 U.S.C. § 552, to obtain records in possession of the United States Department of Agriculture

Animal and Plant Health Inspection Service (“USDA” or “APHIS”) concerning government instructions, directives, advice, and suggestions concerning APHIS inspections of research laboratories where non-human primates are kept, pursuant to the Animal Welfare Act (“AWA”), 7 U.S.C. § 2143.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
3. Venue is proper in this court pursuant to 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

4. Plaintiff Rise for Animals (formerly New England Anti-Vivisection Society) is a nonprofit, tax-exempt 501(c)(3) organization whose mission is to save animals from suffering. Rise for Animals seeks to end animal experimentation, to encourage the transfer of animals from laboratories to animal sanctuaries, and to reduce the suffering of laboratory animals by promoting their humane treatment. Rise for Animals is one of the requesters of the records at issue in this case.

5. Plaintiff Animal Legal Defense Fund (“ALDF”) is a nonprofit, tax-exempt 501(c)(3) membership organization that works to protect the lives and advance the interests of animals through the legal system. ALDF is one of the requesters of the records at issue in this case.

6. Defendant Animal and Plant Health Inspection Service is the division of the United States Department of Agriculture that has possession of the requested records, and is the agency to which the FOIA request was sent.

7. Defendant United States Department of Agriculture is the federal agency that has possession of the information requested by Plaintiffs in this case.

**STATUTORY FRAMEWORK AND FACTS GIVING RISE TO PLAINTIFFS' CLAIMS**

**A. Statutory Framework**

8. The Freedom of Information Act was enacted “to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” S. Rep. No. 813, at 3 (1st Sess. 1965; *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976).

9. Under Section 552(a)(6)(A)(i) of the Freedom of Information Act, an agency is required to provide a substantive response to a FOIA request within 20 business days after receipt of that request. 5 U.S.C. § 552(a)(6)(A)(i).

**Facts Giving Rise to Plaintiffs’ Claims**

10. On May 7, 2014, Rise for Animals (then New England Anti-Vivisection Society (“NEAVS”)) and ALDF submitted a petition to APHIS requesting that the agency upgrade the standards for the psychological well-being of primates used in laboratory research.

11. Over five and a half years later, on October 10, 2019, APHIS finally responded to NEAVS’ and ALDF’s petition by denying the rulemaking request. The agency’s denial of the petition is the subject of litigation in this Court. *New England Anti-Vivisection Society et al. v. Elizabeth Goldentyer*, No. 8:20-cv-02004-GJH (D. Md. filed July 9, 2020).

12. In its denial, the agency asserted that upgrading these standards was not necessary because “APHIS inspectors evaluate a facilities’ [sic] compliance with the regulation [sic]” by “examin[ing] and document[ing] all areas of care and treatment that are covered under the AWA” (emphasis added) and that the facilities’ attending veterinarians “and supervisors are responsible for ensuring that employees are trained to recognize and report distress so that it can be adequately addressed.”

13. However, Plaintiffs have reason to believe that APHIS has informed its inspectors that they may *choose* which aspects of a particular facility they wish to inspect, allowing inspectors to ignore or disregard entire sections of the laboratory that impact the wellbeing of nonhuman primates.

14. Therefore, to ascertain how thorough these inspections actually are, on June 17, 2020 Plaintiffs sent a FOIA request to APHIS seeking “all records that would reveal instructions, directives, advice, suggestions, and any other guidance concerning how such inspections are to be conducted; relating to USDA and APHIS inspections of research laboratories; and all records containing any instructions, directives, advice, suggestions, and any other guidance to USDA and APHIS inspectors regarding inspections of research facilities that are accredited by the Association for Assessment and Accreditation of Laboratory Animal Care” created or generated between January 1, 2017 and the date of the request.

15. Although APHIS acknowledged receipt of Plaintiffs’ FOIA request, to date it still has not provided Plaintiffs with the requested records or any other substantive response to their request for records.

**PLAINTIFFS’ CLAIM FOR RELIEF**

16. Defendants APHIS and the USDA have failed to comply with their statutory obligation to provide a substantive response to Plaintiffs’ FOIA request within 20 working days, and are therefore unlawfully withholding the requested records from Plaintiffs.

17. Plaintiffs have a statutory right to the requested records. Therefore, Defendants’ failure to comply with their FOIA obligations injures Plaintiffs by denying them the information they have requested.

**WHEREFORE**, Plaintiffs respectfully request that the Court grant the following relief:

- (1) Declare that Defendants APHIS and USDA have violated the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i);
- (2) Order Defendants to produce the requested documents;
- (3) Award Plaintiffs their attorney fees and litigation expenses; and
- (4) Award any other relief this Court finds just and proper.

Respectfully submitted,

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October 16, 2020