

**Department of
Veterans Affairs**

Memorandum

Date: January 30, 2013

From: VHA FOIA Office (10P2C1)

Subj: Disclosure of Animal Research Documents Pursuant to FOIA Request

To: VHA Field FOIA Officers

1. On August 19, 2008, the Veterans Health Administration (VHA) FOIA Office issued guidance on disclosing documents pertaining to animal research under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. This memorandum supersedes the August 19, 2008 guidance.
2. In 2009 President Obama and Attorney General Holder issued FOIA memorandums calling on all agencies to reaffirm the government's commitment to accountability and transparency. Attorney General Holder's memorandum strongly encouraged agencies to make discretionary releases of information, unless the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions or disclosure is prohibited by law. When an agency determines that it cannot make a full release, it should consider whether it is possible to make a partial release.
3. There is no one FOIA exemption that permits the withholding of all documents in their entirety related to animal research. As with all FOIA requests, the FOIA Officer responsible for processing the FOIA request must review the responsive document(s) and make a-line-by-line disclosure determination.
4. News media continues to report on homes and laboratories of scientists engaged in animal research being vandalized as well as personal attacks of animal researchers and their families by animal rights activists. These reports cause concern for the safety and well-being for all involved in animal research.
5. Consequently, VHA facilities are not to release any personal information about VHA personnel engaged in any way in animal research in response to requests for that information. This includes in response to requests for the information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. VHA facilities are to withhold the identities (including names, laboratory room numbers, and personal addresses) of these individuals when requested under the FOIA. VHA FOIA Officers should use FOIA exemption 6, 5 U.S.C. § 552(b)(6) to withhold personal information as a clearly unwarranted invasion of the personal privacy of these individuals. As a reminder, Attorney General Holder's memorandum provides that discretionary disclosures should be made unless the agency reasonably foresees that disclosure would harm an interest

protected by one of the statutory exemptions or disclosure is prohibited by law. As exemption 6 is a discretionary exemption, the foreseeable harm in the release of the personal information on individuals involved in animal research is the inability to adequately protect these individuals when there is known attacks against those involved in animal research as documented in the news media. The release of personal information of those involved in animal research would harm the privacy interests of VA personnel by exposing them to potential attacks and harassment because it would essentially reveal who they are and where they work, live, etc. Thus, the interest protected by the exemption, i.e., privacy, is inextricably linked with the employees' expectation to work in a safe environment, one free from harassment, threatening behavior, and potential physical attacks.


6. Moreover, due to the risk of malicious trespass on VA property, as well as risk to personnel involved in supporting or performing approved VA research involving animals; internal animal research documents such as Institutional Animal Care and Use Committee (IACUC) minutes, semi-annual IACUC reports, animal protocols, or other federal compliance documents should be released only when appropriately redacted to ensure that floor plans, room numbers, laboratory descriptions, or research activities cannot be ascertained and personnel cannot be identified. VHA FOIA Officers should withhold the information discussed in this paragraph under the deliberative process privilege of FOIA exemption 5. The general purpose of the deliberative process privilege is to "prevent injury to the quality of agency decisions" with the goal of protecting the integrity of the deliberative process where exposure of the records would result in harm to that process. Factual material may be withheld under FOIA exemption 5 when the factual material is so inextricably intertwined with the deliberative material that the disclosure of the facts would disclose or harm the agency's deliberations. As FOIA exemption 5 is a discretionary exemption, the foreseeable harm in the release of personal information is the inability to adequately protect individuals associated with animal research when there is known attacks against those involved in animal research. In addition, the release would jeopardize or compromise the research study itself. As stated in paragraph 3, the FOIA Office must thoroughly review the responsive document(s) and make a-line-by-line disclosure determination and release any segregable portions of the document(s).

7. Facilities should be advised that other FOIA exemptions may apply when records related to animal research protocols are requested. All other FOIA exemptions should be considered when handling requests for animal research documents. Facilities are encouraged to consult with their local Regional Counsel on these issues, as necessary.

8. As with all adverse determinations, VHA facilities should advise the FOIA requester that they may appeal the decision to withhold this information to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

9. Should you have questions concerning the guidance contained in this memorandum, please contact me at (215) 823-4146 or email the VHA FOIA Office utilizing the "VHA FOIA Issues" Outlook mail group.



Timothy H. Graham
Director, VHA FOIA Office