

STATE OF MICHIGAN
COURT OF CLAIMS

**ANIMAL PARTISAN, a nonprofit Virginia
Corporation**

Plaintiff,

v.

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN, a state public
body.**

Defendant.

Case No.: 24- 000045 **MZ**

Hon. Brock A. Swartzle

Complaint

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COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

Plaintiff, Animal Partisan, alleges for its Complaint, as follows:

INTRODUCTION

The plaintiff, Animal Partisan, is a nonprofit organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories. It is common

practice for Animal Partisan to utilize Freedom of Information Acts to obtain relevant documents of public interest from federal, state, and local governments.

On December 12, 2023, Animal Partisan made a routine FOIA request to the University of Michigan (“University”), seeking videos taken in association with a 2019 published study conducted by the University’s Department of Psychiatry.

On January 10, 2024, the University’s Chief Freedom of Information Officer responded, denying the request, claiming exemptions from disclosure by Sections 3 and/or 4 of the Confidential Research and Investment Information Act (“CRIIA”), pursuant to Section 13(1)(d) of the Michigan Freedom of Information Act (“MFOIA”).

This suit follows, as the law does not support the University’s withholding of this information which is likely to shed light on an area of important public debate.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Animal Partisan, is a Virginia nonprofit corporation, headquartered in Glen Allen, Virginia.
2. Defendant, the Board of Regents of the University of Michigan, is a public body corporate under Article VIII, §5 of the Constitution of the State of Michigan, with its principal campus located in Ann Arbor, Washtenaw County, Michigan. MCL. 390.4.
3. Venue is proper pursuant to MFOIA §10, MCL 15.240(1)(b).
4. Pursuant to MFOIA §20, MCL 15.240(5), this action should be “assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”

5. Pursuant to MCL 600.6419(1)(a), the Court of Claims has jurisdiction over this claim.

IMPROPER EXEMPTIONS UNDER MICHIGAN FREEDOM OF INFORMATION ACT

6. The Plaintiff incorporates the preceding section paragraphs here.
7. On December 12, 2023, Will Lowrey, Legal Counsel for Animal Partisan, sent an official FOIA request to the University for the following records:

“Any video recordings taken in association with a study published in 2019 entitled “Stress-sensitive antidepressant-like effects of ketamine in the mouse forced swim test” that was conducted by Paul J. Fitzgerald, Jessica Y. Yen, and Brendon O. Watson of the Department of Psychiatry, University of Michigan.”

EXHIBIT A - FOIA REQUEST

8. On January 10, 2024, Patricia J. Sellinger, Chief Freedom of Information Officer for the University denied the Animal Partisan’s FOIA Request and withheld the requested records:

“Your request is denied and responsive records are withheld from disclosure pursuant to Section 13 (1) (d) of the Michigan Freedom of Information Act which protects from disclosure “records or information specifically described and exempted from disclosure by statute,” namely Sections 3 and/or 4 of the Confidential Research and Investment Information Act.”

EXHIBIT B - FOIA DENIAL

9. The University properly references §13(1)(d) of MFOIA as allowing exemptions from disclosure for records “specifically described and exempted from disclosure by statute.” Mich. Comp. Laws Ann. § 15.243.

10. A public body, here the University, has the burden of proof when applying an exemption. MCL 15.235(5)(a)-(c); *Peterson v Charter Township of Shelby*, 2018 WL 2024578 (Mich Ct App).
11. The Michigan Supreme Court has distinguished that “FOIA is intended primarily as a prodisclosure statute and the exemptions to disclosure are to be narrowly construed...” *Swickard v. Wayne Cnty. Med. Exam’r*, 438 Mich. 536, 544, 475 N.W.2d 304, 307 (1991)
12. However, the University response to Animal Partisan’s request is contrary to Michigan law, as neither Section 3 nor Section 4 of CRIIA apply to the requested records. No applicable legal exemption has been provided, as required under the law.

CRIIA Section 3

13. Section 3(1) of the CRIIA provides the following:

“Except as otherwise provided in this section, ***trade secrets, commercial information, or financial information***, including that information as it relates to computer hardware and software, that is ***provided to*** a public university or college ***by a private external source*** and that is in the possession of the public university or college in the performance of a lawful function is exempt from disclosure as a public record under the freedom of information act...” Mich. Comp. Laws Ann. § 390.1553 (West), ***emphasis added***

14. This section does not legally exempt the videos requested by Animal Partisan from disclosure, as these videos do not qualify as “trade secrets, commercial information or financial information” and further were not “provided to” the University by a “private external source”. As the study notes, “All procedures were carried out at the University of Michigan” and the entirety of the study was

conducted by Paul J. Fitzgerald, Jessica Y. Yen, Brendon O. Watson, from the University's Department of Psychiatry. (See **EXHIBIT C - JOURNAL STUDY**, full study to be filed as supplemental)

CRIIA Section 4

15. Section 4(1) of the CRIIA provides the following (with four specific subsections, a-d, defining the specific requirements for information to qualify under this exemption:

“Sec. 4. (1) Except as otherwise provided in this section, the following information in which a public university or college holds an interest, or that is owned, prepared, used, or retained by, or in the possession of, a public university or college, is exempt from disclosure as a public record under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws” Mich. Comp. Laws Ann. § 390.1554 (West)

16. Section 4(1)(a) of the CRIIA carves out a temporary intellectual property exemption for University employees or contractors, engaged in research, to allow for a reasonable opportunity “for the information to be published in a timely manner in a forum intended to convey the information to the academic community”. *Id.*

17. The University cannot apply the Section 4(1)(a) exemption to these videos as the study was published in 2019.

18. Section 4(1)(b) of the CRIIA provides an exemption “until a reasonable opportunity is provided for the author to secure copyright registration, not to exceed 12 months from the date the work is first fixed in a tangible medium of expression.” *Id.*

19. The University cannot apply the Section 4(1)(b) exemption as the 12 months has long expired, and ample time has elapsed for copyright registration purposes.

20. Section 4(1)(c) of the CRIIA provides a patent exemption, protecting patentable items from release under FOIA, not to exceed a period of five years from the date the records were first made. *Id.*

21. The University cannot apply the Section 4(1)(c) exemption, as these videos are not patentable, and five years has elapsed since they were made.

22. Section 4(1)(d) of the CRIIA provides the following:

(d) Trade secrets or other proprietary information in which a public university or college holds an interest or that a public university or college owns that is determined by the public university or college to have potential commercial value, if a general description of the nature of the information and a description of the extent of the interest held by the public university or college in the information is made available to a person upon request. *Id.*

23. The University cannot apply the Section 4(1)(d) exemption as these videos are neither trade secrets nor proprietary / commercially valuable materials.

24. Section 4(2) of the CRIIA suggests that the above 4(1) exemptions do not apply if a University is selling or marketing the product or process to the public, which is not applicable to the facts here. *Id.*

25. The University vaguely suggests that the CRIIA sections 3 “and/or” 4 apply, but do not offer any specificity and the above clearly shows that there are no applicable legal exemptions available under either of these sections.

26. This Court has previously evaluated similarly flawed applications of the CRIIA exemptions to MFOIA requests and found, “Where plaintiff specifically requested the record, and where no exemption applies, the University must disclose the

record.” Detroit Free Press, Inc. v. The Regents of the University of Michigan, No. 17-000302-MZ, 2018 WL 3733325, at *5 (Mich.Ct.Cl. Mar. 12, 2018)

27. The University's vague rejection of this FOIA request, loosely pointing to two very detailed sections of the CRIIA noting that maybe one “and/or” the other would apply, represents an arbitrary and capricious action under MCL 15.240(7), thereby subjecting the University to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 in punitive damages to Animal Partisan.
28. Pursuant to MCL, 15.240(6), Animal Partisan, if it prevails, is entitled to attorneys' fees and costs:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

RELIEF REQUESTED

Plaintiff, Animal Partisan, respectfully requests that this Court order Defendant, the University of Michigan, to provide all materials, namely the video recordings, sought in their original FOIA request; apply the full penalties available under MCL 15.234(9), MCL 15.240(T), and MCL 15.240b; award attorneys' fees and costs under MCL, 15.240(6); and award any other relief this Court determines to be just and equitable to remedy the University's loose and improper application of exemptions to avoid release of the requested information and making necessary this suit for compliance.

Dated _____, 2024

/s/ John Reynolds
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Attorney for Plaintiff