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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., a non-
profit public benefit corporation,

Plaintiff,

v.

OREGON HEALTH & SCIENCE
UNIVERSITY, a public corporation,

Defendant.

Case No. 20CV15874

**AMENDED COMPLAINT FOR
INFRINGEMENT OF THE OREGON
AND UNITED STATES
CONSTITUTIONS AND VIOLATIONS
OF OREGON PUBLIC RECORDS
LAW AND FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**NOT SUBJECT TO MANDATORY
ARBITRATION**

ORS 21.135(2)(a): \$281

In its latest attempt to stifle public criticism for wasteful and cruel experiments conducted on animals, Defendant Oregon Health & Science University (“OHSU”) has taken the extraordinary step of destroying public records to prevent them from falling into the hands of Plaintiff, People for the Ethical Treatment of Animals, Inc. (“PETA”), or other members of the public with whose viewpoints OHSU disagrees. This case thus presents important questions of discriminatory treatment prohibited by State and Federal Constitutional law, and OHSU’s obligation to assure equal and reasonable access to public records in its custody—regardless of a

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1 requester's views or anticipated criticisms about the matters contained in such records.
2 Specifically, in this action, PETA seeks declaratory and injunctive relief against OHSU to secure
3 PETA's rights to Free Speech and Equal Protection under the Oregon and United States
4 Constitutions and for relief from violations of the Oregon Public Records Law ("OPRL"),
5 pursuant to ORS 28.010, ORS 192.407, and ORS 192.415(1)(b). In support of its Complaint,
6 PETA alleges as follows:

7 INTRODUCTION

8 1.

9
10 At its core, the First Amendment forbids public entities such as OHSU from restricting
11 speech in ways that favor some viewpoints or ideas at the expense of others. Accordingly, OHSU
12 cannot suppress speech based on the speaker's motivating ideology, opinion, or perspective.
13 When responding to public records requests, and in applying its records retention policies and
14 customs, OHSU's disparate treatment of PETA has been deliberate, discriminatory, and without
15 sufficient constitutional justification. PETA therefore seeks relief from OHSU's unlawful
16 conduct as well as for statutory penalties, arising from OHSU's conduct in violation of the
17 Oregon and United States Constitutions and the OPRL.

18 2.

19
20 OHSU has engaged in a pattern and practice to thwart PETA's right to inspect public
21 records in order to prevent PETA from exercising its constitutionally protected rights to
22 publicize information contained in these records and to promote its opposition to OHSU's
23 experimentation on animals. Most recently, OHSU intentionally deleted videographic records of
24

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1 experiments carried out by OHSU researchers on prairie voles (the “Vole Videos”) funded by
2 two National Institutes of Health (“NIH”) grants, and for months misled PETA about the
3 records’ existence. Since PETA discovered OHSU’s unlawful destruction, OHSU has disavowed
4 that it had any obligation to preserve the public records in question, effectively endorsing the
5 position that its members – who are public employees – have discretion to destroy any such
6 public records they wish to keep hidden.
7

8 3.

9 OHSU’s conduct was not only unlawful, in that it intentionally thwarted the public’s and
10 PETA’s right to inspect public records, but also unconstitutional, in that OHSU deleted the
11 records in question because it disagrees with the content of PETA’s speech. Indeed, internal
12 OHSU emails show that—after PETA made public statements calling for an end to the animal
13 experiments shown in the videos—OHSU’s researchers deleted the videos in order to ensure
14 they would not “fall into the wrong hands.” Other evidence similarly shows that OHSU’s
15 obstructionist tactics in responding to PETA’s past records requests were motivated by OHSU’s
16 disagreement over PETA’s anticipated statements about the records, or statements made by
17 PETA in the past about similar records.
18

19 4.

20 As a public body subject to the public records laws, OHSU must comply with applicable
21 records retention schedules and must—in any event—make public records reasonably available
22 for the public to inspect. In addition, as a public body subject to the state and federal
23 constitutions’ guarantees of free speech and equal protection, OHSU cannot constitutionally
24

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1 discriminate (or retaliate) against public records requesters based on their viewpoints—that is to
2 say, the content of their speech.

3 5.

4 By intentionally deleting the Vole Videos to prevent PETA from obtaining them, OHSU
5 has violated both the law and the state and federal constitutions. And, unless this Court
6 intervenes, there is every reason to believe OHSU will do so again, preventing PETA (and the
7 public) from learning about, or debating, the contents of thousands of additional videos depicting
8 animal experiments that OHSU is currently withholding pursuant to exemptions in the public
9 records laws. Judicial relief is necessary both to protect PETA’s rights in this case and essential
10 to ensure the public can meaningfully scrutinize the conduct of its government in every such
11 case.
12

13 6.

14 PETA seeks an order requiring OHSU to produce the Vole Videos in accordance with
15 OHSU’s obligations under the OPRL including, to the extent necessary, an order compelling
16 OHSU to make an appropriate search for copies of the Vole Videos that may still exist, and/or to
17 determine whether the deleted Videos may be restored, and to produce such records to the extent
18 they may be restored and/or located. In any event, PETA seeks a declaration that OHSU’s failure
19 to make the Vole Videos reasonably available for inspection, its failure to retain the Vole Videos
20 in accordance with its own records retention schedule, and its intentional deletion of the Vole
21 Videos violate the OPRL and related regulations.
22
23
24

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7.

Because OHSU intentionally deleted these public records to prevent PETA from advancing its constitutionally protected viewpoint, PETA also seeks a declaration that OHSU's conduct violated the Oregon and United States Constitutions and an injunction prohibiting OHSU from engaging in similar conduct with respect to certain videos (the "remaining Primate Videos") it is currently withholding from PETA and the public.

PARTIES

8.

Plaintiff PETA is a not-for-profit public interest corporation formed under the laws of Virginia and registered with the State of Oregon to conduct business as a foreign non-profit corporation. PETA is dedicated to protecting animals, including those used in experimentation, from abuse, neglect, and cruelty. PETA undertakes these efforts through, *inter alia*, news dissemination campaigns, cruelty investigations, animal rescue, legislation, public education efforts, and peaceful protest campaigns.

9.

Defendant OHSU is a public body located in Multnomah County, Oregon. Defendant is subject to the OPRL pursuant to ORS 353.100(1).

JURISDICTION AND VENUE

10.

The Court has subject matter jurisdiction pursuant to ORS 28.010, ORS 192.411, ORS 192.415, and ORS 192.431.

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11.

Venue is proper in this Court pursuant to ORS 192.415(1)(b) because Defendant is located in Multnomah County.

THE PUBLIC RIGHT TO INSPECT PUBLIC RECORDS

12.

Under the OPRL’s statutory scheme, “disclosure is the rule.” *Guard Pub. Co. v. Lane County School Dist. No. 4J*, 310 Or 32, 37 (1990). The OPRL embodies Oregon’s “strong and enduring policy that public records and governmental activities be open to the public.” *Jordan v. Motor Vehicles Div., State of Or.*, 308 Or 433, 438 (1989).

13.

Under this framework, “[e]very person has a right to inspect any public record of a public body in this state” unless the record is expressly exempt pursuant to other provisions of the OPRL. ORS 192.314(1).

14.

A “public record” is broadly defined to include any writing that contains information relating to the conduct of the public’s business and “prepared, owned, used or retained by a public body regardless of physical form or characteristics.” ORS 192.311(5)(a).

15.

“Writing” is also broadly defined to mean “every means of recording,” including electronic recordings. ORS 192.311(7).

16.

1
2 The Oregon Department of Justice has confirmed that the location of records does not
3 alter their status of “public records.” According to the Attorney General’s *Public Records and*
4 *Meetings Manual*, records “prepared outside” a state agency that contain “information relating to
5 the conduct of the public’s business” and are “owned, used, or retained” by the agency are public
6 records within the scope of the OPRL.

7
8 **OHSU’S OBLIGATION AND ADOPTION OF POLICY TO PRESERVE PUBLIC**
9 **RECORDS**

17.

10 A public entity’s obligation to preserve public records is mandated pursuant to the OPRL,
11 regulations promulgated by the Secretary of State, and criminal law. It is a crime to knowingly
12 destroy, conceal, remove, or falsely alter a public record without lawful authority. ORS 162.305.

18.

15 The preservation obligations under the OPRL requires each state agency and political
16 subdivision to “maintain a public record or accurate copy of a public record in accordance with a
17 retention schedule authorized under ORS 192.018 or ORS 192.105, without regard to the
18 technology or medium used to create or communicate the record.” ORS 192.108.

19.

20 The preservation obligation applies to any record that (A) is prepared, owned, used or
21 retained by a state agency or public subdivision; (B) relates to an activity, transaction or function
22 of a state agency or political subdivision; and (C) is necessary to satisfy the fiscal, legal,
23

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1 administrative or historical policies, requirements or needs of the state agency or political
2 subdivision. ORS 192.005.

3 20.

4 Pursuant to the OPRL, the Secretary of State has promulgated regulations governing the
5 retention of public records. Those regulations require OHSU to “ensure that all public records in
6 all formats or mediums, including electronic, are maintained in accordance with an applicable
7 records retention schedule approved by the State Archivist,” and further require OHSU to
8 “ensure that electronic public records are accessible to the public for their entire authorized
9 retention period.”
10

11 21.

12 The applicable regulations also specifically require that public entities suspend “[a]
13 scheduled destruction of records, regardless of medium or physical format, which are the subject
14 of a public records request or pending litigation * * * until the request or litigation has been
15 resolved.”
16

17 22.

18 Consistent with the OPRL and regulations promulgated thereunder, OHSU implemented
19 a Records Retention Policy (“OSHU Policy”), which applies to all public records generated by
20 OHSU or an OHSU member “in any format,” expressly including video, “regardless of location
21 or ownership of the storage transmission or computer device.” The OHSU Policy specifically
22 acknowledges that “OHSU is subject to the Public Records Law,” that “any Record * * * may be
23 requested under the law,” and that “[a]ny OHSU Member may be required to provide Record(s)
24

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1 if a valid Public Records request is made and the record is relevant.” The OHSU Policy requires
2 each department or division to ensure its compliance with the retention schedule, including
3 ensuring each department is “maintaining Records for the length of time required * * * .”

4 23.

5 The OHSU Policy specifically provides that “[a]ll Records created by OHSU and/or
6 OHSU Members are OHSU Records and OHSU property.” It also specifically requires each
7 department or division, in the course of determining “how [public] Records can be retrieved or
8 preserved,” to ensure that it “consider[s] locations inside and outside of OHSU where Records
9 might be kept * * * .”

11 24.

12 Under the OHSU Policy, “Research Services-NIH Grant Records” must be retained for
13 “3 years after the Final Status Report Has Been Filed.” To the extent it does not specify any
14 applicable retention period for a particular set of records, the OHSU Policy instructs that
15 “analogous provisions from the Oregon State Archivist’s general record retention rules may be
16 used for guidance.” The analogous provisions from the Oregon State Archivist’s general records
17 retention rules—those applicable to state universities’ retention of research materials—mandate
18 that research records for grant-funded projects, including but “not limited to research data * * *
19 and related documentation,” must be retained for “5 years after final financial report is submitted
20 and account is closed[.]”

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FACTUAL BACKGROUND

25.

This case arises in the context of two sets of public records requests by PETA under the OPRL for videos of experiments on animals conducted by OHSU researchers pursuant to National Institutes of Health (“NIH”) grants. The first set of requests sought several thousand video recordings of publicly-funded experiments on primates (the “Primate Videos”); the second sought video recordings of publicly-funded experiments on prairie voles (the “Vole Videos”). This case seeks relief not only to declare that OHSU’s intentional destruction of the Vole Videos violated the OPRL and PETA’s rights under the Oregon and U.S. Constitutions, but also to enjoin OHSU from similarly destroying the remaining Primate Videos (or otherwise violating the OPRL by failing to make them available for inspection).

I. THE VOLE VIDEOS

26.

In 2016, OHSU applied for—and was awarded—an NIH grant (“Grant RO1AA019793”), totaling almost two million dollars, to investigate how alcohol drinking influences pair bonding in prairie voles. The Final Status Report for this Grant has not yet been filed.

27.

Grant RO1AA019793 identifies the primary location for the performance of the funded project at OHSU’s campus, 3181 SW Sam Jackson Park Road, Portland, Oregon. Andrey Ryabinin (“Ryabinin”), an OHSU professor of behavioral neuroscience, was identified as “the leader on this project” who “will oversee and participate in all aspects of the proposed work.”

28.

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33.

1
2 Following publication of the Voles Article, PETA issued a press release on November 29
3 sharply criticizing OHSU’s research on voles (“University Faces Flak Over Deadly Taxpayer-Funded
4 Experiments on Voles”). PETA also published a blog post on its widely-viewed website criticizing
5 the vole research (“Voles Fed Alcohol, Killed in Dumb Experiment Studying Why Drunk Men
6 Cheat”) and calling on OHSU to terminate all such research in the future. PETA scientists
7 simultaneously sent a letter to OHSU’s internal animal care and use committee challenging the
8 integrity and validity of the voles study and calling for an end to such studies in the future.
9

34.

10
11 PETA’s public criticism of the vole studies—and the press attention it generated in *The*
12 *Oregonian*—caused OHSU to strategize internally, including with Ryabinin himself, on the specific
13 subject of how to respond to PETA’s criticism. Among other things, in response to PETA’s criticism,
14 OHSU assured the public that its experiments were valuable and followed all applicable regulations
15 and protocols—two claims that notably the public could only assess by obtaining access to the Vole
16 Videos.

17 **II. PETA’S REQUESTS FOR THE VOLE VIDEOS**

35.

18
19 On January 22, 2018, PETA submitted a public records request to OHSU seeking “copies
20 of all records associated with ongoing, completed, and/or planned studies for which Andrey E.
21 Ryabinin was the Principal Investigator (PI) or co-PI” from January 2016 to the date of the request.
22 The request sought (but was expressly not limited to) any protocols for such studies approved by
23
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1 OHSU's Institutional Animal Care and Use as well as any photographic or videographic records
2 associated with such protocols.

3 36.

4 Upon receiving the request, Ryabinin acknowledged internally that PETA was "most
5 likely target[ing] me for my work with prairie voles." And, in fact, videos of both Ryabinin's
6 vole experiments (the Vole Videos), as well as numerous videos of certain experiments Ryabinin
7 conducted on mice, were responsive to PETA's request.
8

9 37.

10 Nonetheless, beginning in February 2018, OHSU misled PETA by claiming no
11 responsive photographs or videos existed in response to PETA's request, forcing PETA to
12 submit two additional public records requests (in July and August 2018) specifically seeking any
13 photographs or videos of the vole experiments. In response to PETA's second (July) request,
14 Ryabinin incorrectly identified only videos of mice experiments as responsive.
15

16 38.

17 Because OHSU still had failed to produce or even acknowledge the existence of the Vole
18 Videos, on August 15, 2018, PETA submitted yet another request to OHSU for "copies of
19 photographs and videos captured as part of the experiments reported in the paper, 'Alcohol's
20 effects on pair bond maintenance in male prairie voles,'" published by Walcott and Ryabinin in
21 November 2017, as well as other videos.
22

23 //

24 //

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39.

1
2 In response to PETA's third request, OHSU belatedly produced videos of Ryabinin's
3 mice experiments, but still did not provide the Vole Videos referenced in the Voles Article.
4 Therefore, on October 19, 2018, PETA's Dr. Alka Chandna wrote to OHSU to question OHSU's
5 assertion that "no responsive documents were identified," given that the Voles Article explicitly
6 referenced videos of experiments that would have been responsive to PETA's request.
7

40.

8
9 On October 22, 2018, OHSU responded that "Ryabinin confirmed the videos of resident-
10 intruder test (as well as the partner preference test) are not available because these experiments
11 were performed at the Veterans Administration Hospital." OHSU falsely claimed that "[t]he
12 videos are the property of VA Hospital and the VA Hospital is the custodian of such videos, not
13 OHSU. The VA Hospital does not allow distribution of videos taken within the VA Hospital." In
14 truth, the VAMC did not have custody of the videos and its policy against video recording
15 expressly exempts videos taken for research purposes. Ryabinin even obtained express written
16 permission from the VAMC to record the Voles Videos.
17

41.

18
19 In responding to PETA's third request for the Voles Videos, OHSU still did not disclose
20 that they were kept at Ryabinin's laboratory at OSHU, nor that they were destroyed while in
21 OHSU's custody and (as of October 22, 2018) no longer existed. Rather, OHSU directed PETA
22 to request them from the VAMC's Freedom of Information Act ("FOIA") coordinator.
23

24 //

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42.

Pursuant to OHSU's guidance, on October 29, 2018, PETA contacted the VAMC's FOIA coordinator and requested copies of all "videos captured as part of experiments" reported in the Voles Article.

43.

On November 9, 2018, the VAMC informed PETA that Ryabinin (who "is not a VA employee") had responded that "the video data were destroyed."

44.

In fact, Ryabinin's emails reveal that he decided to destroy the Vole Videos at some point after publication of the Voles Article in order to ensure the videos "would not fall into wrong hands." Upon information and belief, even though Ryabinin's research pursuant to the NIH grants is ongoing and planned in the future, copies of the Vole Videos were destroyed with Ryabinin's knowledge and/or at his request sometime after PETA published a scathing critique of Ryabinin's vole experiments and called for an end to his research on voles. OHSU has since ratified Ryabinin's conduct by contending he had no obligation to preserve the records.

45.

OHSU researchers testified at a recent trial involving videographic records of animal experiments that such records are of great value for OHSU's ongoing and future research efforts. In light of this testimony, and upon information and belief, and given Ryabinin's own frank admission, it is likely that OHSU destroyed the Vole Videos not because OHSU perceived they

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1 lacked further value, but rather to prevent them from falling into the hands of PETA—with
2 whose viewpoint and First Amendment activities OHSU disagrees.

3 46.

4 Throughout the process of OHSU’s response to PETA’s public records requests,
5 Ryabinin demonstrated opposition to releasing records to PETA based not on any legitimate
6 statutory consideration under the OPRL, or rational reason from deviating from OHSU Policy
7 and customs, but rather due to his disagreement with PETA’s message and anticipated use of the
8 videos. For example, despite recognizing the responsiveness of certain mice videos, he suggested
9 that OHSU’s response should be informed by the fact that it was PETA that had requested the
10 videos. Specifically, Ryabinin wrote that he “ha[d] no problems sharing this video with lay
11 audience. However, of course I worry that PETA might want to manipulate the video to distort
12 what is shown.” On that basis, he suggested that—despite the videos’ acknowledged
13 responsiveness to PETA’s request—OHSU’s public records coordinator should “evaluate
14 whether it is appropriate for me to provide these videos.” He later added that, because he
15 considered the mice videos “benign,” he had “no specific concerns with the release of the videos,
16 except PETA’s reputation of distorting facts.”
17
18

19 47.

20 After the VAMC ultimately declined to renew the protocol for Ryabinin’s vole
21 experiments, Ryabinin expressed animus towards PETA, writing to VAMC officials that he
22 believed the “popularity” of his work had “attracted the attention of PETA, an organization
23 known to distort information to discredit important research performed in laboratory animals.”
24

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1 Ryabinin further informed the VAMC that he “underst[ood] the unpleasantness of dealing with
2 this organization.” He also expressed “worr[y] that discontinuing a research direction due to
3 inquiry from PETA will send a wrong message to PETA and its supporters.”

4 **III. PETA’S PETITION TO THE DISTRICT ATTORNEY**

5 48.

6 On April 13, 2020, PETA filed a petition to review OHSU’s effective denial of PETA’s
7 public records request for the Vole Videos with the District Attorney for Multnomah County
8 pursuant to ORS 192.411 and ORS 192.415(1)(a) (the “Petition”).
9

10 49.

11 The District Attorney acknowledged receipt of the Petition on April 13, 2020, and on the
12 same day requested information from OHSU regarding the Petition.

13 50.

14 As of the filing of the initial complaint on April 21, 2020, the District Attorney had not
15 issued an order under ORS 192.415 with respect to PETA’s Petition. Pursuant to ORS
16 192.418(1), the failure of the District Attorney to issue an order denying, granting, or denying in
17 part or granting in part a petition within seven days from the day of receipt of the petition shall
18 be treated as an order denying the petition for the purpose of determining whether a person may
19 institute proceedings for injunctive or declaratory relief under the OPRL.
20

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54.

1
2 Following trial in March 2020, Judge David Rees of the Multnomah County Circuit
3 Court ordered OHSU to disclose 74 of the Primate Videos, reasoning that, whether or not the
4 faculty research exemption applied, the public interest required their disclosure both to ensure
5 OHSU's compliance with animal welfare requirements and to understand whether OHSU's
6 animal experiments are a "worthy use of public funds."
7

55.

8
9 However, the Court concluded that several thousand additional Primate Videos were not
10 presently subject to disclosure because they had not yet been the subject of publication, and
11 therefore "currently" qualified for the faculty research exemption, but concluded that those
12 several thousand videos "may become subject to disclosure under the OPRL" in the future if and
13 when OHSU publishes analyses based on them or ceases using them in research.
14

56.

15
16 Since OHSU's release of the 74 Primate Videos in accordance with the Court's judgment
17 in that case, PETA has disseminated relevant portions of those videos to the public and the
18 media, challenging the validity of the research along with messaging calling for an end to
19 primate experiments at OHSU.
20

57.

21 PETA fully intends to seek the remaining Primate Videos once the conditions identified
22 by Judge Rees are satisfied. However, based on OHSU's intentional destruction of the Vole
23 Videos and its express (but impermissible) position that OHSU members may deviate from
24

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1 OHSU's Policy and destroy public records at their discretion, including when they disagree with
2 a requester's viewpoint or messaging, PETA has legitimate fears that the remaining Primate
3 Videos may be similarly destroyed before PETA has a reasonable opportunity to obtain them.
4 This would not only forever deprive PETA and other public records requesters of the statutory
5 right to inspect those videos, but would also deprive PETA and the public of the ability to
6 consider the information depicted in those videos in public discourse and policymaking
7 regarding animal experimentation.
8

9 **CLAIMS FOR RELIEF**

10 58.

11 A justiciable controversy presently exists between PETA and OHSU over (1) whether
12 OHSU violated the OPRL by intentionally deleting the Vole Videos in order to prevent PETA
13 from obtaining them, by failing to preserve the Vole Videos during the applicable records
14 retention period, or—at minimum—by failing to make them reasonably available for public
15 inspection; (2) whether OHSU has an obligation to preserve the remaining Primate Videos
16 during the applicable records retention policy or—at minimum—to make them reasonably
17 available for public inspection; and (3) whether OHSU's destruction of the Vole Videos to
18 prevent PETA from obtaining them constitutes a violation of PETA's rights to free speech and
19 equal treatment under Article I, Sections 8 and 20 of the Oregon Constitution and the First and
20 Fourteenth Amendments to the U.S. Constitution.
21

22 //

23 //

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FIRST CLAIM FOR RELIEF
Declaratory Relief—Failure to Provide Records

59.

The above paragraphs are hereby re-alleged and incorporated by reference.

60.

Plaintiff seeks declaratory relief pursuant to ORS 28.010 and ORS 192.415(1)(b).

61.

The Vole Videos are writings within the meaning of ORS 192.311(7) and public records within the meaning of ORS 192.311(5)(a) because they relate to the conduct of the public’s business, and because they were “prepared, owned, used or retained” by OHSU. ORS 192.311(5)(a).

62.

By destroying the Vole Videos, OHSU violated the OPRL’s requirement that public records be made available for inspection pursuant to ORS 192.314, including the requirement that it provide “proper and reasonable opportunities for inspection and examination of the records” pursuant to ORS 192.318.

63.

The Vole Videos were improperly withheld because OHSU has not met, and cannot meet, its burden to demonstrate that as of August 15, 2018, the Vole Videos were not within its custody, possession, or control. At minimum, OHSU cannot meet its burden to demonstrate that the Vole Videos were not within its custody, possession, or control as of January 22, 2018, the date of PETA’s original request for the Vole Videos.

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64.

The Vole Videos were further improperly withheld for purposes of the OPRL by OHSU's obstructive conduct, including its misleading responses as to their existence and their location as well as their intentional destruction.

65.

Plaintiff is entitled to an award of statutory penalties under ORS 192.407(3)(b) for OHSU's failure to respond (or, at minimum, undue delay in responding) to PETA's request for the Vole Videos.

66.

Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to ORS 192.431(3) or, in the alternative, pursuant to the public benefit doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.

SECOND CLAIM FOR RELIEF
Declaratory Relief—Failure to Retain Records

67.

The above paragraphs are hereby re-alleged and incorporated by reference.

68.

The Vole Videos are "public records" within the meaning of ORS 192.005(a) because they were "prepared, owned, used or retained" by OHSU; "relate[] to an activity" of OHSU; and their creation and use were "necessary" to satisfy OHSU's contractual requirements in order to receive, and to perform the proposed research in compliance with, the NIH Grants.

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69.

The Vole Videos were subject to the records retention requirements of ORS 192.108 and OAR chapter 166.

70.

OHSU failed to preserve the Vole Videos in accordance with the requirements of ORS chapter 192, OAR chapter 166, and the OHSU Policy. In the alternative, OHSU failed to preserve the Vole Videos for “5 years” after the final financial report for the NIH Grants were submitted and the account closed, as required by the analogous rules of the Oregon State Archivist’s general records retention policies applicable to state university research records.

71.

Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to ORS 192.431(3), or, in the alternative, pursuant to the public benefit doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.

THIRD CLAIM FOR RELIEF
Injunctive Relief

72.

The above paragraphs are hereby re-alleged and incorporated by reference.

73.

PETA intends to seek disclosure of the remaining Primate Videos after OHSU publishes the results of the experiments shown in the Primate Videos, or after OHSU ceases such research, and before the period of time for preserving the Primate Videos has expired.

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74.

1
2 Money damages are inadequate to remedy any premature destruction of the Primate
3 Videos. This court has jurisdiction to enjoin OHSU “from withholding records and to order the
4 production of any records improperly withheld from the person seeking disclosure.” ORS
5 192.431(1). This court should therefore enjoin OHSU destroying any of the Primate Videos
6 during the OPRL mandated retention period or, at minimum, require OHSU to maintain those
7 records for a reasonable time such that PETA has a “proper and reasonable opportunity” to
8 inspect those records pursuant to ORS 192.318.
9

75.

10
11 Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to ORS
12 192.431(3), or, in the alternative, pursuant to the public benefit doctrine set forth in *Deras v. Myers*,
13 272 Or 47, 535 P2d 541 (1975) and its progeny.
14

FOURTH CLAIM FOR RELIEF

***Declaratory and Injunctive Relief—Infringement of Constitutional Guarantees to Free
Speech and Expression***

76.

17
18 The above paragraphs are hereby re-alleged and incorporated by reference.

77.

19
20 As a public body, OHSU is bound by the guarantees of free speech and expression set
21 forth in Article I, Section 8, of the Oregon Constitution and the First and Fourteenth
22 Amendments to the United States Constitution.
23
24

25
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78.

In responding to public records requests, both Article I, Section 8, and the First and Fourteenth Amendments prohibit OHSU from discriminating or retaliating in the provision of public records, as well as disparate treatment, based on the content and viewpoint expressed by the requester’s speech.

79.

OHSU’s selective non-enforcement and departure from the OPRL and OHSU Policy and customs, and its intentional deletion of the Vole Videos to prevent PETA from obtaining them based on the content of PETA’s speech—or, at minimum, OHSU’s failure to make them reasonably available for PETA’s inspection on that basis—infringed on PETA’s constitutional rights to free speech and expression under Article I, Section 8, and the First and Fourteenth Amendments.

80.

PETA is entitled to recover its reasonable attorneys’ fees pursuant to the public benefit doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.

FIFTH CLAIM FOR RELIEF
Declaratory and Injunctive Relief—Denial of Rights to Privileges and Immunities and Equal Protection

81.

The above paragraphs are hereby re-alleged and incorporated by reference.

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82.

As a public body, OHSU is bound by the guarantees of privileges and immunities and equal protection and due process set forth in Article I, Section 20, of the Oregon Constitution and the Fourteenth Amendment to the United States Constitution.

83.

The right to inspect public records is a privilege—that is, an entitlement created pursuant to state law and policy—that OHSU must provide on an equal basis to all citizens.

84.

OHSU’s selective non-enforcement and arbitrary disregard of the OPRL and OHSU Policy, and its intentional deletion of the Vole Videos—or, at minimum, its failure to make them reasonably available for PETA’s inspection on that basis—based on OHSU’s disagreement with PETA’s views, infringed on PETA’s constitutional right to equal privileges under Article I, Section 8, of the Oregon Constitution, and its right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

85.

PETA is entitled to recover its reasonable attorneys’ fees pursuant to the public benefit doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.

WHEREFORE, Plaintiff prays for a judgment in favor of Plaintiff and against Defendant as follows:

1. Declaring that as of the time of Plaintiff’s request for the Vole Videos, they were “public records” subject to disclosure under the OPRL;

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- 1 2. Declaring that OHSU violated the OPRL by failing to provide the Vole Videos in
2 response to Plaintiff’s request;
- 3 3. Declaring that OHSU violated the OPRL, OAR chapter 166, and its statutorily-
4 required Records Retention Policy by destroying the Vole Videos without, at
5 minimum, providing a proper and reasonable opportunity for their inspection;
- 6 4. Enjoining OHSU from destroying the Primate Videos during the retention period
7 mandated by the OPRL, OAR chapter 166, and its statutorily-required Records
8 Retention Policy or, at minimum, until such time as PETA has a proper and
9 reasonable opportunity to inspect them;
- 10 5. Declaring that OHSU’s selective non-enforcement and arbitrary departure from
11 OSHU Policy and deletion of the Vole Videos to prevent PETA from obtaining
12 them—or, at minimum, failure to provide a proper and reasonable opportunity for
13 their inspection—based on OHSU’s disagreement with PETA’s views, violated
14 Article I, Sections 8 and 20 of the Oregon Constitution and the First and
15 Fourteenth Amendments to the United States Constitution;
- 16 6. Awarding PETA statutory penalties under ORS 192.407(3)(b) for OHSU’s
17 effective failure to respond (or, at minimum, undue delay in responding) to its
18 request for the Vole Videos;
- 19 7. Awarding PETA all costs and attorneys’ fees associated with this action pursuant
20 to ORS 192.431(3) and/or the public benefit doctrine as described in *Deras v.*
21 *Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny; and
- 22 8. Granting all other just and equitable relief the Court deems necessary and proper.

23 Dated: October 7, 2020

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