

November 1, 2024

Via e-mail and first-class mail

Gregory Washington, George Mason University President
President@gmu.edu

Paul G. Allvin, Vice President and Chief Brand Officer
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Dalia Abdrabouh, George Mason University FOIA Officer
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PEOPLE FOR
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Re: PETA's Public Records Request No. 24-2024062

Dear President Washington, Mr. Allvin, and Ms. Abdrabouh:

I am writing on behalf of People for the Ethical Treatment of Animals ("PETA") to demand that George Mason University produce records responsive to PETA's outstanding public records request submitted *more than eight months ago*. As detailed in the attached Appendix, PETA has made numerous efforts to resolve this issue without resorting to litigation. However, if PETA does not receive the responsive records by November 15, 2024, it will be compelled to pursue its legal remedies under Virginia's Freedom of Information Act ("FOIA"). As a GMU alum from the Class of 1984, I'm deeply dismayed by GMU's conduct in this matter.

Virginia's FOIA is intended to ensure that the public has "ready access to public records in the custody of a public body."¹ Accordingly, it requires public bodies to respond to a public records

PETA FOUNDATION IS AN OPERATING
NAME OF THE FOUNDATION TO
SUPPORT ANIMAL PROTECTION.

ENTITIES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Switzerland
- PETA Netherlands
- PETA Foundation (U.K.)

¹ VA. CODE § 2.2-3700(B). A "public body" includes any "agency of the Commonwealth." *Id.* § 2.2-3701; see *Responding to Virginia Freedom of Information Act (FOIA) Requests for Records*, GMU (Oct. 11, 2024), <https://universitypolicy.gmu.edu/policies/responding-to-virginia-freedom-of-information-act-foia-requests-for-records/> ("As an agency of the Commonwealth,

request within **five working days** of receiving the request,² and it specifies that, within those five working days, a public body must either provide the requester responsive records or send the requester, in writing, one of the four responses listed under section 2.2-3704(B).³ If a public body cannot provide responsive records within five working days, the public body must explain the conditions that make doing so impossible.⁴ The public body then has only an additional **seven working days** to provide responsive records or one of the four responses listed under section 2.2-3704(B).⁵ This means that a public body has, at most, **twelve working days** to respond to a request.⁶ If a public body cannot provide records within twelve working days, the public body must make a *reasonable effort* to reach an agreement concerning the production of records

George Mason University is subject to the requirements of the Virginia Freedom of Information Act (FOIA).”).

² VA. CODE § 2.2-3704(B).

³ Under Section 2.2-3704(B), a public body “in all cases” must either provide the requested records within five working days or provide one of the following responses:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 work days in which to provide one of the four preceding responses.

⁴ *Id.* § 2.2-3704(B)(4).

⁵ *Id.* (“[T]he public body shall have an additional seven work days . . . to provide one of the four preceding responses.”).

⁶ Although FOIA indicates that the time to respond is tolled while the public body awaits a response from the requester regarding the cost estimate, *id.* § 2.2-3704(F), (H), GMU received PETA’s response on March 8.

before petitioning a court for more time to respond to a request.⁷ The failure to respond to a request for records as specified under FOIA is considered a denial of the request and “shall constitute a violation.”⁸

The eight months that have passed since PETA made its request amount to a period approximately *20 times* the twelve working days allowed by law, and GMU has failed to make reasonable efforts to reach an agreement with PETA concerning the production of the requested records, as evidenced by GMU’s failure to respond, or respond accurately, to PETA’s multiple follow-up messages.⁹

Absent PETA’s receipt of responsive records no later than November 15, 2024, PETA will be forced to pursue its legal remedies under section 2.2-3713.

Additionally, non-PETA requests have been listed under PETA’s request no. 24-2024062 on GMU’s online portal. In light of this, please confirm that nothing pertaining to PETA’s request has been posted under an incorrect request number or account within the portal.

Thank you for your attention to this matter.

Very truly yours,



Jeffrey S. Kerr
Chief Legal Officer
(757) 573-7382 (Mobile)

Enclosures

⁷ *Id.* § 2.2-3704(C); see *Freedom of Information Act Requests*, GMU (last updated July 1, 2016) (“If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.”).

⁸ VA. CODE § 2.2-3704(E).

⁹ See Appendix.

APPENDIX

February 21:¹⁰ PETA submitted a public records request (No. 24-2024062)¹¹ for “[a]ll records—including but not limited to veterinary records, incident reports, violations, summary sheets, videos, and photographs—pertaining to IACUC-approved protocol 0420.”¹²

March 4: GMU’s then-FOIA Officer, Susan Harris, responded through GMU’s online portal estimating that PETA’s request would cost \$700 and stating that GMU would process PETA’s FOIA request upon receipt of those funds.¹³

March 8: PETA responded to Ms. Harris through the online portal confirming that PETA “would like to proceed with obtaining the records pertaining to Protocol #0420” and expanding PETA’s initial request to include “the name of the PI (Principal Investigator).”¹⁴

March 12: PETA sent its check for \$700, which GMU processed on March 21, and the transaction posted to PETA’s bank account on March 25.

September 3: PETA sent a follow-up message through the online portal informing GMU that PETA sent the \$700 payment and asking for a status update.¹⁵ GMU did not respond.

September 16: PETA sent Ms. Harris an email asking when GMU will fulfill PETA’s request.¹⁶ Ms. Harris never responded.

September 18: PETA attempted to call GMU’s FOIA Office; however, PETA was unable to locate a telephone number on GMU’s website. PETA called GMU’s main switchboard, but the individual working could not locate the

¹⁰ All dates herein are from 2024.

¹¹ Although PETA’s records request inadvertently cited the federal FOIA statute, GMU understood that PETA’s request falls under the Virginia’s FOIA statute, as evidenced by GMU’s acceptance of PETA’s check for public records and related communications. *See* VA. CODE § 2.2-3704(B) (explaining that a “request need not make reference to [Virginia’s FOIA statute] in order to invoke the provisions of this chapter or to impose the time limits for response by a public body”).

¹² *See* Exhibit A.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* Exhibit B.

FOIA Office's contact information, so they transferred PETA's call to GMU's Police and Public Safety Office, which could not locate such information either.

September 18: PETA called the Office of the President and left a voicemail requesting a return phone call concerning PETA's request. PETA never received a return call.

September 19: PETA emailed President Washington summarizing its attempts to obtain responsive records and noting that GMU deposited PETA's check on March 25.¹⁷

September 23: Ms. Harris emailed PETA stating that there was "an issue in processing [PETA's] check which has been resolved," that she was "making every effort to get responsive documents out to [PETA] as soon as possible," and that PETA should "check back in on Oct 4," if PETA had not received documents by then.¹⁸

September 23: PETA replied to Ms. Harris asking why PETA was not alerted about the apparent issue in processing PETA's check much sooner and requesting more details about the issue.¹⁹ Ms. Harris never responded.

October 9: Lori Kettler, counsel for PETA, emailed President Washington and Ms. Harris asking when PETA would receive the records.²⁰ Neither President Washington nor Ms. Harris responded.

October 15: The Commissioner of the Virginia Department of Agriculture and Consumer Services, Joseph Guthrie,²¹ forwarded to PETA—and other members of the Task Force on Transparency in Publicly Funded Animal Testing Facilities—an email from Paul G. Allvin, GMU's Vice President and Chief Brand Officer.²² Mr. Allvin's email stated that GMU is "working to resolve [PETA's] request as quickly as possible."²³ Mr. Allvin indicated that PETA's request was paused as GMU awaited word on whether PETA would

¹⁷ See Exhibit C.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Exhibit D.

²¹ To illustrate the challenges requesters face in obtaining public records, on October 7, PETA emailed Commissioner Guthrie, who is also the Chair of the Task Force on Transparency in Publicly Funded Animal Testing Facilities, to inform him of PETA's difficulty obtaining responsive records from GMU.

²² See Exhibit E.

²³ *Id.*

pay the FOIA fee, that PETA's request was "inadvertently left on pause" after receiving payment, and that a batch of documents were undergoing review for redactions and that he expected to resolve the request "very shortly."²⁴

October 21: PETA emailed Mr. Allvin, among others, to point out that PETA confirmed on March 8 that it would pay the FOIA fee, meaning GMU should not have been "await[ing] word."²⁵ Moreover, PETA stated that, despite multiple follow-up messages, PETA only learned of an apparent "issue in processing [the payment]" *six months after* GMU deposited PETA's check.²⁶ PETA emphasized that it still has not received any responsive records.²⁷ PETA also notified GMU that an unrelated, non-PETA request has been listed under PETA's matter on GMU's online portal.²⁸

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*; see Exhibit F.