



**Department of Energy**  
Office of Science  
Integrated Support Center - Chicago Office  
9800 South Cass Avenue  
Argonne, Illinois 60439

February 12, 2016

Mr. Ryan Merkley  
5100 Wisconsin Ave., NW, Suite 400  
Washington, DC 20016 60189

Via e-mail: [rmerkley@pcrm.org](mailto:rmerkley@pcrm.org)

Dear Mr. Merkley:

SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) OFFICE OF SCIENCE (SC)-CHICAGO OFFICE  
(CH) FREEDOM OF INFORMATION ACT (FOIA) REQUEST NO. #CH-2016-00351-F

I am the authorizing official responsible for making the determination required by Section 1004.5(b) of DOE regulations found at 10 CFR Part 1004, implementing the FOIA, 5 U.S.C. § 552. This letter is in partial response to your subject FOIA request.

In your original request, you were seeking the following from Jan 1, 2013 to the present:

- 1) All Institutional Animal Care Use Committee (IACUC) protocols, protocol reviews, and other IACUC documents regarding the use of non-human primates at Brookhaven National Laboratory and Lawrence Berkeley National Laboratory
- 2) All documents related to requests for beam time at Brookhaven National Laboratory and Lawrence Berkeley National Laboratory for research involving the use of non-human primates.
- 3) All communications within Brookhaven National Laboratory and between Brookhaven National Laboratory and the Department of Energy and its employees regarding the use of non-human primates in research, including but not limited to variances, corrections, warnings, and fines related to this research.
- 4) All communications within Lawrence Berkeley National Laboratory and between Lawrence Berkeley National Laboratory and the Department of Energy and its employees regarding the use of non-human primates in research, including but not limited to variances, corrections, warnings, and fines related to this research.
- 5) All photographs and video footage related to items 1) through 4) above.

You also indicated in your request that, "For the purposes of this FOIA "communications" includes, without limitation, e-mail messages and other electronic communications, letters,

faxes, meeting agendas, minutes notes, summaries of conversations, and any other form of hand-written, types or recorded communication.”

In your e-mail of January 11, 2015, you indicated you would be amenable to narrowing request items #3 and #5 to a search of the communication of only those individuals at Brookhaven who were most likely to have records responsive to your request.

Be advised that for request items #1, #2, #4, and #5 as those items pertain to Lawrence Berkeley National Laboratory (LBNL), we asked the University of California (UC), the DOE contractor that operates LBNL, to conduct a search for responsive records. As a result of its search, UC staff responded stating that they located no records responsive to your request.

For request items #1, #2, #3, and #5 as those items pertain to research activities at Brookhaven National Laboratory (BNL), we asked Brookhaven Science Associates, Inc. (BSA), the DOE contractor that operates BNL, to conduct a search for responsive records.

As a result of its search for records responsive to items #1 and #2, BSA staff responded stating that they located four responsive records, as follows:

- Responsive Doc 1 - IACUC Protocol 459 and Related Docs Redacted (*Exemption 6 Applied and Non-Responsive Material*)
- Responsive Doc 2 - IACUC Protocol 449 Redacted (*Exemption 6 Applied*)
- Responsive Doc 3 - IACUC Protocol 102 Redacted (*Exemption 6 Applied*)
- Responsive Doc 4 - News 12 Animal Rights Protest (*Full Release*)

Be advised that those records were provided to DOE with proposed FOIA redactions, which consist of the names and identifying information of BSA and Stony Brook University (SBU) staff, under FOIA Exemption 6 (Privacy). After our review of BSA's proposed redactions, we agree with BSA's assertions, and we are providing all of the responsive documents BSA located to you with the FOIA Exempt (b)(6) material redacted for the reasons discussed below in this letter.

In addition to redactions made pursuant to Exemption 6, BSA also proposed that portions of the subject documents were non-responsive to the request and thus redacted those portions. BSA asserted that those portions reflected protocols for studies that do not involve non-human primates. We agree with BSA's assertions and those portions of the documents are redacted and marked as “non-responsive.”

**Exemption 6:**

The responsive documents contain information exempt from disclosure under Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). A determination under Exemption 6 requires balancing an individual's right to privacy against any public interest in the requested information.

The first step in the Exemption 6 balancing process is determining whether disclosure of the information would violate a viable privacy interest of the subject of the information. *See Schell v. HHS*, 843 F.2d 933, 938 (6th Cir. 1988). Once it has been determined that a personal privacy interest is threatened by a release of information, the next step is to assess whether there is a public interest in disclosing the information. *See FOIA Update*, Vol.X, No. 2, at 7 (1989). The Supreme Court has held that a public interest exists if disclosure would contribute to the "public understanding of the operations or the activities of the Government." *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 775 (1989). Finally, the two competing interests must be weighed against one another in order to determine whether the harm to personal privacy or benefit to the public is the greater result. *See Ripskis v. HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984).

It is well settled that the release of an individual's name and certain other personal information to the public implicates a privacy interest under FOIA. *Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008). The release of personal information such as a name and identifying information in this case could likely lead to harassment of those individuals for the work conducted, i.e., animal research. Specifically, persons involved even peripherally in animal research recently have been subject to harassment in the local BNL area – see following article - <http://www.newsday.com/long-island/suffolk/animal-rights-group-protests-at-skanska-ceo-s-house-1.11333010> . Therefore, individuals have a significant privacy interest in that information. While courts have found that there is little privacy interest in information regarding federal government employees when it is not personal in nature, *Aguirre v. SEC*, 551 F. Supp. 2d 33, 54 (D.D.C. 2008) ("Correspondence does not become personal solely because it identifies government employees."), the employees of BSA and SBU are contractor and other non-government entity employees, and consequently, their privacy rights are not diminished and the significant privacy interest remains.

Having found a significant privacy interest in the names and identifying information regarding BSA and SBU employees, it then must be determined whether there is a public interest in the information. To reveal private information, such as the identity of an individual, it must be demonstrated that disclosure of the individual's identity sheds light on government activity. *See In the Matter of Len Latovski*, FIA-14-0082 (Jan. 14, 2015); *In the Matter of the Oregonian*, FIA-13-0065 (Oct. 24, 2013). As noted, personal information of individuals such as a name and other information that would identify those individuals has a significant privacy interest; conversely, there is little public interest in the release of such information because such release would shed little light on the operations or activities of the government. Weighing the significant privacy interest against the small public interest in disclosure, balancing falls on the side of non-disclosure of this type of information in the responsive documents.

### **Appeal Rights**

With respect to items #1 and #2, you are advised of your right to appeal the adequacy of our search and our determination with the application of FOIA Exemptions and responsiveness within 30 days of receipt of this letter. The appeal may be delivered by U.S. Mail or commercial delivery service to the Director, Office of Hearings and Appeals, United States Department of

Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. For such delivery, both the request and envelope should be clearly marked "Freedom of Information Appeal."

Alternatively, the appeal may be delivered via electronic mail to [OHA.Filings@hq.doe.gov](mailto:OHA.Filings@hq.doe.gov), or via facsimile to (202) 287-1415. For all methods of delivery, the appeal should provide a telephone number, electronic mail address, or other means for communicating with you during business hours. Judicial review will be available thereafter in the district in which your concern is located or has its principal place of business, where the records are located, or in the District of Columbia.

**Fees**

You have been provided a fee waiver for this request. Therefore, there are no fees associated with this partial response to your request.

**Potential Narrowing**

Relative to items #3 and #5 of your request, BSA indicated that a search would be voluminous, and for the same reason as the names of individuals are being redacted under Exemption 6, I am unable to provide you with the names of those most likely to have responsive records. Please e-mail me at [miriam.bartos@science.doe.gov](mailto:miriam.bartos@science.doe.gov) with your agreement to narrow items #3 and #5 of your request to the communications of only those individuals whose names are redacted pursuant to Exemption 6 in the documents that were produced relative to items #1 and #2. If you would like to discuss additional details of potential request narrowing, or if you have other questions related to your request, please call me at (630) 252-2041.

Sincerely,

A handwritten signature in black ink that reads "Miriam R. Bartos". The signature is written in a cursive style with a large initial 'M'.

Miriam R. Bartos  
FOIA Officer

Enclosures:  
As Stated