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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

**THIRD 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 addition, PETA seeks
6 declaratory and injunctive relief prohibiting OHSU law enforcement from continuing to
7 unlawfully collect information on PETA's protected speech activities in violation of ORS
8 181A.250. In support of its Complaint, PETA alleges as follows:

10 INTRODUCTION

11 1.

12 At its core, the First Amendment forbids public entities such as OHSU from restricting
13 speech in ways that favor some viewpoints or ideas at the expense of others. Accordingly, OHSU
14 cannot suppress speech based on the speaker's motivating ideology, opinion, or perspective.
15 When responding to public records requests, and in applying its records retention policies and
16 customs, OHSU's disparate treatment of PETA has been deliberate, discriminatory, and without
17 sufficient constitutional justification. PETA therefore seeks relief from OHSU's unlawful
18 conduct as well as for statutory penalties, arising from OHSU's conduct in violation of the
19 Oregon and United States Constitutions, the OPRL and Oregon statute prohibiting law
20 enforcement agencies from collecting or maintaining information on protected political and
21 advocacy activities.
22
23
24

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2.

OHSU has engaged in a pattern and practice to thwart PETA’s right to inspect public records in order to prevent PETA from exercising its constitutionally protected rights to publicize information contained in these records and to promote its opposition to OHSU’s experimentation on animals. Most recently, OHSU intentionally deleted videographic records of experiments carried out by OHSU researchers on prairie voles (the “Vole Videos”) funded by two National Institutes of Health (“NIH”) grants, and for months misled PETA about the records’ existence. Since PETA discovered OHSU’s unlawful destruction, OHSU has disavowed that it had any obligation to preserve the public records in question, effectively endorsing the position that its members – who are public employees – have discretion to destroy any such public records they wish to keep hidden.

3.

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

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4.

As a public body subject to the public records laws, OHSU must make public records reasonably available for the public to inspect. In addition, as a public body subject to the state and federal constitutions' guarantees of free speech and equal protection, OHSU cannot constitutionally discriminate (or retaliate) against public records requesters based on their viewpoints—that is to say, the content of their speech.

5.

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

6.

PETA seeks an order requiring OHSU to produce the Vole Videos in accordance with OHSU's obligations under the OPRL including, to the extent necessary, an order compelling OHSU to make an appropriate search for copies of the Vole Videos that may still exist, and/or to determine whether the deleted Videos may be restored, and to produce such records to the extent they may be restored and/or located. In any event, PETA seeks a declaration that OHSU's failure

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1 to make the Vole Videos reasonably available for inspection and its intentional deletion of the
2 Vole Videos violate the OPRL.

3 7.

4 Because OHSU intentionally deleted these public records to prevent PETA from
5 advancing its constitutionally protected viewpoint, PETA also seeks a declaration that OHSU's
6 conduct violated the Oregon and United States Constitutions.

7 8.

8
9 During the course of this litigation, PETA discovered that OHSU failed to produce
10 hundreds of photographs that were responsive to its public records requests—photographs that
11 OHSU previously represented did not exist. Despite making *three* public records requests
12 seeking photographs related to OHSU's experiments on prairie voles and other rodents, it was
13 not until three years later—in response to questions asked during a deposition in this matter—
14 that the lead experimenter revealed the existence of these photographs (the “Responsive
15 Photographs”), along with the existence of three additional storage drives that contained
16 responsive image data. While OHSU has now belatedly produced these materials in response to
17 PETA's demand, the Court should award statutory penalties under ORS 192.407 for OHSU's
18 obstructive conduct and extremely unreasonable, undue delay in providing these public records.
19

20 **PARTIES**

21 9.

22 Plaintiff PETA is a not-for-profit public interest corporation formed under the laws of
23 Virginia and registered with the State of Oregon to conduct business as a foreign non-profit
24

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1 corporation. PETA is dedicated to protecting animals, including those used in experimentation,
2 from abuse, neglect, and cruelty. PETA undertakes these efforts through, *inter alia*, news
3 dissemination campaigns, cruelty investigations, animal rescue, legislation, public education
4 efforts, and peaceful protest campaigns.

5 10.

6 Defendant OHSU is a public body located in Multnomah County, Oregon. Defendant is
7 subject to the OPRL pursuant to ORS 353.100(1).
8

9 **JURISDICTION AND VENUE**

10 11.

11 The Court has subject matter jurisdiction pursuant to ORS 28.010, ORS 192.411, ORS
12 192.415, and ORS 192.431.

13 12.

14 Venue is proper in this Court pursuant to ORS 192.415(1)(b) because Defendant is
15 located in Multnomah County.
16

17 **THE PUBLIC RIGHT TO INSPECT PUBLIC RECORDS**

18 13.

19 Under the OPRL’s statutory scheme, “disclosure is the rule.” *Guard Pub. Co. v. Lane*
20 *County School Dist. No. 4J*, 310 Or 32, 37 (1990). The OPRL embodies Oregon’s “strong and
21 enduring policy that public records and governmental activities be open to the public.” *Jordan v.*
22 *Motor Vehicles Div., State of Or.*, 308 Or 433, 438 (1989).
23

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14.

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).

15.

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).

16.

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

17.

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

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1 or ownership of the storage transmission or computer device.” The OHSU Policy specifically
2 acknowledges that “OHSU is subject to the Public Records Law,” that “any Record * * * may be
3 requested under the law,” and that “[a]ny OHSU Member may be required to provide Record(s)
4 if a valid Public Records request is made and the record is relevant.” The OHSU Policy requires
5 each department or division to ensure its compliance with the retention schedule, including
6 ensuring each department is “maintaining Records for the length of time required * * * .”
7

8 22.

9 The OHSU Policy specifically provides that “[a]ll Records created by OHSU and/or
10 OHSU Members are OHSU Records and OHSU property.” It also specifically requires each
11 department or division, in the course of determining “how [public] Records can be retrieved or
12 preserved,” to ensure that it “consider[s] locations inside and outside of OHSU where Records
13 might be kept * * * .”
14

15 23.

16 Under the OHSU Policy, “Research Services-NIH Grant Records” must be retained for
17 “3 years after the Final Status Report Has Been Filed.” To the extent it does not specify any
18 applicable retention period for a particular set of records, the OHSU Policy instructs that
19 “analogous provisions from the Oregon State Archivist’s general record retention rules may be
20 used for guidance.” The analogous provisions from the Oregon State Archivist’s general records
21 retention rules—those applicable to state universities’ retention of research materials—mandate
22 that research records for grant-funded projects, including but “not limited to research data * * *
23
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1 and related documentation,” must be retained for “5 years after final financial report is submitted
2 and account is closed[.]”

3 **FACTUAL BACKGROUND**

4 24.

5 This case arises from a public records request by PETA under the OPRL for videos of
6 experiments on animals conducted by OHSU researchers pursuant to National Institutes of
7 Health (“NIH”) grants. The request sought video recordings of publicly-funded experiments on
8 prairie voles (the “Vole Videos”). This case seeks relief to declare that OHSU’s intentional
9 destruction of the Vole Videos violated the OPRL and PETA’s rights under the Oregon and U.S.
10 Constitutions.
11

12 25.

13 During the course of this litigation, PETA discovered that OHSU withheld hundreds of
14 photographs of experiments on prairie voles and other rodents that were responsive to PETA’s
15 public records request and two other related requests made three years ago. PETA seeks statutory
16 penalties for OHSU’s undue delay in providing these public records.
17

18 **I. THE VOLE VIDEOS**

19 26.

20 In 2016, OHSU applied for—and was awarded—an NIH grant (“Grant RO1AA019793”),
21 totaling almost two million dollars, to investigate how alcohol drinking influences pair bonding
22 in prairie voles. The Final Status Report for this Grant has not yet been filed.
23
24
25

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.

Additionally, Ryabinin's project was funded by NIH Grant T32AA007468, a training grant aimed at developing OHSU's pre-and post-doctoral training program.

29.

The main purpose of the program funded by Grant T32AA007468 was to provide pre- and post-doctoral training for OHSU's graduate students in the biological basis of alcoholism. Upon information and belief, Grant T32AA007468 paid for Ryabinin to serve as preceptor for Andre Walcott ("Walcott"), a graduate student in OHSU's department of behavioral neuroscience. The Final Status Report for this Grant has not yet been filed.

30.

Pursuant to the terms of the aforementioned NIH grants, Ryabinin and Walcott prepared, and then viewed and analyzed, the Vole Videos—video recordings of prairie voles while the voles underwent behavioral tests under the influence of alcohol.

31.

At the time the Vole Videos were recorded, the voles were located at the Portland VAMC Veterinary Medical Unit ("VAMC"), 3710 SW U.S. Veterans Hospital Road, Portland, Oregon.

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1 After the experiments concluded, the Vole Videos were taken to Ryabinin’s laboratory at OHSU
2 for analysis.

3 32.

4 On November 17, 2017, Walcott and Ryabinin published the results of their Vole Video
5 analysis in an article titled Alcohol’s Effects on Pair-Bond Maintenance in Male Prairie Voles,
6 in *Frontiers of Psychiatry* (the “Voles Article”).
7

8 33.

9 Following publication of the Voles Article, PETA issued a press release on November 29
10 sharply criticizing OHSU’s research on voles (“University Faces Flak Over Deadly Taxpayer-Funded
11 Experiments on Voles”). PETA also published a blog post on its widely-viewed website criticizing
12 the vole research (“Voles Fed Alcohol, Killed in Dumb Experiment Studying Why Drunk Men
13 Cheat”) and calling on OHSU to terminate all such research in the future. PETA scientists
14 simultaneously sent a letter to OHSU’s internal animal care and use committee challenging the
15 integrity and validity of the voles study and calling for an end to such studies in the future.
16

17 34.

18 PETA’s public criticism of the vole studies—and the press attention it generated in *The*
19 *Oregonian*—caused OHSU to strategize internally, including with Ryabinin himself, on the specific
20 subject of how to respond to PETA’s criticism. Among other things, in response to PETA’s criticism,
21 OHSU assured the public that its experiments were valuable and followed all applicable regulations
22 and protocols—two claims that notably the public could only assess by obtaining access to the Vole
23 Videos.
24

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38.

1
2 Because OHSU still had failed to produce or even acknowledge the existence of the Vole
3 Videos, on August 15, 2018, PETA submitted yet another request to OHSU for “copies of
4 photographs and videos captured as part of the experiments reported in the paper, ‘Alcohol’s
5 effects on pair bond maintenance in male prairie voles,’” published by Walcott and Ryabinin in
6 November 2017, as well as other videos.
7

39.

8
9 In response to PETA’s third request, OHSU belatedly produced videos of Ryabinin’s
10 mice experiments, but still did not provide the Vole Videos referenced in the Voles Article or
11 any photographs. Therefore, on October 19, 2018, PETA’s Dr. Alka Chandna wrote to OHSU to
12 question OHSU’s assertion that “no responsive documents were identified,” given that the Voles
13 Article explicitly referenced videos of experiments that would have been responsive to PETA’s
14 request.
15

40.

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

3 41.

4 In responding to PETA’s third request for the Voles Videos, OHSU still did not disclose
5 that they were kept at Ryabinin’s laboratory at OSHU, nor that they were destroyed while in
6 OHSU’s custody and (as of October 22, 2018) no longer existed. Rather, OHSU directed PETA
7 to request them from the VAMC’s Freedom of Information Act (“FOIA”) coordinator.
8

9 42.

10 Pursuant to OHSU’s guidance, on October 29, 2018, PETA contacted the VAMC’s FOIA
11 coordinator and requested copies of all “videos captured as part of experiments” reported in the
12 Voles Article.

13 43.

14 On November 9, 2018, the VAMC informed PETA that Ryabinin (who “is not a VA
15 employee”) had responded that “the video data were destroyed.”
16

17 44.

18 In fact, Ryabinin’s emails reveal that he decided to destroy the Vole Videos at some point
19 after publication of the Voles Article in order to ensure the videos “would not fall into wrong
20 hands.” Upon information and belief, even though Ryabinin’s research pursuant to the NIH
21 grants is ongoing and planned in the future, copies of the Vole Videos were destroyed with
22 Ryabinin’s knowledge and/or at his request sometime after PETA published a scathing critique
23

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1 of Ryabinin’s vole experiments and called for an end to his research on voles. OHSU has since
2 ratified Ryabinin’s conduct by contending he had no obligation to preserve the records.

3 45.

4 OHSU researchers testified at a recent trial involving videographic records of animal
5 experiments that such records are of great value for OHSU’s ongoing and future research efforts.
6 In light of this testimony, and upon information and belief, and given Ryabinin’s own frank
7 admission, it is likely that OHSU destroyed the Vole Videos not because OHSU perceived they
8 lacked further value, but rather to prevent them from falling into the hands of PETA—with
9 whose viewpoint and First Amendment activities OHSU disagrees.
10

11 46.

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

3 47.

4 After the VAMC ultimately declined to renew the protocol for Ryabinin’s vole
5 experiments, Ryabinin expressed animus towards PETA, writing to VAMC officials that he
6 believed the “popularity” of his work had “attracted the attention of PETA, an organization
7 known to distort information to discredit important research performed in laboratory animals.”
8 Ryabinin further informed the VAMC that he “underst[ood] the unpleasantness of dealing with
9 this organization.” He also expressed “worr[y] that discontinuing a research direction due to
10 inquiry from PETA will send a wrong message to PETA and its supporters.”

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

13 48.

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

18 49.

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

21 50.

22 As of the filing of the initial complaint on April 21, 2020, the District Attorney had not
23 issued an order under ORS 192.415 with respect to PETA’s Petition. Pursuant to ORS

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1 192.418(1), the failure of the District Attorney to issue an order denying, granting, or denying in
2 part or granting in part a petition within seven days from the day of receipt of the petition shall
3 be treated as an order denying the petition for the purpose of determining whether a person may
4 institute proceedings for injunctive or declaratory relief under the OPRL.

5 **IV. PETA’S SUIT TO OBTAIN THE PRIMATE VIDEOS**

6 51.

7
8 OHSU’s actions regarding the Vole Videos are of particular significance when seen in
9 the context of other requests by PETA involving video recordings of OHSU’s experiments on
10 animals. Beginning on November 6, 2017, PETA submitted a series of public records requests to
11 OHSU seeking copies of the Primate Videos carried out with NIH funding at OHSU’s Oregon
12 National Primate Research Center. OHSU denied those requests, asserting several exemptions
13 under the OPRL, and PETA ultimately filed suit to force the videos’ disclosure.

14 52.

15
16 Most relevantly, OHSU asserted that it was entitled to withhold the Primate Videos from
17 public disclosure in their entirety pursuant to the OPRL’s “faculty research” exemption, which
18 allows a public body to withhold “[w]ritings prepared by or under the direction of faculty of
19 public educational institutions, in connection with research, until publicly released, copyrighted
20 or patented,” unless “the public interest requires disclosure in the particular instance.”

21 53.

22
23 During litigation regarding PETA’s request for the Primate Videos, OHSU
24 representatives stated that they opposed PETA’s records request in part because they believed

1 PETA would use the videos to promote messages with which OHSU substantively disagrees—in
2 particular, messages that oppose animal experiments generally and that criticize OHSU
3 researchers’ experiments in particular.

4 54.

5 Following trial in March 2020, Judge David Rees of the Multnomah County Circuit
6 Court ordered OHSU to disclose 74 of the Primate Videos, reasoning that, whether or not the
7 faculty research exemption applied, the public interest required their disclosure both to ensure
8 OHSU’s compliance with animal welfare requirements and to understand whether OHSU’s
9 animal experiments are a “worthy use of public funds.”
10

11 55.

12 However, the Court concluded that several thousand additional Primate Videos were not
13 presently subject to disclosure because they had not yet been the subject of publication, and
14 therefore “currently” qualified for the faculty research exemption, but concluded that those
15 several thousand videos “may become subject to disclosure under the OPRL” in the future if and
16 when OHSU publishes analyses based on them or ceases using them in research.
17

18 56.

19 Since OHSU’s release of the 74 Primate Videos in accordance with the Court’s judgment
20 in that case, PETA has disseminated relevant portions of those videos to the public and the
21 media, challenging the validity of the research along with messaging calling for an end to
22 primate experiments at OHSU.
23

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1
2 PETA fully intends to seek the remaining Primate Videos once the conditions identified
3 by Judge Rees are satisfied. However, based on OHSU's intentional destruction of the Vole
4 Videos and its express (but impermissible) position that OHSU members may deviate from
5 OHSU's Policy and destroy public records at their discretion, including when they disagree with
6 a requester's viewpoint or messaging, PETA has legitimate fears that the remaining Primate
7 Videos may be similarly destroyed before PETA has a reasonable opportunity to obtain them.
8 This would not only forever deprive PETA and other public records requesters of the statutory
9 right to inspect those videos, but would also deprive PETA and the public of the ability to
10 consider the information depicted in those videos in public discourse and policymaking
11 regarding animal experimentation.
12

13 **V. OHSU ADMITS, ONE YEAR INTO THIS LITIGATION AND THREE**
14 **YEARS AFTER PETA'S REQUESTS, THAT ADDITIONAL RESPONSIVE**
15 **PUBLIC RECORDS EXIST.**

16
17 On June 18, 2021, in response to questions asked during his deposition in this case,
18 Ryabinin revealed for the first time the existence of hundreds of photographs of experiments
19 conducted on prairie voles and other rodents. These photographs were responsive to the public
20 records requests PETA made on January 22, 2018, July 16, 2018, and August 15, 2018. Ryabinin
21 further testified that, although he was aware that these photographs existed at the time PETA
22 made its public records requests, he did not provide them because he assumed PETA was only
23 interested in videos of his experiments, not these photographs.
24

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59.

Following Ryabinin’s deposition, on June 30, 2021, PETA insisted that OHSU produce the photographs Ryabinin identified as responsive to PETA’s public records requests that had not been collected or produced. OHSU belatedly provided hundreds of photographs in July 2021, more than three years after PETA initially requested them.

VI. FURTHER EVIDENCING OHSU’S ANIMUS TOWARD PETA, OHSU LAW ENFORCEMENT UNLAWFULLY MONITORS PETA’S PROTECTED SPEECH ACTIVITIES

60.

In addition to (and consistent with) its unlawful and unconstitutional response to PETA’s public records requests, OHSU also has engaged, during this same timeframe in the unlawful monitoring of PETA’s protected speech and political activities.

61.

Under ORS 181A.250, law enforcement agencies—including the OHSU Police—are prohibited from collecting or maintaining information on a person or organization’s political or social views, associations, or activities. Accordingly, OHSU’s unlawful monitoring of PETA’s activities is not only further evidence of OHSU’s animus towards PETA and its protected viewpoint; it also constitutes actionable misconduct under Oregon law for which declaratory and injunctive relief is independently warranted.

62.

Specifically, discovery in this case reveals that OHSU Police officers, including OHSU Police Chief Heath Kula, have regularly collected and maintained information about PETA’s

1 political and advocacy activities by subscribing to intelligence-style updates on PETA’s
2 activities from a company called INA (“Information Network Associates”), which bills itself as
3 “offer[ing] premier investigative and security services to government entities, private
4 corporations and individuals across the globe.”

5
6 63.

7 At least three OHSU Police officers, including the Police Chief, subscribe to regular INA
8 updates on PETA’s political and advocacy activities, which are sent by INA’s director of “Risk
9 and Threat Intelligence.” The “intelligence” and “threat” updates collected and maintained by
10 OHSU Police have reported on PETA’s political and advocacy activities on a near-daily basis. In
11 addition, on information and belief, OHSU Police subscribes to and receives periodical
12 publications from INA, with names such as “Extremist Watch – Animal Rights,” that similarly
13 monitor and assess the “threat” posed by PETA’s protected political and social views,
14 associations, and activities.

15
16 64.

17 The protected political and social conduct on which OHSU Police have regularly and
18 unlawfully collected and maintained information include, to provide only a few examples,
19 PETA’s publication of blog posts calling for an end to experiments on nonhuman primates;
20 PETA’s publication on Facebook of materials detailing the inhumane treatment to which animals
21 have been subjected in experimentation; PETA’s publication on Twitter of a video criticizing
22 experimentation on an infant monkey at a public university; PETA’s publication of an article
23 criticizing the use of animal experimentation by the National Institutes of Health; and PETA’s
24

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1 sending of letters demanding that COVID-19 precautions be implemented to protect the health of
2 monkeys at federally-funded institutions.

3 65.

4 All of PETA’s activities on which OHSU Police collected and maintained “intelligence”
5 and “threat” information are fully lawful, constitutionally protected activities, and OHSU Police
6 neither had nor have any reasonable grounds on which to believe otherwise.

7
8 **CLAIMS FOR RELIEF**

9 66.

10 A justiciable controversy presently exists between PETA and OHSU over (1) whether
11 OHSU violated the OPRL by intentionally deleting the Vole Videos in order to prevent PETA
12 from obtaining them, and by failing to make them reasonably available for public inspection; and
13 (2) whether OHSU’s destruction of the Vole Videos to prevent PETA from obtaining them
14 constitutes a violation of PETA’s rights to free speech and equal treatment under Article I,
15 Sections 8 and 20 of the Oregon Constitution and the First and Fourteenth Amendments to the
16 U.S. Constitution.

17
18 **FIRST CLAIM FOR RELIEF**
19 *Declaratory Relief—Failure to Provide Records*

20 67.

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

22 68.

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

24
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69.

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).

70.

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.

71.

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.

72.

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.

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73.

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.

74.

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

75.

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

76.

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

77.

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.

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78.

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.

79.

In addition to constituting viewpoint discrimination, OHSU's intentional deletion of the Vole Videos also amounted to unconstitutional retaliation against PETA. PETA's speech regarding the animal experimentation depicted in the Vole Videos is free speech protected by Article I, Section 8, and the First and Fourteenth Amendments. OHSU's intentional deletion of the Vole Videos, with claimed impunity, to prevent a party (here, PETA) from obtaining them based on the content of that party's speech would deter a person of ordinary firmness from continuing to engage in that speech. In fact, OHSU's intentional destruction of the Vole Videos actually deterred PETA from speaking with respect to the animal experimentation depicted in the Vole Videos, by rendering PETA incapable of reviewing the Vole Videos and presenting its view of what they depicted to the public. OHSU's conduct deprived PETA of a more effective means of communicating with its audience. OHSU's intentional destruction of the Vole Videos was motivated by PETA's speech regarding OHSU's animal experimentation, including PETA's prior published criticism of the vole experiments.

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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.

THIRD 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.

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 20, of the Oregon Constitution, and its right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

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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.

FOURTH CLAIM FOR RELIEF
Declaratory Relief—Failure to Provide Records

86.

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

87.

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

88.

The Responsive Photographs 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).

89.

By affirmatively misrepresenting the existence of the Responsive Photographs and failing to produce them in response to three separate public records requests, 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.

90.

The Responsive Photographs were improperly withheld for purposes of the OPRL by OHSU's obstructive conduct, including its misleading responses as to their existence and failure to provide them to PETA until three years after they were initially requested and only following the filing of this lawsuit.

91.

Plaintiff is entitled to an award of statutory penalties under ORS 192.407(3)(b) for OHSU's extremely unreasonable, undue delay in responding to PETA's request for the Responsive Photographs.

92.

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.

FIFTH CLAIM FOR RELIEF
ORS 181A.250 – Declaratory and Injunctive Relief

93.

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

94.

OHSU Police is a department of OHSU and a "law enforcement agency" as that term is defined by ORS 181A.010 and ORS 353.125.

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95.

1
2 As a law enforcement agency, OHSU Police is prohibited under ORS 181A.250 from
3 “collect[ing] or maintain[ing] information about the political, religious or social views,
4 associations, or activities of any individual, group, association, organization, corporation,
5 business or partnership unless such information directly relates to an investigation of criminal
6 activities, and there are reasonable grounds to suspect the subject of the information is or may be
7 involved in criminal conduct.”
8

96.

9
10 OHSU Police is in violation of ORS 181A.250 because it regularly collects and maintains
11 information about PETA’s political and social views, associations, and activities, including but
12 not limited to the information described in paragraphs 60-65 above. The information collected by
13 OHSU Police does not relate to any investigation of criminal activities, and OHSU Police neither
14 had nor has any reasonable grounds to suspect that PETA was or may have been involved in
15 criminal conduct relating to the information collected and maintained. Instead, OHSU Police’s
16 conduct amounts to pervasive, unlawful monitoring of PETA’s protected advocacy activities.
17

97.

18
19 Pursuant to ORS 28.010, PETA is entitled to a declaration that OHSU has violated ORS
20 181A.250. In light of the pervasive, flagrant, and ongoing nature of OHSU’s violations of that
21 statute, PETA also is entitled to supplemental relief pursuant to ORS 28.080 enjoining OHSU
22 Police from unlawfully collecting or maintaining any further information on PETA’s political or
23 social views, associations, or activities.
24

25
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1
2 Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to the
3 public benefit doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its
4 progeny.

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

- 7 1. Declaring that as of the time of Plaintiff’s request for the Vole Videos, they were
8 “public records” subject to disclosure under the OPRL;
- 9 2. Declaring that OHSU violated the OPRL by failing to provide the Vole Videos in
10 response to Plaintiff’s request;
- 11 3. Declaring that OHSU violated the OPRL by destroying the Vole Videos without,
12 at minimum, providing a proper and reasonable opportunity for their inspection;
- 13 4. Declaring that OHSU’s selective non-enforcement and arbitrary departure from
14 OSHU Policy and deletion of the Vole Videos to prevent PETA from obtaining
15 them—or, at minimum, failure to provide a proper and reasonable opportunity for
16 their inspection—based on OHSU’s disagreement with PETA’s views, violated
17 Article I, Sections 8 and 20 of the Oregon Constitution and the First and
18 Fourteenth Amendments to the United States Constitution;
- 19 5. Declaring that, as of the time of Plaintiff’s requests for the Responsive
20 Photographs, they were “public records” subject to disclosure under the OPRL;
- 21 6. Declaring that OHSU violated the OPRL by failing to timely provide the
22 Responsive Photographs in response to Plaintiff’s requests;
- 23 7. Declaring that OHSU violated the OPRL by failing to timely provide a proper and
24 reasonable opportunity for the inspection of the Responsive Photographs;
- 25 8. Awarding PETA statutory penalties under ORS 192.407(3)(b) for OHSU’s
26 effective failure to respond (or, at minimum, undue delay in responding) to its
request for the Vole Videos;
9. Awarding PETA statutory penalties under ORS 192.407(3)(b) for OHSU’s undue
delay in responding to its request for the Responsive Photographs;

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1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I caused a true copy of the foregoing THIRD AMENDED
5 COMPLAINT to be served on:

6 C. Robert Steringer
7 James E. Mountain, Jr.
8 Erica Tatoian
9 Harrang Long Gary Rudnick P.C.
10 1050 SW Sixth Avenue, Suite 1600
11 Portland, OR 97204-1116
12 bob.steringer@harrang.com
13 james.e.mountain@harrang.com
14 erica.tatoian@harrang.com

_____ By hand delivery
_____ By first-class mail*
 x By email
_____ By overnight mail
_____ By facsimile transmission
_____ Fax #:
_____ Ph #:

EM:

11 Attorneys for Defendant

12 *With first-class postage prepaid and deposited in Portland, OR.

13 DATED: November 5, 2021.

14
15 s/Colin H. Hunter
16 COLIN H. HUNTER, OSB No. 131161
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