

**U.S. District Court
Eastern District of Virginia – (Alexandria)
CIVIL DOCKET FOR CASE #: 1:21-cv-01275-LMB-JFA**

Empower Oversight Whistleblowers & Research v. National Institutes of Health
Assigned to: District Judge Leonie M. Brinkema
Referred to: Magistrate Judge John F. Anderson
Cause: 05:552 Freedom of Information Act

Date Filed: 11/17/2021
Date Terminated: 09/16/2022
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Empower Oversight Whistleblowers & Research

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TERMINATED: 05/03/2022

Defendant

National Institutes of Health

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Date Filed	#	Docket Text
11/17/2021	<u>1</u>	Complaint (Filing fee \$ 402, receipt number AVAEDC-8107025.), filed by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Civil Cover Sheet)(Schrier, Michael) (Entered: 11/17/2021)
11/17/2021	<u>2</u>	Proposed Summons re <u>1</u> Complaint by Empower Oversight Whistleblowers & Research. (Schrier, Michael) (Entered: 11/17/2021)

11/17/2021	<u>3</u>	Corporate Disclosure Statement by Empower Oversight Whistleblowers & Research. (Schrier, Michael) (Entered: 11/17/2021)
11/17/2021		Initial Case Assignment to District Judge Leonie M. Brinkema and Magistrate Judge John F. Anderson. (dvanm,) (Entered: 11/18/2021)
11/18/2021	<u>4</u>	Proposed Summons re <u>1</u> Complaint by Empower Oversight Whistleblowers & Research. (Schrier, Michael) (Entered: 11/18/2021)
11/18/2021	<u>5</u>	Proposed Summons re <u>1</u> Complaint by Empower Oversight Whistleblowers & Research. (Schrier, Michael) (Entered: 11/18/2021)
11/19/2021	<u>6</u>	Summons Issued as to National Institutes of Health, U.S. Attorney and U.S. Attorney General NOTICE TO ATTORNEY: Please remove the headers and print two duplexed copies of the electronically issued summons for each Defendant. Please serve one copy of the summons and a copy of the Complaint upon each Defendant. Please ensure that your process server returns the service copy (executed or unexecuted) to your attention and electronically file it using the filing events, Summons Returned Executed or Summons Returned Unexecuted. (Attachments: # <u>1</u> Notice)(dvanm,) (Entered: 11/19/2021)
12/22/2021	<u>7</u>	NOTICE of Appearance by Meghan Elizabeth Loftus on behalf of National Institutes of Health (Loftus, Meghan) (Entered: 12/22/2021)
12/22/2021	<u>8</u>	Consent MOTION for Extension of Time to File Response/Reply to Plaintiff's Complaint by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order)(Loftus, Meghan) (Entered: 12/22/2021)
12/22/2021	<u>9</u>	ORDER granting <u>8</u> Motion for Extension of Time. ORDERED that Defendant shall respond to Plaintiff's Complaint on or before February 7, 2022. Signed by District Judge Leonie M. Brinkema on 12/22/2021. (kgall) (Entered: 12/22/2021)
02/07/2022	<u>10</u>	Consent MOTION for Extension of Time to File Response/Reply to Plaintiff's Complaint by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order)(Loftus, Meghan) (Entered: 02/07/2022)
02/08/2022	<u>11</u>	ORDERED that Defendant's Consent Motion is GRANTED; and it is further ORDERED that Defendant shall respond to Plaintiff's Complaint on or before February 21, 2022. Signed by District Judge Leonie M. Brinkema on 02/08/2022. (dvanm) (Entered: 02/08/2022)
02/18/2022	<u>12</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>1</u> Complaint by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order)(Loftus, Meghan) (Entered: 02/18/2022)
02/18/2022	<u>13</u>	ORDER granting <u>12</u> Consent Motion for Extension of Time. ORDERED that Defendant's previous deadline to answer Plaintiff's Complaint (Dkt. 1) is void. ORDERED that Defendant shall respond to Plaintiff's forthcoming Amended Complaint on or before March 11, 2022. Signed by District Judge Leonie M. Brinkema on 2/18/2022. (kgall) (Entered: 02/18/2022)
02/25/2022	<u>14</u>	Consent MOTION for Leave to File <i>First Amended Complaint</i> by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Exhibit A – First Amended Complaint, # <u>2</u> Exhibit B – Redline Comparison)(Schrier, Michael) (Entered: 02/25/2022)
02/28/2022	<u>15</u>	ORDER granting Plaintiff's Consent Motion for Leave to File First Amended Complaint (the "Motion"). Because defendant has not filed a responsive pleading to the initial complaint and consents to the Motion, the Motion [Dkt. No. 14] is GRANTED, and it is hereby ORDERED that plaintiff promptly file the First Amended Complaint, attached as Exhibit A to the Motion [Dkt. No. 14-1]. Signed by District Judge Leonie M. Brinkema on 2/28/2022. (dvanm) (Entered: 02/28/2022)
03/01/2022	<u>16</u>	AMENDED COMPLAINT for Declaratory and Injunctive Relief against National Institutes of Health, filed by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Schrier, Michael) (Entered: 03/01/2022)
03/11/2022	<u>17</u>	ANSWER to Complaint by National Institutes of Health.(Loftus, Meghan) (Entered: 03/11/2022)

03/16/2022	<u>18</u>	VACATED PER ORDER 26 – SCHEDULING ORDER:Initial Pretrial Conference set for 4/6/2022 at 11:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. Discovery due by 7/15/2022. Final Pretrial Conference set for 7/21/2022 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. Signed by District Judge Leonie M. Brinkema on 3/16/22. (Attachments: # <u>1</u> Mag.Consent, # <u>2</u> Pretrial Notice)(yguy) Modified on 4/8/2022 (dvanm,). (Entered: 03/16/2022)
03/28/2022	<u>19</u>	MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order)(Loftus, Meghan) (Entered: 03/28/2022)
03/28/2022	<u>20</u>	Memorandum in Support re <u>19</u> MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> filed by National Institutes of Health. (Loftus, Meghan) (Entered: 03/28/2022)
03/28/2022	<u>21</u>	Notice of Hearing Date set for April 8, 2022 re <u>19</u> MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> (Loftus, Meghan) (Entered: 03/28/2022)
03/28/2022		Set Deadlines as to <u>19</u> MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> . Motion Hearing set for 4/8/2022 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. (clar,) (Entered: 03/29/2022)
03/30/2022	<u>22</u>	<i>Joint Proposed</i> Discovery Plan by National Institutes of Health.(Loftus, Meghan) (Entered: 03/30/2022)
03/31/2022	<u>23</u>	ORDER – ORDERED that the initial pretrial conference is rescheduled for Wednesday, April 13, 2022 at 11:00 a.m. Once a decision has been made concerning the motion to vacate, counsel are to discuss whether a Rule 16 conference is necessary and inform the court. Signed by Magistrate Judge John F. Anderson on 03/31/2022. (wgar) (Entered: 03/31/2022)
03/31/2022		Reset Scheduling Order Deadlines: Initial Pretrial Conference reset for 4/13/2022 at 11:00 AM in Alexandria Courtroom 501 before Magistrate Judge John F. Anderson. (wgar,) (Entered: 03/31/2022)
04/05/2022	<u>24</u>	Opposition to <u>19</u> MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> filed by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Exhibit A – Declaration)(Schrier, Michael) (Entered: 04/05/2022)
04/06/2022	<u>25</u>	RESPONSE in Support re <u>19</u> MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> filed by National Institutes of Health. (Loftus, Meghan) (Entered: 04/06/2022)
04/08/2022	<u>26</u>	ORDERED that Defendant's motion <u>19</u> is granted; it is further ORDERED that the Scheduling Order, including all deadlines contained therein, is VACATED; and it is further ORDERED that the parties will file cross–motions for summary judgment in accordance with the following schedule: Opening briefs filed on or before May 13, 2022; Opposition briefs filed on or before June 13, 2022; Reply briefs filed on or before June 27, 2022. Signed by District Judge Leonie M. Brinkema on 04/08/2022. (dvanm) (Entered: 04/08/2022)
04/08/2022	<u>27</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema:Motion Hearing held on 4/8/2022. Appearance of counsel. Court advised of case status. Deft <u>19</u> MOTION to Vacate <u>18</u> Scheduling Order, <i>and for a Briefing Schedule</i> is argued and GRANTED. (Court Reporter S. Austin.)(yguy) (Entered: 04/08/2022)
04/08/2022	<u>28</u>	ORDERED that the initial pretrial conference scheduled for April 13, 2022 is cancelled. Signed by Magistrate Judge John F. Anderson on 04/08/2022. (dvanm) (Entered: 04/08/2022)
04/08/2022	<u>29</u>	TRANSCRIPT of proceedings held on 4/8/22, before Judge Leonie M. Brinkema, Court Reporter Stephanie Austin, Telephone number 571–298–1649. NOTICE RE REDACTION OF TRANSCRIPTS:The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court

		public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 5/9/2022. Redacted Transcript Deadline set for 6/8/2022. Release of Transcript Restriction set for 7/7/2022.(Austin, Stephanie) (Entered: 04/08/2022)
04/22/2022	<u>30</u>	NOTICE of Appearance by Jeffrey S. Beelaert on behalf of Empower Oversight Whistleblowers & Research (Beelaert, Jeffrey) (Entered: 04/22/2022)
05/02/2022	<u>31</u>	MOTION to Withdraw as Attorney by Empower Oversight Whistleblowers & Research. (Schrier, Michael) (Entered: 05/02/2022)
05/02/2022	<u>32</u>	Amended MOTION to Withdraw as Attorney by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Proposed Order to Withdraw)(Schrier, Michael) (Entered: 05/02/2022)
05/03/2022	<u>33</u>	ORDERED that the appearances of Michael J. Schrier and his law firm, Husch Blackwell LLP, be and are TERMINATED. Signed by District Judge Leonie M. Brinkema on 05/03/2022. (dvanm) (Entered: 05/03/2022)
05/12/2022	<u>34</u>	MOTION to Alter Briefing Schedule by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order)(Loftus, Meghan) (Entered: 05/12/2022)
05/12/2022	<u>35</u>	ORDERED that Defendant's Consent Motion is GRANTED; and it is further ORDERED that Defendant shall file its motion for summary judgment and brief in support on or before June 10, 2022. Signed by District Judge Leonie M. Brinkema on 5/12/2022. (dvanm) (Entered: 05/12/2022)
06/10/2022	<u>36</u>	MOTION for Summary Judgment by National Institutes of Health. (Loftus, Meghan) (Entered: 06/10/2022)
06/10/2022	<u>37</u>	Memorandum in Support re <u>36</u> MOTION for Summary Judgment filed by National Institutes of Health. (Attachments: # <u>1</u> Exhibit 1 Gorka–Malene Decl., # <u>2</u> Exhibit 2 Gorka–Malene Suppl. Decl., # <u>3</u> Exhibit 3 Vaughn I, # <u>4</u> Exhibit 4 Vaughn II, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8)(Loftus, Meghan) (Entered: 06/10/2022)
06/10/2022	<u>38</u>	NOTICE by National Institutes of Health re <u>36</u> MOTION for Summary Judgment <i>Waiver of Hearing</i> (Loftus, Meghan) (Entered: 06/10/2022)
06/13/2022	<u>39</u>	Consent MOTION for Extension of Time to File Response/Reply <i>for summary judgment</i> by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Proposed Order)(Beelaert, Jeffrey) (Entered: 06/13/2022)
06/15/2022	<u>40</u>	ORDERED that Plaintiff's Consent Motion is GRANTED; and it is further ORDERED that Plaintiff shall file its opposition to defendant's motion for summary judgment and brief in support on or before July 11, 2022. Signed by District Judge Leonie M. Brinkema on 06/15/2022. (dvanm) (Entered: 06/15/2022)
07/11/2022	<u>41</u>	Opposition to <u>36</u> MOTION for Summary Judgment filed by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Beelaert, Jeffrey) (Entered: 07/11/2022)
07/15/2022	<u>42</u>	MOTION to Seal <i>Portions of Plaintiff's Opposition to Defendant's Motion for Summary Judgment</i> by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Exhibit Proposed Redactions to Dkt. 41, # <u>3</u> Exhibit Proposed Redactions to Dkt. 41–3)(Loftus, Meghan) (Entered: 07/15/2022)
07/15/2022	<u>43</u>	Notice of Under Seal Filing LCvR5 (B) by National Institutes of Health re <u>42</u> MOTION to Seal <i>Portions of Plaintiff's Opposition to Defendant's Motion for Summary Judgment</i> (Loftus, Meghan) (Entered: 07/15/2022)
07/15/2022	<u>44</u>	Memorandum in Support re <u>42</u> MOTION to Seal <i>Portions of Plaintiff's Opposition to Defendant's Motion for Summary Judgment</i> filed by National Institutes of Health. (Loftus, Meghan) (Entered: 07/15/2022)
07/18/2022	<u>45</u>	Consent MOTION for Extension of Time to File Response/Reply by National Institutes of Health. (Attachments: # <u>1</u> Proposed Order)(O'Connor, Kirstin) (Entered: 07/18/2022)

07/18/2022	<u>46</u>	ORDER: This matter comes before the Court on Defendant's Consent Motion for Enlargement of Time. Upon consideration of the motion, and for good cause shown, it is hereby ORDERED that Defendant's motion is GRANTED; and it is further ORDERED that Defendant shall file its Reply in Support of its Motion for Summary Judgment on or before July 21, 2022. Signed by District Judge Leonie M. Brinkema on 7/18/22. (yguy) (Entered: 07/18/2022)
07/20/2022		Per LMB chambers the Final pretrial conference set for 7/21/2022 has been removed – Please see order dated 4/8/2022 document # 26 (Per NL) (clar,) (Entered: 07/20/2022)
07/21/2022	<u>47</u>	Reply to Motion re <u>36</u> MOTION for Summary Judgment filed by National Institutes of Health. (Attachments: # <u>1</u> Exhibit 9)(Loftus, Meghan) (Entered: 07/21/2022)
07/22/2022	<u>48</u>	NOTICE by National Institutes of Health re <u>47</u> Reply to Motion, <u>44</u> Memorandum in Support (Loftus, Meghan) (Entered: 07/22/2022)
07/22/2022	<u>49</u>	ORDER granting <u>42</u> Motion to Seal. Signed by Magistrate Judge John F. Anderson on 07/22/2022. (see order for details/changes) (dvanm) (Entered: 07/22/2022)
07/22/2022	<u>50</u>	Opposition to <u>42</u> MOTION to Seal <i>Portions of Plaintiff's Opposition to Defendant's Motion for Summary Judgment</i> filed by Empower Oversight Whistleblowers & Research. (Beelaert, Jeffrey) (Entered: 07/22/2022)
07/27/2022	<u>51</u>	Motion Re: Objections to Magistrate Judge's Ruling or Recommendation re <u>49</u> Order on Motion to Seal by Empower Oversight Whistleblowers & Research. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order)(Beelaert, Jeffrey) (Entered: 07/27/2022)
08/03/2022	<u>52</u>	ORDERED that the parties meet and confer and notice the two motions for a hearing on any upcoming Friday at 10:00 AM. Signed by District Judge Leonie M. Brinkema on 08/03/2022. (dvanm) (Entered: 08/03/2022)
08/03/2022		Set/Reset Deadlines as to <u>51</u> Motion Re: Objections to Magistrate Judge's Ruling or Recommendation re <u>49</u> Order on Motion to Seal , <u>36</u> MOTION for Summary Judgment . Motion Hearing set for 8/12/2022 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. (clar,) (Entered: 08/04/2022)
08/04/2022	<u>53</u>	Notice of Hearing Date set for August 12, 2022 re <u>52</u> Order, <u>51</u> Motion Re: Objections to Magistrate Judge's Ruling or Recommendation re <u>49</u> Order on Motion to Seal , <u>36</u> MOTION for Summary Judgment (Loftus, Meghan) (Entered: 08/04/2022)
08/10/2022	<u>54</u>	Opposition to <u>51</u> Motion Re: Objections to Magistrate Judge's Ruling or Recommendation re <u>49</u> Order on Motion to Seal filed by National Institutes of Health. (Loftus, Meghan) (Entered: 08/10/2022)
08/12/2022	<u>55</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 8/12/2022 re <u>51</u> Motion Re: Objections to Magistrate Judge's Ruling or Recommendation re <u>49</u> Order on Motion to Seal filed by Empower Oversight Whistleblowers & Research, <u>36</u> MOTION for Summary Judgment filed by National Institutes of Health. Jeffrey Beelaert and Jason Foster appeared on behalf of the plaintiff. Meghan Loftus appeared on behalf of the defendant. Matter argued. <u>51</u> Plaintiff's Motion to Set Aside the Order Issued by Magistrate Judge Anderson on July 22, 2022 – Objection Overruled. The defendant to file all unredacted exhibits A through D by the close of business on Monday, August 15, 2022. Court Reporter: T. Harris (tran) (Entered: 08/12/2022)
08/12/2022	<u>56</u>	ORDER: For the reasons stated in open court, Plaintiff's Motion to Set Aside the Order Issued by Magistrate Judge Anderson on July 22, 2022 <u>51</u> is DENIED, Defendant's Motion for Summary Judgment <u>36</u> is HELD IN ABEYANCE, and it is hereby ORDERED that by close of business on Monday, August 15, 2022, defendant produce unredacted versions of Exhibits A–D to Plaintiff's Opposition to Defendant's Motion for Summary Judgment <u>41</u> for <i>in camera</i> review, and file a declaration specifying which of the 27 components of the National Institutes of Health were searched for the second production. Signed by District Judge Leonie M. Brinkema on 08/12/2022. (tran) (Entered: 08/12/2022)

08/15/2022	<u>57</u>	NOTICE by National Institutes of Health re <u>56</u> Order on Motion Re: Objections to Magistrate Judge's Ruling or Recommendation,, Order on Motion for Summary Judgment,, (Attachments: # <u>1</u> Exhibit Garcia–Malene Second Suppl. Declaration, # <u>2</u> Exhibit Exhibits I–N)(Loftus, Meghan) (Entered: 08/15/2022)
09/09/2022	<u>58</u>	ORDERED that defendant's Motion for Summary Judgment [Dkt. No. 36] is GRANTED IN PART, except for the open questions discussed above, and it is hereby ORDERED that a hearing be and is SCHEDULED for Friday, September 16, 2022 at 10:00 am, at which NIH will be required to respond to these questions. Signed by District Judge Leonie M. Brinkema on 09/09/2022. (dvanm) (Entered: 09/09/2022)
09/09/2022		Set Hearings: Status Conference set for 9/16/2022 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. see order <u>58</u> for details) (dvanm) (Entered: 09/09/2022)
09/15/2022	<u>60</u>	NOTICE by National Institutes of Health (Attachments: # <u>1</u> Exhibit Declaration of Michael Lauer, M.D.)(Loftus, Meghan) (Entered: 09/15/2022)
09/16/2022	<u>61</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema:Status Conference held on 9/16/2022. Appearances of counsel. Court advised of case status. Objections and questions discussed re #58 Deft Motion for Summary Judgment. Judgment is Denied as to Count I. (order to follow) (Court Reporter S. Austin.)(yguy) (Entered: 09/16/2022)
09/16/2022	<u>62</u>	ORDER: On September 9, 2022, the Court granted defendant's Motion for Summary Judgment in part, except for open questions discussed in the Order [Dkt. No. 58], and directed the defendant to respond to those questions in open court.For the reasons stated in open court, defendant has not provided an adequate basis for the redaction of the "Status" column in Exhibit D, and the names of the curator and researcher previously disclosed. Therefore, plaintiffs objections to these exemptions are sustained. On the other hand, defendant has justified not disclosing Dr. Collins' email address and has withdrawnclaiming any exemption for the email chain in plaintiffs Exhibit A (bates number 00175). Therefore, plaintiffs objections to those exemptions are overruled. Accordingly, it is hereby ORDERED that defendant promptly produce the information for which plaintiffs objections have been sustained by this Order.Although plaintiff failed to comply with the time limits set out in the Freedom of Information Act, 5 U.S.C. § 552(a)(6), plaintiffs request for a judgment in its favor on Count I of the complaint is DENIED because the defendant did not act in bad faith and explained it had worked with plaintiff's former counsel to arrange for production schedules. The Court also finds that plaintiff was not prejudiced by the delay.(yguy) (Entered: 09/16/2022)
09/19/2022	<u>63</u>	NOTICE by National Institutes of Health <i>Regarding Information Under Seal</i> (Loftus, Meghan) (Entered: 09/19/2022)