

Joseph Kemnitz
Wisconsin National Primate Research Center
1220 Capitol Court
Madison, WI 53715-1299

Dear Joseph Kemnitz,

April 7, 2005

Pursuant to the state open records law, Wis. Stat. Ann. sec. 19.31 to 19.39, **I write to request access to and a copy of all photographic records (photos, videos, or film) relating to the protocols of researcher Ruth Benca.** If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees. Please provide a receipt indicating the charges for these documents.

If you choose to deny this request, I ask that you provide a written explanation for the denial *including a reference to the specific statutory exemption(s)* upon which you rely. Please note that an agency cannot promulgate an administrative rule that creates an exception to open records law (*Chavala v. Bubolz Ct. App. 1996*).

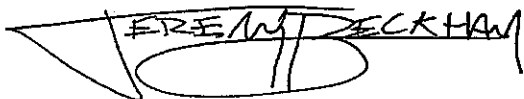
I would further note that, pursuant to Wis. State. Ann. sec. 19.35(5), destroying or tampering with records is prohibited until at least 60 days after the date of denial or until a dispute has been resolved pursuant to 19.37.

Please be advised that I intend to pursue whatever legal remedy necessary to obtain access to the requested records pursuant to Wis. Stat. Ann. section 19.37. I would note that violation of the open records law can result in the award of attorney fees, damages of not less than \$100 and other actual costs. If a court determines that an official's noncompliance with the law was arbitrary or capricious, it may award punitive damages and assess fines of up to \$1000.

As provided by the open records law, I expect your response as soon as practicable and without delay.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "JEREMY BECKHAM". The signature is written in a cursive style with some capital letters. The name "JEREMY" is written above "BECKHAM".

Jeremy Beckham
102 N. Orchard St., #101
Madison, WI 53715

Joseph Kemnitz
Wisconsin National Primate Research Center
1220 Capitol Court
Madison, WI 53715-1299

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April 7, 2005

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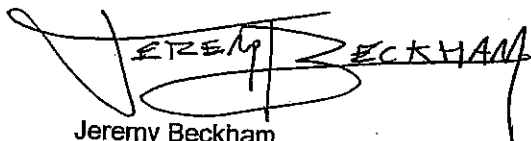
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A handwritten signature in black ink that reads "JEREMY BECKHAM". The signature is written in a cursive style with a large, stylized initial "J" and "B".

Jeremy Beckham
102 N. Orchard St., #101
Madison, WI 53715

**Animal Law Associates of Wisconsin, LLC
29 Haverhill Circle
Madison, WI 53717
(608) 824-9472**

October 27th, 2005

Honorable Peggy A. Lautenschlager
Attorney General
State of Wisconsin
PO Box 7857
Madison, WI 53707-7857

Re: Public Records Enforcement Action Request
University of Wisconsin

Dear Attorney General Lautenschlager:

On behalf of our client, Mr. Jeremy Beckham, we request that your office immediately begin an enforcement action against the University of Wisconsin-Madison (U.W.) for its failure to abide by the provisions of Wisconsin's Public Records Law, §§ 19.31 – 19.39, Wis. Stats. Specifically, the U.W. has either denied access to the records listed below or has unduly delayed providing the requested opportunity for review and/or copies of these records.

On April 7th, 2005, Jeremy Beckham mailed (by certified mail) the following records requests to Joseph Kemnitz, Director of the UW National Primate Research Center:

Primate census (including primate identification numbers)
Photos, videos or film regarding Kalin research*
Photos, videos or film regarding Benca research
List of names, titles and salaries of current employees

On May 31st, 2005, Joseph Kemnitz sent a letter to Mr. Beckham stating that he was exploring the existence of the Kalin and Benca video records per Mr. Beckham's request of April 7th. (Copy of Kemnitz letter enclosed).

To date, Mr. Beckham has not been provided with the photos, videos or film regarding the Kalin and Benca research.

The public has a significant interest in the research being conducted at taxpayer expense at its public universities. By withholding information about this research, the University of Wisconsin prevents the public from understanding, evaluating and weighing the costs and benefits of this publicly funded research.

The existence of the requested videotapes and/or photographs was revealed by the researchers themselves in their published articles. For example, see the following excerpt from an article entitled "Effects of amygdala lesions on sleep in rhesus monkeys" by Ruth M. Benca and Ned Kalin, et al., published in a year-2000 issue of the journal Brain Research.

* In 2002, Mr. Beckham requested (in writing, pursuant to the Open Records Law) copies of the same videotapes of Dr. Kalin's work and at that time he was told that the videotapes were not "records" as the term is defined by Wisconsin Law. (Copy of August 9th, 2002 letter from John C. Dowling, Senior UW Legal Counsel enclosed).

Open Records Enforcement Request
Videotapes
October 27, 2005

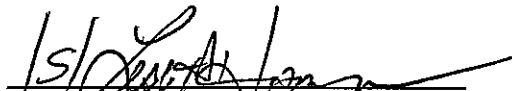
Each monkey's sleep was recorded for one night. On the afternoon before recording, monkeys were manually restrained for application of electroencephalogram (EEG), electrocardiogram (ECG) and electro-oculogram (EOG) electrodes. Monkeys were placed in the restraining chair immediately afterwards (at approximately 17:00 h), at which time EKG and electromyogram (EMG) electrodes were affixed. Recording began at about 17:45 h and lights were turned off at 18:00 h. A dim red light was left on during the recording period and monkeys were monitored continuously using a video camera. Several monkeys were videotaped throughout. Lights were turned on at 06:00 h the next morning and recording ended at about 06:15 h. The electrodes were removed and the animals were returned to their home cages.

changes in emotional responsivity. Although earlier studies in several primate species suggested that sleep is not significantly disrupted when animals are chair-adapted [7,8], observation of the videotapes of our animals indicated that the animals were reacting to the chair, even after 4 days of adaptation. For example, both experimental and control animals experienced frequent, brief arousals that appeared to occur in response to neck muscle relaxation and head drop. In fact, total sleep time and sleep efficiency were lower in control subjects than values reported for unrestrained macaques by other investigators [9,21,34]. This was also true of subjects with small lesions. Consistent with our observations, other investigators have also found that sleep recorded in a restraining chair is more fragmented than sleep recorded by telemetry in normal, unrestrained animals (D. Rye, personal communication).

We would appreciate your prompt attention to this request. We are concerned that the UW may destroy these videotapes/photographs before we are able to view them.

Sincerely,

Animal Law Associates of Wisconsin, LLC

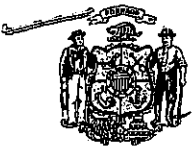


Leslie A. Hamilton, Attorney

Lori B. Nitzel, Attorney

Stacy R. Taeuber, Attorney

Cc Ben Griffiths, Attorney, Office of Administrative Legal Services, University of Wisconsin Madison



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Monica Burkert-Brist
Assistant Attorney General
burkert-bristm@doj.state.wi.us
608/266-1795
FAX 608/267-2778

December 1, 2005

Attorney Leslie A. Hamilton
Animal Law Associates of Wisconsin, LLC
29 Haverhill Circle
Madison, WI 53717

Dear Attorney Hamilton:

I have had an opportunity to review your public records complaint against the UW Primate Research Center. Because the Department of Justice has had recent on-going legal matters representing the Center's interest in litigation, I have concluded that it would not be appropriate for the Public Integrity Unit to conduct a review of your complaint.

I recommend that you seek a review from Dane County District Attorney Brian Blanchard who has concurrent jurisdiction with the Department of Justice under Wis. Stat. § 19.97 (1). Please note that a complaint sent to Mr. Blanchard should be in verified form. Alternatively, your organization may wish to avail itself of the private legal remedy in Wis. Stat. § 19.97 (4).

Thank you for contacting the Department of Justice

Sincerely,

Monica Burkert-Brist
Assistant Attorney General

MBB:tlw

cc: District Attorney Brian Blanchard



THE UNIVERSITY
of
WISCONSIN
MADISON

December 13, 2005

Atty. Leslie A. Hamilton
Animal Law Associates of Wisconsin, LLC
29 Haverhill Circle
Madison, Wisconsin 53717

Dear Ms. Hamilton:

I am writing in regard to your client Jeremy Beckham's records requests addressed to the Wisconsin National Primate Research Center and dated April 7, 2005. I am aware that, by letter dated October 27, 2005, you asked the Attorney General to begin an enforcement action against the University. The Attorney General has recently informed us that she will not begin such an action at this time.

Mr. Beckham seeks access to and copies of all photographic records (photos, videos or films) relating to the research of UW-Madison faculty members Ned Kalin and Ruth Benca. By letter dated August 9, 2002, I informed Mr. Beckham that the University had to deny an identical request. We have come to the same conclusion again.

The photos and videos that Mr. Beckham requested do not constitute a "record" as that term is defined in the Wisconsin Public Records law, sec. 19.32(2), Wis. Stats. The videotapes are primary data from research undertaken by faculty members at the University. Those faculty members have custody of them as part of the ongoing research.

Furthermore, we have concluded that we cannot produce these videotapes for you because the public interest in nondisclosure outweighs the interest in disclosure. As stated above, the tapes are primary data from the ongoing investigations of university researchers. It is extremely important to that research that the data remain under the control of the researchers, as otherwise it would be susceptible to misappropriation and/or misinterpretation.

This determination is subject to review by mandamus under sec. 19.37(1), Wis. Stats., or upon application to the Attorney General or District Attorney.

I also invite you to call me if you would like to discuss this matter further. The University has produced many records from the Primate Research Center in the past and remains open to doing so in the future. However, scientific research data produced by university faculty and other researchers must remain secure in the custody of those researchers.

Sincerely,

John C. Dowling
Senior University Legal Counsel

JCD/kkn

xc: Joseph Kemnitz
Ned Kalin
Ruth Benca

Office of Administrative Legal Services

361 Bascom Hall

University of Wisconsin-Madison

500 Lincoln Drive

Madison, Wisconsin 53706-1380

608/263-7400

Fax: 608/263-4725

www.wisc.edu/legal