

Freedom Through Justice Foundation

2111 Wilson Blvd #700
Arlington, VA 22201
703.875.8625

August 30, 2011

VIA CERTIFIED MAIL

John Dahlberg
Director of the Division of Investigative Oversight
Office of Research Integrity
National Institutes of Health
1101 Wootton Parkway, Suite 750
Rockville, MD 20852

Re: Freedom of Information Act Request

Dear Dr. Dahlberg,

We write on behalf of the Freedom Through Justice Foundation, a 501(c)(3) nonprofit corporation that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. It has come to our attention that taxpayer dollars used for federally-funded scientific research may have been abused; accordingly, we write to request certain documents pursuant to the Freedom of Information Act ("FOIA").

On March 6, 2008, a team of scientists lead by Linda B. Buck, a 2004 Nobel laureate, retracted a scientific paper after the scientists could not reproduce their original findings.¹ The science journal *Nature* issued the retraction of an article co-authored by Dr. Linda B. Buck, stating:

During efforts to replicate and extend this work, we have been unable to reproduce the reported findings. Moreover, we have found inconsistencies between some of the figures and data published in the paper and the original data. We have therefore lost confidence in the reported conclusions. We regret any adverse consequences that may have resulted from the paper's publication.²

Debra Speert, the Public Information Manager at the Society for Neuroscience, wrote in the *Nature* magazine Neuroscience blog,

¹ Kenneth Chang, *Nobel Winner Retracts Research Paper*, N.Y. TIMES, (Mar. 7, 2008), available at <http://www.nytimes.com/2008/03/07/science/07retractw.html?pagewanted=print> (last visited Aug. 25, 2011).

² Retraction, 452 *Nature* 120 (March 6, 2008), available at <http://www.nature.com/nature/journal/v452/n7183/full/nature06819.html> (last visited Aug. 24, 2011).

This is the highest profile retraction that I can recall in neuroscience, but so far, there has been little fallout. Perhaps that's because the original findings were notable only in the neuroscience community rather than in the general public. Regardless, it indicates that neuroscience and its well-known labs are not immune from fraudulent data. Although I admire Buck's swift and direct action, it concerns me that the first author has been assigned the lion's share of the blame. This seems like a familiar refrain, and I find it troubling.³

While issues of scientific misconduct are of public interest, public oversight is especially relevant when misconduct involves a scientist who has received several hundreds of thousands of dollars in taxpayer funds,⁴ is employed by a center that has received over \$2.3 billion in taxpayer funded federal grants,⁵ and is an elected member⁶ of the Congressionally-chartered and federally funded National Academy of Sciences.⁷

The public has a right to know that federal taxpayer dollars are not subject to mismanagement or fraud. An organization receiving NIH grant support for research is required to certify compliance with the NIH's policies on research misconduct.⁸ The HHS Office of Research Integrity (ORI) is responsible for implementing the assurance system related to procedures on scientific misconduct. Upon ORI's recommendation, Harvard Medical School formed an ad hoc committee to review Dr. Buck's retraction⁹ and the Fred Hutchinson Cancer Research Center (where Dr. Buck currently is employed) launched its own internal investigation.¹⁰

³ Debra Speert, *Retraction reaction*, Action Potential, *Nature Neuroscience* blog (Mar. 6, 2008), available at http://blogs.nature.com/nn/actionpotential/2008/03/retraction_reaction.html (last visited Aug. 25, 2011).

⁴ Search Results "Linda Buck", National Institutes of Health, Research Portfolio Online Reporting Tools, available at http://projectreporter.nih.gov/reporter_searchresults.cfm?&new=1&icde=8640063&loc=2&CFID=38738223&CFTOKEN=49241923 (last visited Aug. 25, 2011).

⁵ FRED HUTCHINSON CANCER RESEARCH CENTER, USASPENDING DATABASE, available at <http://www.usaspending.gov/search?query=&searchtype=&formFields=eyJTZWFyY2hUZXXJtjpbllwiRnJlZCBldXJjaGluc29uIENhbmNlciBSZXNlYXJjaCBDZW50ZXJcIiJdfQ%3D%3D> (last visited Aug. 25, 2011) (click "grant" in search and Fred Hutchinson Cancer Research Center in "recipient").

⁶ National Academy of Sciences, Membership Directory, Linda B. Buck, available at http://www.nasonline.org/site/Dir/1958979019?pg=vprof&mbr=1001988&returl=http%3A%2F%2Fwww.nasonline.org%2Fsite%2FDir%2F1958979019%3Fpg%3Dsrch%26view%3Dbasic&retmk=search_again_link (last visited Aug. 25, 2011).

⁷ 12 Stat. 806, §1, ch. 111 (Mar. 3, 1863), 36 U.S.C. § 1503.01 ("[T]he Academy shall, whenever called upon by any department of the Government, investigate, examine, experiment, and report upon any subject of science or art, the actual expense of such investigations, examinations, experiments, and reports to be paid from appropriations[]").

⁸ 42 CFR Part 93, Subpart A.

⁹ Kenneth Chang, *Nobel Winner Retracts Research Paper*, N.Y. TIMES, (Mar. 7, 2008), available at <http://www.nytimes.com/2008/03/07/science/07retractw.html?pagewanted=print> (last visited Aug. 25, 2011).

¹⁰ Sandi Doughton, *Research papers retracted at WSU, the Hutch*, THE SEATTLE TIMES, (Sept. 24, 2010), available at http://seattletimes.nwsourc.com/html/localnews/2012991448_misconduct25m.html (last visited Aug. 25, 2011); Heidi Ledford, *Nobel prizewinner's paper retracted*, 452 NATURE 13 (Mar. 5, 2008), available at <http://www.nature.com/news/2008/080305/full/452013a.html> (last visited Aug. 25, 2011).

Pursuant to the provisions of FOIA, 5 U.S.C. § 552, the Freedom Through Justice Foundation hereby requests that your department produce the following within twenty (20) business days:

1. All records¹¹ between ORI and Harvard Medical School pertaining to investigation of Dr. Linda Buck's retraction, including the recommendation of forming a committee and any suggested guidelines for that committee
2. All records concerning the results of investigations into the scientific integrity of Dr. Linda Buck's research
3. Copies of any other requests for information made by outside groups through FOIA regarding this matter

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . The presumption of disclosure should be applied to all decisions involving FOIA.¹²

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

The Freedom Through Justice Foundation is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose.

¹¹ For purpose of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term "record" also shall mean any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

¹² PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, (Jan. 21, 2009), available at <http://www.whitehouse.gov/the-press-office/freedom-information-act> (last visited August 30, 2011).

Mr. John Dahlberg
August 30, 2011
Page 4

In an effort to facilitate record production within the statutory time limit, the Freedom Through Justice Foundation is willing to accept documents in electronic format (e.g. e-mail, pdfs). When necessary, the Freedom Through Justice Foundation will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact Amber Taylor at (703) 875-8625. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Epstein", written over a horizontal line.

Daniel Epstein
Executive Director