



the sunshine project

<http://www.sunshine-project.org>

NBAF Transparency Report #2

Whereas secrecy generates suspicion, transparency promotes safety and international and domestic confidence in the objectives of research involving bioweapons agents. To assess US biodefense transparency, a selection of records has been requested from institutions that wish to construct the Department of Homeland Security's National Bio- and Agro-defense Facility (NBAF). This report is the second in a series detailing the results. Future reports will focus on other bidders. This report will be updated with comparisons to other NBAF bidders as future reports are released.

Oklahoma State University

Oklahoma State University (OSU) is a member of a coalition of institutions that has bid for NBAF.

Summary Transparency Evaluation

Overall Response:	A satisfactory response was received for none of eight (8) information requests (0%).
Shoe Bomber Test:	Failed. Information about select agents is public, despite OSU's claim that federal law prevents disclosure. Google enables easy pinpointing of the location of OSU select agents.
Hate Mail:	Was received after requesting information. OSU states that it is unconcerned about abuse directed at public requesters.
Select Agent Rule:	OSU claims that the Select Agent Rule " <i>restricts access [to select agent information] to only those with a Department of Justice approval</i> " and that this applies to all information that was requested. OSU further claims that CDC reconfirmed that this is federal law before it replied. The CDC Select Agent Program did not answer requests for clarification.
Response Time & Fees:	OSU quickly refused to provide any significant information.

Request Detail

Request #1: *OSU's entire Expression of Interest (EOI) in the National Bio- and Agro-defense Facility (NBAF).*

Response: OSU refused to release any portion of the EOI. It justified its position by stating that the EOI is copyrighted and subject to a non-disclosure agreement. OSU is a public institution. It did not state who holds the copyright or why it would prevent release, nor did OSU identify the other parties to the alleged non-disclosure agreement that it says obviates the Oklahoma state freedom of information law.

Request #2: *OSU's entire NBAF EOI (again, citing release by other NBAF bidders).*

Response: OSU again refused to release any portion of the EOI.

Request #3: *All Reports of Laboratory Biosafety Incident since 1 January 2003, in their entirety.*

Response: This is the only request for which OSU provided any records. Four reports were released that allegedly describe all accidents in OSU labs over a period of nearly four years. They total eleven (11) heavily redacted pages. The accidents are one eye splash with an adenovirus gene therapy vector, one needle stick, one cut, and one ethanol fire/burn. In three of four cases, the organism being researched at the time of the accident is blacked out, as are numerous other details.

The information provided is not of significant use in understanding the effectiveness of the OSU biosafety program. The Sunshine Project does not believe that the response is complete, either because accidents have occurred for which an incident report was filed, or because OSU has refused to release other reports (without indicating that it has done so), or both reasons.

Request #4: *All reports of inspections identifying structural deficiencies in OSU BSL-3 laboratories from 30 May 2003 through the present, including but not limited to inspections by OSU staff and federal agencies.*

Response: Nothing was released. On the basis of OSU Institutional Biosafety Committee meeting minutes released in 2004, however, it is known that such reports were written. There were numerous problems with OSU BSL-3 select agent facilities documented in inspections in 2003 and 2004, as OSU scientists rushed to begin new projects with select agents.

Request #5: *Research protocol JHW030303, "Bacterial Sugars to Potentiate Macrophage Immunity." This is for select agent research with brucella, plague, and tularemia.*

Response: OSU refused to release any portion of the protocol stating that CDC has informed it that federal law prohibits OSU from releasing information about select agent research to persons without FBI clearance. Despite OSU's claim of a secrecy mandate, using OSU public records, the personnel and agents involved in the research, some detail, and the location of the lab may be identified.

Request #6: *Research protocol WM061602, "Murine and Baboon Model for Monkeypox Virus Infection." Monkeypox is a select agent.*

Response: Citing the Select Agent Rule, OSU refused to release any portion of the protocol. Situation is identical to request #5.

Request #7: *The research protocol "Revealing the Attenuating Mutations of F. tularensis LVS."*

Response: Citing the Select Agent Rule, OSU refused to release any portion of the protocol. LVS is the vaccine strain of tularemia, and is not a select agent.

Request #8: *The reports of all annual reviews of the OSU select agent program from 1 January 2003 through the present.*

Response: Citing the Select Agent Rule, OSU refused to release any portion of the reviews, which are documented to exist by OSU's IBC meeting minutes.

The Shoe Bomber Test ¹

Result: OSU fails the Shoe Bomber Test.

Information that OSU refused to release for security reasons can be readily obtained from other public sources, including OSU's website. If such data in fact should not be public, then OSU has failed to protect it. At the same time, OSU's nearly complete refusal to honor requests makes it one of the most opaque public institutions from which the Sunshine Project has ever requested records.

It can be quite easily ascertained by an internet search of OSU's own websites that OSU handles select agents. This includes this specific agents being used and the names of many persons handling them. Records released to the Sunshine Project by OSU in 2004 also identify specific room numbers where this work takes place, information that can also be quickly inferred from information in a "secure documents" section of the OSU website which, in fact, is not secure and has been indexed by Google.²

OSU's security measures are thus completely ineffective, in addition to the fact that OSU is clearly improperly invoking security concerns for the vast majority of the information it refuses to release.

Hate Mail

Several days after filing our request with OSU under the Oklahoma Open Records Act, an abusive e-mail was received from a person claiming to be in Seattle, Washington. The e-mail reads in part:

I'm curious as to your huge "need" for knowledge for the 'project' and why you think you are so darn important to request such information... Do you really want them WASTING their time to get junk ready for you to read? Public Knowledge you say? Bull Crap... Get off you lazy rear and do something worth while ... quit harrassing everyone that has worked their whole life to get a degree and a well respected job in the field and then having to spend hours on end to make copies of papers for you and your no-account cause... I am COMPLETELY fed up with hearing about you and your INTERRUPTING NORMAL BUSINESS... STICKING YOUR NOSE IN OTHER PEOPLES BUSINESS. If you were to call my place of business ... I'd slam the phone in your ear so you couldn't hear me laugh at you." (Emphasis in original.)

Which pretty much mirrored OSU's attitude about public information requests, albeit in more blunt terms. Thus it came as little surprise that the e-mail did not come from Seattle, it was actually sent by the spouse of the OSU Biological Safety Officer who, when confronted, admitted that he was the author.

¹ The Shoe Bomber Test is a common sense probe of consistency. Does the institution evenly enforce information access policies or is it erratic in its transparency? Named for Richard Reid (the "Shoe Bomber"), a failed terrorist who, despite being widely perceived as of questionable intelligence, thwarted security measures and nearly killed hundreds of airline passengers. A worthwhile security measure will generally stop a moron's effort to defeat it. If an unacceptable risk is posed by release of information, then that information should be consistently held secret. Part time secrets reflect an ineffective and false notion of security. In the Shoe Bomber Test, quick internet searches are conducted to identify details that are redacted from documents. If the allegedly sensitive information can be found on the institution's website or another public source, such as a scientific article, then the institution fails the test because any moron could defeat the institution's security. In some circumstances, the institution may actually be failing to protect genuinely sensitive data. In most circumstances, however, redactions are not of information that is in fact security-sensitive. More commonly, embarrassing detail is removed, or black ink indicates ignorance of security issues or arbitrary resistance to transparency.

² The site lists biosafety cabinets and other lab equipment, identifying the location (room number) and responsible PI, information that can be easily cross-referenced with other public sources on select agent research projects to pinpoint the location of specific select agents on the OSU campus.

Persons filing a freedom of information request should not be subject to abuse as a result of exercising their rights under open records law. The Sunshine Project contacted Dr. David Bosserman, OSU Vice President and Mr. Gary Shutt, Director of Communications and the responsible officer for Oklahoma Open Records Act requests. Shutt replied that he was unconcerned because the e-mail came from the BSO's spouse rather than the BSO herself.

In subsequent communication, the husband stated that the BSO was charged with gathering records for the response to the Sunshine Project request. He stated that the BSO, the most recent of a string of officers that have quickly abandoned the job, spent days locating a large number of responsive records and then hours making copies for Mr. Shutt. The sheer scale of the task had prompted his anger and the e-mail from "Seattle". What happened to all of these records is a mystery. Only eleven pages were released to the Sunshine Project.

Select Agent Rule

OSU claims that the Select Agent Rule "*restricts access [to select agent information] to only those with a Department of Justice approval*" and that this applies to all information that was requested. This interpretation of the rule would outlaw scores of websites, publications, and transparency policies at other institutions that handle select agents.

The Sunshine Project challenged OSU's interpretation of the Rule, but the University replied:

This rule in fact precludes OSU from releasing specific information concerning our select agent program. We confirmed this with the CDC Compliance Officer for the Select Agent Program prior to our response... The strict interpretation of the Final Rule restricts access to only those with a Department of Justice approval for access to information about our program. Our reply does not contain false information about the Select Agent Final Rule and therefore does not misrepresent federal law.

The CDC Select Agent Program did not return a phone call or e-mails requesting clarification, however, if OSU is correct in its interpretation of the law, then the Sunshine Project is in possession of information documenting violation of the select agent rule by most of the more than 400 institutions that handle select agents in the United States. Such violations can carry a lengthy jail sentence.

Response Time and Fees

OSU reasonably quickly (28 days) replied by refusing to provide anything of substance.