

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT

BABAK BABAKINEJAD

Plaintiff,

v.

MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY

Defendant.

CIVIL ACTION NO. 2181CV01904

**MIT's STATUS REPORT CONCERNING DISCOVERY AND RESPONSE TO COURT  
ORDER CONCERNING IN CAMERA SUBMISSION**

Consistent with the Court's direction at the Status Conference held on September 27, 2023 and the Court's Order on September 23, 2023, defendant Massachusetts Institute of Technology ("MIT") hereby provides the following Report to the Court.

**A. Status Report Concerning Discovery**

At the Status Conference held on September 27, 2023, MIT undertook to begin its rolling production by October 31, 2023 and report to the Court on that production no later than November 10, 2023. MIT reports that on October 31, 2023, it produced 2,271 pages of responsive documents from 10 of the 19 custodians whose documents the Court (largely adopting MIT's proposal) has directed MIT to produce. *See* Docket No. 28. Counsel for MIT will continue to review and produce documents on a rolling basis.

**B. Response to Court’s Order Concerning In Camera Submission of Research Misconduct Materials.**

On November 23, 2023, the Court issued an Order directing that MIT provide for in camera review “five examples of documents reflecting MIT’s investigation into any research misconduct by Caleb Harper or OpenAg . . . which it has withheld from production on grounds of privilege or relevance or confidentiality.” MIT has separately submitted five such documents today.

MIT continues to ask the Court deny plaintiff’s to motion to compel production of those documents pursuant to plaintiff’s Request No. 9, an extraordinarily broad request, which seeks “[a]ll Documents and Communications, relating to research misconduct at the MIT Open Agriculture Initiative.” MIT makes this request for four main reasons:

*First*, federal policy strongly favors robust confidentiality protection for material related to university research misconduct investigations. In 2000, the White House Office of Science and Technology issued the “Federal Research Misconduct Policy” applicable to universities, like MIT, supported by federal funds. *See* Federal Research Misconduct Policy, Fed. Reg. 65, 76260-76264 (Dec. 6, 2000) available at <https://ori.hhs.gov/federal-research-misconduct-policy>. That Policy provides as follows:

Confidentiality During the Inquiry, Investigation, and Decision-Making Processes. To the extent possible consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know.

*Id.*

*Second*, MIT's own procedures, which individuals who make research misconduct complaints and the subjects of those complaints should be entitled to rely on, likewise make confidentiality a key component of every inquiry. *See* MIT Research Misconduct Policy, § 10.1.5 ("Provisions Common to Misconduct Review Process," available at <https://research.mit.edu/integrity-and-compliance/research-misconduct>). The MIT Policy provides:

Proceedings concerning Research Misconduct often raise difficult issues for those making the allegations, for those who are the subject of the allegations, and for those responsible for reviewing the allegations. Review of the allegations should therefore be conducted promptly and with care and sensitivity.

All participants in the review process under this Policy are expected to maintain confidentiality to protect the privacy of all involved, to the extent possible and as permitted by law. Participants should keep in mind the effect that allegations can have on reputations, even if the allegations are not sustained by the proceedings. Thus, only those people with a need to know should be informed of a complaint.

*Id.* As the Court will see, the materials MIT has submitted for in camera review repeatedly refer to this Policy.

*Third*, as the Court observed at the last status conference, this is case involving a claim for wrongful termination. Plaintiff claims that he was terminated on September 30, 2018. Plaintiff's Second Amended Complaint, Dkt No. 8, at ¶67. The initial inquiry relating to the subject of Document Request No. 9 did not commence until May 1, 2020, some 19 months after plaintiff's alleged termination. *See In Camera* Doc. No. 1, at 1-2. That inquiry was based on allegations first received on August 27, 2019, nearly a year after plaintiff's alleged termination. *Id.* MIT's conclusions relating to that allegation, reached on July 14, 2021, *see In Camera* Doc. No. 5, do not bear on plaintiff's claim that he was wrongfully terminated on September 30, 2018, nearly three years earlier.

*Fourth*, the material MIT has submitted reveal the identities and addresses the conduct of many individuals, not just those that plaintiff alleges played a role in his alleged wrongful termination. *See, e.g.*, In Camera Document No. 2. It would be extraordinarily unfair for the identity of those individuals to be revealed based on allegations relating to an alleged wrongful termination they played no role in.

To the extent that the Court believes it appropriate, striking the balance between these important confidentiality considerations and plaintiff's interest in prosecuting his claim could be achieved by requiring MIT to produce excerpts from the small number of documents from the research misconduct file that contain references to the plaintiff. *See, e.g.*, In Camera Doc. No. 4, at 51-56.

Respectfully submitted,

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Dated: November 3, 2023

**CERTIFICATE OF SERVICE**

I, Martin F. Murphy, hereby certify that on November 3, 2023, I caused a true and correct copy of the foregoing document to be served upon all counsel of record by means of the Court's electronic filing system.

/s/ Martin F. Murphy  
Martin F. Murphy