

July 25, 2017

Malcom A. Shorter
Deputy Assistant Secretary for Administration
U.S. Department of Agriculture

Via e-mail: Malcom.Shorter@osec.usda.gov

Re: Office of Administrative Law Judges' Failure to Comply With Statutory
Mandates Regarding Online Postings

Dear Mr. Shorter,

I'm writing on behalf of PETA to request that the U.S. Department of Agriculture's (USDA) Office of Administrative Law Judges (OALJ) resume promptly posting decisions from its Animal Welfare Act (AWA) adjudications online at <https://www.oaljdecisions.dm.usda.gov>, as required by law. Until recently, the OALJ routinely posted such decisions within a couple of weeks of issuance. Recently, however, the postings have slowed to a torpid pace: The office is now taking *months* to post these records. Indeed, the most recent AWA decision available on the website is from May 18x—more than two months ago.

The failure to post these decisions promptly deprives PETA and the public of timely access to information as required by the 1996 amendments to the Freedom of Information Act (FOIA). Those amendments—which were enacted to address agency delays in making records available—require that agencies proactively and within a reasonable timeframe post certain records online, including, specifically, "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases." 5 U.S.C. § 552(a)(2)(A); *accord* 7 C.F.R. § 1.4(a)(1); *see also id.* § 1.23 ("Records in formal adjudication proceedings . . . and shall be made available to the public."). Even when the USDA took down records from its website pertaining to its enforcement of the AWA this past February, it stressed that enforcement records would continue to be made available on the OALJ website.

The failure to provide timely access to these records violates the FOIA's strong aversion to "secret law"—i.e., it deprives the public of a body of final decisions that reflect the manner in which the agency is implementing the AWA. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975). This violation of the affirmative-disclosure requirements also harms PETA's efforts to advocate on behalf of animals who are covered by the AWA.

May I please hear from you by the end of the day on Friday, July 28, that the OALJ will resume posting these decisions within a reasonable timeframe and with a date by which prompt posting will resume? I can be reached at 202-309-4697 or DelciannaW@petaf.org.

Thank you for your prompt attention to this important matter.

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PETA FOUNDATION IS AN
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TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

Very truly yours,

A handwritten signature in black ink, appearing to read "Delcianna J. Winders". The signature is fluid and cursive, with a long, sweeping horizontal stroke extending to the right.

Delcianna J. Winders, Esq.
Vice President and Deputy General Counsel
Captive Animal Law Enforcement
PETA Foundation