



Marketing and
Regulatory
Programs

Animal and Plant
Health Inspection
Service

Legislative and
Public Affairs

Freedom of
Information

4700 River Road
Unit 50
Riverdale, MD
20737-1232

December 26, 2017

Teresa Marshall
PETA Foundation
501 Front Street
Norfolk, VA 23510

RE: Your Freedom of Information Act (FOIA) request, 2016-APHIS-03057-F

SENT VIA E-MAIL TO TERESAM@PETA.COM

Dear **Ms. Marshall**:

This letter responds to your Freedom of Information Act (FOIA) request, tracking number **2016-APHIS-03057-F**, dated **March 30, 2016**, which was received at **APHIS** on **March 30, 2016**. You requested **"all records related to the February 1, 2016, inspection of The Garold Wayne Interactive Zoo aka GW Exotic owned by Joseph Maldonado, Registration #73-C-0139."**

Your request was referred to the Animal Care (AC) program for a search using the information you provided. As you may know, the cut-off date for responsive records to a FOIA request is based on the date the agency conducts its search. AC performed a thorough search of their records to include all locations likely to contain documents. The search commenced on **August 19, 2016**. As a result of that search, a total of forty-nine (49) pages of records responsive to your request were identified.

The documents you requested are contained in a Privacy Act (PA) system of records. See, APHIS-8: Veterinary Services - Animal Welfare. Generally, under the Privacy Act, an agency shall not disclose information contained in a system of records, except pursuant to the written request by or consent of the individual to whom the record pertains, unless an exception applies. There are twelve exceptions under the Privacy Act to this general prohibition to disclosure. See 5 U.S.C. § 552a (b). One exception authorizes disclosure when the FOIA requires the release of information contained in a system of records. *Id.* at § 552a (b) (2).

As such, APHIS must release all requested records which are not exempt under the FOIA. Therefore, the records at issue have been reviewed under the FOIA. After a review of the records, it has been determined that certain information is exempt from release pursuant to FOIA Exemptions (b)(6) and (b)(7). Of the above, eleven (**11**) pages have been released to you in part pursuant to exemptions (b)(6) and (b)(7)(c) of the FOIA. The remaining thirty-eight (**38**) pages are being withheld in full pursuant to exemptions (b)(6) and (b)(7)(c). Therefore, these pages have not been included in this release.

The above-referenced records are hereby released to you via **e-mail**.

Personal Privacy Interests – Exemption 5 U.S.C. §552(b)(6)

FOIA Exemption 6 permits the government to withhold from “personnel and medical files and similar files” information about individuals when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” As a threshold matter, an inspection report and its attachments (to include photos and/or videos) and all other records at issue contain information about an individual licensee and is therefore considered a “similar file.”

In order to determine whether information may be withheld under FOIA Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be compromised by the disclosure of the information. If no privacy interest is identified, the information may not be withheld pursuant to Exemption 6. Second, the agency must determine whether the release of the information would further the public interest by shedding light on the operations and activities of the Government. Third, the agency must balance the identified privacy interests against the public interest in disclosure.

From the records, APHIS is withholding information such as inspection report numbers, the month and day of any inspections, the type of inspections, the findings (to include photos and/or videos if applicable), and any private addresses and/or names of persons who are not government employees, but whom have had direct contact with the government.

It has been determined that there is a substantial privacy interest in the withheld information. The risk of revealing the inspection findings could cause embarrassment, harassment or other stigma to the licensee. The withholding of the inspection summary and other identifying information is appropriate, because the public would be able to compare the publicly available inspection report found in the APHIS Animal Care Public Search database against the requested redacted inspection report which, in this case, would reveal the identity of the licensee. As such, the full release of the requested inspection report would be considered an unwarranted invasion of personal privacy.

Under Exemption 6, the only pertinent public interest is whether release of the information would shed light on the agency's activities and the agency's performance of its statutory duties. We do find that there is public interest in the request for this information; however, the protection against embarrassment or harassment of the licensee, far outweighs any public interest in disclosing of this personal information. Therefore, because the harm to personal privacy is greater than any minimal public interest that may be served by disclosure, release of this personal information would constitute a clearly unwarranted invasion of the privacy of the individual and is therefore exempt from disclosure.

Records or Information Compiled for Law Enforcement Purposes –
Exemption 5 U.S.C. §552(b)(7)

Exemption (b)(7)(C) protects from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records could reasonably be expected to constitute an unwarranted invasion of personal privacy, 5 U.S.C. §552(b)(7)(2006), amended by the OPEN Government Act of 2007, Pub. No. 110-175, 121 Stat. 2524.

Under Exemption 7, law enforcement purposes cover administrative enforcement actions. APHIS is authorized under the Animal Welfare Act (AWA), (see 7 U.S.C. 2131-2159) (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) to assure the humane treatment of animals during transportation in commerce; and (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. The pertinent regulations enforcing the AWA are found at 9 CFR, Chapter 1, Subchapter A, Part 1 – 4). The AWA ensures that all regulated commercial animal breeders, dealers, brokers, transportation companies, exhibitors, and research facilities are licensed or registered, and that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use are in compliance with the AWA. In addition, the AWA authorizes APHIS to review and investigate and set civil penalties for alleged violations.

FOIA Exemption (b)(7)(C) of the FOIA permits the government to withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records could reasonably be expected to constitute an unwarranted invasion of personal privacy, 5 U.S.C. §552(b)(7)(2006), amended by the OPEN Government Act of 2007, Pub. No. 110-175, 121 Stat. 2524. The responsive records at issue were compiled as part of the AWA regulatory compliance process. Therefore, Exemption (b)(7)(C) is also applied along with Exemption (b)(6).

You may contact the analyst who processed your request and/or the FOIA Requester Service Center, as well as our FOIA Public Liaison (James Ivy) for any further assistance and to discuss any aspect of your request at: **USDA/APHIS/LPA/FOIA&PA, 4700 River Road, Unit 50, Riverdale, MD 20734**; e-mail at Foia.officer@aphis.usda.gov; telephone at **(301)-851-4102**; or facsimile at **(301) 734-5941**.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: **Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001**; e-mail at ogis@nara.gov; telephone at **202-741-5770**; toll free at **1-877-684-6448**; or facsimile at **202-741-5769**.

If you are not satisfied with the response to this request, you may administratively appeal by writing to **Administrator, Animal and Plant Health Inspection Service, Ag Box 3401**,

Washington, DC 20250-3401. Your appeal must be postmarked or electronically transmitted within **90 days** of the date of the response to your request. If you choose to Appeal, please refer to tracking number **2016-APHIS-03057-F** in your appeal letter and add the phrase "**FOIA APPEAL**" to the front of the envelope. To assist the Administrator in reviewing your appeal, provide specific reasons why you believe modification of the determination is warranted.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Woods', is positioned below the word 'Sincerely,'.

Tonya G. Woods
Director
Freedom of Information & Privacy Act
Legislative and Public Affairs