



Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

Legislative and
Public Affairs

Freedom of
Information

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Unit 50
Riverdale, MD
20737-1232

March 9, 2018

Teresa Marshall
Information Officer
PETA Foundation
501 Front Street
Norfolk, VA 23510
teream@petaf.org

Dear Ms. Marshall:

This response is in reply to your Freedom of Information Act (FOIA) request dated and received in this office June 10, 2016. Your request was assigned FOIA tracking number 2016-APHIS-04262-F. You requested the following:

- PETA requests all documents related to the following complaints submitted by PETA:
 - Pocono Snake Farm AC16-347
 - Lancelot Kollman Ramos AC16-368
 - Carson & Barnes AC16-353

Upon receipt, your request was forwarded to the Animal Care (AC) Program to conduct a search of their files for records responsive to your request. AC searched their electronic files on June 24, 2016 and located 26 pages of records that are responsive to your request. The records at issue have been reviewed under the FOIA. It has been determined that of these 26 pages, some are being withheld in part pursuant to FOIA Exemption 6, 5 U.S.C. § 552 (b)(6), and FOIA Exemption 7, 5 U.S.C. § 552 (b)(7)(C).

The records requested are contained in a Privacy Act 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. The following information provides justifications and precedent for our withholding of information under the applicable FOIA exemptions:

FOIA Exemption (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 contains 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.

In this matter, we have withheld information from an inspection report and other documents, such as the licensees’ address, phone number, the inspection report number, day and month of the inspection, the type of inspection, the description of inspection findings, the signature of the animal care inspector and other APHIS employees, the results of some complaints, and other personal information.

It has been determined that there is a substantial privacy interest in the withheld information. We are withholding the signatures to prevent potential identity theft and/or fraud. Withholding the inspection findings is warranted because 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 and other records 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.

FOIA Exemption (b) (7) (c)

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, Parts 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) permits the government to withhold information compiled for law enforcement purposes about individuals, the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." The responsive records at issue were compiled as part of the AWA regulatory compliance process, and were compiled for law enforcement purposes. Therefore, from the responsive records, Exemption (b)(7)(c) is also applied along with Exemption (b)(6).

Discussion of IES Search for Records Responsive to Request

On another note, your request was also forwarded to Investigative and Enforcement Services (IES) on March 24, 2017 to search for documents responsive to your request. IES conducted a search for records related to your request during the timeframe you specified. With regards to the IES search I can neither confirm nor deny that any records exist. Confirmation of the existence of such records would itself reveal exempt information. To acknowledge the existence of records would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6 of the FOIA. If they existed, responsive records would be exempt from disclosure under Exemptions 6 and/or 7C.

Because of the obvious possibility of embarrassment, harassment, intimidation, or other personal intrusions, we find that to even acknowledge the responsive records may exist pertaining to any portion of your request would result in a substantial invasion of privacy. While APHIS is strongly committed to keeping the public fully informed about agency operations, we also are concerned about preserving the privacy rights of individuals.

Teresa Marshall
FOIA 2016-APHIS-04262-F

An agency's statement in response to a FOIA request, that it can neither confirm nor deny the existence of records is commonly called a "Glomar" response. A Glomar response is justified when confirmation of the existence of certain records would itself reveal exempt information and the following four circumstances exist:

1. The request is made by a third party.
2. The request is for information about a person identified by name.
3. The named individual is not deceased.
4. The individual has not given the requester a waiver of his privacy right.

I have determined that all of the above circumstances exist, and therefore, a Glomar response is justified.

Lastly, a Decision and Order for Lancelot Kollman Ramos can be found here:
<https://www.oaljdecisions.dm.usda.gov/sites/default/files/75%20-%20Book%201%20-%20Part%201%20-%20General.pdf>

This is our final response. If you have any additional questions regarding this matter, you may contact Tamara Scott, the analyst who processed your request, at (301) 851-4112 or by email, at tamara.scott@aphis.usda.gov. You may also contact Mr. James Ivy, our FOIA Public Liaison, at (301) 851-4100 for any further assistance and to discuss any aspect of your request. 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, 8601 Adelphi Road-OGIS, 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.

Sincerely,

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