



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

April 2, 2018

Teresa Marshall
PETA Foundation
501 Front Street
Norfolk, VA 23510

Email: teresam@petaf.org

SENT VIA ELECTRONIC MAIL

Re: Final Response to FOIA Request No. 2017-APHIS-05109-F

Dear Ms. Marshall:

This is in response to your June 21, 2017, Freedom of Information Act (FOIA) request which was received in the U.S. Department of Agriculture (USDA), Animal and Plant Health Service (APHIS) on the same date. Your request was assigned FOIA tracking number 2017-APHIS-05109-F. Your FOIA request states:

PETA requests all records, including color photos, related to the May 9, 2017 inspection of Waccatee Zoo, 56-C-0230.

Upon receipt, your request was forwarded to the Animal Care (AC) program to conduct a search of their files for records that are responsive to your FOIA request. Agency employees conducted a search of their electronic files and databases using key words that would most likely result in responsive records. As a result of their search, on December 22, 2017, AC provided 20 pages (7 pages of inspection reports, 4 pages of a complaint, and 9 photographs) and 3 videos that are responsive to your request.

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. Therefore, the records at issue have been reviewed under the FOIA. After a review of the records, it has been determined that 8 pages will be released in part, pursuant to FOIA Exemptions 6 and 7(C); 3 pages will be released in part, pursuant to FOIA Exemptions 6, 7(C) and (D); and 9 photographs and 3 videos will be withheld in full, pursuant to FOIA Exemptions 6 and 7(C).

The following information provides justifications and precedent for our withholding of information under the applicable FOIA exemptions:

Exemption 6

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.” We have determined that these records meet the definition of “similar” files, because they contain information pertaining to individuals.

In order to determine whether a document may be withheld under 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 record. Second, the agency must determine whether the release of the document 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 circumstance, we are withholding certain information from the inspection reports, namely, the private address of the licensee, the inspection report number, the month and date of the inspection, the type of inspection, the actual results of the inspection, and the number and type of animals. We are also withholding all of the photographs and videos that are associated with the inspections as well as the details of a complaint that was filed against the licensee.

We have determined that the individual has more than a *de minimis* privacy interest in this information because the facility is located on the homestead. 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. While we do find that there is public interest in the withheld information, we have determined that the protection against potential harm to the licensee far outweighs any public interest in revealing the personal information in these records. Therefore, the privacy interests of the individuals in the records you have requested outweigh the non-existent public interest in disclosure of the information.

Exemption 7(C)

FOIA Exemption 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." 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.

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). As explained above, APHIS has concluded that the privacy interest in the information described in Exemption (b)(6) outweighs the public interest in release of the information. Therefore, release of this information would constitute an unwarranted invasion of personal privacy.

Exemption 7(D)

FOIA Exemption 7(D) provides protection for “records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority of any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.”

The goal of Exemption 7(D) is to protect the ability of law enforcement agencies to obtain information and cooperation from individuals who expect a degree of confidentiality as otherwise, they may be less likely to come forward in future investigations. In this case, we have withheld the identity of the confidential source and any information that would reveal the source’s identity. In this instance, the confidential source voluntarily provided to our Agency information that could be used in an administrative law enforcement investigation with the understanding that their identity would remain confidential.

If you are not satisfied with this response, 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 this response. Please reference case number 2017-APHIS-05109-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, please provide specific reasons why you believe modification of this determination is warranted.

This completes APHIS's response to your request. You may contact Tameka Tilliman, the analyst who processed your request, at (301) 851-4033 or by email, at Tameka.L.Tilliman@aphis.usda.gov as well as Mr. James Ivy, our FOIA Public Liaison, at (301) 851-4100. Additionally, you may contact the Office of Government Information Service (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6601
Email: ogis@nara.gov
Phone: (202) 741-5770
Toll Free: (877) 684-6448
Fax: (202) 741-5769

Sincerely,

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

Enclosures (11 pages)