



June 21, 2018

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

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

RE: 2017-APHIS-01403-F

Dear Ms. Marshall:

This response is in reply to your Freedom of Information Act (FOIA) request dated and received in this office January 11, 2017, and assigned FOIA tracking number 2017-APHIS-01403-F. You requested “all documents related to Tri-State Zoo 51-C-0064 from July 1, 2015 onwards”, and indicated that “all documents” included:

- Investigation reports;
- All correspondence, including correspondence between the exhibitor and the USDA, correspondence between members of the public and the USDA, and internal correspondence relating to the exhibitor;
- Other reports;
- permit and license applications;
- Memoranda;
- Veterinary records;
- Photographs; and
- All attachments or exhibits to the above records.

Upon receipt, your request was forwarded to the Animal Care (AC) and Investigation and Enforcement Services (IES) program offices to conduct a search of their files for records responsive to your request. The programs’ subsequent search of their electronic and paper files revealed one hundred and two (102) pages responsive to your request. Please note that, for the reasons stated below, forty (40) pages of photos have been withheld in full from release. Additionally, please note that your request appears to seek additional information and/or records whose existence I can neither confirm nor deny. Confirmation of the existence, or nonexistence, of any additional records may itself reveal exempt information. Any additional responsive records, if they existed would be exempt from disclosure under Exemptions 6 and/or 7(C).

Regarding IES's search for responsive documents under all parts of your request, I can neither confirm nor deny that any records exist. IES conducted a search for records related to your request during the timeframe you specified. 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. Responsive records, if they existed, would be exempt from disclosure under Exemptions 5, 6, and/or 7C.

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 certain information is exempt from release pursuant to FOIA Exemptions (b) (6) and (b)(7)(c).

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 a document may be withheld under Exemption 6, an agency must undertake a four-step analysis. First, the agency must determine whether the information at issue is a personnel, medical, or “similar” file; Second, the agency must determine whether there is a significant privacy interest in the requested information; Third, the agency must evaluate the requester’s asserted FOIA public interest in disclosure; and finally, if there is a significant privacy interest in non-disclosure and a FOIA public interest in disclosure, balance those competing interest to determine whether disclosure “would constitute a clearly unwarranted invasion of personal privacy.”

In this matter, we have withheld inspection report information such as the licensees’ address, the names of individuals associated with the license that are not otherwise made public, the inspection report number, the day and month of the inspection, the type of inspection, the description of inspection findings, the number and types of animals inspected, and forty (40) pages of inspection photographs, and the signature of one AC employee whose name is not otherwise being withheld from release. Additionally, we have withheld from release license application information including licensee address information, financial information, the number and types of animals held, and names of individuals associated with the license.

It has been determined that there is a substantial privacy interest in the withheld information. The licensed activity is withheld from release because the licensed activity has been determined to be taking place on a homestead, and the licensee has a substantial privacy interest in activities taking place on their homestead. Similarly, the licensee has a substantial privacy interest in their financial information, including their fees, and the number of animals they own as part of the licensed business. 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 in those records. Releasing the APHIS employee signature presents a risk of identity theft, as the signature could be copied and used by third parties without the individuals' knowledge or consent. The photos have been withheld in their entirety because the protected information cannot be reasonably segregated from any releasable information present on the document. 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 of homestead activities 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) 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. For the reasons articulated above, APHIS concludes that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Therefore, from the responsive records, Exemption (b)(7)(c) is also applied along with Exemption (b)(6).

This is our final response. If you have any additional questions regarding this matter, you may contact Hamilton Kuralt, the analyst who processed your request, at (301) 851-4010 as well as Mr. James Ivy, our FOIA Public Liaison, at (301) 851-4100 for any further assistance and to discuss any aspect of your request.

Teresa Marshall
FOIA 2017-APHIS-01403-F

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,

A handwritten signature in black ink, appearing to read 'T. Woods', is written over a thin horizontal line.

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