



**THE HUMANE SOCIETY
OF THE UNITED STATES**

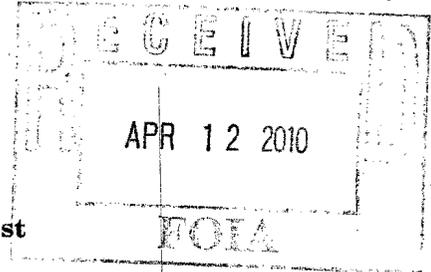
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April 12, 2010

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Tonya Woods, FOIA/PA Officer
4700 River Road, Unit 50
Riverdale, MD 20737-1232
tonya.g.woods@aphis.usda.gov

Freedom of Information Act Request

Dear Ms. Woods:

On behalf of The Humane Society of the United States ("The HSUS"), I am requesting records under the Federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* If you are not the appropriate official to handle this request, please forward this letter to the appropriate person, and let me know that you have done so.

A. Records Request

This request is for records related to the licensing and inspection of Danny Kolwyck and/or Debra Kolwyck (a.k.a. Debbie Kolwyck) for exhibition of non-human primates, and/or the following businesses with which they are affiliated: Blitzen & Co. and Savannahland Educational Park in Pleasant Hill, Missouri. According to the Electronic Freedom of Information Act Reports posted on the APHIS website, Mr. and Mrs. Kolwyck currently hold a Class-C Exhibitor License (#43-C-0208).

Specifically, The HSUS requests the following:

1. All records received or created by APHIS in the last 10 years related to the application for a USDA license by Danny and/or Debra Kolwyck, or any of the above-named entities. These records should include, but not be limited to, all initial and renewal applications, including those relevant to license #43-C-0208, or any other license applied for, granted, or denied.
2. All records related to inspection of Danny and/or Debra Kolwyck, or any of the above-named entities, carried out by APHIS in the last 10 years. These records should include, but not be limited to, any Inspection Report created by APHIS. HSUS is aware that as of April 12, 2010, APHIS has posted some inspection reports on its website, and this request does not include those inspection reports already posted.
3. All records related to any complaints received by APHIS or the USDA in the last 10 years concerning Danny Kolwyck and/or Debra Kolwyck, or any of the above-named entities.
4. All records received or created in the last 10 years related to any correspondence between Danny Kolwyck and/or Debra Kolwyck, or any of the above-named entities, and APHIS or the USDA.

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For this request, the term “records” includes, but is not limited to, correspondence of any kind, memoranda, letters, notes, schedules, electronic mail, telephone logs, minutes of meetings, work papers, reports, studies, videos, DVDs, CDs, or data. If any information is withheld, please identify all such information with specificity and state the statutory exemption under which the information is being withheld.

The FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, so please provide us with all non-exempt portions of any otherwise exempt records. 5 U.S.C. § 552(b). Please explain any redactions by reference to specific FOIA exemptions.

B. Statutory Fee Waiver Request

1. Representatives of the News Media

The HSUS qualifies for the preferred fee status of “representative of the news media.” See 5 U.S.C. § 552(A)(ii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c). In 2007 the FOIA was amended to include a definition of the term “representative of the news media” that comports with the previous interpretation applied by the courts. OPEN Government Act of 2007, Pub. L. No. 110-175; See *National Security Archives v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1388 (D.C. Cir. 1989). An entity is a “representative of the news media” if it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii) (2008).

The HSUS is unquestionably a “representative of the news media.” The HSUS has extensive and well-exercised means to investigate and keep the public informed about the operations and activities of the United States government and has invariably done so for many years. The HSUS does not merely obtain information and then contact members of the press to relate that information. Rather, The HSUS independently collects and analyzes information, drafts its own reports and articles on the issues by putting facts and issues into context, and disseminates the information broadly through its own publications to interested persons, legislators, its members and the public at large.

Relevant to this request, as a result of its longstanding advocacy and work on issues affecting non-human primates, The HSUS has developed a substantial level of expertise which commands public attention when such information is disseminated. For instance, The HSUS actively monitors and reports on issues related to the exploitation of primates kept as pets and for entertainment purposes, and maintains a website where frequently asked questions about chimpanzees used in research are addressed and where the public and interested parties are provided with the results of The HSUS’s research and investigations. See

http://www.hsus.org/animals_in_research/chimps_deserve_better/chimpanzees_in_research_fact.html. As a result of synthesizing such research and investigations, the public is informed about the use of primates in research and as privately owned pets or exhibitions, the effects such use and ownership has on the safety and well-being of the animals and the public at large and about the effect USDA licensing and inspection has, or fails to have, on

the same. Through these efforts, The HSUS serves to inform and protect the public by alerting people about the laws and current practices related to ownership and use of these animals. In addition to maintaining the website, The HSUS also publishes a Fact Sheet that tracks instances of primate attacks, demonstrating the real risk to public health and safety posed by private ownership of such animals. (*Available at* <http://www.hsus.org/web-files/PDF/legislation/primate-incidents-2007.pdf>). Given its independent and extensive public dissemination of information about the policies and activities relating to non-human primates, The HSUS meets the criteria for a representative of the news media.

2. Public Interest Fee Waiver

In addition to being eligible for preferred fee status, HSUS is also entitled to a public interest fee waiver. Under the FOIA, records are to be furnished completely without charge when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of government and is not in the commercial interest of the requestor.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6. Pursuant to this provision, The HSUS seeks a waiver of any search and copy fees for this request.

As a threshold matter, the information sought in this request is in the public interest. The issue of captive primates is of intense and ongoing interest to the public at large, due to the inhumane conditions in which monkeys and apes are kept in certain research and exhibition facilities and because of the injuries that primates kept as pets and for exhibition purposes can, and often do, inflict on members of the public. Indeed, numerous national mainstream newspapers, television shows and other mass media outlets have repeatedly reported on these issues, demonstrating that the interest in preventing cruelty to animals and ensuring public safety are commonly held by the public generally, and is not limited to merely a subsection of the population. *See, e.g.,* Monica Hortobagyi, *People who own chimps rethink choice of pet*, USA TODAY, April 6, 2009; Amos Bridge, *Sanctuary for monkeys under review*, MISSOURI NEWS LEADER, April 24, 2009; R.D. Rosen, *Lie of the Jungle*, WASH. POST, December 7, 2008; Rich Schapiro, *All it takes is \$45,000 and a phone call to get a pet chimp*, N.Y. DAILY NEWS, February 22, 2009. More specifically, as it pertains to this request, Mr. and Ms. Kolwyck’s possession, exhibition, and sale of primates raises serious, ongoing concerns about the safety of the animals in their charge, their surrounding community, and the public at large.

i. Operations & Activities of the Government

All of the requested information significantly contributes to the public’s understanding of the “operations and activities of the government,” because it details the USDA’s actions in providing a private person the license needed to exhibit, breed, and sell potentially dangerous animals. Similarly, the records will shine light upon the USDA’s related inspection authority of such licensees and will help inform the public of the sufficiency of a federal government’s enforcement practices. Indeed, the light these disclosures will shine upon USDA’s activities is particularly bright given that this licensee breeds and sells animals that are known to pose a serious risk to private owners and the public. *See* Chase Wright, *Chimp victim blind for life*, STAMFORD TIMES, April 7, 2009; Anahad O’Connor, *Woman Mauled by Chimp Has Surgery, and Her Vital Signs Improve*,

N.Y. TIMES, February 19, 2009; United Press International, *Chimp Shot and Killed After Escape*, Missouri Post Dispatch, April 2, 2009.

ii. Public Understanding

The HSUS is a non-profit organization dedicated for over five decades to the protection of animals. The HSUS has devoted substantial time and resources to monitoring activities of the federal government and keeping the public informed of these activities, as well as educating the public about captive primates and the role of the USDA in regulating and inspecting their possessors.

The HSUS contributes to the public's understanding of issues related to captive primates generally, and the public danger and inhumane treatment of privately owned chimpanzees in particular, due to its size and proven ability to disseminate information to a large segment of the public. The HSUS disseminates information to the general public through various sources including its websites, media outlets, litigation, legislation and public education. *See, e.g.,* http://www.hsus.org/wildlife/issues_facing_wildlife/should_wild_animals_be_kept_as_pets/fact_and_fiction_monkeys_and_apes_as_pets.html. In particular, The HSUS has actively informed the public about instances of primate attacks, which demonstrate a real and recognized risk to public health and safety. *See* <http://www.hsus.org/web-files/PDF/legislation/primate-incidents-2007.pdf>. Indeed, a recent HSUS undercover investigation into the federally-funded New Iberia Research Center, which conducts invasive procedures on monkeys and chimpanzees, resulted in a subsequent inspection of the facility by the USDA. *See* Marsha Sills, *USDA Report cites NIRC*, THE ADVOCATE, April 11, 2009.

The information sought in this request will enable The HSUS to further educate the public about the possession of non-human primates and what, if any, risks may be realized by such ownership. It will also demonstrate the USDA's role in the licensing and inspection of exhibitors of potentially dangerous animals. Information obtained through this request may be disseminated to the public through publication on any of The HSUS's webpages cited above or in various reports and action alerts produced for our members and the public. Reports, comments, action alerts, press releases, and other materials relevant to operation and activities of the USDA as it relates to captive primates have been, and will continue to be, added to the The HSUS's webpages to ensure that interested citizens have unfettered access to information.

iii. Significant Contribution

The contribution of this information to the public understanding will be "significant," because the records are the sole source of information as to the success and sufficiency of USDA's licensing and inspecting of this particular permit holder under the Animal Welfare Act.

iv. No Commercial Interest

The HSUS does not have a commercial, trade, or profit interest in the information requested.

Accordingly, The HSUS asks that any search and duplication fees in this case be waived or reduced. If the fee waiver request is denied, please notify me by telephone at 202-676-2333, or by email at afrostic@hsus.org, so that The HSUS may decide whether to pay the fees or to appeal the denial of the request for waiver or reduction.

C. Conclusion

I look forward to receiving your reply within 20 business days as required by law. If you have any questions or need additional information regarding this request, please contact me. Thank you for your assistance.

Sincerely,



Anna Frostic
Attorney, Animal Protection Litigation
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037



"Anna Frostic"
[redacted]@humanesociety.org

04/12/2010 02:06 PM

To <foia.officer@aphis.usda.gov>
cc
bcc
Subject *FOIA Request*

Dear FOIA Officer -

Please confirm your receipt of the attached Freedom of Information Act Request.

Thank you,

Anna Frostic

Attorney, Animal Protection Litigation

[redacted]@hsus.org

t

The Humane Society of the United States
2100 L Street NW Washington, DC 20037

humanesociety.org/litigation



THE HUMANE SOCIETY
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