

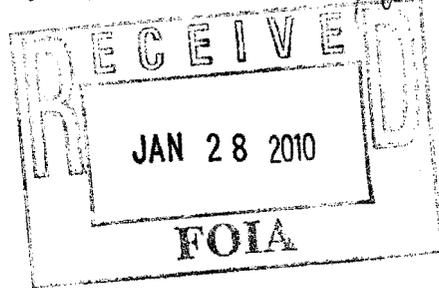
10- 218



National Transportation Safety Board
Washington, D.C. 20594

Reggie
Referral
(US Records)

January 27, 2010



USDA
Animal & Plant Health Inspection Service
Tonya Woods
FOIA/PA Officer
4700 River Road, Unit 50
Riverdale, MD 20737-1232

Re: FOIA request filed by: Ms. Wendy Keefover-Ring
NTSB FOIA Number: 2009-00287

FEB 26 2010

Dear FOIA Officer:

Enclosed are USDA originated documents we located in connection with our search for documents responsive to the above FOIA request. In accordance with standard government practice, we are referring these documents to you for a decision on whether they should be released.

The requestor will be advised of this referral. Please provide me with a copy of your direct response to the requestor.

If you have any questions, please contact the FOIA Office at (202) 314-6540.

Sincerely,

Melba D. Moyer
FOIA Officer

Enclosures

Crawford Tamara

From: publicmail@ntsb.gov
Sent: Thursday, September 10, 2009 5:07 PM
To: FOIA
Subject: Public Correspondence

The following request was received from the NTSB web site:

Wendy Keefover-Ring
1536 Wynkoop Street, Ste. 301
Denver CO 80202
WildEarth Guardians - <http://www.wildearthguardians.org/>
wendy@wildearthguardians.org
303.819.5229
USA
nochoice

Message:

The National Transportation Safety Board
Attention: FOIA Officer, RE-51
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Aerial-Gunning Accidents by federal and state governments and individuals

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. Sec. 552, and implementing regulations, 49 CFR § 8010 et seq., we request copies of records (including photographs) generated, modified or acquired in relation to incidents/accidents involving aerial gunning (shooting wildlife from aircraft) from May 2000 to the present by the following entities:

- 1) The U.S. Department of Agriculture-Animal Plant Health Inspection Service-Wildlife Services. (This agency was formerly known as "Animal Damage Control".);
- 2) State game and fish agencies (especially Wyoming Game and Fish and South Dakota Game, Fish and Parks); and
- 3) Individuals or private entities.
- 4) Search terms: In your search please include the terms: predator; predator control; varmint; coyote; hog; swine; bobcat; wolf/wolves; wildlife; animal; pest; fox/foxes; agriculture; U.S. Department of Agriculture; USDA; Animal and Plant Health Inspection Service; APHIS; Wildlife Services; WS; Animal Damage Control; ADC; game and fish; shoot, and gun.
- 5) We would specifically would like all records and photographs for accidents/incidents since May 2000 that are on this website:
<http://www.goagro.org/>. Click on both the "federal aircraft accidents" and "non federal aircraft accidents" pages.
- 6) Include in your response, accidents the following accidents not yet on the above site:

CEN09CA180, O'Donnell, TX, 2/25/09; and
ANC09TA040, Iliamna, AK 5/12/09.

By the term "documents," this request adopts the definition of the Federal Records Act (44 U.S.C. § 3101 et seq.), which includes "all . papers, maps, photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business.." Id. at § 3301. This definition includes paper documents, electronic mail (e-mail), memoranda, notes, guidelines, and internal policy documents, without exception. All of the above information should be easily available and a matter of public record.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. Department of State v. Ray, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in legislation as recently as December 2007, stating that government remains accessible to the American people and "is always based not upon the "need to know" but upon the fundamental "right to know." Public Law 110-175, 121 Stat 2524, 2525 (Dec. 31, 2007). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

In the event that you determine that requested documents are exempt from disclosure, please note that FOIA provides that if only portions of a requested document are exempted from release, the remainder must still be released to the requester. 5 U.S.C. § 552(b). WildEarth Guardians therefore requests that we be provided with all non-exempt information that is reasonably segregable from exempt information.

We further request that you provide a "Vaughn Index" of any documents or portions of documents that you may withhold. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). A Vaughn Index must (1) identify each document or portion of document withheld; (2) state the statutory exemption claimed; and (3) explain how disclosure of the document or portion of document would damage the interests protected by the claimed exemption. Citizens Comm'n on Human Rights v. FDA, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995). The Vaughn Index will be helpful in deciding whether to appeal a decision to withhold documents and/or might also help to avoid unnecessary litigation. WildEarth Guardians has the right to appeal the withholding or redaction of any information and expects that you will list the office and address where such an appeal can be made. Please tender responsive documents in electronic form whenever possible.

Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.19(b), we hereby request a fee waiver for all copying costs, mailing costs, and other costs associated with locating and tendering responsive documents.

See Judicial Watch v. Rossotti, 326 F.3d 1309 (D.C. Cir. 2003). The release of these documents is not for commercial use and is in the public interest because it will significantly contribute to public understanding of government operations, particularly as they relate to aerial gunning of wildlife programs. Please note that the U.S. Fish and Wildlife Service, Department of Defense, National Park Service, USDA-Forest Service, Bureau of Land Management, Bureau of Indian Affairs, Department of Energy, Bureau of Reclamation, and the U.S. Geological Survey have previously granted requests for fee waivers in their provision of documents to WildEarth Guardians.

In considering whether WildEarth Guardians meets fee waiver criteria, NTSB must remember that FOIA carries a presumption of disclosure and that the fee waiver amendments of 1986 were designed specifically to provide organizations such as WildEarth Guardians access to government documents without the payment of fees. As stated by one Senator, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298 (statement of Senator Leahy). In interpreting these amendments, the Ninth Circuit Court has held that the amended statute "is to be liberally construed in favor of waivers for noncommercial requesters." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). Both the Ninth Circuit and the District of Columbia Circuit courts have stated that the amendments' main purpose were "to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA." Id.; Judicial Watch, 326 F.3d at 1315.

Both Congress and federal courts have been clear in their interpretation that the main legislative purpose of the fee waiver amendments is to facilitate access to agency records by noncommercial requesters and "watchdog" organizations, such as conservation organizations, which use FOIA to monitor, analyze, publicize and challenge government activities. As the District of Columbia Circuit Court has stated, this waiver provision was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests," in reference to requests from journalists, scholars, and public interest groups. Better Gov't Ass'n v. Department of State, 780 F.2d 86, 93-94 (D.C. Cir. 1986), quoting Ettliger v. FBI, 596 F. Supp. 867, 876 (D. Mass. 1984) (emphasis added).

The following information concerning this request and WildEarth Guardians is relevant to our application for a fee waiver (responding to fee waiver criteria listed in Department of Interior FOIA regulations, Appendix D [see 43 C.F.R. § 2]):

1. How do these documents concern the operations or activities of the government?

Documents requested concern how the public's wildlife are managed. See Judicial Watch, 326 F.3d at 1313 ("[R]easonable specificity is all that FOIA requires with regard to this factor.")

2. Will disclosure of the documents contribute significantly to public understanding of government operations or activities?

The public's interest in aerial-gunning operations has increased dramatically since 1999, the year when WildEarth Guardians (f/k/a

"Sinapu") cofounded AGRO: A National Coalition to End the Aerial Gunning of Wildlife. The U.S. presidential campaign of 2008 highlighted aerial gunning because of Gov. Sarah Palin's sanctioning of aerial gunning of Alaskan wolves. In February 2009, Larry King Live featured an interview with Ashley Judd on the subject:

<http://www.youtube.com/watch?v=I2Bol2by4J0>. Also in February, WildEarth Guardians released its report, "War on Wildlife: the U.S. Department of Agriculture's 'Wildlife Services.'" As part of the report, we critiqued that federal government's involvement in aerial gunning operations. See:

<http://www.wildearthguardians.org/library/paper.asp?nMode=1&nLibraryID=712>.

The report garnered global media attention from an Associated Press story.

WildEarth Guardians (www.wildearthguardians.org) is a 501(c)(3), non-profit membership organization dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West. The mission of WildEarth Guardians' Anti-Aerial-Gunning Campaign (www.goAGRO.org) is to focus both public attention and conservation resources on

inefficacious methods of predator control. WildEarth Guardians has 9,000 members and activists and maintains offices in Santa Fe, Denver, and Phoenix.

As recognized authorities on predator control policies, WildEarth Guardians possesses the necessary expertise to extract and interpret the relevant information from the requested documents, and to disseminate this information to the public. Conservation and other organizations and the public regularly seek analysis from WildEarth Guardians concerning native carnivore conservation and rely on its dissemination of information about these species. This recognized expertise and organizational capacity, and the important issues described herein, assures that provision of the requested documents to WildEarth Guardians will significantly contribute to public understanding of government operations and activities.

WildEarth Guardians employs a variety of methods to disseminate information to the public, including electronic communiqué (circulation: 10,000) and print newsletters (circulation: 5,000); news releases; presentations to members; presentations to the general public; publication of reports, factsheets and white papers; and postings on our websites.

Documents provided by agencies to WildEarth Guardians in the past have contributed to multiple reports and extensive media coverage that have increased the public's understanding of government operations as they pertain to the management of native carnivores and carnivore-killing methodologies.

WildEarth Guardians also routinely shares information it has obtained with other organizations. For example, information received from federal agencies has been shared with Animal Damage Review, California Native Plant Society, California Wilderness Coalition, Center for Biological Diversity, Center for Native Ecosystems, Committee for Idaho's High Desert, Conservation Northwest, Defenders of Wildlife, Friends of Nevada Wilderness, Idaho Conservation League, National Wildlife Federation, Natural Resources Defense Council, Oregon Natural Desert Association, Predator Defense Institute, Sierra Club, and the Wilderness Society.

Information is also distributed at numerous conferences throughout the country. Information provided to WildEarth Guardians also aids staff who are frequently interviewed by news media and take part in public forums to analyze and interpret government programs and activities.

As one of the only organizations dedicated to the preservation and protection of wildlife, lands and waters in the western U.S., the WildEarth Guardians is an important source of information for both our members and the general public who have an interest in the health and management of our public lands.

Information received from this FOIA request will be presented to the public through one or more of the above means. In view of these facts, it can be seen that information obtained from this FOIA request will contribute to an understanding of government programs by the public-at-large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Reply to Request

FOIA provides an agency twenty (20) working days to reply to a request for documents. If you need more time to process this request due, please notify WildEarth Guardians of the delay. We would also appreciate an opportunity to work with NTSB to limit our request in order to expedite your response.

Thank you for your attention to this request.

Sincerely yours,

Wendy Keefover-Ring, Carnivore Protection Director WildEarth Guardians
wendy@wildearthguardians
303.819.5229

*** THIS FOIA REQUEST REQUIRES A RESPONSE ***