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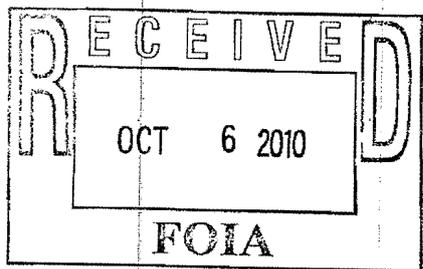
"Read Porter"
<porter@eli.org>
10/05/2010 04:25 PM

To <foia.officer@aphis.usda.gov>
cc
bcc
Subject Freedom of Information Act Request

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

October 5, 2010

Tonya Woods, FOIA Director
Legislative and Public Affairs
Freedom of Information Act
Animal and Plant Health Inspection Service
4700 River Road, Unit 50
Riverdale, MD 20737



Re: Freedom of Information Act Request

NOV 8 2010

Dear Ms. Woods:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), I request, on behalf of the Environmental Law Institute, that the United States Department of Agriculture – Animal and Plant Health Inspection Service (APHIS) produce within twenty (20) business days all correspondence, memoranda, documents, reports, records, statements, letters, notes, examinations, opinions, folders, files, manuals, forms, electronic mail, and other documents and things that refer or relate in any way to the following:

- special needs requests submitted to APHIS pursuant to the Plant Protection Act (PPA) by any state, tribe, territory, or group of states, or other jurisdiction or jurisdictions, whether submitted prior to or after finalization of APHIS regulations governing the treatment of such special needs requests; and
- any APHIS response(s) to each special needs request.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), cert denied, 415 U.S. 977 (1974). Additionally any reasonably segregable portion of a responsive record must be provided after redaction of any allegedly exempt material to me, as the law requires. 5 U.S.C. § 552(b).

We request a fee waiver for this information disclosure request because this disclosure request meets each of the factors for a fee waiver identified at section 6(a)(1) of 7 C.F.R. Part 1, Appendix A:

(i) The subject of the request directly concerns “the operations or activities of the government” as it seeks information on an executive agency’s interpretation of federal law as indicated by its responses to special needs requests made to it by state agencies pursuant to the PPA.

(ii) The disclosure is “likely to contribute” to an understanding of government operations or activities. Analysis of state special needs requests and APHIS responses to those requests will enable fuller understanding of the interpretation and preemptive effect of the PPA and the relationship of state and federal agencies in this area.

(iii) Disclosure of the requested information will contribute to “public understanding” because it will be used as the basis for a published study of the operation of the special needs provision of the PPA that will be disseminated broadly by the Environmental Law Institute, which has extensive experience in publication and outreach. It will be of interest to state agriculture and forestry agencies, the landscaping, nursery, forestry, and agriculture industries.

(iv) The disclosure is likely to contribute “significantly” to public understanding of government operations or activities. Neither state special needs provisions nor APHIS responses are currently available to the public, and no prior study has examined their use or the operation of the special needs provision of the PPA. As such, this disclosure will enable completion of the first study of the topic, which will constitute a significant contribution to public understanding of the PPA and its implementation.

(v) The requester has no substantial commercial interest that would be furthered by the requested disclosure. The Environmental Law Institute is a registered 401(c)(3), not-for-profit public interest organization whose mission is to foster innovative, just, and practical law and policy solutions to enable leaders across borders and sectors to make environmental, economic, and social progress. This disclosure will further the Institute’s mission by enabling understanding of environmental law and policy.

(vi) Disclosure is not “primarily in the commercial interest of the requester.” This disclosure request is intended to inform the public about governmental action, and therefore primarily is in the public interest.

If the requested fee waiver is not approved, please inform me before fees are incurred. I can be contacted at (202) 939-3810, or by electronic mail at porter@eli.org, if necessary to discuss any aspect of this request.

I look forward to receiving the requested documents and a full fee waiver within twenty (20) business days.

Sincerely,

/s/

Read D. Porter
Staff Attorney
Environmental Law Institute
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Washington, DC 20036

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