



December 3, 2010

United States  
Department of  
Agriculture

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

Ms. Mindy De Young  
Riddell Williams P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154-1192

Dear Ms. De Young:

This is in response to your November 3, 2010, Freedom of Information Act (FOIA) request that was received in our office on November 3, 2010, and assigned FOIA case number 11-065. Your request was received on the date above. Specifically, you requested the following:

1. All documents that relate in any way to *Salmonella Enteritidis (SE)* testing, monitoring, stereotyping phage-typing, and/or pulsed field gel electrophoresis for Keith Smith Company in National Veterinary Services Laboratories (NVSL)'s possession dated from January 1, 2005, through the present, including all results of such *SE* processes, and all Keith Smith Company-related laboratory and agency reports, files, written and electronic correspondence among NVSL representatives and between representatives of NVSL, Arkansas Livestock and Poultry Commission and/or Keith Smith Company, and all Keith Smith Company-related records prepared received or kept by NVSL concerning such *SE* Processes.
2. All *SE* positive isolates for Keith Smith Company from January 1, 2009, through the present including but not limited to the isolate from the *SE* positive sample submitted by ALPC to NVSL in or around December 2009, to Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301-2532, Attention: Lee Effinger, Animal Health Laboratory Supervisor.

NVSL conducted a search of their files and located 59 pages of testing reports responsive to Item 1 of your request. These reports are on the enclosed CD-ROM. In addition, we are also enclosing 22 pages of guidance material about the enclosed testing reports.

With regard to Item 2, isolates are not considered an "agency record(s)" as defined under the FOIA. The FOIA applies to "records," not tangible, evidentiary objects, and while courts initially construed the term "record" according to its traditional dictionary definition, the Supreme Court subsequently broadened the term to include "machine readable materials . . . regardless of physical form or characteristics," as defined in the Records Disposal Act. The statutory language of the FOIA itself defines the term "record" as including "any information that would be an agency record . . . when maintained by an agency in any format, including an electronic format." Therefore, we have no records responsive to Item 2.



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Ms. Mindy De Young  
FOIA 11-065

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All information about the FOIA is located at: [http://www.justice.gov/oip/foia\\_guide09.htm](http://www.justice.gov/oip/foia_guide09.htm).  
USDA regulations' concerning the FOIA is located at <http://www.dm.usda.gov/foia.htm>.

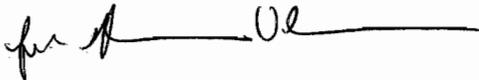
You may appeal our response to your request. If you choose to appeal, your appeal must be in writing and must be received within 45 days of the date of this letter. Send to:

Administrator  
Animal and Plant Health Inspection Service  
Ag Box 3401  
Washington, D.C. 20250-3401

Please refer to FOIA 11-065 in your appeal letter and add the words "FOIA Appeal" to the front of the envelope. To assist the Administrator in reviewing your appeal, provide specific reasons why you believe modification of the determination is warranted.

If you have any questions, please contact the FOIA Staff at 301-734-8296.

Sincerely,



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

Enclosure