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"Anna Frostic"
<afrostic@humanesociety.org>

To <foia.officer@aphis.usda.gov>

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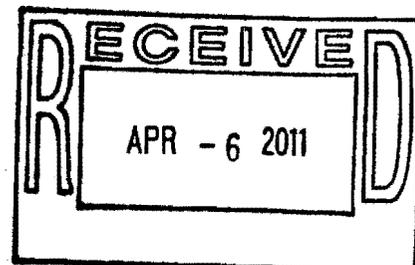
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Subject ***FOIA Request***



THE HUMANE SOCIETY
OF THE UNITED STATES



MAY - 3 2011

April 6, 2011

Ms. Tonya Woods
FOIA Director
Legislative and Public Affairs
U.S. Department of Agriculture
4700 River Road, Unit 50
Riverdale, MD 20737

Freedom of Information Act Request

Dear Ms. Woods:

On behalf of The Humane Society of the United States (HSUS), I hereby make this request for records under the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 and applicable regulations. 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.

The HSUS is a national animal protection organization headquartered in Washington, D.C., with four regional offices located throughout the country and international offices located throughout the world. The organization is dedicated to educating the public about issues concerning animal protection.

This request is for records regarding the U.S. Department of Agriculture's (USDA) management of threatened and endangered species in captivity. In particular, HSUS is requesting:

1. Any internal guidance, formal interpretation, or other records explaining or supporting USDA's interpretation of the phrase "generally accepted . . . animal husbandry practices" as used in the definition of "Harass . . . when applied to captive wildlife . . ." (50 C.F.R. § 17.3).
2. All records reflecting communication between USDA and the U.S. Fish and Wildlife Service regarding the scope or applicability of the phrase "generally accepted . . . animal husbandry practices" as used in the definition of "Harass . . . when applied to captive wildlife . . ." (50 C.F.R. § 17.3).
3. Any internal guidance, formal interpretation, or other records explaining or supporting USDA's interpretation of the phrase "normal practices of animal husbandry" as used in the definition of "Enhance the propagation or survival" (50 C.F.R. § 17.3).
4. All records reflecting communication between USDA and the U.S. Fish and Wildlife Service regarding the scope or applicability of the phrase "normal practices of animal husbandry" as used in the definition of "Enhance the propagation or survival" (50 C.F.R. § 17.3).

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. The FOIA provides that if portions of a document are exempt from release, the remainder of the information must nevertheless be segregated and disclosed. 5 U.S.C. § 552(b). Accordingly, please provide all nonexempt portions of the records requested and justify deletions, if any, by reference to the specific provisions of the FOIA. Further, please provide sufficient information to identify the subject matter of any withheld portions of the records.

Request for Fee Waiver

The HSUS requests a waiver of fees incurred in connection with this FOIA request. 5 U.S.C. § 552(a)(4)(A). This request satisfies the criteria for a waiver of all search and reproduction fees. In 1986, Congress revised the fee waiver criteria because it was disturbed by the restrictive interpretation the U.S. Department of Justice had given to the fee waiver provisions in its 1983 guidelines. Indeed, as one Congressman explained, the purpose of the amendments was "to make it easier for more requesters, *especially noncommercial requesters*, to qualify for fee waivers . . ." Thus, he explained, "the new fee waiver standard should be liberally construed in order to encourage full and complete disclosure of information in the possession of the government that does not require withholding for a public or private interest." Statement of Representative Glen English, 132 Cong. Rec. 22 (Oct. 6, 1987) (emphasis added).

To carry out the objective of liberalizing fee waivers, Congress adopted a multi-tiered fee waiver system. Under that system, documents are furnished completely without charge when the "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). If the organization is a "representative of the news media," the

organization is charged no more than reasonable duplication fees. *Id.* at § 552 (a)(4)(A)(ii)(II).

Disclosure of the Information Is In the Public Interest

The requested documents pertain to the “operations or activities of the federal government” (5 U.S.C. § 552(a)(4)(A)(iii)) because they aid The HSUS in its ongoing monitoring of threatened and endangered wildlife in captivity in the United States.

The HSUS undeniably has the ability to contribute to the public’s understanding of federal agencies’ operations as well as their policies relating to listed species in captivity due to its size and proven ability to disseminate information to a large segment of the public. The HSUS is particularly well suited to distribute information of national import to concerned citizens and others throughout the country, because of its long standing dedication and ongoing efforts to promote the humane care and treatment and conservation of threatened and endangered species. The HSUS routinely distributes information, press releases, reports, and copies of original documents to members of the media to generate articles to inform the public. The HSUS also routinely distributes, at no charge, its own information and information obtained from other sources to anyone requesting such information, including the public, media, students, and scientists.

In addition, The HSUS posts reports, comments, action alerts, press releases, and other materials relevant to policies and activities relating to captive wildlife and exotic pet ownership on its website (<http://www.hsus.org>) to ensure that interested citizens have constant access to the information. *See, e.g.*, The Humane Society of the United States, *The HSUS Applauds Lautenberg Bill to Stop Captive Hunting* (accessed September 20, 2010), at http://www.humanesociety.org/news/press_releases/2008/04/lautenberg_canned_hunt_bill_042408.html; The Humane Society of the United States, *Questions and Answers about Wild and Exotic Animals as Pets* (accessed September 20, 2010), at http://www.humanesociety.org/issues/exotic_pets/qa/q_and_a_wild_exotic.html. Thus, The HSUS is well positioned to contribute significantly to the public understanding of policies and activities relating to the welfare of wildlife in captivity, once it receives and analyzes the requested information.

HSUS is a Representative of the News Media

Not only does The HSUS qualify for a fee waiver due to the significance of the material requested, The HSUS also qualifies under the fee exemption provided for “representative[s] of the news media.” 5 U.S.C. § 522(a)(4)(A)(ii). Under this clause, a representative of the news media is defined as “any person or entity that 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. § 522(a)(4)(A)(ii).

The United States Court of Appeals for the District of Columbia Circuit supported a broad interpretation of this definition in *National Security Archive v. U.S. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). In reaching its conclusion, the Court relied on strong statements by legislators in support of the amendments who argued that the

terms be “broadly interpreted if the Act is to work as expected” and extend to “any person or organization which regularly disseminates information to the public,” even if it is a public interest group that “might also want the information for other purposes.” See 132 Cong. Rec. 27190.

Under this definition and interpretation, The HSUS unquestionably is a “representative of the news media.” The HSUS has extensive and well-exercised means to keep the public informed on the operations and activities of the United States government. The HSUS does not merely obtain information and then contact members of the press to relate that information; rather, The HSUS independently analyzes the information, drafts its own reports and articles on the issues, and disseminates the information broadly through its own publications to members and other interested persons. Thus, the HSUS has shown a “firm intention . . . to publish” this important information and to make it easily accessible. *Nat’l Security Archive* , 880 F.2d at 1386; see also *Judicial Watch, Inc. v. United States Dep’t of Justice* , 122 F.Supp.2d 13, 24 (D.D.C. 2000). As a result of its longstanding interest in policies and activities relating to threatened and endangered wildlife, The HSUS has developed a substantial level of expertise on the issues which commands public attention when it disseminates such information. Given its independent and extensive public dissemination of information pertaining to policies and activities relating to listed species in captivity, The HSUS meets the criteria for a representative of the news media.

Therefore, The HSUS asks that any search and duplication fees in this case be waived or reduced. We understand that the first two search hours and the first one hundred pages of documents are free. 5 U.S.C. § 522(a)(4)(A)(iv)(II). If the request will involve more than two search hours or more than one hundred pages of documents and the waiver or reduction is denied, and fees are estimated to exceed two hundred and fifty dollars (\$250.00), please notify me immediately by email (afroctic@hsus.org) or telephone (202-676-2333) before the request is processed so we may decide whether to pay the fees, narrow our request based on your description of the records, or appeal the denial of the request for waiver or reduction.

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

Sincerely,

Anna Frostic
Staff Attorney, Wildlife Litigation
afroctic@hsus.org
t 202.676.2333
The Humane Society of the United States
2100 L Street NW Washington, DC 20037

humanesociety.org/litigation



THE HUMANE SOCIETY
OF THE UNITED STATES

Celebrating Animals | Confronting Cruelty

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