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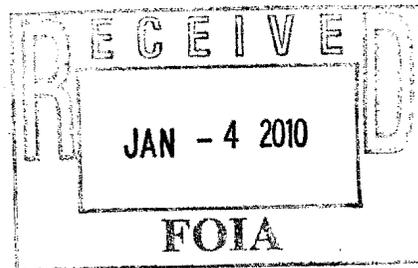
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OF THE UNITED STATES**

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January 4, 2010

Animal and Plant Health Inspection Service
Director, Freedom of Information and Privacy Act Staff
4700 Riverdale Road, Unit 50
Riverdale, MD 20737



Via Facsimile: 301-734-5941

Re: FREEDOM OF INFORMATION ACT REQUEST

Dear FOIA Officer:

FEB - 2 2010

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, 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 us 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. It is dedicated to educating the public about issues concerning animal protection.

This request is for

A noncompliant item summary (per section code), including but not limited to the number of animals affected by each noncompliant item, for the year 2009 specific to all animal research facilities that were registered with the USDA during that year (as separate from other entities regulated under the AWA. The USDA currently has a noncompliant item summary for 2007 posted on its website for all regulated entities—we are interested in noncompliant items pertaining to research facilities only).

The HSUS is not interested in any personal, privacy information that is exempt from release under Exemption b(6), or trade secrets or commercial / financial information that is exempt from release under Exemption 4. The FOIA provides that if portions of a document are exempt from release, the remainder of the information must nevertheless be segregated and disclosed. Accordingly, please provide all nonexempt portions of the records requested and justify deletions, if any, by reference to the specific provisions of the FOIA.

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The HSUS requests a waiver of fees incurred in connection with this FOIA request. 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).

The requested records pertain to the "operations and activities of the federal government" because they aid The HSUS in its ongoing monitoring of the way in which federal animal research facilities follow the Animal Welfare Act, 7 U.S.C. § 2141, *et seq.*, as well as the manner in which the USDA enforces compliance with that Act

The HSUS undeniably has the ability to contribute to the public's understanding of federal agencies' operations as well as their policies and activities relating to animal welfare at animal research institutions due to its size and proven ability to disseminate information to a large segment of the public. The HSUS is a national animal protection organization headquartered in Washington, D.C. with four regional offices, various hands-on animal care facilities located throughout the country, and international offices located throughout the world. Policies and activities relating to proper animal care and use at research institutions are of national concern. The HSUS is particularly well suited to distribute information to concerned citizens and others throughout the country, because of its long standing dedication and ongoing efforts to promote the humane care and treatment of animals in laboratories, and to promote humane alternatives to live animal testing. The HSUS routinely distributes information, press releases, reports, and copies of original documents to members of the media to generate articles. The HSUS also routinely distributes, at no charge, its own information and information obtained from other sources regarding policies and activities relating to research facilities, to anyone requesting such information. This includes the public, media, students, and scientists.

One of the primary methods through which The HSUS educates and informs the public concerning the policies and activities of the USDA and the research facilities the agency

regulates is through the World Wide Web (<http://www.hsus.org>). The HSUS regularly posts reports, comments, action alerts, press releases, and other materials relevant to these matters, and we will continue to do so to ensure that interested citizens have around the clock access to such information. In sum, The HSUS is well positioned to contribute significantly to the public understanding of policies and activities relating to the welfare of animals used in research, once it receives and digests the requested information.

Aside from The HSUS's clear qualification for a fee waiver for the reasons just stated, The HSUS alternatively qualifies for a fee waiver under the fee exemption provided for "representative[s] of the news media." The definition of "representative of the news media" has a well-accepted interpretation which stems from the District of Columbia Circuit:

A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.

Nat'l Security Archive v. U.S. Dep't of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

In reaching this 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 (A later case has explicitly required this. See 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 animals used in research, 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 animal research, The HSUS meets the criteria for a representative of the news media.

Therefore, in summary The HSUS believes that this request satisfies the criteria for fee waiver or reduction for the following reasons:

- 1) The Humane Society of the United States is a non-profit, public interest group whose tax exempt number is 53-0225390. The primary purpose for requesting these records is to obtain

information about policies and activities relating to the welfare of animals used in research, not to commercially profit from the sale of this information.

2) The disclosure of the requested records would be to the benefit of the general public. The HSUS has demonstrated its ability to disseminate to the general public the information it acquires. This is achieved by state and nationally distributed newsletters, statewide membership mailings, information available electronically via the Internet, and extensive and reliable media contacts. This is evidenced by such articles and reports as: see e.g., THE HUMANE SOCIETY OF THE UNITED STATES, [Nature: System That Protects Animals in Laboratories Needs Revamp](#) (accessed April 6, 2009), *at*

http://www.hsus.org/animals_in_research/animals_in_research_news/nature_system_that_protects_animals_in_laboratories_needs_revamp.html; THE HUMANE SOCIETY OF THE UNITED STATES, [USDA Complaint Against University Alleges 60 Animal Welfare Violations](#) (October 6, 2004), *at*

http://www.hsus.org/animals_in_research/animals_in_research_news/usda_complaint_against_university_alleges_60_animal_welfare_violations.html.

3) The HSUS alternatively qualifies for a fee waiver because it is a "member of the news media" as that term has been interpreted by the D.C. Circuit.

Therefore, The HSUS asks that any search and duplication fees in this case be waived or reduced. It understands that the first two search hours and first one hundred pages of documents are free. If the request will involve more than two (2) search hours or more than one hundred (100) 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 telephone at 301-258-3041 before the request is processed so The HSUS may decide whether to pay the fees, whether to narrow our request based on your description of the records, or to appeal the denial of the request for waiver or reduction.

I may be reached during business hours at 301-258-3041. If you have any questions regarding any aspect of this request, please contact me by telephone rather than by mail in order to expedite timely disclosure. Thank you for your assistance. I look forward to receiving your determination regarding this request within the twenty business days as specified by law.

Sincerely,

Leah Gomez
Project Manager
The Humane Society of the United States