



"broberts"  
<broberts@volkerlaw.com>  
06/30/2008 07:49 PM

To <Bevelyn.R.Whitfield@aphis.usda.gov>  
cc "svolker" <svolker@volkerlaw.com>  
bcc  
Subject FOIA Search Request No. 08-650

Please see the attached correspondence regarding FOIA Search Request No. 08-650.

Bridget Roberts  
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El-Lissy and Whitfield 6-30-08.pdf El-Lissy FOIA 4-9-08 signed.pdf

Stephan C. Volker  
Joshua A.H. Harris  
Bridget A. Roberts  
Caitlin S. Sislin

Law Offices of  
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436 14<sup>th</sup> Street, Suite 1300  
Oakland, California 94612  
TEL: 510/496-0600 ♦ FAX: 510/496-1366  
email: [svolker@volkerlaw.com](mailto:svolker@volkerlaw.com)

June 30, 2008

*VIA FACSIMILE AND U.S. MAIL*  
Fax: (301) 734-8584 Tel: (301) 734-5941

Osama El-Lissy  
Director, Emergency Management  
Emergency and Domestic Programs  
Animal and Plant Health Inspection Service  
United States Department of Agriculture  
4700 River Rd., Unit 134  
Riverdale, MD 20737-1232

*VIA EMAIL*

Bevelyn.R.Whitfield@aphis.usda.gov  
FOIA/PA Program Specialist  
Department of Agriculture  
Freedom of Information  
Legislative and Public Affairs

Re: FOIA Search Request No. 08-650

Dear Mr. El-Lissy and Ms. Whitfield:

On April 9, 2008 we submitted the attached request under the Freedom of Information Act for documents related to your Light Brown Apple Moth eradication program, and asked you to waive reproduction costs. To date we have received no response to our request for a waiver of copying fees, and no documents. Please transmit the requested documents and waive all reproduction fees that might otherwise apply. We are entitled to a waiver of any such fees under your FOIA regulations, as we explain below.

This request for a fee waiver is made pursuant to 7 C.F.R. Part 1, Appendix A, section 6(a)(1), on behalf of two non-profit environmental organizations, the North Coast Rivers Alliance ("NCRA") and CLEAR Center of Health ("CCH"), in connection with their FOIA request of April 9, 2008. Our FOIA request seeks disclosure of the United States Department of Agriculture, Animal and Plant Health Inspection Service ("APHIS")'s records related to the Light Brown Apple Moth in California. A fee waiver in this case is appropriate because, as discussed in detail below, the disclosure of the requested information is in the public interest, as it is likely to contribute significantly to public understanding of the operations or activities of the government and is not made for any commercial purpose, as neither NCRA nor CCH has any commercial interest.

First, the subject matter of the requested records specifically concerns APHIS's operations. APHIS applied to the US Environmental Protection Agency for an exemption from compliance with the quarantine requirement under Section 18 of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") (7 U.S.C. § 136p) for the aerial and ground applications of Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F. APHIS received this Grant from EPA once it concluded that Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F (and their inert ingredients) were acceptable for use on food commodities, and did not

expect their use to pose risks to the public or the environment. As provided in the requesters' April 8, 2008 FOIA Request, requesters seek records prepared or received by APHIS that related to the Light Brown Apple Moth's discovery and observation, its actual or projected damage to crops, and APHIS' plans for its control or eradication. This information would be directly related to APHIS' decision to seek to the FIFRA exemption. Thus, the records sought specifically concern an identifiable operation or activity of the government.

Second, the releasable material has informative value because it is likely to contribute to an understanding of government activities. The requested information seeks to shed light on APHIS' reasoning for seeking an exemption from FIFRA for the use of Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F. Such information is not currently available to the public. The records would demonstrate the extent to which the evidence available to APHIS supported its conclusion that the Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F required an exemption from FIFRA's quarantine requirement. Thus, because the requested records directly address how and for what reasons APHIS arrived at its decision, the releasable material is meaningfully informative in relation to its request for the Grant issued by EPA.

Third, the documents would contribute to the understanding of the public at large. The APHIS application sought to allow the aerial and ground application of Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F in the San Francisco Bay area without first complying with FIFRA's quarantine requirement. This decision thus concerns a large class of persons – millions of residents in the areas likely to be affected by the spraying program, as well as those who consume agricultural products produced in the affected region. However, the requested information has not been released to the public at large, despite the decision's potential to impact the health and welfare of the region's residents, wildlife, and ecosystems. As respected advocates for public and environmental health who supply the public with information on such topics, requesters intend to convey information contained in the requested records to the interested public. Accordingly, the public would benefit from the release of information to the requesters, which demonstrates that government has or has not properly assessed these concerns during its decision-making process, before it granted the exemption to the quarantine requirement.

Fourth, the disclosure would significantly contribute to public understanding of government operations or activities. The requesters are organizations based in the affected San Francisco Bay area, and plan to synthesize the information gleaned from the records to educate the affected public about APHIS' analysis of the possible risks posed by the Light Brown Apple Moth and the risks from application of Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F. The requested information has not reached a threshold level of dissemination, as it is not publicly available. Disclosure of this information would therefore significantly enhance the public's understanding of the governmental process used in seeking the FIFRA exemption. The requesters plan to disseminate educational information about this subject through, for instance, the newsletter published by CLEAR Center of Health, and its website, found at [http://www.clearcenterofhealth.com/clear\\_living/](http://www.clearcenterofhealth.com/clear_living/). Thus, requesters' capacity and intent to disseminate the requested information to the affected public weighs in favor of granting a fee waiver.

Fifth, the disclosure will not serve the requesters' "commercial interests," as they have none. The requesters are not-for-profit entities who do not seek profit in relation to the

United States Department of Agriculture

June 30, 2008

Page 3

dissemination of the disclosed documents, nor in relation to the proposal to release Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F. North Coast Rivers Alliance is an unincorporated association of residents of coastal Northern California, whose purpose is to protect California's North Coast rivers from degradation. CLEAR Center of Health's primary objective is guiding and educating patients, by helping them to become comfortable with the science and therapies of integrated medicine. The requesters' motivation in seeking the disclosure of the requested information is to educate the public regarding governmental processes and the human and environmental health risks associated with the use of Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F. Thus, because the requesters seek this information for the benefit of the public, and not their own commercial interests, the fee waiver should be granted.

Sixth, the public interest in disclosing information vital to educating the public about APHIS' processes in reaching its decision, and the consequent human and environmental health risks associated with the decision, will outweigh the requesters' "commercial interests," as they have none. As explained above, the requesters do not have commercial interests in either the dissemination of records (nor information therein) nor in advancing or preventing the use of Disrupt Micro-flake LBAM Mating Disruption and CheckMate LBAM-F. With no commercial interests at stake, this balance weighs in favor of the disclosure of the requested records.

In accordance with FOIA, please transmit your response to this inquiry within 20 days. We will cooperate fully in assisting your reproduction of these requested materials. Thank you.

Very truly yours,

Stephan C. Volker  
Attorney for North Coast Rivers Alliance  
and CLEAR Center of Health

Stephan C. Volker  
Joshua A.H. Harris  
Bridget A. Roberts  
Caitlin S. Sislin

Law Offices of  
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April 9, 2008

VIA FACSIMILE AND FEDERAL EXPRESS  
Fax: (301) 734-8584 Tel: (301) 734-5941  
Airbill No: 8391 3378 7409

Osama El-Lissy  
Director, Emergency Management  
Emergency and Domestic Programs  
Animal and Plant Health Inspection Service  
United States Department of Agriculture  
4700 River Rd., Unit 134  
Riverdale, MD 20737-1232

**Re: FOIA request under 5 U.S.C. § 552**

Dear Mr. El-Lissy:

This is a request on behalf of two non-profit environmental organizations, the North Coast Rivers Alliance and CLEAR Center of Health, under the Freedom of Information Act, 5 U.S.C. § 552, for one copy of all of the following documents:

1. All documents prepared or received by the United States Department of Agriculture, Animal and Plant Health Inspection Service ("APHIS") concerning the discovery and observations of the Light Brown Apple Moth in California;
2. All documents prepared or received by United States Department of Agriculture, APHIS regarding the actual or projected damage to commercial crops in California from the Light Brown Apple Moth;
3. All documents prepared or received by United States Department of Agriculture, APHIS regarding its past, current and future plans for controlling or eradicating the Light Brown Apple Moth population in California.

In accordance with FOIA, please transmit your response to this inquiry within 20 days. Because this request is made on behalf of two non-profit organizations with absolutely no commercial interest in the subject matter, and whose sole motivation is to educate the public regarding governmental processes, we respectfully request a waiver of any reproduction fees that otherwise would apply to this request.

Osama El-Lissy  
Director, Emergency Management  
April 9, 2008  
Page 2

Please advise of your response as soon as possible, and we will cooperate fully in assisting your reproduction of these requested materials. Thank you.

---

Stephan C. Volker  
Attorney for North Coast Rivers Alliance  
and CLEAR Center of Health

SCV:taf



JUN 17 2010

United States  
Department of  
Agriculture

Animal and  
Plant Health  
Inspection  
Service

Legislative and  
Public Affairs

Freedom of  
Information

4700 River Road  
Unit 50  
Riverdale, MD  
20737-1232

Mr. Stephan C. Volker  
Law Offices  
436 14<sup>th</sup> Street, Suite 1300  
Oakland, CA 94612

Dear Mr. Volker:

This is in response to your April 9, 2008, Freedom of Information Act (FOIA) request for documents regarding the Light Brown Apple Moth in California. Your request was received in this office on April 21, 2008, and assigned case number FOIA 08-650. I regret to inform you that your request is still pending in this Office.

Because the lapse of time may have changed your need for the information you originally requested, I write to ask whether you are still interested in receiving the responsive documents. If you are still interested in receiving the documents, please sign this letter below and return it in the enclosed self-addressed, postage paid envelope, and I will complete the processing of your request as soon as possible.

If you are no longer interested in the documents, you need do nothing. If I have not received this letter in 10 calendar days, I will assume you are no longer interested in receiving the documents and your case will be closed. I appreciate your patience and understanding.

Sincerely,

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

I am still \_\_\_\_\_ at are responsive to my request.

Signature \_\_\_\_\_

Date 6-21-10

Enclosure



"svolker"  
<svolker@volkerlaw.com>  
07/01/2008 10:42 AM

To <Bevelyn.R.Whitfield@aphis.usda.gov>, "broberts"  
<broberts@volkerlaw.com>  
cc <Barbara.Kennedy@aphis.usda.gov>,  
<Tonya.G.Woods@aphis.usda.gov>, "Caitlin Sislin"  
<csislin@volkerlaw.com>

bcc

Subject RE: FOIA Search Request No. 08-650

History:

 This message has been replied to.

Ms. Whitfield,

The spraying caused serious personal injury to many residents of the affected areas, nearly causing the death of two of them, an 11-month old infant and a 9 year old girl.

Because of the grave consequences of USDA's approval of this program, a full inquiry is needed. Please proceed to provide us all the documents we have requested.

Stephan C. Volker

-----Original Message-----

**From:** Bevelyn.R.Whitfield@aphis.usda.gov [mailto:Bevelyn.R.Whitfield@aphis.usda.gov]

**Sent:** Tuesday, July 01, 2008 7:00 AM

**To:** broberts

**Cc:** 'svolker'; Barbara.Kennedy@aphis.usda.gov; Tonya.G.Woods@aphis.usda.gov

**Subject:** Re: FOIA Search Request No. 08-650

**Importance:** High

Please be advised that I am in receipt of your e-mail.

Per my e-mails to your office of June 3 and June 16, 2008, I am asking once again, if you would consider narrowing the scope of your request. The office that has these records has advised that the initial search to retrieve these records will take a MINIMUM of 400 hours of search time and 200 hours of professional time.

Bev Whitfield  
FOIA/PA Program Specialist  
Department of Agriculture  
Freedom of Information  
Legislative and Public Affairs  
Ph: (301) 734-5250  
Fax: (301) 734-5941

"broberts" <broberts@volkerlaw.com>

06/30/2008 07:49 PM

To <Bevelyn.R.Whitfield@aphis.usda.gov>  
cc "svolker" <svolker@volkerlaw.com>  
Subject FOIA Search Request No. 08-650

Stephan C. Volker  
Joshua A.H. Harris  
Bridget A. Roberts  
Shannon L. Chaney  
Alexis E. Krieger  
Stephanie L. Abraham  
Daniel P. Garrett-Steinman

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10.

DATE: June 22, 2010

TO: Tonya G. Woods, Director  
Freedom of Information and Privacy Act  
Legislative and Public Affairs  
U.S. Department of Agriculture

FAX: (301) 734-5941

FROM: Stephan C. Volker

PAGES: 2, pages, including this coversheet

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Re: FOIA Request Case No. FOIA 08-650

Please see the attached indication of Mr. Volker's continuing interest in obtaining the information sought in the FOIA Request dated April 9, 2008 and assigned the Case No. FOIA 08-650. Mr. Volker's original signature follows by U.S. mail.

**FACSIMILE TRANSMITTAL SHEET**

NOTE: The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original of this transmittal to us at our address via the U.S. Postal Service. Thank you!



United States  
Department of  
Agriculture

National and  
International Health  
Education  
Office

Legislative and  
Public Affairs

Freedom of  
Information

100 River Road  
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Baltimore, MD  
410-737-1232

JUN 17 2010

Mr. Stephan C. Volker  
Law Offices  
436 14<sup>th</sup> Street, Suite 1300  
Oakland, CA 94612

Dear Mr. Volker:

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If you are no longer interested in the documents, you need do nothing. If I have not received this letter in 10 calendar days, I will assume you are no longer interested in receiving the documents and your case will be closed. I appreciate your patience and understanding.

Sincerely,

*Karin L. Edwards*

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

I am still

\_\_\_\_\_ that are responsive to my request.

Signature \_\_\_\_\_

Date 6-21-10

Enclosure

