

USDA Blackout: E-FOIA and the Animal Welfare Act

Delcianna J. Winders

Vice President & Deputy General Counsel
Captive Animal Law Enforcement
PETA Foundation

Haub Environmental Visiting Scholar
Elisabeth Haub School of Law
Pace University

Animal Welfare Act – stated purpose:

“to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment”

7 U.S.C. § 2131

Animal Welfare Act, Public Interest, & Transparency

- “[W]e need to ensure the public that adequate safeguards are in place to prevent unnecessary abuses to animals, and that everything possible is being done to decrease the pain of animals during experimentation and testing.” Sen. Dole, in introducing 1985 AWA amendments.
- “[T]he AWA anticipated the continued monitoring of concerned animal lovers to ensure that the purposes of the Act were honored.” *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 445 (D.C. Cir. 1998).

USDA Feb. 3, 2017, Announcement

“Based on our commitment to being transparent, remaining responsive to our stakeholders’ informational needs, and maintaining the privacy rights of individuals, APHIS is implementing actions to remove documents it posts on APHIS’ website involving the Horse Protection Act (HPA) and the Animal Welfare Act (AWA) that contain personal information covered by the Privacy and Freedom of Information Acts or guidance from the U.S. Department of Justice regarding them.”

1996 E-FOIA Amendment

“Each agency . . . shall make available for public inspection in an electronic format— . . . all records . . . that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records”

5 U.S.C. § 552(a)(2)(D).

S. Rep. No. 104-272 (1996)

“The purpose . . . is to prompt agencies to make information available affirmatively on their own initiative in order to meet anticipated public demand for it. In other words, FOIA processes should not be incumbered by requests for routinely available records or information that can more efficiently be made available to the public through affirmative dissemination means.”

USDA Acknowledgments

“[I]nspection and annual reports . . . qualify as records subject to multiple requests under E-FOIA and must be made available to the public via electronic means.” USDA Memo (Mar. 12, 2004).

Enforcement records “are frequently requested and as a result, APHIS, in compliance with the Electronic Freedom of Information Act Amendments of 1996, made the determination to provide the requested records on its agency website.” USDA Letter (2015).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEOPLE FOR THE ETHICAL TREATMENT)
OF ANIMALS, INC.,)
1536 16th Street, N.W.)
Washington, D.C. 20036,)

DELCIANNA J. WINDERS,)
1557 Massachusetts Ave.)
Lewis 437)
Cambridge, MA 02138,)

PHYSICIANS COMMITTEE FOR)
RESPONSIBLE MEDICINE,)
5100 Wisconsin Avenue, NW, Suite 400,)
Washington, D.C. 20016,)

BORN FREE USA,)
2300 Wisconsin Ave., N.W., Suite 100B)
Washington, D.C. 20007,)

MASSACHUSETTS SOCIETY FOR THE)
PREVENTION OF CRUELTY TO ANIMALS,)
350 South Huntington Ave.)
Boston, MA 02130,)

BEAGLE FREEDOM PROJECT,)
4804 Laurel Canyon Blvd.)
Valley Village, CA 91607,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE)
1400 Independence Ave., S.W.)
Washington, D.C. 20250,)

ANIMAL AND PLANT HEALTH)
INSPECTION SERVICE)
4700 River Road)
Riverdale, MD 20737)

Defendants.)

Civil Action No.

1 Christopher Berry, State Bar No. 283987
Matthew Liebman, State Bar No. 248861
2 cberry@aldf.org
ANIMAL LEGAL DEFENSE FUND
3 525 E. Cotati Ave.
Cotati, CA 94931
4 Tel: 707.795.2533/Fax: 707.795.7280

5 Margaret B. Kwoka (Pro Hac Vice Application pending)
mkwoka@law.du.edu
6 UNIVERSITY OF DENVER STURM COLLEGE OF LAW
2255 E. Evans Ave
7 Denver CO 80208
Tel: 303.871.6275/ Fax: 303.871.6378

8
9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 ANIMAL LEGAL DEFENSE FUND,
STOP ANIMAL EXPLOITATION NOW,
15 COMPANION ANIMAL PROTECTION
SOCIETY, and ANIMAL FOLKS,

16 Plaintiffs,

17 v.

18 UNITED STATES DEPARTMENT OF
19 AGRICULTURE and ANIMAL AND
PLANT HEALTH INSPECTION
20 SERVICES,

21 Defendants.
22

Case No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF



[REDACTED] Insp_id

Inspection Report

[REDACTED]
GREENS FORK, IN

Customer ID: [REDACTED]

Certificate: [REDACTED]

Site: 001
[REDACTED]

Type: ROUTINE INSPECTION

Date: 24-AUG-2017

3.7(c) DIRECT

COMPATIBLE GROUPING.

During a focused inspection conducted August 24, 2017 a puppy was observed drowned in its water bowl. This small, eight week old, female, American Eskimo puppy was observed singly housed yesterday. Today, it shared an enclosure with a fully grown, approximately 35 pound, female Shiba Inu mix. The puppy was fully submerged in blood tinged water, eyes bulging, with agonal convulsions when this inspector pulled her out of the water bowl. It was too late, she was dead. The puppy had bloody bite wounds on her head and body. The Shiba Inu had blood on its chest. It is unknown exactly how the puppy ended up in the water bowl, or if she was alive prior to entering the water. Regardless of these details, clearly this young puppy was attacked by the older adult dog resulting in her death. Puppies four months of age or less may not be housed in the same primary enclosure with adult dogs, other than their dams or foster dams, unless permanently maintained in breeding colonies.



[REDACTED] Insp_id

Inspection Report

[REDACTED]
BLOOMFIELD, IA

Customer ID: [REDACTED]

Certificate: [REDACTED]

Site: 001

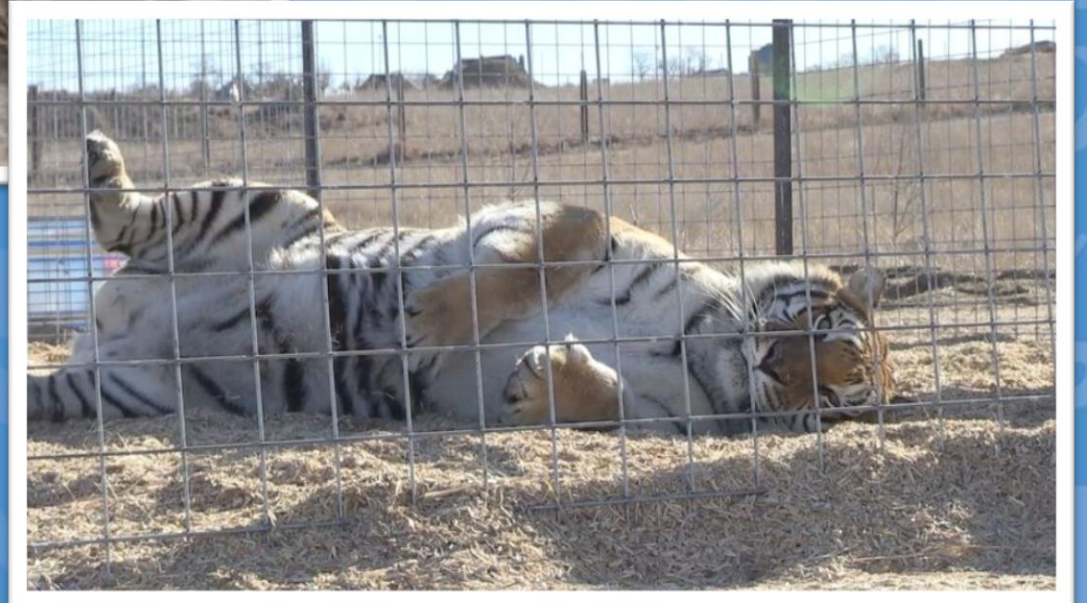
Type: ROUTINE INSPECTION

Date: 12-SEP-2017

2.40(b)(3) CRITICAL

ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE (DEALERS AND EXHIBITORS).

In the outdoor section of one enclosure is a deceased female Chihuahua (microchip #0007296B3B). The dog is located at the end of the enclosure lying on her right side up against the enclosure gate. There is a large, circular open wound in the lower left side of the abdomen directly in front of the left hind leg. The licensee said this dog tended to have intermittent issues with uterine infections during the time she has been at the facility.



Delcianna J. Winders

Vice President & Deputy General Counsel
Captive Animal Law Enforcement
PETA Foundation

Haub Environmental Visiting Scholar
Elisabeth Haub School of Law
Pace University

DelciannaW@petaf.org



[@DelciannaW](https://twitter.com/DelciannaW)