



**THE HUMANE SOCIETY
OF THE UNITED STATES**

OFFICERS

David O. Wiebers, M.D.
Chair of the Board
Anita W. Coupe, Esq.
Vice Chair of the Board
Walter J. Stewart, Esq.
Board Treasurer
Wayne Paccelle
President & CEO
G. Thomas Waite III
Treasurer & CFO
Roger A. Kindlet, Esq.
General Counsel & CLO
Janet D. Frake
Secretary
Andrew N. Rowan, Ph.D.
Executive Vice President
Operations
Michael Markarian
Executive Vice President
External Affairs

STAFF VICE PRESIDENTS

John Balzar
Senior Vice President
Communications
Patricia A. Forkan
Senior Vice President
External Affairs International
John W. Grandy, Ph.D.
Senior Vice President
Wildlife & Habitat Protection
Holly Hazard
Chief Innovations Officer
Heidi Prescott
Senior Vice President
Campaigns
Katherine B. Liscomb
Administration &
Animal Care Centers
Richard M. Chugston, Ph.D.
Higher Education
Geoffrey L. Handy
Media and Online
Communications
Jonathan R. Lovorn, Esq.
Animal Protection Litigation
Kathleen C. Milani
Investigations and Video
Miyun Park
Farm Animal Welfare
Nancy Perry, Esq.
Government Affairs
Steve Putnam
Business Development &
Corporate Relations
Robert G. Roop, Ph.D., SPHR
Human Resources &
Education Programs
Melissa Seide Rubin, Esq.
Field & Disaster Services
John M. Snyder
Companion Animals
Martin L. Stephens, Ph.D.
Animal Research Issues

DIRECTORS
Leslie Lee Alexander, Esq.
Patricia Mares Asip
Peter A. Bender
Barbara S. Brack
Anita W. Coupe, Esq.
Neil B. Fang, Esq., C.P.A.
Judi Friedman
David John Jhirad, Ph.D.
Jennifer Leaning, M.D., S.M.H.
Kathleen M. Linehan, Esq.
William F. Mancuso
Mary I. Max
Patrick L. McDonnell
Gil Michaels
Judy Ney
Judy J. Peil
Marian G. Probst
Joshua S. Reichert, Ph.D.
Jeffery O. Rose
James D. Ross, Esq.
Marilyn G. Seyler
Walter J. Stewart, Esq.
John E. Taft
Andrew Weinstein
Persia White
David O. Wiebers, M.D.

December 2, 2008

Tonya Woods, FOIA/PA Officer
4700 River Road, Unit 50
Riverdale, MD 20737-1232

Freedom of Information Act Request

Dear Ms. Woods:

On behalf of The Humane Society of the United States ("The HSUS"), I am requesting records under the Federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* 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.

A. Records Request

This request is for records pertaining to the "Humane Care Guidelines" described by Petland, Inc., ("Petland") in the attached statement as being "developed in conjunction with the USDA to assist with breeder facility inspections as it pertains to pet selection." Lisa Wade McCormick, "Humane Society Accuses Petland of Supporting Puppy Mills," ConsumerAffairs.com, Nov. 21, 2008 (accessible at http://www.consumeraffairs.com/news04/2008/11/hsus_pet_stores02.html) (quotation of Lacey Clever, identified as Petland spokesperson).

Specifically, The HSUS requests the following:

1. The "Humane Care Guidelines" referred to by Petland in the above-quoted statement, or any similar document "developed . . . [by] USDA to assist [Petland] with breeder facility inspections as it pertains to pet selection," *id.*, if any.
2. Communications between Petland or its officers, employees or representatives and the United States Department of Agriculture ("USDA") regarding the "Humane Care Guidelines" or similar document described in paragraph 1, if any.

For this request, the term "records" refers to, but is not limited to, correspondence of any kind, memoranda, letters, notes, schedules, electronic

Celebrating Animals, Confronting Cruelty

mail, telephone logs, minutes of meetings, work papers, reports, studies or data. If any information is being withheld, please identify all such information with specificity and provide all information required under 7 C.F.R. § 1.7.

The FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, so please provide us with all non-exempt portions of any exempt records. 5 U.S.C. § 552(b). Please explain any redactions by reference to specific provisions of the FOIA that allow information to be exempted from disclosure.

B. Statutory Fee Waiver Requests

1. Representatives of the News Media

The HSUS qualifies for the preferred fee status of "representative of the news media." See 5 U.S.C. § 552(A)(ii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c). The FOIA was amended to include a definition of the term "representative of the news media" that is in line with the previous interpretation applied by the courts. OPEN Government Act of 2007, Pub. L. No. 110-175; See *National Security Archives v. U.S. Dep't of Defense*, 880 F.2d 1381, 1388 (D.C. Cir. 1989). As such, an entity is a "representative of the news media" if it "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. § 552(a)(4)(A)(ii) (2008).

The HSUS is unquestionably a "representative of the news media." The HSUS has extensive and well-exercised means to investigate and keep the public informed about the operations and activities of the United States government and has invariably done so for many years. The HSUS does not merely obtain information and then contact members of the press to relate that information. Rather, The HSUS independently collects and analyzes information, drafts its own reports and articles on the issues by putting facts and issues into context, and disseminates the information broadly through its own publications to interested persons, legislators, its members and the public at large. As a result of its longstanding advocacy and work on companion animal issues, The HSUS has developed a substantial level of expertise about puppy mills which commands public attention when such information is disseminated.

For instance, with respect to this request, The HSUS Stop Puppy Mills Campaign maintains a website, <http://www.stoppupmills.org/>, where frequently asked questions about puppy mills are addressed and where the public and interested parties are provided with the results of The HSUS's research and investigations. As an end result of synthesizing such research and investigations, the public is informed about puppy mills, the link between these puppy mills and retail stores and about the effect USDA licensing and inspection has, or fails to have, on the same. Through these efforts, The HSUS also serves to inform and protect consumers by alerting them to false and misleading statements made by puppy retailers such as Petland. In addition to maintaining the website, The HSUS also publishes materials such as the Canine Chronicle newspaper which exposes the conditions of puppy mills, discusses the laws that regulate them and covers the USDA's role in inspecting such facilities and enforcing the Animal Welfare Act ("AWA"). The HSUS, "Behind the Scenes: What Investigators Found," Canine Chronicle,

2006, pg. 3. Given its independent and extensive public dissemination of information pertaining to policies and activities relating to puppy mills, The HSUS meets the criteria for a representative of the news media.

2. Public Interest Fee Waiver

In addition to granting preferred fee status, under federal law, records are to be furnished completely without charge when "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); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6. Pursuant to this requirement, The HSUS seeks a waiver of any search and copy fees for this FOIA request.

As a threshold matter, the information sought in this request is in the public interest. The issue of puppy mills is of intense and ongoing interest to the public at large, due to the inhumane conditions in which puppy mill dogs are kept, the illnesses and congenital defects suffered by many puppy mill puppies, the rampant consumer deception in the puppy mill industry, and the risk to human and animal health posed by the transmissible diseases often carried by puppy mill puppies. National mainstream newspapers, television shows and other mass media have run stories discussing these issues, demonstrating that the interest in preventing egregious cruelty to animals is commonly held by the public generally, and is not limited to merely a subsection of the population. *See, e.g.,* Jeanette Trompeter, "I-TEAM: Inside A Minnesota Puppy Mill," WCCO (available at <http://wcco.com/pets/i.team.puppy.2.872927.html>); The Oprah Winfrey Show, April 4, 2008; Jane Weaver, "Pet store chain linked to puppy mills," MSNBC, Nov. 20, 2008.

More specifically, as it pertains to this request, Petland, the country's largest retail seller of puppies, claims to address the animal welfare problems posed by its supplier puppy mills through a set of purported "Humane Care Guidelines" that it allegedly "developed in conjunction with the USDA to assist with breeder facility inspections as it pertains to pet selection." Lisa Wade "Humane Society Accuses Petland of Supporting Puppy Mills," *ConsumerAffairs.com*, Nov. 21, 2008 (accessible at http://www.consumeraffairs.com/news04/2008/11/hsus_pet_stores02.html). Whether those jointly-developed "Guidelines" in fact exist, and if so, the extent to which they actually prevent cruelty to animals is a matter of great interest to the public. Moreover, consumers rely on Petland's representation about the "Humane Care Guidelines" when deciding whether to purchase puppies from Petland. The substance of those "Guidelines," or whether they exist at all, is thus a matter of keen interest to consumers as well.

i. Operations & Activities of the Government

All of the requested information significantly contributes to the public's understanding of the "operations and activities of the government," because it details the USDA's actions in assisting a private entity to develop policies and procedures. As such, the nature and extent of USDA's involvement with Petland to develop "Humane Care Guidelines" has a clear and direct relation to the operations and activities of the government. More specifically, Petland has publicly represented that the USDA has

undertaken a particular operation or activity – namely, the “develop[ment] in conjunction with [Petland]” of animal welfare standards. The requested information will illustrate the extent of and basis for USDA’s involvement in assisting a retail pet store develop internal operating standards. The light these disclosures will shine upon USDA’s activities is particularly bright given the fact that USDA is charged with enforcing the AWA and the breeders with which Petland conducts business fall under the ambit of USDA’s regulatory authority. Thus, the extent to which these “Guidelines,” if any, conform to or supplement existing federal laws enforced by USDA against Petland and its suppliers sheds light on the operations and activities of the federal government.

ii. Public Understanding

The HSUS is a non-profit organization dedicated to animal protection and has focused its efforts on puppy mills for over four decades. The HSUS has devoted substantial time and resources to monitoring activities of the federal government and keeping the public abreast of these activities, as well as educating the public about puppy mills and the role of the USDA in regulating and inspecting commercial breeding operations.

The HSUS contributes to the public’s understanding of companion animal issues generally, as well as the controversy surrounding puppy mills, due to its size and proven ability to disseminate information to a large segment of the public. The HSUS disseminates information to the general public through various sources including its websites, media outlets, litigation, legislation and public education. *See, e.g.,* <http://www.stoppupmills.org>; <http://www.hsus.org/pets>. In particular, The HSUS has actively informed the public about the source of the puppies Petland offers for sale and the relationship between many of those breeders, the USDA and Petland. In light of this recent report, Petland has stated to several members of the media that Petland and USDA worked together in creating guidelines used by Petland in the operation of its business. *See, e.g.,* Donna Willis, “Petland Fights Puppy Mill Allegations,” NBC4i.com, Nov. 20, 2008 (reporting that Petland’s director of marketing and communications stated “We get our puppies from USDA licensed facilities and hobby breeders as well, but we’ve established humane guidelines that we’ve developed in conjunction with the USDA.”).

The information sought in this request will enable The HSUS to further educate the public about the truthfulness of that representation, as well as USDA’s involvement, if any, in developing a “guidance” document for those involved in the commercial breeding and sale of puppies. Information obtained through this request may be disseminated to the public through publication on any of The HSUS’s webpages cited above or in various reports and action alerts produced for our members and the public. Reports, comments, action alerts, press releases, and other materials relevant to operation and activities of the USDA as it relates to puppy mills have been, and will continue to be, added to the The HSUS’s webpages to ensure that interested citizens have around the clock access to information. *See* http://www.stoppupmills.org/petland_usda_reports.html (contains selected USDA reports linked to Petland suppliers).

iii. Significant Contribution

The contribution of this information to the public understanding will be "significant," because it is the sole source of information as to whether USDA actually jointly developed "Humane Care Guidelines" with Petland, and if so, how and why.

iv. No Commercial Interest

The HSUS does not have a commercial, trade, or profit interest in the information requested.

C. Conclusion

Therefore, The HSUS asks that any search and duplication fees in this case be waived or reduced. If the fee waiver request is denied, please notify me by telephone at 202-676-2334, or by email at agreen@hsus.org, so that The HSUS may decide whether to pay the fees or to appeal the denial of the request for waiver or reduction. If you have any questions or need additional information regarding this request, please contact me. I look forward to receiving your reply within 20 business days as required by law. Thank you for your assistance.

Sincerely,

Aaron D. Green, Esq.
Litigation Fellow, Animal Protection Litigation
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037



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

FEB 25 2009

Aaron Greene, Esquire
Litigation Fellow, Animal Protection Litigation
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037

Dear Mr. Greene:

This is in response to your December 2, 2008, Freedom of Information Act (FOIA) request for records pertaining to the "Humane Care Guidelines" described by Petland, Inc. as being "developed in conjunction with the USDA to assist with breeder facility inspections as it pertains to pet selection." Your request was received in this office on December 5, 2008, and assigned case number FOIA 09-305. We apologize for the delay of this response.

Agency employees conducted a thorough search of their files, but did not locate any records responsive to your request.

You may appeal our finding of no responsive records. If you choose to appeal, your appeal must be in writing and must be received at the following address within 45 days of the date of this letter.

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

Please refer to FOIA 9-305 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.

Because the cost to process your request is less than \$25.00, the fee has been waived. If you have any questions, please contact Ms. Glendorá Gilchrist of my staff at (301) 734-0601.

Sincerely,

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