



IN DEFENSE OF ANIMALS

April 25, 2014

Via Electronic Mail and Certified Mail

Animal and Plant Health Inspection Service
Director, Freedom of Information and Privacy Act Staff
4700 River Road, Unit 50
Riverdale, MD 20737
foia.officer@aphis.usda.gov

Re: Freedom of Information Act Request for Records Related to APHIS Wildlife Services' Involvement in White-Tailed Deer Management in Rock Creek Park, Washington, D.C.

Dear FOIA Official,

We are writing under to request records under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552. IDA is a 501(c)(3) non-profit organization whose mission is to protect the rights, welfare, and habitats of animals. Our organization is supported by over 100,000 individuals with most of them located in the United States.

As used throughout this letter, the terms "record" and "records" shall mean any and all forms of records and documents (handwritten, typed, electronic or otherwise produced, reproduced or stored) generated, received, obtained, held or created by or for the agency, including any correspondence, email, telefax, notes, memos, records of phone conversations, spreadsheet, documents, studies, reports, photographs, and/or videotape footage in the possession of The United States Department of Agriculture Wildlife Services (WS) regardless of the origins of the record.

Specifically, we request the following records from **November 1, 2011 to present:**

1. Any contract(s) between the Animal and Plant Health Inspection Service ("APHIS") or APHIS Wildlife Services and the National Park Service ("NPS") or Rock Creek Park for management of white-tailed deer within Rock Creek Park, including but not limited to sharpshooting by rifle or archery, "capture-and-euthanasia" operations, and/or fertility control; and
2. Any correspondence between APHIS or APHIS Wildlife Services and NPS or Rock Creek Park concerning deer management in Rock Creek Park.

Since FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, 5 U.S.C. § 552(b), we request that you provide us with all non-exempt portions of the requested records, along with an explanation of which documents,

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info@idausa.org
www.idausa.org

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Grenada, Mississippi
www.idausa.org/Hope

IDA Africa
Sanaga-Yong Chimpanzee Rescue Center
Cameroon, Africa
www.idausa.org/Africa

IDA India
Mumbai, India
www.idausa.org/India

Fighting Apathy, Building Empathy



if any, may be privileged or exempt from this FOIA request and why. Please explain any deletions by referring to the specific exemption that you are invoking under FOIA. Further, if processing some of the records requested may take longer than processing the other information requested, we request that you provide the latter expeditiously and continue to provide information on a rolling basis.

Request for Fee Waiver

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii). As demonstrated below, IDA meets the two pronged test for a fee waiver, i.e., (A) the subject of this request concerns the public interest in the management of Rock Creek Park, and the disclosure of such information will “contribute significantly to public understanding of the operations or activities of the government;” and, (B) the request primarily and fundamentally is for non-commercial purposes. *See id.*; 7 C.F.R. Part 1, App. 1, § 6. a. Disclosure of this Information Will Significantly Contribute to Public Understanding of the Operations or Activities of the Government.

a. Disclosure of this Information Will Significantly Contribute to Public Understanding of the Operations or Activities of the Government.

First, the information requested – specifically, government contracts for deer management within Rock Creek Park and related correspondence between government agencies – concerns “the operations or activities of the government.” Both APHIS and NPS are government entities. APHIS’s website describes its Wildlife Services program as “provid[ing] Federal leadership and expertise to resolve wildlife conflicts to allow people and wildlife to coexist” through “program delivery, research, and other activities.” http://www.aphis.usda.gov/wildlife_damage/. NPS is an agency of the United States under the Department of the Interior charged with managing the federal lands and resources of Rock Creek Park, in accordance and compliance with federal laws and regulations.

Second, the records requested have an informative value. The subject of this FOIA request concerns a specific problem – i.e., the publicly funded management of wild white-tailed deer in Rock Creek Park – and such information will help the public understand the functions of government more clearly than the already publicly available information on this subject. The killing of deer in Rock Creek Park using federal tax dollars has resulted in public outcry, including local TV and radio stations covering the story (i.e., the local radio stations The Kojo Nnamdi Show, see <http://thekojonnamdishow.org/shows/2014-01-09/managing-regions-deer-population>, and WTOP hosted a six-part series on the Rock Creek Park deer in 2013, along with several follow-up stories in 2014. *See* <http://www.wtop.com/41/3534715/Controversial-Rock-Creek-deer-hunt-begins-again>). In addition, several op-eds and letters to the editors have been discussing the ethics of killing deer in Rock Creek Park, an online petition urging the NPS to end the deer killing in Rock Creek Park has garnered nearly 16, 400 signatures, *see* <http://www.change.org/petitions/national-parkservice-don-t-kill-deer-in-our-nation-s-capital>. Facebook and Twitter accounts dedicated to providing news and opinion about the Rock Creek Park deer, which together reach more than 1,100 supporters. *See* <http://www.facebook.com/SaveTheRockCreekParkDeer>; <http://twitter.com/rockcreekdeer>.



Accordingly, because this request articulates a specific problem that release of the records will shed light on, a fee waiver is appropriate. *See, e.g., Physicians' Comm. for Responsible Med. v. HHS*, 480 F. Supp. 2d 119, 123-24 (D.D.C. 2007) (finding that "PCRM's description of a specific problem – the composition of [a committee's] membership – and its impact on [the committee's] ability to fulfill a specific statutory mandate" satisfies the "reasonably specific" standard, "which is all that FOIA requires" (internal quotation marks omitted)); *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17, 26 (D.D.C. 2006) (holding that a request for information regarding specific events in particular facilities would provide insight about how federal prisons were being managed and how tax dollars were being spent).

Third, disclosure of the records is likely to result in a contribution to an understanding of the subject *by the public*. In evaluating this factor, courts look to whether the requester has the capacity to disseminate the information to parties outside of the organization. *See FedCURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009) ("a requester must demonstrate an intention to effectively convey the requested information to the public" (internal citations and quotation marks omitted)); *accord Judicial Watch v. Dep't of Justice*, 185 F. Supp. 2d 54, 62 (D.D.C. 2002). With the establishment of the internet, organizational websites, and email, most public interest requester organizations like IDA can easily demonstrate that they have this ability. *D.C. Technical Assist. Org. v. HUD*, 85 F. Supp. 2d 46, 49 (D.D.C. 2000) ("In this Information Age, technology has made it possible for almost anyone to [disseminate information].").

IDA has over 100,000 supporters, most of them residing throughout the country. In addition to our website -- <http://www.idausa.org/> -- IDA electronically publishes a weekly newsletter that's freely available to anyone who signs up. *See* [http://ida.convio.net/site/PageNavigator/sign up](http://ida.convio.net/site/PageNavigator/signup). Information on the humane treatment and conservation of wildlife is a key component of our web presence, and our Wild and Free-Habitats Campaign is a major campaign featured on our website. *See* <http://www.idausa.org/campaigns/>.

Indeed, one court found that "one self-generated newspaper article, and interviews that have not aired," were adequate to prove a requester's ability to disseminate information, in part because the newspaper article appeared in *The New York Times*, "one of the most circulated newspapers in the United States." *Clemente v. FBI*, 741 F. Supp. 2d 64, 76-77 (D.D.C. 2010).

IDA's ability to disseminate information to the public through the print media, including *The New York Times*, and other widely read publications, is even more impressive. *See, e.g.,* <http://www.nytimes.com/1995/08/10/nyregion/chimp-research-laboratory-is-taken-over-byfoundation.html> (*The New York Times* article featuring IDA). Consider, for example, two articles about IDA's efforts to ensure the humane treatment of white-tailed deer from the past few months: On January 5, 2013, *The Journal-News* covered IDA's campaign to ensure that the community of Hastings-on-Hudson, New York uses humane, nonlethal management techniques for white-tailed deer. *See* <http://rivertowns.dailyvoice.com/news/hastings-begin-deer-birth-control-project-february> and <http://www.lohud.com/article/20130105/NEWS02/301050088/Vaccine-might-help-Hastings-reduce-deer-population>. And on February 28, 2013, the *Washington City Paper* featured IDA's efforts to raise awareness of the inhumane consequences of a deer cull in Montgomery County, Maryland. <http://www.washingtoncitypaper.com/blogs/citydesk/2013/02/28/photo-gruesome-deer->

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[wandering-around-montgomery-county/](#). In addition, IDA has more than 170,000 followers on Facebook, and more than 3,000 followers on Twitter.
<https://www.facebook.com/indefenseofanimals>; <https://twitter.com/IDAUSA>.

Fourth, release of the records will result in a “significant” contribution to public understanding of the government’s operations or activities – because the requested records will shed light on government funding and oversight of federal deal-making that occurs primarily out of the public view. For purposes of this factor, significance is determined by “comparing the public understanding with and without potential disclosure.” *CREW v. HHS*, 481 F. Supp. 2d at 116 (citing *Judicial Watch*, 185 F. Supp. 2d at 62). Here, the “threshold level of public dissemination” of the information sought is minimal. The public is aware that NPS planned to use APHIS Wildlife Services to conduct the cull. See <http://www.nps.gov/rocr/parkmgmt/upload/ROCR-Deer-Management-Plan-FAQ-Revision-for-Public-Distribution-January-10-2012.pdf> (“NPS will work with specially trained biologists from the United States Department of Agriculture’s Animal and Plant Health Inspection Service, Wildlife Services branch (USDAWS”).

But the public has no understanding of the intricacies of the deal that was struck – the duration of any contract, the total cost to taxpayers, any provisions that are made to transition from killing to nonlethal reproductive controls, the qualifications of the APHIS employees who will be conducting the management activities, any emergency protocols in case a member of the public or a domestic animal is injured, etc. Therefore, because public knowledge about the government’s role in funding and conducting these management activities is limited, IDA is clearly entitled to a statutory fee waiver. See *FedCURE v. Lappin*, 602 F. Supp. 2d at 205; *Judicial Watch v. Dep’t of Justice*, 365 F.3d 1108, 1126-27 (D.C. Cir. 2004); see also *Campbell v. Dep’t of Justice*, 164 F.3d 20, 36 (D.C. Cir. 1998) (holding that the government must demonstrate that the information sought “has met a threshold level of public dissemination [and thus] will not further ‘public understanding’ within the meaning of the fee waiver provisions” to justify a decision denying a fee waiver).

b. Obtaining the requested information is of no commercial interest to IDA or the other requesters.

IDA is a 501(c)(3) non-profit organization. IDA has no commercial, trade, or profit interest in the material requested. IDA will not be paid for or receive other commercial benefits from the publication or dissemination of the information requested, nor will any of the individual requesters.

Instead, IDA and the individual requesters seek to use the requested information to inform the public, including IDA’s members and supporters through the organization’s website, newsletters, and other publications, about the fate of the Rock Creek Park deer and the government’s role in funding and conducting the management activities. Therefore, the disclosure of the information is in the public interest and a fee waiver is appropriate.



If you have any questions regarding any aspect of this request, please contact me by telephone (406-544-5727) or email to expedite timely disclosure.

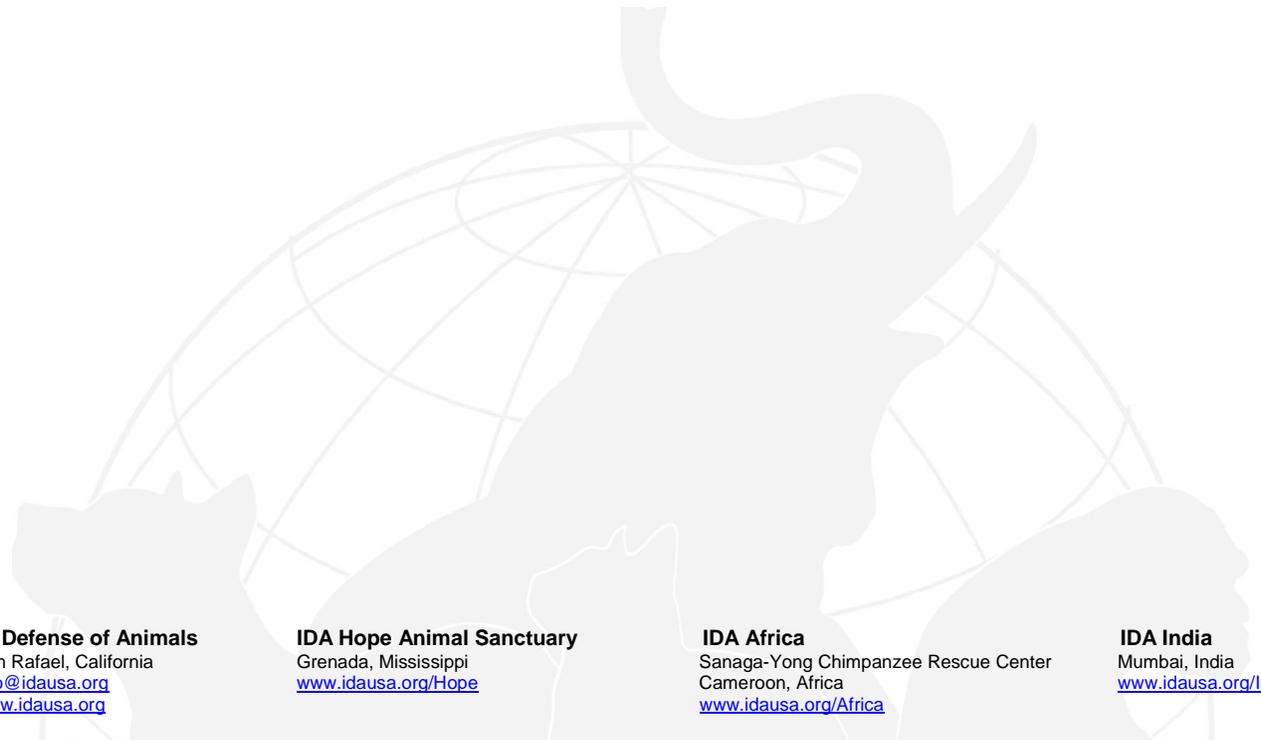
Please confirm receipt of this request by email to Anja@idausa.org.

Thank you for your assistance. I look forward to receiving your reply.

Sincerely,

Anja Heister

Anja Heister
Director, Wild and Free – Habitats Campaign
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