

**EXHIBIT A**



Oct. 2, 2018

Ryan Witt, FOIA Officer  
Bureau of Land Management  
Attn: FOIA Office (WO-640)  
1849 C St. N.W.  
Washington, DC 20240

Dear Mr. Witt:

I am writing on behalf of Friends of Animals to seek the disclosure of documents and records<sup>[1]</sup> pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Friends of Animals requests copies of all documents, records and data held by the Bureau of Land Management relating to persons who have purchased 20 or more wild horses in one transaction or in multiple transactions within a 90 day period, from the Bureau of Land Management since 2015.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request.

The Supreme Court has stated that FOIA establishes a “strong presumption in favor of disclosure” of requested information, and that the burden is on the government to substantiate why information may not be released under the Act’s various exemptions. *United States Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that “the Government [should] remain open and accessible to the American people” and always be based “not upon the need to know but upon the fundamental right to know.” Public Law 110-175, 121 Stat. 2524,

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[1] The terms “document(s)” and “records” are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; contracts; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs’ electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

2525 (Dec. 31, 2007) (internal citations omitted). Please consider the foregoing before withholding any documents that are responsive to this request.

In the event that access to any of the requested records is denied, please note that FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. Friends of Animals therefore requests that we be provided with all non-exempt portions, which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. A written justification might also help to avoid unnecessary litigation. Friends of Animals has the right to appeal the withholding or deletion of any information and expects that you will list the office and address where such an appeal can be sent.

Friends of Animals anticipates that you will make the requested materials available within the statutorily prescribed period.

### **FEE WAIVER REQUEST**

Friends of Animals requests that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

FOIA provides that “documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)). This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived.

Friends of Animals is a nonprofit international animal advocacy organization headquartered in Darien, Connecticut and incorporated in the state of New York since 1957. It serves the public interest by increasing the general public awareness of animal advocacy issues and how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of non-human, free-living and domestic animals. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification #: 13-6018549).

Friends of Animals does not have a commercial, trade, or profit interest in the requested records. Friends of Animals seeks information in order to more fully understand the operations and activities of FWS regarding the importation of trophies from Africa between 2014-present.

This data will help Friends of Animals to further its mission and deepen public understanding of the current crisis pertaining to America's wild horses on federal public lands. Wild horses are disappearing—6 states have already lost their wild horse population. Additionally, in the past wild horses, who are

supposed to be protected by the Wild Horse and Burro Act of 1971, have been sold to slaughter by buyers despite policies the BLM had in place to prevent this.

Friends of Animals has the ability to distribute information to its members and other interested members of the public through its website, its quarterly journal *ActionLine*, and through outreach to other media outlets. Friends of Animals regularly publicizes information about wildlife and employs several experts who can quickly digest and circulate the information obtained from this request, including attorneys and media correspondents. Friends of Animals plans to disseminate the information obtained from this request to its members, members of other conservation organizations, and other interested members of the public.

Given Friends of Animals' well-orchestrated and demonstrably successful efforts at educating the public on animal advocacy issues, and the fact that Friends of Animals' education program has significantly contributed to an understanding of government operations and activities, Friends of Animals is entitled to a fee waiver.

I may be called at the telephone number listed below during the hours of 9 a.m. to 5 p.m. to discuss my request, if necessary. 203-656-1522, ext. 2125. My email address is [nrivard@friendsofanimals.org](mailto:nrivard@friendsofanimals.org).

Sincerely,

Nicole Rivard

Editor/Correspondent

Friends of Animals

777 Post Road

Darien CT 06820

**EXHIBIT B**

To: <[nrivard@friendsofanimals.org](mailto:nrivard@friendsofanimals.org)>

Subject: FOIA 2019-00015

Good afternoon Ms. Rivard,

Our FOIA office received your FOIA request, dated October 2, 2018. We have assigned it control number 2019-00015. Please cite this number in any future communications with our office regarding your request.

In your request you asked for the following:

"Friends of Animals requests copies of all documents, records and data held by the Bureau of Land Management relating to persons who have purchased 20 or more wild horses in one transaction or in multiple transactions within a 90 day period, from the Bureau of Land Management since 2015.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request"

We have received your fee waiver request and it will be processed accordingly. In the interim, we have classified you as an "other" requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. See 43 C.F.R. § 2.39. If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.49(a)(1).

We use Multitrack Processing to process FOIA requests. The Simple track is for requests that can be processed in one to five workdays. The Normal track is for requests that can be processed in six to twenty workdays. The Complex track is for requests that can be processed in twenty-one to sixty workdays. The Exceptional/Voluminous track is for requests requiring more than sixty workdays for processing. The Expedited track is for requests that have been granted expedited processing. Within each track, requests are usually processed on a first-in, first-out basis.

This request falls into the **Complex** track.

If you have any questions, please contact us at [BLM\\_WO\\_FOIA@blm.gov](mailto:BLM_WO_FOIA@blm.gov) or 202-912-7650. Thank you for your interest in public lands and in programs and activities of the BLM.



Washington Office FOIA Coordinators  
Bureau of Land Management  
Phone: 202-912-7650  
Fax: 202-245-0027  
[BLM\\_WO\\_FOIA@blm.gov](mailto:BLM_WO_FOIA@blm.gov)

**EXHIBIT C**



December 20, 2018

VIA ELECTRONIC MAIL (BLM\_CO\_FOIA@blm.gov)

Brian Klein  
FOIA/PA Coordinator  
2850 Youngfield Street Lakewood, CO 80215  
BLM\_CO\_FOIA@blm.gov

Re: Freedom of Information Act Request

Dear Mr. Klein,

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for the release and production of records. Friends of Animals (FoA) request copies of all documents<sup>1</sup> held by the U.S. Department of Interior, including the Bureau of Land Management (BLM) relating to wild horses that were removed from the Little Book Cliffs Herd Management Area in Colorado and were adopted and sold in 2018, including but not limited to: all documents related to the sales process, all applications to purchase or adopt horses, all bills of sale, all health records for horses held for adoption or sale, and all correspondence regarding the adoption or sale of these wild horses.

In the event that access to any of the requested records is denied, please note that FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. FoA therefore requests that we be provided with all non-exempt portions, which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this

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<sup>1</sup> "Document(s)" is used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all originals copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or record of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below.



instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. A written justification might also help to avoid unnecessary litigation. FoA has the right to appeal the withholding or deletion of any information and expects that you will list the office and address where such an appeal can be sent.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S.164, 173 (1991). Congress affirmed these tenets of FOIA in legislation, stating that government remains accessible to the American people and is always based not upon the "need to know" but upon the fundamental "right to know." Public Law 110-175, 121Stat2524, 2525 (Dec. 31, 2007). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

FoA anticipates that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

### **Fee Waiver Request**

FOIA provides that, "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as case law interpreting FOIA, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

FoA's current request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived.

This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we first state in italics the requirements for a fee waiver delineated in the FOIA regulations of the Department of Interior (43 C.F.R. § 2.48) and then state our satisfaction of those requirements.

#### **A. Disclosure of the Information Requested is in the Public Interest**

*(1) How the records concern the operations or activities of the Federal government.*

The requested records concern BLM's management of wild horses, and its compliance with the Wild Free-Roaming Horses and Burros Act of 1971. Specifically, it concerns the government's activities, management, and oversight of the wild horse adoption and sale program that the government implemented.

*(2) How disclosure is likely to contribute to public understanding of those operations or activities, including:*

*(i) How the contents of the records are meaningfully informative;*

These documents will illuminate in a clear and direct way the extent and details of BLM's recent wild horse adoption and auction event in Colorado. As such, their release will significantly contribute to public understanding and oversight of BLM's operations, specifically its implementation of the wild horse adoption and sale program.

*(ii) The logical connection between the content of the records and the operations or activities;*

There is a logical connection between the content of the records FoA requests and the government's operations and activities because the content of the records will demonstrate how BLM conducts wild horse adoptions and sale events. The content of the records will also reveal how BLM operates the program, and the scope of the program. Finally, FoA anticipates that the contents of the documents will demonstrate whether the government is meeting its duties under the Wild Free-Roaming Horses and Burros Act.

*(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;*

FoA is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. FoA seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. FoA has a proven track record of contributing to public understanding of issues surrounding wild animals, particularly wild horses.

FoA informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called Act'ionLine, its website, and other reports. FoA regularly publicizes the plight of wild horses on public lands, and has published articles and information advocating for the protection of wild horses so that they can live unfettered in their natural habitat.

*(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding*

FoA has on staff or available for consultation biologists, environmental lawyers, and

policy analysts with long-term experience in animal health, conservation issues, and data analysis. Once the requested information is obtained, FoA staff will analyze the data presented and will review and digest the documents. Then, FoA staff will disseminate the information to FoA's members, members of other conservation organizations, and other interested members of the public. FoA plans to use its website, its magazine, and its connection to other news media in order to significantly contribute to the public understanding of how the government operates the wild horse adoption program.

*(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information)*

FoA employs several experts who are able to quickly digest and circulate information obtained from this request, including attorneys and media correspondents. FoA plans to disseminate the information to FoA's members, members of other conservation organizations, and other interested members of the public through its website, its quarterly journal ActionLine, and through outreach to other media outlets.

*(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:*

*(i) Whether the information being requested is new;*

FoA's request is for new information regarding the operations and activities of the wild horse adoption and sale program. FoA believes the information requested has not been released to the public yet, and is not aware of how it could access this information other than through a FOIA request. Thus, the requested documents would reveal new information about the wild horse adoption program.

*(ii) Whether the information would confirm or clarify data that has been released previously;*

BLM has provided information about how to adopt wild horse, but has not released documents containing detailed information about recent wild horse adoption events and auctions. FoA anticipates that the requested information will clarify the activities, and help confirm whether or not the program is being abused.

*(iii) How disclosure will increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure; and*

FoA requests the records to increase its understanding, and subsequently contribute to public understanding, of how BLM operates the wild horse adoption and sale program. Disclosure of these documents would provide FoA and the public, with information about the facilities and operations of this program. Without this information, FoA and the public cannot determine how BLM's actions are affecting the wild horses. Disclosure will permit FoA to disseminate information to the public and it will also allow FoA members and the public are more informed about the wild horse adoption program.

*(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.*

The information FoA is requesting is not, to our knowledge, publicly available. The Government may omit sending us requested records that are available in publicly accessible forums such as on the internet or in published materials that are routinely available at public or university libraries so long as the Government provides us with adequate references and/or website links so that we may obtain these materials on our own. We would request the Government provide us with an index of such omitted documents. However, we suspect that the majority of requested materials will not be available unless we receive them from the Government in satisfaction of this FOIA request.

*(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.*

The the public does not how many horses have been adopted or sold in Colorado in the last year, or any details about the adoptions and sale process. FoA members, and the public, are very interested in the fate of these iconic animals, but has little information about their adoptions and sale. FoA's staff has the ability to review, consolidate, and disseminate all this information to the public. This process will make the information available to the public. By consolidating and releasing the information, FoA will enhance the public's understanding of how the government is currently operating and implementing the wild horse adoption program. If the information is not disclosed to FoA, the public will remain in the dark about BLM's wild horse adoption program.

**B. Disclosure of the information is not primarily in the commercial interest of the requester**

*(b) In deciding whether the fee waiver meets the requirements in § 2.45(a)(2) of this subpart, the bureau will consider any commercial interest of yours that would be furthered by the requested disclosure.*

*(1) You are encouraged to provide explanatory information regarding this consideration.*

*(2) The bureau will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.*

FoA does not have a commercial, trade, or profit interest in the requested records. In fact, FoA does not have any commercial, trade, or profit interests. FoA is a not-for-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public awareness of animal advocacy issues and how to end animal cruelty and exploitation around the world. FoA seeks to promote a respectful view of non-human, free-living and domestic animals. The

Internal Revenue Service recognizes FoA as a 501(c)(3) tax-exempt organization (IRS Employer Identification #: 13-6018549).

Given FoA's well-orchestrated and demonstrably successful efforts at educating the public on animal advocacy issues, and the fact that FoA's education program has significantly contributed to an understanding of government operations and activities, FoA is entitled to a fee waiver.

Please produce the records regarding this FOIA request by electronic mail to **jennifer@friendsofanimals.org** or the physical address listed below:

Friends of Animals  
7500 E. Arapahoe Rd., Suite 385  
Centennial, CO 80112

Please produce the records on a rolling basis; at no point should the search for – or the deliberation concerning – certain records delay the production of others that BLM has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or [jennifer@friendsofanimals.org](mailto:jennifer@friendsofanimals.org). I look forward to hearing from you within twenty days (excepting Saturdays, Sundays, and public holidays), as required by FOIA.

Sincerely,

Jennifer Barnes  
Assistant Legal Director  
Wildlife Law Program  
Friends of Animals

Western Region Office  
7500 E. Arapahoe Rd., Suite 385  
Centennial, CO 80112  
[jennifer@friendsofanimals.org](mailto:jennifer@friendsofanimals.org)  
720-949-7791