

**CONTACT**

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**REPORT ON LEGISLATION BY THE  
ANIMAL LAW COMMITTEE**

**H.R. 1368  
S.503**

**Rep. Blumenauer  
Sen. Wyden**

AN ACT to require the Secretary of Agriculture to make publicly available certain regulatory records relating to the administration of the Animal Welfare Act and the Horse Protection Act, to amend the Internal Revenue Code of 1986 to provide for the use of an alternative depreciation system for taxpayers violating rules under the Animal Welfare Act and the Horse Protection Act, and for other purposes.

**The Animal Welfare Accountability and Transparency Act**

**THIS LEGISLATION IS APPROVED**

**I. SUMMARY OF THE PROPOSED LEGISLATION**

The proposed legislation<sup>1</sup> — the Animal Welfare Accountability and Transparency Act — would require the Secretary of Agriculture (the “Secretary”) to make publicly available certain inspection, enforcement, and regulatory reports. Specifically, the Secretary would have to maintain on the Department of Agriculture website a public online searchable database of inspection and enforcement reports<sup>2</sup> relating to the administration of the Animal Welfare Act (7 U.S.C. 2131-2159; the “AWA”) and the Horse Protection Act (15 U.S.C. 1821-1831; the “HPA”), in their entirety. The database would also house annual inspections reports submitted by a research facility under the AWA,<sup>3</sup> as well as the identifying information of any entity licensed

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<sup>1</sup> A copy of the proposed legislation is available at <https://www.congress.gov/115/bills/hr1368/BILLS-115hr1368ih.pdf> (House of Representatives bill) and <https://www.congress.gov/115/bills/s503/BILLS-115s503is.pdf> (identical Senate bill). All websites cited in this letter were last visited on January 18, 2018.

<sup>2</sup> The database would house “the entirety of each report of any inspection conducted, and record of any enforcement action taken under either of [the Animal Welfare act and the Horse Protection Act]; or any regulation issued under those Acts.” H.R. 1368/S. 503, § 2(1).

<sup>3</sup> See 7 U.S.C. 2143(a)(7)(A) (requiring each research facility “to show upon inspection, and to report at least annually, that the provisions of this chapter are being followed and that professionally acceptable standards governing the care, treatment, and use of animals are being followed by the research facility during actual research or experimentation”).

by or registered with the Secretary under the AWA.<sup>4</sup> Likewise, the database would have to contain the name and address of any person licensed to make inspections under the HPA<sup>5</sup> and the name and address of any organization or association licensed by the Department of Agriculture to promote horses through specified means.<sup>6</sup>

The proposed legislation would further require that the depreciation deduction for any property placed in service by a taxpayer who has violated the AWA or HPA must be determined using an alternative depreciation system.<sup>7</sup>

## II. BACKGROUND

In February 2017, the Animal and Plant Health Inspection Service (“APHIS”) of the United States Department of Agriculture (“USDA”) removed tens of thousands of records relating to the Horse Protection Act and the Animal Welfare Act from its website.<sup>8</sup> These records, which for years had been searchable on APHIS’s website,<sup>9</sup> included various regulatory documents: inspection reports, research facility annual reports, lists of persons licensed under the AWA and HPA, and other correspondence and enforcement information related to the Acts.<sup>10</sup> Without detailing why it removed the records, APHIS suggested that it was evaluating whether maintaining them online complied with the Privacy Act, Freedom of Information Act, and other laws, as interpreted by courts and the Department of Justice.<sup>11</sup>

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<sup>4</sup> Specifically, “the name, address, and license or registration number of each research facility, exhibitor, dealer, and other person or establishment — (i) licensed by the Secretary under section 3 or 12 of [the AWA]; or (ii) registered with the Secretary under section 6 of [the AWA].”

<sup>5</sup> See 15 U.S.C. 1823(c) (providing for HPA inspections).

<sup>6</sup> Specifically, “the name and the address of — (A) any person that is licensed to conduct any inspection under 4(C) of [the HPA]; or (B) any organization or association that is licensed by the Department of Agriculture to promote horses through — (i) the showing, exhibiting, sale, auction, or registry of horses; or (ii) the conduct of any activity that contributes to the advancement of horses.”

<sup>7</sup> H.R. 1368/S. 503, § 3 (amending 26 U.S.C. 168(g)). Practically, this requirement would generally increase the number of years over which the property depreciates, which in turn would decrease the annual deduction. Jean Murray, *What is the Alternative Depreciation System?*, THE BALANCE, Sept. 2, 2017, <https://www.thebalance.com/what-is-the-alternative-depreciation-system-398109>. While this report does not further discuss this provision of the proposed legislation, the Committee supports the provision to the extent that it may impose negative tax consequences on violators of the AWA or HPA.

<sup>8</sup> USDA, APHIS, Updates to APHIS’ Website Involving Animal Welfare Act and Horse Protection Act Compliance Information, Feb. 15, 2017, [https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa\\_by\\_date/sa-2017/sa-02/awa-hpa-compliance](https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa_by_date/sa-2017/sa-02/awa-hpa-compliance) (“APHIS Removal Notice”); USDA, APHIS, Updates to APHIS’s Website Involving Animal Welfare Act and Horse Protection Act Compliance Information, Feb. 2, 2017, <http://goo.gl/pocLXf> (“APHIS FAQ”).

<sup>9</sup> See Log-in page for inspection reports search tool as of November 20, 2009, <https://web.archive.org/web/20091120215928/https://acissearch.aphis.usda.gov/LPASearch/faces/Warning.jspx>.

<sup>10</sup> APHIS, FAQ, *supra* note 8.

<sup>11</sup> *Id.* (“What has occurred? Courts are continuously issuing decisions that provide agencies with guidance on interpreting and applying laws applicable to the release of information to the public by the Federal government, including the Privacy Act and Freedom of Information Act. In addition, the U.S. Department of Justice maintains comprehensive guidance involving the Privacy Act, Freedom of Information Act, and other laws, and updates such

In addition, APHIS also declared that “going forward” it would no longer make these types of records available online.<sup>12</sup> The agency instead directed people seeking records to submit Freedom of Information Act requests.<sup>13</sup>

APHIS’s removal of the records prompted widespread criticism,<sup>14</sup> with several groups filing lawsuits demanding that the agency restore the records to the site.<sup>15</sup> In August 2017, around six months after the records had been removed, APHIS reposted several records, along with an updated search tool.<sup>16</sup> Yet the agency had significantly narrowed the types of records on its site. In particular, where APHIS had once made available all AWA- and HPA-related decisions and orders issued by administrative law judges, it now simply posted a link to the USDA’s Office of Administrative Law Judge website.<sup>17</sup> Where APHIS had once made available unredacted warning letters, stipulations, pre-litigation settlement agreements, and administrative complaints, even where culpability had not been assessed, APHIS now simply posted quarterly statistical summaries that contained just some of this information.<sup>18</sup> And where APHIS had once made available all inspection reports (with limited redactions for privacy reasons), APHIS now posted just a subset of them.<sup>19</sup> APHIS also no longer discloses monthly logs of the Freedom of Information Act requests it receives.<sup>20</sup> (The various records that are no longer available on APHIS’s website are referred to as the “Records” below.)

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guidance based on legal developments. APHIS, with the support from the Office of the General Counsel, continuously monitors these sources of information and refinements to APHIS’ practices are made accordingly.”)

<sup>12</sup> APHIS Removal Notice, *supra* note 8.

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., Natasha Daly, *U.S. Animal Abuse Records Deleted — What We Stand to Lose*, NATIONAL GEOGRAPHIC, Feb. 6, 2017, <https://news.nationalgeographic.com/2017/02/wildlife-watch-usda-animal-welfare-trump-records/> (describing criticisms by the Association of Zoos and Aquariums, Born Free USA, PETA, the Physicians Committee For Responsible Medicine, and the Humane Society of the United States); ASPCA, ASPCA Denounces Suppression of Vital Data in Diminished USDA Dog Breeder Database, Aug. 22, 2017, <https://www.prnewswire.com/news-releases/aspc-denounces-suppression-of-vital-data-in-diminished-usda-dog-breeder-database-300508198.html>.

<sup>15</sup> See Meredith Wadman, *Activists Battle U.S. Government in Court Over Making Animal Welfare Reports Public*, SCIENCE, May 24, 2017, <http://www.sciencemag.org/news/2017/05/activists-battle-us-government-court-over-making-animal-welfare-reports-public> (describing lawsuits by the Animal Legal Defense Fund and People for the Ethical Treatment of Animals). See footnote 35 below for citations to these lawsuits.

<sup>16</sup> USDA, APHIS, AWA Inspection and Annual Reports, Aug. 18, 2017, [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa\\_awa/awa-inspection-and-annual-reports](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/awa-inspection-and-annual-reports); USDA Animal Care Public Search Tool, <https://acis.aphis.edc.usda.gov/ords/f?p=118:1:0>.

<sup>17</sup> USDA, APHIS, Animal Care Information System Website Review Chart, Aug. 18, 2017, [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA\\_AWA/acis-table](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_AWA/acis-table) (“APHIS Website Review Chart”); see also USDA, APHIS, Animal Welfare Enforcement Actions, Aug. 18, 2017, [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA\\_AC\\_Enforcement\\_Actions](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_AC_Enforcement_Actions).

<sup>18</sup> APHIS Website Review Chart, *supra* note 17.

<sup>19</sup> *Id.*

<sup>20</sup> See USDA, APHIS, FOIA Logs, Aug. 1, 2017, [https://www.aphis.usda.gov/aphis/resources/foia/ct\\_foia\\_logs](https://www.aphis.usda.gov/aphis/resources/foia/ct_foia_logs).

In removing the Records, APHIS has taken numerous animal welfare documents out of the public's hands. For instance, removing records where culpability has not been assessed dramatically reduces the site's archives: because the USDA mainly enforces the AWA through warning letters, just a small percentage of the records in APHIS's original database had been adjudicated.<sup>21</sup>

### III. JUSTIFICATION

#### A. The proposed legislation helps the public monitor and stop animal abuse, which in turn promotes USDA's and APHIS's own missions.

The Records have long been an important tool for animal welfare organizations and journalists in their efforts to uncover animal abuse,<sup>22</sup> particularly in locations otherwise hidden from public view. Exposing such practices is an important step in drawing public attention to instances of animal abuse and, hopefully, leading to the amelioration of such conditions. For instance, a 2017 *Rolling Stone* investigatory article exposed various abuses at puppy mills.<sup>23</sup> Similarly, a much-publicized *New York Times* article uncovered farm animal abuses at a USDA research facility in Nebraska.<sup>24</sup> And inspection reports have been used to report on animal mistreatment at research facilities and other places.<sup>25</sup>

Access to the Records is essential, not only to further the work of animal welfare groups and journalists, but also to help pet stores and consumers, including those seeking companion animals, identify and avoid breeders with previous violations.<sup>26</sup> This is particularly important for pet stores, as seven states prohibit selling puppies from places with a history of AWA

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<sup>21</sup> Natasha Daly, *U.S. Backtracks on Purge of Animal Abuse Records — What We Know*, NATIONAL GEOGRAPHIC, Feb. 22, 2017, <https://news.nationalgeographic.com/2017/02/wildlife-watch-usda-animal-welfare-records-trump-explainer/>.

<sup>22</sup> Wayne Pacelle, *The HSUS Challenges USDA over Mass Removal of Animal Welfare Records*, A Humane Nation: Wayne Pacelle's Blog, Feb. 6, 2017, <http://blog.humanesociety.org/wayne/2017/02/hsus-challenges-usda-mass-removal-animal-welfare-records.html>.

<sup>23</sup> *Id.* (discussing Paul Solotaroff, *The Dog Factory: Inside the Sickening World of Puppy Mills*, ROLLING STONE, Jan. 3, 2017, <http://www.rollingstone.com/culture/features/the-dog-factory-inside-the-sickening-world-of-puppy-mills-w457673>).

<sup>24</sup> Natasha Daly, *U.S. Backtracks on Purge of Animal Abuse Records — What We Know*, *supra* note 14 (referencing Michael Moss, *U.S. Research Lab Lets Livestock Suffer in Quest for Profit*, N.Y. TIMES, Jan. 19, 2015, <https://www.nytimes.com/2015/01/20/dining/animal-welfare-at-risk-in-experiments-for-meat-industry.html>, and other examples).

<sup>25</sup> Natasha Daly, *U.S. Backtracks on Purge of Animal Abuse Records — What We Know*, *supra* note 14 (noting that “the inspection reports ... enabled The Augusta Chronicle, the Harvard Crimson, the Boston Globe, and the Daily Beast to report on patterns of abuse at several private research facilities against dogs and primates”); *see also* Karen Brulliard, *USDA Abruptly Purges Animal Welfare Information from Its Website*, WASHINGTON POST, Feb. 3, 2017, <https://www.washingtonpost.com/news/animalia/wp/2017/02/03/the-usda-abruptly-removes-animal-welfare-information-from-its-website/> (“The records that had been available were frequently used by animal welfare advocates to monitor government regulation of animal treatment at circuses, scientific labs and zoos. Journalists have used the documents to expose violations at universities.”).

<sup>26</sup> Wayne Pacelle, *The HSUS Challenges USDA over Mass Removal of Animal Welfare Records*, *supra* note 22.

violations.<sup>27</sup> In addition, the New York City Bar Association Animal Law Committee has cited to inspection records from the USDA website in its reports on legislation — records no longer publicly available on the USDA website.<sup>28</sup>

By helping the public monitor and stop animal abuse, making the Records available would in turn advance the missions of USDA and APHIS. The USDA counts among its missions, for instance, to ensure the “health and care of animals.”<sup>29</sup> APHIS similarly aims to “administer[] the Animal Welfare Act” and regulate “animal welfare.”<sup>30</sup>

**B. The proposed legislation furthers basic principles of open government, as reflected in the Freedom of Information Act and other laws.**

The Freedom of Information Act, or “FOIA,” is a federal law that requires each government agency to generally make its records publicly available.<sup>31</sup> Under FOIA, government records are presumptively available for disclosure,<sup>32</sup> and the government “encourage[s] agencies to make discretionary disclosures of information” beyond what is technically required.<sup>33</sup> FOIA also requires agencies to proactively post online certain categories of information, including certain frequently requested records or records that the agency determines are likely to be the subject of future requests.<sup>34</sup>

The Committee does not address here whether APHIS *must* make the Records available on the APHIS website — though we understand that several organizations have asserted as much.<sup>35</sup> Still, keeping the Records on the website would certainly further the open government

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<sup>27</sup> *Id.*

<sup>28</sup> New York City Bar Association, Animal Law Committee, Report on Int. No. 1233-2016, at 4-5, n.19, [http://s3.amazonaws.com/documents.nycbar.org/files/20073187-WildlifeBanEntertainment\\_Animal\\_Report\\_FINAL\\_11.9.16.pdf](http://s3.amazonaws.com/documents.nycbar.org/files/20073187-WildlifeBanEntertainment_Animal_Report_FINAL_11.9.16.pdf) (citing a November 18, 2010 USDA inspection report on Feld Entertainment, Inc. and providing a link that now redirects to a webpage about the records that APHIS has removed).

<sup>29</sup> USDA, “Mission Areas,” <https://www.usda.gov/our-agency/about-usda/mission-areas>.

<sup>30</sup> USDA, APHIS, “About APHIS,” Aug. 3, 2016, <https://www.aphis.usda.gov/aphis/banner/aboutaphis>.

<sup>31</sup> Freedom of Information Act of 1966, Pub. L. No. 89-487, 80 Stat. 250 (codified as amended at 5 U.S.C. § 552(a)).

<sup>32</sup> See FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016) (codified at 5 U.S.C. § 552(a)(8)(A)). See also Memorandum on Freedom of Information Act, Jan. 21, 2009 (“All agencies should adopt a presumption in favor of disclosure[.]”), available at <https://www.gpo.gov/fdsys/pkg/DCPD-200900009/pdf/DCPD-200900009.pdf>.

<sup>33</sup> Memorandum from Eric Holder, Attorney Gen., U.S. Dep’t of Justice, The Freedom of Information Act 1, Mar. 19, 2009, <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>. See also Memorandum on Freedom of Information Act, Jan. 21, 2009 (instructing agencies not to withhold information “merely ... because of speculative or abstract fears.”).

<sup>34</sup> See 5 U.S.C. § 552(a)(2)(D).

<sup>35</sup> See, e.g., Complaint for Declaratory and Injunctive Relief, *People for the Ethical Treatment of Animals v. USDA*, Case No. 1:17-cv-00269 (D.D.C. Feb. 13, 2017), available at <http://courthousenews.com/wp-content/uploads/2017/02/Peta.pdf>; Plaintiffs’ Motion for Preliminary Injunction, *Animal Legal Defense Fund v. USDA*, Case No. 3:17-cv-00949 (“*ALDF v. USDA*”) (N.D. Ca. March 29, 2017), available at <http://www.sciencemag.org/sites/default/files/2017-03-29%20Motion%20for%20Preliminary%20Injunction.pdf>;

principles that FOIA reflects — principles that APHIS itself has touted. Indeed, APHIS has publicly stressed the importance of affirmatively making these very Records available online. In a 2010 presentation, for instance, APHIS noted its duty to “[a]nticipate interest in Agency records” and “[p]roactively post information online” (emphasis in original) including in databases and on the agency’s website<sup>36</sup>; the presentation also demonstrated how the public could access AWA inspection reports online.<sup>37</sup> In that same presentation APHIS also praised the “benefits of transparency,” among them creating informed citizens, increasing stakeholder engagement, collaboration, and furthering the public’s understanding of APHIS.<sup>38</sup>

On other occasions too, APHIS has highlighted its making of “facility inspection reports available to the public on the APHIS Web site,” noting that “[t]hese were the most frequently requested APHIS records under the FOIA and making them available on our Web site will go a long way toward informing the public of our commitment to animal welfare, while also supporting our FOIA backlog reduction efforts.”<sup>39</sup> APHIS further encouraged programs within the agency to make inspection reports and other records available online “even before we receive a single FOIA request for them.”<sup>40</sup>

APHIS’s recent about-face threatens to undermine the transparency on which APHIS has long prided itself. For one, removing the Records makes it harder to access information on violators: rather than simply accessing this information directly online, the public will now have to make specific FOIA requests from APHIS — a process that can take months, sometimes years.<sup>41</sup> In fact, APHIS’s earlier disclosure of the Records on its website was aimed at reducing

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Letter from Humane Society of the United States to Office of Information Policy, Department of Justice, Feb. 6, 2017, available at [http://blog.humanesociety.org/wp-content/uploads/2017/02/2017-02-06-Notice-of-Violation\\_HSUS-v-USDA-No.-15-0197.pdf](http://blog.humanesociety.org/wp-content/uploads/2017/02/2017-02-06-Notice-of-Violation_HSUS-v-USDA-No.-15-0197.pdf). The Animal Legal Defense Fund’s motion for a preliminary injunction was subsequently denied and their lawsuit dismissed, though the organization has appealed that decision. Order Denying Motion for Preliminary Injunction, *ALDF v. USDA* (N.D. Ca. May 31, 2017), available at [https://www.aphis.usda.gov/animal\\_welfare/downloads/acis/ALDF-PI-Decision.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/acis/ALDF-PI-Decision.pdf); Order Granting Motion to Dismiss, *ALDF v. USDA* (N.D. Ca. Aug. 14, 2017), available at [https://www.aphis.usda.gov/animal\\_welfare/downloads/acis/Orrick-Order-Granting-MTD-in-ALDF.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/acis/Orrick-Order-Granting-MTD-in-ALDF.pdf); ALDF, *Animal Legal Defense Fund Appeals Dismissal of Lawsuit Against USDA Over Blackout of Animal Welfare Records*, Sept. 13, 2017, <http://aldf.org/press-room/press-releases/animal-legal-defense-fund-appeals-dismissal-lawsuit-usda-blackout-animal-welfare-records/>.

<sup>36</sup> Anastazia Taylor, FOIA & Privacy Acts Office, USDA, APHIS, “The Freedom of Information Act Overview” (emphasis in original) at 15-18, available at [https://www.aphis.usda.gov/biotechnology/downloads/Meetings/mtg\\_stakeholder10\\_FOIA.pdf](https://www.aphis.usda.gov/biotechnology/downloads/Meetings/mtg_stakeholder10_FOIA.pdf).

<sup>37</sup> *Id.* at 23-27.

<sup>38</sup> *Id.* at 19.

<sup>39</sup> Letter from Kevin Shea, APHIS Acting Administrator, and Bill Clay, APHIS Acting Associate Administrator, to APHIS Management Team and Program Leaders Group, June 19, 2009, at 1, <https://www.aphis.usda.gov/foia/downloads/APHIS%20Commitment%20to%20Transparency.pdf>.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> USDA, APHIS, Removal Notice (“Those seeking information from APHIS regarding inspection reports, regulatory correspondence, and enforcement records should submit Freedom of Information Act (FOIA) requests for that information.”); see also USDA, FOIA Annual Report for Fiscal Year 2016, at 23,

this very FOIA “backlog,”<sup>42</sup> so that the “[p]ublic does not have to make a FOIA request.”<sup>43</sup> Not surprisingly, APHIS’s monthly FOIA requests significantly increased in the months following the Records’ removal, and the agency’s FOIA backlog nearly doubled.<sup>44</sup>

Further, by reducing public oversight of APHIS’s actions, removing the Records also threatens the agency’s accountability and compromises public trust. Notably, APHIS’s own Office of Inspector General has in several audits already found the agency’s AWA enforcement process to be “ineffective.”<sup>45</sup>

Not surprisingly, several groups have echoed these transparency and accountability concerns. For instance, the head of the Association of Zoos and Aquariums (“AZA”) noted that “when people see something like that, they’re inclined, rightfully, to think that the government is trying to shield something from their view.”<sup>46</sup> And the AZA, which issued a press release criticizing APHIS’s actions,<sup>47</sup> represents over 200 zoos and aquariums — the very entities that are the subjects of APHIS’s inspection reports. Similarly, the Animal Welfare Institute has called APHIS’s actions “the opposite of transparency, it takes us back to the Stone Age.”<sup>48</sup> Politicians, too, have spoken out against the records purge. After APHIS removed the records, for instance, 18 Senators sent a letter to the Acting Deputy Secretary of Agriculture demanding that the

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<https://www.dm.usda.gov/foia/docs/USDA%20FY16%20Final.docx> (showing that even a so-called “simple” FOIA request from APHIS takes, on average, around three months and, at the upper bound, well over two years).

<sup>42</sup> Tonya G. Woods, FOIA Director, USDA, APHIS, “FOIA Overview,” at 40, available at <https://www.aphis.usda.gov/foia/downloads/FOIA%20Overview.pdf>.

<sup>43</sup> Anastazia Taylor, “The Freedom of Information Act Overview,” *supra* note 36, at 16.

<sup>44</sup> Delcianna J. Winders, *USDA Blackout: Scrutinizing the Deletion of Thousands of Animal Welfare Act-Related Records*, American Bar Association Committee News: Animal Law Committee, Summer 2017, available at <http://apps.americanbar.org/dch/thedl.cfm?filename=/IL201050/relatedresources/Summer2017.pdf> (citing Statement of Craig Nowakowski, Director of Program Support, Animal Care, APHIS, at APHIS Animal Care Stakeholder Engagement Meeting with the Animal Protection Community, May 19, 2017). Several of the sources found in the following footnotes were found through Ms. Winders’ article.

<sup>45</sup> USDA, Office of Inspector General, APHIS Oversight of Research Facilities at 10, Dec. 2014, <https://www.usda.gov/oig/webdocs/33601-0001-41.pdf>.

<sup>46</sup> Natasha Daly, *U.S. Animal Abuse Records Deleted — What We Stand to Lose*, *supra* note 14 (quoting Dan Ashe, President and CEO of the AZA and former director of U.S. Fish and Wildlife Service).

<sup>47</sup> American Zoo Association, *Nation’s Best Zoos and Aquariums Disagree With Decision to Remove Online Access to USDA Inspection Reports*, Feb. 6, 2017, <https://www.aza.org/aza-news-releases/posts/nations-best-zoos-and-aquariums-disagree-with-decision-to-remove-online-access-to-usda-inspection-re>.

<sup>48</sup> Sara Reardon, *US Government Takes Animal-Welfare Data Offline*, NATURE, Feb. 6, 2017, available at <https://www.scientificamerican.com/article/u-s-government-takes-animal-welfare-data-offline/>.

Records be restored.<sup>49</sup> And shortly after that, around 100 Representatives signed onto a similar letter.<sup>50</sup>

While the Committee appreciates APHIS’s concerns about “maintaining the privacy rights of individuals,”<sup>51</sup> it is unclear how such concerns warrant removing records that APHIS has *already* disclosed to the public and that APHIS has indicated may still be available through FOIA requests.<sup>52</sup> Further, to the extent that APHIS believes certain information on inspection reports might be sensitive, APHIS could simply redact that information — a solution that FOIA expressly contemplates and that APHIS has previously employed.<sup>53</sup>

#### IV. CONCLUSION

For the reasons above, the Committee approves the proposed legislation.

Animal Law Committee  
Lori Barrett-Peterson, Chair

February 2018

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<sup>49</sup> Letter from Senators to Michael Young, Acting Deputy Secretary of Agriculture, USDA, Feb. 13, 2017, *available at* <https://www.durbin.senate.gov/newsroom/press-releases/durbin-demands-trump-administration-restore-animal-cruelty-puppy-mill-records-on-usda-website>.

<sup>50</sup> Letter from Representatives to Donald J. Trump, President of the United States, Feb. 14, 2017, *available at* <https://blumenauer.house.gov/media-center/press-releases/blumenauer-calls-donald-trump-restore-vital-animal-welfare-data-online>.

<sup>51</sup> USDA, APHIS, Animal Welfare Enforcement Actions, *supra* note 17.

<sup>52</sup> APHIS Removal Notice, *supra* note 8.

<sup>53</sup> *See* 5 U.S.C. § 552(b)(9) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”); *see also* APHIS Website Review Chart, *supra* note 17.