

VICTORIA L. FRANCIS
Assistant U.S. Attorney
U.S. Attorney's Office
P.O. Box 1478
Billings, MT 59103
2929 Third Ave. North, Suite 400
Billings, MT 59101
Phone: (406) 247-4633
Fax: (406) 657-6989
E-mail: victoria.francis@usdoj.gov

ATTORNEY FOR DEFENDANT
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BUFFALO FIELD CAMPAIGN,

Plaintiff,

vs.

UNITED STATES
DEPARTMENT OF
AGRICULTURE, ANIMAL AND
PLANT HEALTH INSPECTION
SERVICE,

Defendants.

CV 12-35-M-DWM

SETTLEMENT AGREEMENT

This agreement is entered into by and between the United States

of America, by and through its counsel of record, Victoria L. Francis Assistant U.S. Attorney, and Plaintiff, by and through its counsel of record, Daniel C. Snyder, of the Law Offices of Charles M. Tebbutt, P.C., to settle the above captioned proceeding on the following terms:

RECITALS

1. On March 13, 2012, Plaintiff filed a Complaint for Declaratory and Injunctive Relief seeking completion of responses to six Freedom of Information Act (FOIA) requests, and additional injunctive relief.

2. Defendant filed its Answer on May 22, 2012, admitting that certain requests needed to be answered or supplemented, but denying the injunctive relief requested and asserting other defenses.

3. Plaintiff and Defendant do hereby agree to settle and compromise certain claims relating to the FOIA requests and the Complaint at issue in this proceeding. This settlement is entered into by the parties for the purpose of compromising certain disputed claims and avoiding the expenses and risks of further litigation and is entered into without any admission of liability. The terms of the Agreement are as follows:

a. Plaintiff agrees that APHIS has responded fully to the six FOIA requests issued by Plaintiff in this litigation. While Plaintiff disputes APHIS's withholding of certain documents or portions of documents under the exception set forth in 5 U.S.C. Section 552(b)(6), Plaintiff agrees not to challenge those withholdings in order to settle this case. Nothing contained in this Agreement shall preclude Plaintiff from challenging future withholdings by APHIS under any of the exemptions set forth in 5 U.S.C. Section 552(b).

b. The parties have resolved issues relating to the standard APHIS FOIA acknowledgment letter and the individualized response letters which invoke the "unusual circumstances" exception as a basis for not responding to a FOIA request within 20 days as allowed under 5 U.S.C. Section 552(a)(6) and 7 C.F.R. 1.16. In regards to future APHIS acknowledgment letter APHIS will include in the letter a telephone line or reference to an Internet link that provides information about the status of a request to the person making the request using the assigned tracking number, to obtain the date on which the agency originally received the request, and an estimated date on which the agency will complete action on the request as provided in 5 U.S.C. Section 552(a)(7)

(B). APHIS will include in all FOIA letters which invoke the “unusual circumstances” exception, the substance of the statutory language in effect at the time the letter is issued, which currently requires inclusion of the following information:

i. A description of the unusual circumstances necessitating the extension described in 5 U.S.C. 552(a)(6) and 7 C.F.R. 1.16;

ii. Set forth the date on which a determination is expected to be dispatched;

iii. Provide in the notice that the requesting party may limit the scope of the request so that it may be processed within the statutory time limit, or to arrange an alternative time frame for processing the request or any modified request, and provide a name, address and phone number to discuss such scope and time modifications;

c. Within 90 days of the date of this Agreement, APHIS will augment its annual FOIA responder and FOIA point of contact training programs by creating a guidance memorandum that shall include training information based on the following criteria:

-What constitutes an “unusual circumstance” as allowed under FOIA;

-When has an “unusual circumstance” arisen under FOIA;

-When and how FOIA personnel should notify a requestor of

the utilization of the “unusual circumstances” time extension, including that such notice is to be sent within twenty business days;

-Contents of the notice to include the information set forth in paragraph 2.b. above;

-Finally, the usefulness in communicating with the requester and keeping the requester informed of the progress.

d. APHIS will provide a letter through counsel to Plaintiff’s counsel that the above training modifications have been made within 30 days of completion of the training modifications. In the event Plaintiff discovers that APHIS has violated the terms and conditions of this Settlement Agreement as outlined in paragraphs 3.b. or 3.c., Plaintiff shall notify the United States of the violation by providing written notice of the violation to counsel for the United States, Victoria L. Francis, by mail. Notice shall be provided to the United States within 30 days of Plaintiff’s discovery of the failure in order to provide APHIS an opportunity to correct any such violation.

e. Neither party waives any right to file litigation if violations continue to occur whether or not notice of a violation has been given. However, it is anticipated by APHIS that while modifications are instituted there exists the possibility of inadvertent error, and failure to

provide notice by Plaintiff will be an indicator to the agency that violations are not occurring.

f. The parties agree that this Court shall retain jurisdiction for the purpose of enforcing this Agreement.

4. APHIS will pay attorney fees to Plaintiff's counsel in the amount of \$21,500 plus costs and expenses in the amount of \$983.82, for a total amount due of \$22,483.82, for full satisfaction of all fees and costs related to this litigation. The attorney fees and costs will be processed by APHIS upon the issuance of a Court order approving the settlement agreement. Payment shall be made to the Law Offices of Charles M. Tebbutt, P.C., on behalf of the Buffalo Field Campaign.

5. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the party on whose behalf they are signing to the terms of the settlement. Further the parties agree that this agreement will be filed with the Court in the above captioned proceeding.

/

/

/

DATED this 20th day of December, 2012.

MICHAEL W. COTTER
United States Attorney

/s/ Victoria L. Francis
Assistant U.S. Attorney
Counsel for Defendant

/s/ Daniel C. Snyder
Daniel C. Snyder
Counsel for Plaintiff