

August 2, 2023

**VIA EMAIL**

Iowa Public Information Board  
Wallace Building, 502 East 9th St.  
Des Moines, Iowa 50319  
*IPIB@iowa.gov*

**Re: Complaint Challenging Public Record Redactions**

Animal Outlook, a 501(c)(3) nonprofit organization, submits this Complaint under Iowa Code § 23.5 to challenge an improper withholding of public records. On March 21, 2022, Animal Outlook submitted a request to the Iowa Department of Agriculture and Land Stewardship (the “Department”) pursuant to the Iowa Open Records Law § 22.1 *et seq.*, requesting:

Records related to the depopulation of animals subsequent to the March 17, 2022 confirmation of avian influenza in a commercial egg-laying poultry flock in Buena Vista County, Iowa, specifically:

- Any records related to the method, procedures, and protocol for the depopulation
- Any records related to the approval of the method, procedures, and protocol for the depopulation
- Any photographs or videos related to the depopulation, whether taken before or after the actual event

The Department redacted, *inter alia*, (1) partial physical descriptions of a facility, (2) total counts of animals at facilities, and (3) counts of animals who survived depopulation attempts. The Department argues that this information is related to the identification of a premises where animals are kept and therefore exempted from disclosure under Iowa Code § 22.7(39A).

Animal Outlook argues that these redactions are unlawful because (1) partial physical descriptions of premises are not the type of identifying information the statute aims to protect, (2) quantities of animals at facilities are not the type of identifying information the statute aims to

protect, and (3) counts of animals who survived depopulation attempts cannot, in any way, be used to identify a facility.

### **BACKGROUND**

- On March 21, 2022, Animal Outlook submitted its public records request to the Department.
- On May 2, 2023, Deputy Division Director Haylee Pontier provided the initial set of records to Animal Outlook.
- On June 7, 2023, Ms. Pontier sent the second set of records to Animal Outlook.
- On June 12, 2023, Jareb Gleckel, legal counsel for Animal Outlook, emailed Ms. Pontier and requested a redaction letter explaining the Department's redactions ("Redaction Letter").
- On June 28, 2023, Ms. Pontier provided the Redaction Letter, noting four exemptions under which the Department made redactions.<sup>1</sup> The Redaction Letter is attached as Exhibit A.
- On June 28, 2023, Animal Outlook, through its counsel, requested clarification about the redactions in several documents.
  - First, Animal Outlook questioned the redaction in an email dated March 17, 2022, which is attached as Exhibit B. Upon information and belief, the redacted text is a partial physical description of a facility and is the basis for USDA APHIS's decision to approve a federal indemnity payment to the facility for VSD+ depopulation.
  - Second, Animal Outlook questioned the Department's decision to redact all quantifications of animals in the records.
- On June 28, 2023, Ms. Pontier clarified the Department's position that the redacted information constituted "identifying feature[s] of the premise[s]" and was therefore exempt from Iowa's disclosure requirements pursuant to § 22.7(39A).
- On July 3, 2023, Animal Outlook, through its counsel, responded and asked the Department to reconsider the redactions. In particular, Animal Outlook noted that (1) the number of animals at a facility is not identifying information exempted from disclosure under § 22.7(39A), and (2) many of the redacted numbers could not be used, in any way, to identify facilities.
- On July 17, 2023, Ms. Pontier rejected any reconsideration, maintaining that the number of animals at a facility can be used to determine barn size and therefore identify a facility in conjunction with county information and aerial imagery (the "July 17 Pontier Email"). The email did not address Animal Outlook's second argument that many of the redacted numbers have no relation to barn size. See July 17 Pontier Email, attached as Exhibit C.

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<sup>1</sup> In the initial records request, Animal Outlook asked that the Department explain any redactions. Therefore, the Department was required to provide a redaction letter pursuant to the Uniform Rules of Agency Procedure X.4(4).

## ARGUMENT

Iowa Code § 22.2 gives every person the right to examine and copy a public record unless it falls under a specific exemption. In determining whether an exemption applies, Iowa courts recognize a “presumption in favor of disclosure and a liberal policy in favor of access to public records.” *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 550 (Iowa 2021) (internal quotations omitted). In this case, the Department claimed its redactions were appropriate based on the exemption for “[i]nformation related to the . . . identification of any premises where animals are kept pursuant to the foreign animal disease preparedness and response strategy.” *See* Iowa Code § 22.7 (39A) (“Exemption 39A”). For the reasons explained below, this Board should rule that the redacted information at issue is not identifying information of a premises under Exemption 39A and is not exempted from public disclosure. Therefore, the Board should determine that withholding this information violates the Open Records Law and order that it be disclosed to Animal Outlook.

**I. “Information related to identification,” as narrowly defined by the legislature, does not include descriptive information that must be combined with other data to (potentially) identify a facility.**

Numbers of animals at a facility and partial descriptions of a facility are not “information related to the . . . identification of any premises where animals are kept” under Iowa law. Therefore, they are not subject to Exemption 39A and must be disclosed in response to Animal Outlook’s request.

Exemption 39A provides that the government need not disclose “[i]nformation related to the . . . identification of any premises where animals are kept pursuant to the foreign animal disease preparedness and response strategy as provided in section 163.3C.” In turn, Iowa Code Ann. § 163.3C specifies that this information “include[s] but is not limited to” the following: “[t]he name,

address, and contact information of an interested person”; “[t]he location of the premises where the animals are kept”; and “[a]n identification number assigned to the premises where the animals are kept.”

Courts have consciously avoided unnecessarily broad interpretations of statutes by invoking the canon of *noscitur a sociis*, which requires that words be construed in light of the neighboring terms in a statute. *See, e.g., United States v. Williams*, 553 U.S. 285, 294 (2008) (Scalia, J.) (“a word is given more precise content by the neighboring words with which it is associated”); *State v. Ross*, 941 N.W.2d 341, 348 (Iowa 2020) (“meanings of particular words may be indicated or controlled by associated words”). Here, the types of “information related to . . . identification” enumerated in Iowa’s statute—names, addresses, contact information, and identification numbers of premises—are all alike in being direct and specific identifiers that are independently sufficient to identify a particular place or person. The word “information” must be construed narrowly in light of these neighboring terms, to encompass only similarly direct and specific identifiers that are independently sufficient to identify a facility. Indeed, Iowa’s strong public policy preference favoring disclosure over suppression substantiates this plain text reading of the statute. *See Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 550 (Iowa 2021) (discussing the “presumption in favor of disclosure”).

The total numbers of animals at a facility and partial descriptions of a facility are significantly different from all the types of identifying information that the statute enumerates, like names and addresses. In contrast, the number of animals may be used to identify facilities only by a party who also has additional, unrelated information. *See* July 17 Pontier Email, Exhibit C (noting that numbers of animals can be used to identify facilities in conjunction with extrapolations about barn size, county information, and aerial imagery). The Department’s interpretation of Exemption

39A improperly expands the scope of “information related to identification” to include this latter category, creating an exemption so expansive that it would swallow the rule; nearly all information could be used to identify a facility in conjunction with enough additional data. The Department’s redactions are therefore at odds with the plain language employed by the legislature and the State’s public policy.

Accordingly, this Board should rule that Exemption 39A does not apply to the redacted information and order its disclosure to Animal Outlook.

**II. Many of the redacted numbers cannot be used to identify a facility even in conjunction with additional information.**

Even if this Board were to (improperly) find that counts of animals can be identifying information covered by Exemption 39A, many of the redacted numbers do not reveal any information about the size of the facility—even when combined with other data. In particular, several redacted numbers represent counts of animals requiring a secondary method of depopulation because the initial method, VSD+, did not kill them. *See* Exhibits D, E, F, G & H. There is no way to determine from this number how many animals were killed by VSD+ and therefore how many animals the facility holds.

To illustrate, assume that the number of animals who survived VSD+ is 15. There is no information about how many did *not* survive and therefore how many animals there initially were at the facility. At most the number identifies the facility as having a barn that holds more than 15 animals—which is no identification at all, as it probably is true of every single barn at every single registered facility. Notably, when Animal Outlook raised this point by email, the Department’s response failed to address it. *See* July 17 Pontier Email, attached as Exhibit C.

Since the counts of animals who survived VSD+ at various facilities are not “[i]nformation related to the . . . identification of any premises where animals are kept,” they are not protected by Exemption 39A and the Department’s redactions are unsupported by law.

### **CONCLUSION**

For the above reasons, the Board must order disclosure of the redacted information at issue in response to Animal Outlook’s document requests. Thank you for your time and attention to this matter. If you have any questions or would like additional information, please contact me anytime at [jgleckel@animaloutlook.org](mailto:jgleckel@animaloutlook.org)

Respectfully,

A handwritten signature in black ink, appearing to read "J. V. Gleckel", written in a cursive style.

Jareb Gleckel

*Counsel, Animal Outlook*

[jgleckel@animaloutlook.org](mailto:jgleckel@animaloutlook.org)

# **EXHIBIT A**

Jareb Gleckel  
Animal Outlook

Dear Mr. Gleckel,

During the processing of your public record request under Iowa Code Chapter 22, the Iowa Department of Agriculture and Land Stewardship (IDALS) determined that the records you have requested contain confidential information as defined by Iowa Code chapter 22.7 and subsequent sections.

In response to the confidential nature of the information, redactions have been made to responsive documents in accordance with Iowa Code chapter 22, including, but not limited to the following provisions:

Iowa Code §22.7(18)	<i>Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.</i>
Iowa Code §22.7(39A)	<i>Information related to the registration and identification of any premises where animals are kept as authorized pursuant to the foreign animal disease preparedness and response strategy as provided in section 163.3C</i>
Iowa Code §22.7(65)	<i>Tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended and in a form prior to the form in which it is submitted for use or used in the actual formulation, recommendation, adoption, or execution of any official policy or action by a public official authorized to make such decisions for the governmental body or the government body</i>
Iowa Code §22.9	<i>Denial of federal funds</i> <i>1. If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.</i>

Sincerely,

Haylee Pontier  
Deputy Division Director, Attorney



# **EXHIBIT B**

**Reece, Kelley**

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**From:** Petersburg, Kevin L - APHIS <kevin.l.petersburg@usda.gov>  
**Sent:** Thursday, March 17, 2022 7:38 PM  
**To:** Kaisand, Jeff  
**Subject:** Response re: VSD+

**Categories:** Green Category

Dr. Custer,

USDA APHIS has evaluated the information about the layer flock in Iowa. The State Veterinarian and the company have requested the use of VSD+ as a method of depopulation. There are constrained circumstances: [REDACTED] which will require significant staff to depopulate with CO2 carts. While this is not our preferred method of depopulation, USDA APHIS has determined that the use of VSD+ will not impact the payment of Federal indemnity for this flock.

In this flock, we will support the use of whole house CO2 or cart CO2 with NVS resources as well to help facilitate depopulation as rapidly as possible.

Rosemary B Sifford, DVM  
Deputy Administrator  
Chief Veterinary Officer  
Veterinary Services  
USDA, APHIS

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# **EXHIBIT C**

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**Fwd: IDALS records 4 of 4**

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**Jareb Gleckel** <jgleckel@animaloutlook.org>  
To: LaKia Roberts <lroberts@animaloutlook.org>

Thu, Jul 20, 2023 at 2:23 PM

----- Forwarded message -----

From: **Haylee Pontier** <Haylee.Pontier@iowaagriculture.gov>  
Date: Mon, Jul 17, 2023 at 10:27 AM  
Subject: RE: IDALS records 4 of 4  
To: Jareb Gleckel <jgleckel@animaloutlook.org>

Good morning Jareb,

The number of animals is considered confidential as it can be an identifying characteristic in many situations, especially when the county is identified. With the availability of aerial imagery, barn size is an identifying characteristic. Barn sizes are unique to a premise; there isn't a generic size that is consistent across all species and timeframes of production. Especially within this request with the wide amount of other information provided and the county known, if we released the number of birds, it would be possible to identify the premise.

I would also provide that although 163.3C. does identify certain categories of information, that list is not exclusive and is preceded by "The information may include but is not limited to all of the following:.."

Confidentiality is a paramount portion of our ability to respond to disease outbreaks. Voluntary producer participation allows IDALS to more efficiently and more quickly respond and that voluntariness would be diminished if we didn't protect producer information as much as statutorily authorized.

Haylee

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**From:** Jareb Gleckel <jgleckel@animaloutlook.org>  
**Sent:** Wednesday, July 12, 2023 8:51 AM  
**To:** Haylee Pontier <Haylee.Pontier@iowaagriculture.gov>  
**Subject:** Re: IDALS records 4 of 4

On Mon, Jul 3, 2023 at 6:55 PM Jareb Gleckel <jgleckel@animaloutlook.org> wrote:

Hi Haylee,

Thank you for getting back to me.

I'm wondering if the department would reconsider the redactions regarding the number of animals--and I would be happy to discuss on a quick call, at your convenience, if that's easier?

It doesn't seem like the number of birds (or even relative barn size) would be considered an identifying characteristic under the statute. The language in 163.3C identifies "[t]he name, address, and contact information of an interested person"; "[t]he location of the premises . . ."; and, "[a]n identification number . . ." Something as generic as barn size is very different from these specifications.

In addition, some of the redacted numbers would seem impossible for anyone to use to identify (or even guess at the identity of) a facility. For example, at p. 37 of the email records, the agency has redacted the "[n]umber of birds requiring secondary method." That number would give no indication of barn size.

Thank you again for your help with these records, and hopefully you're enjoying a long holiday weekend.

Best,

Jareb

# **EXHIBIT D**

# HPAI Monitoring Depopulation Report

(Prem Name) / Prem ID:

<b>Set up and Preparation Activities (Examples: penning, sealing building, setting up containers):</b>		
Description: Barn Fans sealed with plastic. All fans manually shut off. Supplemental heat placed in each end of the barn. Lights left on.		
Date: 3/18/2022	Start time: 2:30pm	Finish time: 6:00 pm

<b>Weather Considerations (Examples: temp, wind, rain, ice, snow):</b>
Description: Outside temperature was approximately 35 degrees Fahrenheit.

<b>Primary Depopulation Method: Choose an item.</b>			
Comments: Ventilation shut down with heat.			
Start time:	2:30 pm	Approximate time at 50% mortality:	Click or tap here to enter text.
Time at 100% mortality or cessation of primary method:		6:00 pm	
Was standard achieved?	Yes		

<b>Secondary Depopulation Method: Choose an item.</b>	
Comments: Cervical dislocation	
Was secondary method required?	Yes
Number of birds requiring secondary method:	
Finish time (100% mortality):	8:00 pm
Was standard achieved?	Yes

Notes:

Appropriate steps were taken by management and all farm staff to ensure that human safety was a priority and that all steps were taken to ensure effectiveness of the process.
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Name/Title of personnel completing this form: \_\_\_\_Jeff Kaisand State Veterinarian\_\_\_\_\_

# **EXHIBIT E**



# HPAI Monitoring Depopulation Report

(Prem Name) / Prem ID:

*Prepare a separate report for each house*

House Name/Number	[REDACTED]
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Set up and Preparation Activities (Examples: penning, sealing building, setting up containers):		
Description: Barn Fans sealed with plastic. All fans manually shut off. Supplemental heat placed in each end of the barn. Lights left on.		
Date: 3/18/2022	Start time: 11:30 am	Finish time: 3:00 pm

Weather Considerations (Examples: temp, wind, rain, ice, snow):	
Description: Outside temperature was approximately 30 to 35 degrees Fahrenheit.	

Primary Depopulation Method: Choose an item.			
Comments: Ventilation shut down with heat.			
Start time:	11:30 am	Approximate time at 50% mortality:	Click or tap here to enter text.
Time at 100% mortality or cessation of primary method:		No activity could be observed at 1:30. Barn was opened at 3.	
Was standard achieved?	Yes		

Secondary Depopulation Method: Choose an item.	
Comments: Cervical dislocation	
Was secondary method required?	Yes
Number of birds requiring secondary method:	[REDACTED]
Finish time (100% mortality):	6 pm
Was standard achieved?	Yes

## Notes:

Appropriate steps were taken by management and all farm staff to ensure that human safety was a priority and that all steps were taken to ensure effectiveness of the process.
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Name/Title of personnel completing this form: \_\_\_\_ Jeff Kaisand State Veterinarian\_\_\_\_\_

# **EXHIBIT F**

# HPAI Monitoring Depopulation Report

**Site / Prem ID:** [REDACTED]

*Prepare a separate report for each house*

<b>House Name/Number</b>	[REDACTED]
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<b>Set up and Preparation Activities</b> (Examples: penning, sealing building, setting up containers):		
Description: Barn fans sealed with plastic by overnight staff. At 0615, all fans manually shut off. Supplemental heat was not used since the heating units undergo automatic shut-off when ambient temperature rises above 100 degree F. Lights left on.		
Date: 3/19/2022	Start time: 6:15 am	Finish time: 11:00 am

<b>Weather Considerations</b> (Examples: temp, wind, rain, ice, snow):
Description: Outside temperature was approximately 30 to 35 degrees Fahrenheit.

<b>Primary Depopulation Method:</b> Ventilation Shutdown + heat			
Comments: Ventilation shut down with heat.			
Start time:	6:15 am	Approximate time at 50% mortality:	Click or tap here to enter text.
Time at 100% mortality or cessation of primary method:		11:00 am	
Was standard achieved?	No		

<b>Secondary Depopulation Method:</b> Choose an item.	
Comments: Container gassing	
Was secondary method required?	Yes
Number of birds requiring secondary method:	[REDACTED]
Finish time (100% mortality):	TBD
Was standard achieved?	Yes

## Notes:

Barn had difficulty maintaining heat, likely due to poor insulation. By 11 am, >98% of birds had been depopulated, leaving approximately [REDACTED] birds. The decision was made to switch to container gassing remaining birds. Efforts will persist through the night until barn is fully depopulated.
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Name/Title of personnel completing this form: Julie Aebi, VMO

# **EXHIBIT G**

# HPAI Monitoring Depopulation Report

**Site / Prem ID:** [REDACTED]

*Prepare a separate report for each house*

<b>House Name/Number</b>	[REDACTED]
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<b>Set up and Preparation Activities</b> (Examples: penning, sealing building, setting up containers):		
Description: Barn fans sealed with plastic by overnight staff. At 0810, all fans manually shut off. Supplemental heat was not used as heating units undergo automatic shut-off when ambient temperature rises above 100 degrees F. Lights left on.		
Date: 3/19/2022	Start time: 8:10 am	Finish time: 12:00 am

<b>Weather Considerations</b> (Examples: temp, wind, rain, ice, snow):
Description: Outside temperature was approximately 30 to 35 degrees Fahrenheit.

<b>Primary Depopulation Method:</b> Ventilation Shutdown + heat			
Comments: Ventilation shut down with heat.			
Start time:	8:10 am	Approximate time at 50% mortality:	Click or tap here to enter text.
Time at 100% mortality or cessation of primary method:		12:00 pm	
Was standard achieved?	No		

<b>Secondary Depopulation Method:</b> Container Gassing	
Comments: Click or tap here to enter text.	
Was secondary method required?	Yes
Number of birds requiring secondary method:	[REDACTED]
Finish time (100% mortality):	TBD
Was standard achieved?	Yes

## Notes:

Barn had difficulty maintaining heat, likely due to poor insulation. By 11 am, >98% of birds had been depopulated, leaving approximately [REDACTED] birds. The decision was made to switch to container gassing remaining birds. Efforts will persist through the night until barn is fully depopulated.
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Name/Title of personnel completing this form: Julie Aebe, VMO

# **EXHIBIT H**

# HPAI Monitoring Depopulation Report

**Site** / Prem ID:

*Prepare a separate report for each house*

<b>House Name/Number</b>	
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<b>Set up and Preparation Activities</b> (Examples: penning, sealing building, setting up containers):		
Description: Barn fans sealed with plastic by overnight staff. At 11:30 am, all fans manually shut off. Supplemental heat was not used as heating units undergo automatic shut-off when ambient temperature rises above 100 degrees F. Lights left on.		
Date: 3/19/2022	Start time: 11:30 am	Finish time: 2:30 pm

<b>Weather Considerations</b> (Examples: temp, wind, rain, ice, snow):
Description: Outside temperature was approximately 45 degrees Fahrenheit.

<b>Primary Depopulation Method:</b> Ventilation Shutdown + heat			
Comments: Ventilation shut down with heat.			
Start time:	11:30 am	Approximate time at 50% mortality:	Click or tap here to enter text.
Time at 100% mortality or cessation of primary method:		1:00 pm	
Was standard achieved?	Yes		

<b>Secondary Depopulation Method:</b> Cervical Dislocation +/- mechanically assisted	
Comments: Click or tap here to enter text.	
Was secondary method required?	Yes
Number of birds requiring secondary method:	Approx.
Finish time (100% mortality):	TBD
Was standard achieved?	Yes

## Notes:

Barn achieved desired 104 degrees F within 35 minutes and maintained temperatures of 106-107 degrees F for the duration.
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Name/Title of personnel completing this form: Julie Aebi, VMO