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Freedom of Information Act/Concentrated Animal Feeding Operations: U.S. Eighth Circuit Court of Appeals Determines EPA Disclosure of Individual Names/Phone Numbers/Mailing and E-mail Addresses Prohibited by Personal Privacy Exemption

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The United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") issued a September 9th opinion holding:

- American Farm Bureau and the National Pork Producers Council (collectively "AFB") have standing to bring a "reverse" Freedom of Information Act ("FOIA") action challenging the United States Environmental Protection Agency's ("EPA") disclosure of certain information about concentrated animal feeding operations ("CAFO")
- EPA abused its discretion in deciding that disclosure of individual names, phone numbers, mailing and e-mail addresses (collectively "personal information") was not exempt under Exemption 6 (personnel and medical files and similar files, disclosure of which would constitute a clearly unwarranted invasion of personal privacy) of the FOIA

AFB had filed in federal district court a "reverse" FOIA action under the Administrative Procedure Act seeking an order prohibiting EPA from making disclosures of personal information that it collects from the states in regards to CAFOs. EPA collected information from 35 states in regards to CAFOs in the following manner:

- 27 states provided publically accessible information at EPA's request
- 2 states referred the agency to the federal data systems for the information
- Retrieved CAFO information from 8 state's websites
- Obtained information from about 6 states from its regional office

Three environmental organizations (Earthjustice, Pew Charitable Trusts and the Natural Resources Defense Council) submitted FOIA requests for the EPA's records that contained CAFO information. Some of the information requested included:

- Legal name of the CAFO owner
- Owner's mailing address
- E-mail address
- Primary telephone number

EPA released to the environmental organizations information gathered from 28 states and from the agency's data systems. The agency did not release information from the remaining seven states because it obtained such data after the FOIA request was submitted.

EPA notified various agricultural stakeholders including AFB of the information released. These groups raised concerns about the release of such information. On April 4th, 2013 EPA informed AFB and other stakeholders that the information concerning CAFOs from 19 states did not implicate a privacy interest that made the records eligible for withholding under Exemption 6 of FOIA.

Exemption 6 excludes from mandatory disclosure personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. EPA argued that the exemption did not apply because the information from the 19 states was accessible on a public website or available to the public on request. As a result, the agency did not believe that the release of the information implicated a substantial privacy interest. Further, the agency contended that even assuming a privacy interest, the weight of the public interest rendered any invasion of privacy "not clearly unwarranted".

EPA did not disclose information from several other states on the basis that these facilities did not have permits or were not subject to federal or state mandatory permitting disclosure requirements. It believed that personal information in such cases implicated a substantial privacy interest that outweighed the public interest and disclosure.

The federal district court held that AFB did not have standing to bring the reverse FOIA action. The court reasoned that AFB lacked standing because the personal information of its members was already publically available. As a result, the federal district court did not address the merits of the reverse FOIA action.

The Eighth Circuit reversed the federal district court and held that AFB had standing to bring the action.

Despite the fact that the federal district court did not address the merits of AFB's reverse FOIA claim, the Eighth Circuit decided to also address the substantive issue. It noted that the parties had fully briefed the issue and that questions of fact had not been identified that needed to be resolved by the federal district court.

The Eighth Circuit undertook a detailed analysis of FOIA and Exemption 6. It examined the nature of the requested information and noted:

The information requested here includes personal information about CAFO owners, including names, home addresses, telephone numbers, GPS coordinates of homes, and information from which financial information could be gleaned.

The court stated the disclosure of such information would constitute a substantial invasion of privacy. It cited the fact that many farm owners live on these facilities and such disclosure could facilitate unwanted contact by FOIA requesters. It cited a comment by a member of one environmental organization that admitted to having "participated in aerial and ground investigations of poultry facilities".

The Eighth Circuit also rejected EPA's prior decision to release on the basis that Exemption 6 did not apply because the requested information was "well known or widely available within the public domain".

Citing prior case law the Eighth Circuit noted that:

An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.

The Eighth Circuit also noted that the information had been aggregated by the EPA into vast collections of data from the majority of states. It further noted:

The agency's release of the complete set of data on a silver platter, so to speak, eliminates the need for requesters and others to scour different websites and to pursue public records requests to create a comprehensive database of their own. If the information were so easily accessible, then it is passing strange that the parties would engage in protracted and expensive litigation to secure it through the Freedom of Information Act.

The Eighth Circuit also rejected arguments that :

- EPA has a public interest in disclosing in such disclosure because it provides the public with information about the agency's efforts to implement the Clean Water Act
- Congress' required public disclosure of permits/permit applications placed a premium on citizen involvement in the regulatory process under the Clean Water Act

The EPA records at issue were therefore determined exempt from disclosure.

[A copy of the opinion can be downloaded here.](#)