

May 29, 2020

Director Gary McDowell
Michigan Department of Agriculture and Rural Development
Constitution Hall
P.O. Box 30017
Lansing Michigan 48909

Dear Director McDowell,

As I understand MDARD FOIA appeal procedures from :

https://www.michigan.gov/documents/mdard/Procedure_11_-_FOIA_Final_version_573083_7.pdf

You, as MDARD Director, are the correct person to appeal to.

I wish to appeal the decisions in the attached FOIA denial letter to me of 5-29-2020 from Mr. Bradley N. Deacon. (**Exhibit A**).

1 – Mr. Deacon states that *“After a diligent search, I have not been able to locate the records “future facility plans” that you are seeking”*.

In a letter 9/10/2018 from Mr. Mahoney (**Exhibit B**), he acknowledges receipt of such a plan in the second sentence of paragraph 2.

Perhaps Mr. Mahoney can locate a copy.

2 –The denial letter also states: *“The “farm management plans” record(s) you seek are exempt from disclosure under MCL 286.474 (9) which exempts the release of the manure management plan. Therefore, the request is denied.”*

The “farm management plans” are listed as an item separate from the Manure Management Plan in Mr. Mahoney’s same letter in the second sentence of paragraph 2.

The following state law makes no mention of exempting anything other than Manure Management Plans. So I conclude the “farm management plans” are not exempt from disclosure.

Right to Farm Act 93 of 1981 MCL 286.474 Sec 4

“9) If generally accepted agricultural and management practices require the person responsible for the operation of a farm or farm operation to prepare a manure management plan, the person responsible for the operation of the farm or farm operation shall provide a copy of that manure management plan to the city, village, or township or the county in which the farm or farm operation is located, upon request. A manure management plan provided under this subsection is exempt from

disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246."

Thank you for your consideration in this matter.

Robert A. Yager
1146 Bear Creek Ct.
Oakland Township MI 48306
yagera@comcast.net
248-495-8563 (cell)
248-650-9854 (land)

EXHIBIT A



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

May 29, 2020

Robert Yager
1146 Bear Creek Ct.
Oakland Township, MI 48306
Via E-mail: yagera@comcast.net

Dear Mr. Yager:

Your request for records dated May 15, 2020, under the Freedom of Information Act was received in our office on May 18, 2020. You requested "Future facility plans, farm management plan for: Rainbow Basket Egg Farm, 1700 N. Rochester Road, Oakland, MI 48363. These plans are referred to in letter Stephen Mahoney to Kim Huss 9/10/2018."

After a diligent search, I have not been able to locate the records "future facility plans" that you are seeking. Pursuant to provisions of the Freedom of Information Act, and based on my knowledge, information, and belief, I certify that the record sought does not exist as described or by any other name reasonably known to me and your request is therefore denied.

The "farm management plans" record(s) you seek are exempt from disclosure under MCL 286.474 (9) which exempts the release of the manure management plan. Therefore, the request is denied.

Under Section 10 of the Freedom of Information Act, MCL 15.240, the Department is obligated to inform you that you may do the following: 1) Appeal this decision in writing to the Director of the Michigan Department of Agriculture & Rural Development at the address below. The writing must specifically state the word "appeal" and must identify the reason or reasons you believes the denial should be reversed. The Director or his designee must respond to the appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to the appeal may be extended by 10 business days. 2) File an action in the appropriate court within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements, and possible damages.

For your information, the Department's Freedom of Information Act written summary, procedures, and guidelines can be found at www.michigan.gov/mdard-foia.

Sincerely,

Bradly N. Deacon / JHG

Bradley N. Deacon
Freedom of Information Act Coordinator

EXHIBIT B



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GORDON WENK
DIRECTOR

September 10, 2018

Ms. Kim Huss
Rainbow Basket Egg Farm
1700 N. Rochester Road
Oakland, MI 48363

RE: Pro-Active GAAMPs Determination

Dear Ms. Huss:

On June 7, 2018, Mitch Read and I met with you at your poultry facility to conduct an inspection of your facility and to review management practices being followed at your facility located in Oakland County. The review was conducted by the Michigan Department of Agriculture & Rural Development (MDARD) at your request to determine conformance with the Generally Accepted Agricultural and Management Practices for Site Selection and Odor Control for New and Expanding Livestock Facilities (Site Selection GAAMPs) and Manure Management and Utilization (Manure GAAMPs).

At the time of the inspection, we observed your poultry facility and determined the facility is maintained with no excess accumulations of manure. Also, at the time of the inspection, all poultry appeared to be well fed and healthy and the odors were not excessive. Finally, we reviewed your future facility plans, manure and farm management plans and requested additional information.

On July 10, 2018, MDARD received the remainder of the information requested at the June 7, 2018 inspection. Based on the inspection and review of all of the information submitted:

- 1) Your property is zoned "Low Density Residential" which appears to allow agriculture uses by right.
- 2) You currently have less than 50 animal units.
- 3) There are less than 13 non-farm residences within 1/8 miles and there are two non-farm residences within 250 feet of your facilities. Your Site is a Primarily Residential Site as defined in the Site Selection GAAMPs.
- 4) Your Manure Management System Plan (MMSP) contains all of the necessary components outlined in the Manure GAAMPs.

MDARD has determined that your poultry facility located at 1700 North Rochester Road, Oakland, is a Category 3 Site as defined in the Site Selection GAAMPs and thus conforms to these GAAMPs.

Ms. Kim Huss
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September 10, 2018

MDARD has also determined, based on the inspection and your completed MMSP, that your facilities conform to Manure GAAMPs.

If you have any questions or need any assistance, please call me at 517-830-2966.

Sincerely,



Stephen J. Mahoney, CCA/CPAg
Right to Farm Program

SJM:ot

cc: Oakland County Clerk
Oakland Township Clerk