



May 14, 2010

City Clerk Department
clerk@ci.oceanside.ca.us
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

Subject: Public Records Request PR082a

Dear Clerks Office,

In your response to my public records request PR082 dated March 26, 2010 asking for Shelter Buddy records of all animals impounded from January 1, 2009 to March 20, 2010 at the North Campus facility located at 2905 San Luis Rey Road, I was provided monthly statistics rather than animal records and was advised these are the only required reports from San Diego Humane Society, pursuant to the "Professional Services Agreement".

While I appreciate the efforts in making these reports available I must protest; that the information provided is unresponsive to my public records request. My reasons and explanations are below.

REASONS

1. Ten (10) of the fourteen (14) SDHS monthly reports failed to provide any information about the final dispositions of animals impounded at the above named facility.
2. A fairly large difference in the number of owner surrendered cats and dogs accounted for in the monthly reports that were provided compared to the number reported in the Annual Rabies Activity Report submitted to the San Diego County Health Department.

PREFACE TO EXPLANATIONS

Before going into the explanations, please allow me to preface them with the following information.

A news article¹ in the North County Times dated March 10, 2010 stated that among the issues still to be resolved is how the Humane Society will comply with a state law that requires it to allow rescue groups to take any animals that are scheduled to be euthanized.

In a later North County Times article² dated March 20, 2010 it was reported that Elaine Godzak, a former volunteer at the Oceanside facility, said the agency (SDHS) was violating a 1998 state law, the Hayden Act, by refusing to release dogs to rescue groups that were cleared for adoption at the Oceanside shelter, taken to the SDHS campus and then killed. She hired a lawyer, Brian Pease, and threatened to take the Humane Society to court over the matter.



A Cease and Desist letter³ from the Law Offices of Bryan W. Pease dated February 22, 2010 confirms what was reported in the North County Times article about a violation of state law by SD Humane. In the Cease and Desist letter it states that North County Humane previously had a number of adoption groups that would take animals, but when SD Humane took over, they were prevented from doing so on the ground that SD Humane had not "approved" these organizations. However, the 501(c)(3) status is all that the law requires, not separate approval by SD Humane.

Note: Statute allows shelters to impose only two requirements 1) that the rescue organization have IRC section 501(c)(3) status and 2) that the rescue organization pay an adoption fee.

The North County Times article² also reported that after meeting with concerned citizens and city officials, Humane Society President Mark Goldstein agreed that **stray dogs** set to be euthanized will be released to rescue groups that have requested them, as long as the groups sign forms releasing the Humane Society from any legal liability should the dogs later cause problems.

A SDHS Adoption Partner Agreement⁴ was developed and produced with the following statements being made (final draft dated 03-17-10):

WHEREAS, as required by the Hayden Law, SDHS will release **stray animals** that would otherwise be euthanized to registered 501(c) organizations upon timely request and,

WHEREAS, Releasee represents that it is a registered section 501(c)(3) organization in good standing and has made a timely request to SDHS under the Hayden law to obtain a **stray animal**.

SDHS and Releasee mutually agree as follows:

1. Releasee has submitted a request under the Hayden law in writing, or other manner approved by SDHS, for the release of a **stray animal**...

The North County Times article² reported Mark Goldstein as saying that STRAY dogs set to be euthanized will be released to rescue groups requesting them and the first part of the Adoption Partner Agreement (as shown above) states that release is specific to STRAY animals.

These two examples demonstrate that SD Humane is limiting the release of animals scheduled for euthanasia to only stray animals and not allowing owner surrendered animals the same life saving opportunities required by law.

The Cease and Desist letter³ previously referenced states that "Under Food and Agricultural Code sections 31108, 31752 and 31754, SD Humane must release animals from the shelter to Internal Revenue Code 501(c)(3) animal rescue and adoption groups.

Food and Agricultural Code Section 31754(a) Except as provided in Section 17006, any animal relinquished by the purported owner that is of a species impounded by public or private shelters shall be held for the same holding periods, with the same requirements of care, applicable to stray dogs and cats in Sections 31108 and 31752, and shall be available for owner redemption or adoption for the entire holding period.



Additionally, the requirement to release animals scheduled for euthanasia to IRC 501(c)(3) animal rescue and adoption groups is not limited to only cats and dogs.

Food and Agricultural Code Section 31753 Any rabbit, guinea pig, hamster, potbellied pig, bird, lizard, snake, turtle, or tortoise that is legally allowed as personal property and that is impounded in a public or private shelter shall be held for the same period of time, under the same requirements of care, and with the same opportunities for redemption and adoption by new owners or nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organizations as provided for cats and dogs.

The Professional Services Agreement 1.1 states that "CONTRACTOR shall provide animal control services required by and in accordance with the laws, regulations, ordinances and codes of the State of California."

In both the cases mentioned up to this point it appears that SD Humane has or currently is violating California State laws and by doing so may also be failing in their contractual obligations to the City of Oceanside and its residents.

EXPLANATIONS

1. A total of ten (10) out of fourteen (14) monthly reports failed to provide any information on the final dispositions (outcomes) of animals impounded at the North County facility. This inconsistency in reporting might be attributed to a failure to keep accurate records as required by the State of California.

Food and Agricultural Code Section 32003

All public pounds and private shelters shall keep accurate records on each animal taken up, medically treated, or impounded. The records shall include all of the following information and any other information required by the California Veterinary Medical Board:

- (a) The date the animal was taken up, medically treated, euthanized, or impounded.
- (b) The circumstances under which the animal was taken up, medically treated, euthanized, or impounded.
- (c) The names of the personnel who took up, medically treated, euthanized, or impounded the animal.
- (d) A description of any medical treatment provided to the animal and the name of the veterinarian of record.
- (e) **The final disposition of the animal**, including the name of the person who euthanized the animal or the name and address of the adopting party. These records shall be maintained for three years after the date the animal's impoundment ends.



While the Professional Services Agreement (PSA) states that; "The CITY acknowledges that once the legal hold period for any animal is over, the disposition of said animal is determined at the sole discretion of CONTRACTOR." (PSA 1.1e) these animals must still be accounted for.

PSA 1.1 also states that "CONTRACTOR shall provide animal control services required by and in accordance with the laws, regulations, ordinances and codes of the State of California." The PSA also states in part that "CONTRACTOR shall provide animal shelter services as a public pound".

2. For the year 2009 the monthly reports show a total of 124 cats surrendered by owners but 264 cats surrendered by owners are reported in the Annual Rabies Activity Report⁵ submitted to the County Health Department which is signed off by the County Health Officer and sent to the State Department of Public Health. In the same year (2009) the monthly reports show a total of 99 dogs surrendered by owners but reported 290 in the Annual Rabies Activity Report⁵.

These discrepancies should be looked into and the Shelter Buddy animal records originally requested would most likely help in determining why there is a difference and how to correct it.

In summary, the San Diego Humane Society and SPCA has demonstrated that it is willing to comply with state law and adhere to its contract obligations but only when there is public oversight and/or is demanded (or threatened with lawsuits) to abide by state law. It is for this reason I must insist that the monthly reports provided are unresponsive to my request and that the Shelter Buddy system animal records be provided as originally requested.

Regards,

A handwritten signature in black ink that reads "Bradley J. Jensen".

Bradley J. Jensen

xxxxxx, Cypress CA 90630
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C: City of Oceanside, City Clerk Fax: 760-967-3922

- 1 http://www.nctimes.com/news/local/oceanside/article_d31f149d-8b7f-5887-9b3b-3bd58be289ff.html
- 2 http://www.nctimes.com/news/local/oceanside/article_f6cebf73-52d8-56d6-b8ef-318305c65b9b.html
- 3 Re: IMMEDIATELY CEASE AND DESIST ILLEGALLY KILLING ANIMALS
- 4 File: 125461_1 - SDHS-to-AdoptionPartner Agreement - final draft 03-17-10.pdf
- 5 File: 2009 Preliminary Annual Reports of Local Rabies doc.pdf (attached)