



Susan Thixton <susan@truthaboutpetfood.com>

violations of SC Freedom of Information complaint

1 message

Susan Thixton <susan@truthaboutpetfood.com>

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To: awood@scda.sc.gov, ckey@scda.sc.gov, harndt@scda.sc.gov

Dear Mr. Weathers,

Care of: Aaron Wood Assistant Commissioner, Cristina Key Executive Assistant, Hannah Arndt Administrative Assistant

This email is to serve as a complaint to violations of the South Carolina Freedom of Information Act law and potential knowing and intentional violations of South Carolina Freedom of Information law should South Carolina Department of Agriculture participate in any manner in any future Association of American Feed Control Officials (AAFCO) meeting. This email also serves as notification of potential Freedom of Information Act/Sunshine Act violations of South Carolina Commercial Feed law.

AAFCO – the Association of American Feed Control Officials – is a not for profit 501 (c) (5) entity providing services to governmental agencies including, but not limited to, FDA and South Carolina Department of Agriculture. In public record, FDA stated in April 2019 (FDA's Final Response Letter Docket ID: FDA-2016-P-3578 Citizen Petition filed by Association for Truth in Pet Food): "AAFCO is an association of state and federal agencies". AAFCO provides evidence of their service to government within the "Purpose" statement of various AAFCO Committees. Some examples are:

- "committees for effective educational approaches in support of regulators"
- "development of uniform enforcement policies"
- "develop science- and risk-based regulations. Such regulations would support the implementation of effective inspection and compliance strategies..."

Evidence of South Carolina Department of Agriculture participation in AAFCO as official state business is found in South Carolina Commercial Feed law which states: "The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization." "The commissioner may adopt by reference the official definitions of feed ingredients and official feed terms as adopted by the Association of American Feed Control Officials and regulations promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act."

Further, the South Carolina Department of Agriculture website states "The South Carolina Department of Agriculture actively participates in AAFCO." South Carolina Department of Agriculture representative Austin Therrell serves on the AAFCO Board of Directors, serves as Co-Chair the AAFCO Feed and Feed Ingredient Manufacturing Committee, serves as Board Liaison for AAFCO Inspection and Sampling Committee, and serves on AAFCO's Pet Food Committee.

South Carolina Commercial Feed law adopts and administers the official definitions of feed ingredients, and official feed terms written by the collective government agency members of AAFCO (further evidence of AAFCO's service to South Carolina Department of Agriculture), but your agency does not provide those definitions and terms as part of public record due to AAFCO's action to copyright protect shared work product of government agency members. However, there remains Attorney General's Office conclusions that "the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record."

The South Carolina Freedom of Information Act law states:

"The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings."

In November 2019, the AAFCO Board of Directors – "as directed by the board of directors" (which includes South Carolina Department of Agriculture employee Austin Therrell) - closed meetings ("restricted access") to Association for Truth in Pet Food, TruthaboutPetFood.com, myself (Susan Thixton), a veterinarian, and multiple pet owners. This action put the South Carolina Department of Agriculture in violation of Open Meetings laws

and, as such, the Department can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

South Carolina Department of Agriculture participation in any AAFCO meeting (either attending in person or participating via phone conference) could be considered an intentional/knowing violation of federal and state Open Meeting laws (in part) due to:

- Federal or state law does not provide opportunity to close a meeting to a select few individuals;
- No public written copy of a vote to close the meeting has been publicly provided;
- No General Counsel or chief legal officer of any agency participating in AAFCO meetings has provided certification that the meeting may be closed to the public;
- Fees are charged for admission to meetings that government agency officials participate as part of their official duties preventing public observation;
- Work product from government employee members of AAFCO are not published in public record and are denied in FOIA requests;
- Pet food/animal feed labeling regulations and legal definitions are not published in public record and are denied in FOIA requests prohibiting the public from access.

As AAFCO Board of Directors – including South Carolina Department of Agriculture employee Austin Therrell – took action to close meetings without abiding by the federal and state legal requirements to close a meeting, violations of Open Meeting laws have been already been committed. Because AAFCO “members” consist solely of state and federal government employees who participate as part of their official duties, any future government employee participating in AAFCO in any manner would be in violation of state and federal open meeting laws and Sunshine Act laws. Therefore, the only remedy is South Carolina Department of Agriculture must withdraw from participation in AAFCO until AAFCO meets all legal requirements of state and federal Open Meeting/Sunshine Act laws.

As an additional note, The Municipal Association of South Carolina website provides details to “*a recently issued order*” in violation of SC FOIA. “*As a result, the court found the County Council denied the public its right to know what its members were discussing, and ordered \$13,708 be paid in fees and costs.*”

We ask you to promptly reply to this email stating if South Carolina Department of Agriculture intends to participate in upcoming AAFCO meetings.

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Susan Thixton
Pet Food Consumer Advocate
TruthaboutPetFood.com
AssociationforTruthinPetFood.com