

27th March 2023

Animal Law Reform South Africa

Service per: outreach@animallawreform.org

RE: REQUEST FOR ACCESS TO INFORMATION

Dear Requester "ALRSA"

1. A request was submitted to this office, The National Council of SPCA's, in terms of the Promotion of Access to Information Act 2 of 2000, by you, for and on behalf of the Animal Law Reform of South Africa "ALRSA" on the 16th of November 2022.
2. The correspondence set out the request made, and further, the reason for such a request, which was the compilation of a report by yourself and the information sought therein would assist your attempt to influence the egg industry in South Africa, and we reply thereto as follows hereunder:
 - 2.1. "7.1 A list of facilities which the NSPCA and/or SPCAs know to be stakeholders." This has been provided in by way of excel spreadsheet, which we attach hereto for convenience.
 - 2.2. "7.2 A list of each SPCA that the NSPCA oversees, including their contact details."
The list of every SPCA and their contact details are held on our website, however for the sake of completeness, we attach it hereto.



- 2.3. *"7.3 A list of facilities inspected during the above-mentioned periods which are stakeholders."* This has been provided. A comprehensive spreadsheet was compiled, providing this information, inclusive of these periods.
- 2.4. *"7.4. Reports, lists, tables, spreadsheets and other information relating to any non-compliance, warnings, citations issued to or other actions in respect of any stakeholder, in respect of violations of animal protection and welfare legislation and standards, including among others, instances of ill-treatment, abuse, neglect and death of chickens."*
- 2.5. As you have indicated above, warnings and other citations issued are for contraventions of the Animals Protection Act 71 of 1962, which is a criminal statute. In so far as reports, tables and other information relating to non-compliance is concerned, we provided a detailed spreadsheet informing which facility was inspected and what the concerns or non-compliance was.
- 2.6. We therefore refuse the request for copies of the warnings or citations issued, on the basis that these documents form part of and are instrumental in criminal investigations or will likely be utilised in the course of our investigations or the exercise of our powers in terms of the law. As furthered by Sections 39(1)(b)(i)(aa), 39(1)(b)(iii)(aa)(bb) of the Act.
- 2.6.1. *"The information officer of a public body - b) may refuse a request for access to a record of the body if-*
- (i) the record contains methods, techniques, procedures or guidelines for*
- (aa) the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law;*
- and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence."*
- And/Or*
- (ii) the disclosure of the record could reasonably be expected*
- (aa) to prejudice the investigation of a contravention or possible contravention of the law which is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed;*

(bb) to reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law,"

2.7. *"7.5. Reports, lists, tables, spreadsheets and other information relating to any non-compliance, warnings and citations or other actions in respect of any stakeholder, in respect of violations of animal welfare legislation and standards regarding chicks including ill-treatment, abuse, neglect and death of chicks."*

2.8. We have in our opinion, already furnished sufficient information as requested to enable you to compile a report. If you require intimate and detailed information pertaining to severe cruelty and ill treatment of chickens in the industry, we think it prudent that you visit one of the facilities mentioned in our comprehensive list.

2.9. *"7.6. Internal NSPCA guidelines, manuals, and any operational procedure documents for SPCAs or units of the NSPCA in relation to chicken welfare practices and compliance and enforcement efforts, particularly those relating to any stakeholder."*

2.10. We refuse access to these records on the basis that our policies and operating procedures for inspection of facilities and enforcement techniques cannot become public knowledge due to the probability that it would frustrate our objects or reasonably prejudice future investigations at these facilities. In accordance with Section 39(1)(i)(bb) of the Act, which has been canvassed above.

2.11. *"7.7. Enforcement reports, including lists, tables, spreadsheets and other information concerning any stakeholder."* This information has been furnished to you as per the spreadsheet.

2.12. *"7.8. Details of charges laid by the NSPCA against stakeholders in the poultry industry."* We refuse this request on the basis that divulging information pertaining to any pending criminal matter may be prejudicial, with reliance on Section 39(1)(b)(ii)(aa) of the Act.

2.13. *"7.9. Details of court proceedings relating to the stakeholders which NSPCA has been involved with to any extent including but not limited to through the provision of evidence, providing testimony or otherwise which may include pleadings, notices, affidavits, orders, judgments, or any other court records."* This request is refused, on the basis that the information so requested relates to court proceedings on the

grounds already traversed in terms of Section 39(1)(b)(iii)(aa) and 39(1)(b)(iii)(bb). Divulgence of information pertaining to matters that may be presently before Court, would result in prejudice. Reportable cases may be found on <http://www.saflii.org>.

2.14. "7.10. *Details of any successful or unsuccessful prosecutions in respect of the Animals Protection Act 61 of 1962 (as amended) in respect of stakeholders.*" We confirm that presently there are no successful prosecutions in respect of the identified stakeholders. Access to the records pertaining to unsuccessful prosecutions are denied on the grounds traversed in terms of Section 39(1)(b)(iii)(aa) and 39(1)(b)(iii)(bb). Those being that the evidence held within criminal dockets are not considered public knowledge and that the information contained therein may severely harm the enforcement and prosecution of these offenses should it be publicly circulated.

2.15. "7.11 *Correspondence with the National Prosecuting Authority ("NPA") regarding the charges they have sought to pursue against any stakeholders.*" We deny access to these records on the grounds already traversed in terms of Section 39(1)(b)(iii)(aa) and 39(1)(b)(iii)(bb) of the Act. Whereas they relate directly to the prosecution of criminal offenses in respect of animals, and their divulgence would result in prejudice to both the National Council and other parties or impede the administration of justice.

2.16. "7.12. *Details of nolle prosequi certificates issued by the NPA to the NSPCA in respect of cases related to any stakeholder.*" We can confirm that no such record exists.

3. The National Council of SPCA has provided and furnished a large amount of relevant and requested statistical information. Information or records that pertain to criminal investigations, prosecutions or the enforcement of contraventions are refused and a reason is provided above. We also have an obligation to protect the identities and information of our informants/ complainants, which is further supported by *South African Pork Producers Organisation v National Council of Societies for the Prevention of Cruelty to Animals* (26060/2014) [2014] ZAGPPHC 877.
4. It may be prudent at this juncture to suggest that representatives of your organisation, visit the facilities in the lists provided, to obtain a complete and concrete understanding of the industry, whilst taking the opportunity to secure information you may need for your report.


5. In respect of your letter received on the 16th of March 2023, we have considered same. We are pleased to note that you have found the information previously provided, to be helpful. We are however concerned that you request additional information by way of this email, without having submitted such an application in the prescribed manner. We will however assist you and extend a courtesy in dealing with this additional request.
6. We are not in a position to deal with each and every one of these additional requests, but we will for the sake of completeness and in good faith answer succinctly.
- 6.1. *"1. How does the NSPCA define a "welfare concern" in the context of the inspections conducted by the "skilled inspectors" forming part of the NSPCA's Farmed Animal Protection Unit (FAPU)? What are the specific criteria used by the inspectors? What legislation, if any, is utilised, in determining what constitutes a welfare concern?"* – A welfare concern shall mean a contravention or potential contravention of the Animals Protection Act 71 of 1962, such as inadequate housing, feed, water, shelter or freedom of movement, injury, etc.
- 6.2. Skilled Inspectors shall mean Authorised officers in terms of Section 8(1) of the Animals Protection Act 71 of 1962. A copy of the NSPCA training policy shall be attached hereto as a courtesy, even though you over extend the original request and exceed a mere request for access to a record.
- 6.3. In reply to *"2. More specifically, when the FAPU's Inspectors inspect facilities A - J..."* – We understand battery cages are a standard practice, and does not mean we condone same. We ask you to apply your mind when it comes to issues of definition, it goes without saying that a lack of food, water, shelter and injuries all constitute welfare concerns. It also bears mentioning that where you ask us for an opinion, we are not obliged to reply. Where we indicate "welfare concerns" it must be interpreted to mean notable and actionable concerns.
- 6.4. The culling of any animal is a welfare concern if the cull is not necessary to prevent further suffering and if the animal is not humanely euthanised. Water must be potable and sufficient, and food must fully satisfy the nutritional purpose for the species involved. The SPCA is opposed to forms of farming, farming systems and animal husbandry practices which causes or may cause pain, suffering, distress, or lasting harm.

- 6.5. In reply to paragraphs 3, 5 ,6 and 7 – In all facilities where there are notable welfare concerns, inspectors may, depending on the circumstances, issue warnings or other notices for corrective action or exercise any power conferred upon them in terms of the Animals Protection Act 71 of 1962.
- 6.6. In reply to paragraphs 4, 11, and 14 – As previously stated, the NSPCA training policy will be attached to this document, which you may then peruse. We reiterate that our standard operating procedures cannot be furnished on the basis that it forms part of our investigative techniques. We can however inform that Inspectors will issue written notices where contraventions are observed. ~~The inspectors would make use of a checklist when inspection these types of facilities.~~
- 6.7. In reply to paragraphs 8 and 9 – The absence of “no welfare concern” shall only mean that at the time of inspection there were no actionable welfare concerns. The NSPCA inspects all facilities including abattoirs. The approach obviously blends the interests of the animals welfare against the need for them to be intensively farmed, and that such farming is conducted in accordance with the provisions of the Animals Protection Act 71 of 1962.
- 6.8. In reply to paragraph 10 – The Inspector would note the number of animals if it was necessary to do so and was reasonably quantifiable. It depends on the circumstances.
- 6.9. In reply to paragraph 12 and 13 – The spreadsheet was compiled by the farm animal protection unit collectively and not a single person. Although the contact lists of all the SPCA’s in the country can be easily found on our website, we will include a list herein for the sake of completeness.
7. We are of the opinion that the information we have provided thus far and herein, are sufficient for the purposes for which you intend to use it. Considering that the ALRSA do not wish to exercise any rights relating to this information, or at least have not informed us of these rights, other than the compilation of a public report under the auspices of Section 24 of the Constitution. Having due regard to this, you have demonstrated a need to only analyse the current position in South Africa relating to the Egg Industry.
8. As a public body, and one with a Constitutionally recognised mandate and well established public responsibility, which has time and again been confirmed in the

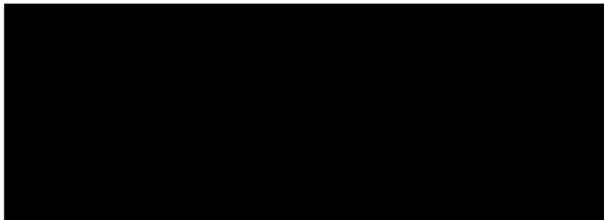
Constitutional Court and other Superior Courts, we must compare these competing interests, and balance them accordingly. Thus your request for information must be held against the interests of the animals we serve, the interests of justice and the protection of sensitive and vulnerable information. It is our duty to ensure that we demonstrate a diligence in the protection of information relating to complaints received, or contraventions of the law, so as to prevent curtailing of our enforcement thereof, and a derogation of public trust.

9. If the ALRSA had truly fostered the "spirit of collaboration", it would have adopted a far less officious approach. Our organisation has limited resources, in comparison to the real and tangible work we do for animals each and every day.
10. Our rights remain strictly reserved.





**National Council
of SPCAs**



*Remember the NSPCA in your Will
to protect what matters to you.*

