

THE ANIMAL COUNCIL

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February 17, 2012

Via facsimile: (512) 475-3032

General Counsel's Office
Texas Department of Licensing and Regulation
Attention: Melissa Rinard, Legal Assistant
P.O. Box 1215
Austin, Texas 78711

Re: COMMENTS, Proposed rules, Chapter 91. DOG OR CAT BREEDERS PROGRAM

Gentlemen:"

THE ANIMAL COUNCIL (TAC) is a California nonprofit, public benefit corporation founded in 1991 to seek positive, humane solutions to the challenges of detrimental animal public policies, legislation and regulation through study, analysis and application of animal husbandry, statistics and law, and at the same time preserve human benefit from all species, breeds and registries. At the request of and on behalf of our Texas constituents, we submit the following comments to the above-referenced proposed rules.

In preface, we stress your agency's dilemma initiating licensing of unknown numbers of breeders who may or may not be operating on a business model and have, do or would annually meet the threshold definition. This differs from the other licensed occupations in that breeding as a single activity is rarely a means of economic support. Potential licensees must estimate the costs and risks of compliance in deciding whether to reduce operations, leave Texas or attempt application and anticipate compliance although the quantitative measures may vary unpredictably from year to year. The animal activists who sought the enabling legislation have interests ranging from mere protection of animals to abolition of whatever they deem exploitation of animals, i.e. breeding. Promulgating fair, practical rules will be challenging. However, given the factual context, we believe the following proposed rules unreasonably stretch TDLR's discretion by setting up, incenting and fostering systematic vigilantism in respect to unlicensed activity.

§91.59. (c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

COMMENT: Will TDLR be accepting oral complaint reports? If the complainant provided adequate identification and verifiable information, why would the reward be limited to written or online complaints?

§91.59 (d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

COMMENT: Does "all subsequent transactions" refer to all different complaints about other unlicensed persons made by a serial complainant, so that the presence, persistence and scope of activity of such complainants is

identified and tracked? While anonymous reporting by an individual who had personal dealings with a suspect is understandable, this system would not identify an association of complainants casting their own dragnet over possible breeders as a class. Would the frequency and outcomes of such reporters be included in publicly available information about enforcement activities?

§91.60. (a) The amount of reward granted to eligible applicants may not exceed \$1,000 and shall be determined on a case by case basis by the executive director.

COMMENT: We do not believe that authority to offer any type of reward under these circumstances is appropriate exercise of agency discretion. Rather, it entices witch-hunting for gain or even underwrites an individual's efforts to seek out any dog or cat breeders or merely owners as suspects for investigation.

§91.60. (b) In the event two or more eligible applicants furnish information pertaining to unlicensed activity, the reward may be divided among the eligible applicants in an amount determined by the executive director.

COMMENT: The mere authorization of this determination subjects the executive director to suspicions – even if baseless, of complicity in what will appear to the public as opportunity for excess influence by organized complainants, other impropriety or outright corruption.

§91.60. (c) A reward under this section must be authorized by the executive director in writing stating the public purpose served by the payment.

COMMENT: The final order by the commission finding unlicensed activity would be adequate public purpose alone, because the very essence of the activity is rarely apparent to observation but requires suspicion and investigation to gather and present identifying information in a complaint. The cost of paying awards is a low cost investigative tool notwithstanding its potential for harm.

§91.60. (d) A decision by the executive director to pay or otherwise allocate reward payments is within the sole discretion of the executive director and this chapter in no way provides an independent right to such payments, if any.

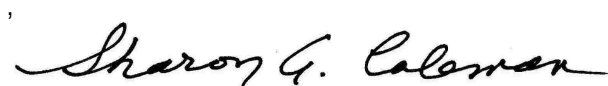
COMMENT: Again, these details will appear to allow the executive director appear to conspire with individuals, not subject to legal constraints on government employees, to pursue private investigations of citizens who may or may not ever be subject to licensing.

§91.60. (e) If the commission issues a final order finding unlicensed activity by a person named in the complaint submitted under this section, the department shall issue payment to the person or persons providing the information as soon thereafter as is practical.

COMMENT: Following §91.60. (d), this appears to give the reward recipient(s) a right to receive the reward and possibly bring a claim for payment should receipt not be considered timely.

We believe the detrimental consequences of this scheme of reporting and rewarding unlicensed activity will outweigh the legitimate enforcement interests in licensing and regulating commercial breeders and should be eliminated from the proposed rules.

Respectfully submitted



SHARON A. COLEMAN
President, The Animal Council