



United States
Department of
Agriculture

Office of the General Counsel
1400 Independence Ave. SW
Washington, DC 20250-1400

August 28, 2020

Delivered via Electronic Mail

Adam R. Pulver
Public Citizen
1600 20th Street NW
Washington, DC 20009
apulver@citizen.org

**Re: Interim Response for Freedom of Information Act (FOIA)
Request No. 2020-OSEC-04055-F**

Dear Mr. Pulver:

This is an interim response to the above-referenced FOIA request received by the Departmental FOIA Office (DFO). The request sought:

1. Any communications related to COVID-19, the coronavirus, and/or plant closures, slowdowns, or openings related to the pandemic between USDA officials or staff and representatives of Smithfield Foods, Tysons Food, Cargill, Pilgrim's Pride, JBS, the National Pork Producers Council, the National Chicken Council, and the National Meat Association.
2. Any communications between USDA officials or USDA staff and Department of Labor (DOL) officials or staff, including, but not limited to officials or staff at the Occupational Safety and Health Administration, relating to poultry, beef, and pork slaughter and/or processing facilities, and COVID-19 or the coronavirus.
3. All records concerning worker safety or occupational health at poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.

In an email dated May 26, 2020, you agreed to modify the three portions of your request as follows:

1. Agreed to accept the results of a search the USDA has already conducted in response to a prior FOIA request. The search we conducted was for emails between a list of USDA officials and a list of domains associated with meatpacking operations. Specifically, the search was conducted within the accounts of Sonny Perdue, Joby Young, Matthew Christianson, Jannine Miller, Wesley Gwinn, Jacob French, Misty Giles, Peter Bachmann, Lauren Sullivan, Hailey Ghee, Ashton Saunders, Courtney Knupp, Andrew D. Fisher, Juan Caro, Stephen Censky, Mindy Brashears, Paul Kiecker, Terri Nintemann, Janet Stevens, Nathan Greenwell, Carol Blake, Denise Eblen, and Philip Bronstein for emails exchanged with the following domains: @smithfield.com, @smithfieldfoods.com, @consumerbrandsassociation.org, @tysonfoods.com, @tyson.com, @cargill.com, @pilgrims.com, @jbssa.com, @npcc.org, @aamp.com, @nationalchickencouncil.org, @chickenusa.org, @meatinstitute.org, @ncba.org, @sysco.com,

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@corp.sysco.com, @perdufarm.com, @perdue.com, @gapf.org, @gov.georgia.gov, @governor.alabama.gov, @sd.gov, @state.sd.us, @siouxfalls.org, and @siouxfalls.gov, within the date range March 13, 2020 through June 2, 2020.

2. Agreed to a manual search conducted by the Food Safety Inspection Service (FSIS) for communications between Paul Kiecker, FSIS Administrator; Terri Nintemann, FSIS Deputy Administrator; Jeremy Todd Reed, FSIS Chief Operations Officer; Yolanda Chambers, Director in Office of Management and employees of the DOL regarding meatpacking plants and COVID-19, and to an electronic search of non-FSIS USDA officials emails exchanged with DOL.

3. Agreed to limit the search to the same list of USDA officials referred to in item #1, and to the following search terms: worker, employee, union, employment, or labor AND Coronavirus, Corona, COVID, COVID-19, opening, closing, closure, PPE, transmission, testing, outbreak, pandemic.

Your request is being processed under the FOIA, 5 U.S.C. § 552.

With this interim response we are providing records pertaining to item 2 of your FOIA request. Employees of FSIS have completed a manual search for communications with DOL relating to poultry, beef, and pork slaughter and/or processing facilities, and COVID-19 or the coronavirus.

Following a review of the responsive records, the DFO has determined that certain information contained therein should be withheld pursuant to U.S.C. § 552(b)(5) (FOIA Exemption 5), and U.S.C. § 552(b)(6) (FOIA Exemption 6). Below is an explanation of the information that has been withheld.

Portions of these records originated with the DOL. We sought the DOL's input regarding records they created. They asked that certain information be withheld pursuant to FOIA Exemptions 5 and 6. Please note that DOL withholdings are marked in blue on the enclosed records; USDA withholdings are marked in red.

FOIA Exemption 5 protects from disclosure those "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." One of the frequently invoked FOIA Exemption 5 privileges is the deliberative process privilege. To fall within FOIA's deliberative process privilege, the records must be both pre-decisional and deliberative; the records must precede the adoption of an agency policy and include the opinions, recommendations, or deliberations on a legal or policy matter. In this instance, the DFO is withholding, under the deliberative process privilege, certain pre-decisional intra-agency and inter-agency communications. The withheld portions include two versions of a draft attestation document and emails related to the clearance and approval of communications and web postings. Disclosure of such information would have a chilling effect on the ability of agency officials to engage in free and frank discussion.

Exemption 6 generally is referred to as the "personal privacy" exemption. It provides that the disclosure requirements of FOIA do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

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Application of the exemption involves balancing the public's interest in disclosure against individuals' privacy interests.

The information withheld under Exemption 6 consists of mobile phone numbers, direct dial phone numbers, conference line passcodes, and identifying information relating to a deceased FSIS employee and their next of kin. This information qualifies as "similar files" because it is information in which individuals have a privacy interest. Moreover, releasing the information could subject the individuals to unwarranted or unsolicited communications. Since there is a viable privacy interest that would be threatened by disclosure, Exemption 6 authorizes this office to withhold the information. Accordingly, we have determined that the public interest in the information's release does not outweigh the overriding privacy interests in keeping it confidential.

The DFO continues processing your request and will issue a final response.

You have the right to appeal the DFO's determinations. Due to the need to issue more than one determination in order to fully resolve your request, your appeal rights for all determinations in response to this request will be provided to you in our final response letter.

You may seek dispute resolution services from the DFO's FOIA Public Liaison, Ms. Camille Aponte. Ms. Aponte may be contacted by telephone at 202-505-0271, or electronically at Camille.Aponte@usda.gov or USDAFOIA@usda.gov. You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit <https://www.archives.gov/ogis/mediation-program/request-assistance> for information about how to request OGIS assistance in relation to a FOIA request. Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees will be charged.

If you have any questions regarding the processing of this request, please contact Mr. Harald Fuller-Bennett at 202-239-4522, or electronically at harald.fullerbennett@usda.gov or USDAFOIA@usda.gov.

For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at www.dm.usda.gov/foia.

The DFO appreciates the opportunity to assist you with this matter.

Sincerely,



Alexis R. Graves
Departmental FOIA Officer
Office of the General Counsel

Enclosure: Responsive records (660 pages)