



United States  
Department of  
Agriculture

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

May 10, 2021

**Delivered via Electronic Mail**

Adam R. Pulver  
Public Citizen  
1600 20th Street NW  
Washington, DC 20009  
[apulver@citizen.org](mailto:apulver@citizen.org)

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

Dear Mr. Pulver:

This is our fourth interim response to the above-referenced FOIA request received by the Office of Information Affairs (OIA). 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,

**Adam Pulver**

FOIA Case No. 2020-OSEC-04055-F

Page 2

@chickenusa.org, @meatinstitute.org, @ncba.org, @sysco.com, @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. An electronic search for responsive records was conducted by the Chief Information Office Client Experience Center (CEC).

On August 28, 2020, we sent you a first interim response which included 660 pages of records responsive to item #2 of your request. On September 8, 2020, we sent you a second interim response which included 367 pages of records responsive to item #1 of your request. On February 10, 2021, we sent you a third interim response which included 474 pages of records responsive to item #1 of your request. With this fourth interim response, we are releasing to you 86 pages of records responsive to items #1 and #3 of your request.

Following a review of the responsive records, the OIA has determined that certain information contained therein should be withheld pursuant to U.S.C. § 552(b)(4) (FOIA Exemption 4), 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.

FOIA Exemption 4

Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential,” 5 U.S.C. § 552(b)(4). The exemption covers two distinct categories of information in federal agency records, (1) trade secrets, and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential. The information was submitted to USDA by several businesses and industry associations. We have sought input from these businesses regarding whether they treat the information they provided as confidential. We have determined that portions of these records contain commercial or financial information customarily treated as private by the business submitters, and we have withheld these portions pursuant to FOIA Exemption 4.

FOIA Exemption 5 – Deliberative Process

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 OIA is withholding, under the deliberative process privilege: pre-decisional intra-agency discussions and briefings; proposed responses to media, industry, and internal inquiries; proposed meeting agendas; proposed talking points; and draft documents.

These items are pre-decisional in that they are antecedent to any final agency decision. These items are also deliberative in that they reflect the evolving, back-and-forth process between agency employees that is so integral to the Executive Branch decision-making process; more specifically, the development of potential recommendations made by agency advisors for use in making policy decisions.

If these pre-decisional, deliberative communications were released to the public, USDA and other Executive Branch employees would be much more cautious in their discussions with each other, and in candidly discussing and providing all pertinent information and viewpoints in a timely manner to agency decision-makers. This lack of candor would also seriously impair the Department’s ability to engage in forthright, internal discussions necessary for efficient and proper agency decision-making.

#### FOIA Exemption 5 – Attorney-Client

The OIA is also withholding information under the attorney-client privilege. This privilege protects confidential communication between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinion given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client supplied information. In this instance, the OIA is withholding information shared internally whereby legal advice is being sought from and provided by the Department’s counsel. The OIA is also withholding, pursuant to the attorney-client privilege, a subpoena issued by the Occupational Safety and Health Administration (OSHA).

These confidential communications are shielded from disclosure in order to encourage open and frank discussions between the Department and its legal advisors. Ensuring the Department receives sound legal advice promotes public policy, and this advice depends on counsel being fully informed. The release of these confidential communications would inhibit the Department’s ability, and the government’s ability, to provide pertinent information and would impair the Department’s counsel from making well-informed legal decisions.

#### FOIA Exemption 6

**Adam Pulver**

FOIA Case No. 2020-OSEC-04055-F

Page 4

Exemption 6 of the FOIA is generally 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.” 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 phone numbers for third parties, conference line passcodes, private email address handles, and an individual’s home address. 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.

You have the right to appeal the OIA’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, Mr. Harald Fuller-Bennett. Mr. Fuller-Bennett may be contacted by telephone at 202-239-4522, or electronically at [harald.fullerbennett@usda.gov](mailto:harald.fullerbennett@usda.gov) or [USDAFOIA@usda.gov](mailto: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](mailto:harald.fullerbennett@usda.gov) or [USDAFOIA@usda.gov](mailto: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](http://www.dm.usda.gov/foia).

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

Sincerely,

Harald Fuller-Bennett  
Government Information Specialist  
Office of the General Counsel

Enclosure: Responsive Records (86 pages)