



January 10, 2020

VIA ONLINE PORTAL

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460
Via FOIAOnline

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 40 C.F.R. Part 2, American Oversight makes the following request for records.

The Environmental Protection Agency (EPA) has taken action to expand the use of antibiotics as pesticides for citrus production, despite warnings from other federal agencies that this could spur antimicrobial resistance at great risk to human health.¹

American Oversight seeks records to shed light on whether and to what extent the administration's decision-making in this area is being shaped by industry representatives at the expense of public health.

Requested Records

American Oversight requests that EPA produce the following records within twenty business days:

All email communications (including emails, email attachments, and calendar invitations) sent by (1) any of the EPA officials listed or described in Column A, to (2) employees or representatives of any of the following external entities listed in Column B, regarding the use of the antibiotics as pesticides.

¹ See, e.g., Ctrs. for Disease Control and Prevention, Antimicrobial Susceptibility Testing of Human Bacterial Pathogens to Antibiotics Used as Pesticides: Report to EPA, May 11, 2017, https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/CDC-study-from-FOIA.pdf.



Column A: EPA Officials	Column B: Entities
<ul style="list-style-type: none"> i. Andrew Wheeler, Administrator ii. Scott Pruitt, former Administrator iii. Ryan Jackson, Chief of Staff iv. Michael Dourson, Senior Advisor, Office of the Administrator v. Samantha Dravis, former Senior Counsel and Associate Administrator, Office of Policy vi. Brittany Bolen, Associate Administrator, Office of Policy vii. Byron R. Brown, former Deputy Chief of Staff for Policy viii. Daisy Letendre, former Senior Advisor for Policy and Strategic Communications, Office of Policy ix. David Dunlap, Deputy Assistant Administrator for Science Policy x. John Konkus, former Deputy Associate Administrator, Office of Public Affairs xi. Elizabeth Bowman, former Associate Administrator for Public Affairs xii. Alexandra Dapolito Dunn, Assistant Administration, Office of Chemical Safety and Pollution Prevention (OCSPP) xiii. Nancy B. Beck, Principal Deputy Assistant Administrator, OCSPP xiv. David Fischer, Deputy Assistant Administrator, OCSPP xv. Lek Kadeli, Acting Deputy Assistant Administrator for Management 	<ul style="list-style-type: none"> i. AgroSource, Inc. (including anyone communicating with an email address ending in @agrosource.net) ii. Geo Logic Corp. iii. Nufarm Americas, Inc. (including anyone communicating with an email address ending in @us.nufarm.com) iv. Syngenta (including anyone communicating with an email address ending in @syngenta.com) v. Consolidated Citrus LP (including anyone communicating with an email address ending in @cclpcitrus.com) vi. Florida Citrus Commission (including anyone communicating with an email address ending in @citrus.state.fl.us) vii. Florida Citrus Mutual (including anyone communicating with an email address ending in @flcitrusmutual.com) viii. Florida Citrus Processors Association (including anyone communicating with the email address kec@macfar.com) ix. Florida Fruit and Vegetable Association (including anyone communicating with an email address ending in @ffva.com) x. California Citrus Quality Council (including anyone communicating with an email address ending in @ccqc.org) xi. Juice Products Association (including anyone

xvi.	Tom Tyler, Chief of Staff, OCSP	communicating with the email address @kellencompany.com)
xvii.	Rick Keigwim, Director, Office of Pesticide Programs (OPP)	
xviii.	Michael Goodis, Director, Registration Division, OPP	
xix.	Anyone serving in the role of White House Liaison or Deputy White House Liaison	

For this request, American Oversight believes that records containing the terms below are likely to be responsive records, and American Oversight requests that EPA, at a minimum, employ these search terms to identify responsive records.

- “Oxytetracycline”
- “OxyTc”
- “2058-46-0”
- “7179-50-2”
- “FireLine”
- “FireLine™”
- “Mycoshield”
- “Mycoshield™”
- “Streptomycin”
- “3810-74-0”
- “Firewall”
- “Firewall™”
- “Agri-Mycin”
- “Agri-Mycin™”
- “Huanglongbing”
- “HLB”
- “*Candidatus Liberibacter asiaticus*”
- “*Ca. L. asiaticus*”
- “CLAS”
- “Citrus greening”

In an effort to accommodate EPA and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by the identified officials. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both the sent messages and the prior received messages in each email chain. This means, for example, that both Administrator Wheelers’ response to an email from an employee or representative of AgroSource, Inc, and the initial received message are responsive to this request and should be produced.

This request includes all prior messages (whether incoming or outgoing) reflected in the responsive correspondence and any attachments thereto.

Please provide all responsive records from January 20, 2017, through March 31, 2019.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."² The public has a significant interest in the health and safety effects of the agricultural use of antibiotics as pesticides, particularly given concerns raised by the Centers for Disease Control and Prevention and the Food and Drug Administration that such use could fuel antibiotic resistance in humans.³ Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including whether and to what extent industry interests trumped public health concerns. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁴ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁵

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ Andrew Jacobs, *Citrus Farmers Facing Deadly Bacteria Turn to Antibiotics, Alarming Health Officials*, N.Y. TIMES, May 17, 2019, <https://www.nytimes.com/2019/05/17/health/antibiotics-oranges-florida.html>.

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ American Oversight currently has approximately 14,825 page likes on Facebook and 88,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Jan. 7, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Jan. 7, 2020).

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁶ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁷ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁸ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁰ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹¹

Accordingly, American Oversight qualifies for a fee waiver.

⁶ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁷ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁸ *See generally Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁰ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹¹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹² It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹³
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁴ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to

¹² See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁴ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Christine H. Monahan at foia@americanoversight.org

or 202.869.5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight