



April 17, 2020

VIA EMAIL

Alexis R. Graves
Departmental FOIA Officer
USDA
1400 Independence Avenue SW
South Building
Room 4104
Washington, DC 20250-0706
USDAFOIA@ocio.usda.gov

Re: Expedited 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 the U.S. Department of Agriculture (USDA), 7 C.F.R. Part 1, American Oversight makes the following request for records.

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.¹ Since late 2019, the virus has spread to dozens of countries, sickened millions of people, and resulted in tens of thousands of deaths.² Recently, several meat processing plants have had to close in response to employees contracting COVID-19.³ Both private-sector and government inspectors have raised concerns that they lack proper workplace personal protective equipment (PPE) and that it is difficult to follow public health officials' social

¹ *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

² *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (Apr. 9, 2020, 8:03 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

³ Alex Gangitano, *Food Supply Worries Grow After Outbreak Closes Smithfield Meat Plant*, THE HILL (Apr. 14, 2020, 6:00 AM) <https://thehill.com/business-a-lobbying/business-a-lobbying/492625-food-supply-worries-grow-after-outbreak-closes>.



distancing recommendations while at work.⁴ Additionally, industry representatives have raised concerns that plant closures may interrupt food supply chains.⁵

American Oversight seeks records with the potential to shed light on how USDA is protecting the health of its employees and working to prevent potential food shortages.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that USDA produce the following records as soon as practicable, and at least within twenty business days:

1. All email communications (including complete email chains, email attachments, calendar invitations, and attachments thereto) between (a) the specified USDA officials listed below in Column A and (b) any of the external individuals or entities listed below in Column B.

Column A: USDA Officials	Column B: External Individuals or Entities
<ul style="list-style-type: none"> i. Secretary Sonny Perdue, and anyone communicating on his behalf, such as Chiefs of Staff, executive assistants, personal assistants, or schedulers ii. Deputy Secretary of Agriculture Stephen Censky iii. Dr. Mindy Brashears, Under Secretary for Food Safety (FSIS) iv. Paul Kiecker, Administrator (FSIS) v. Terri Nintemann, Acting Deputy Administrator (FSIS) 	<ul style="list-style-type: none"> i. Any representative of Smithfield Foods, including CEO Ken Sullivan ii. Any representative of Consumer Brands Association, including Betsy Booren iii. Any representative of Tysons Food, including Dean Banks iv. Any representative of Cargill, including David MacLennan v. Any representative of Pilgrim’s Pride

⁴ Eric Katz, *Coronavirus Outbreaks at Food Processing Plants Have Inspectors 'Fearful' and Employees Staying Home*, GOVEXEC DAILY, Apr. 9, 2020, <https://www.govexec.com/workforce/2020/04/coronavirus-outbreaks-food-processing-plants-have-inspectors-fearful-and-employees-staying-home/164501/>; Miriam Jordan & Caitlin Dickerson, *Poultry Worker’s Death Highlights Spread of Coronavirus in Meat Plants*, N.Y. TIMES, Apr. 9, 2020, <https://www.nytimes.com/2020/04/09/us/coronavirus-chicken-meat-processing-plants-immigrants.html>.

⁵ Jim Zarroli, *U.S. Meat Supply Is 'Perilously Close' to a Shortage, CEO Warns*, NPR (Apr. 13, 2020, 10:53 AM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/13/833110486/u-s-meat-supply-is-perilously-close-to-a-shortage-ceo-warns>.

<ul style="list-style-type: none"> vi. Janet Stevens, Assistant Administrator (OPARM) vii. Nathan Greenwell, Acting Deputy Assistant Administrator (OPARM) viii. Carol Blake, Assistant Administrator, Office of Public Affairs and Consumer Education (OPACE) ix. Dr. Denise Eblen, Assistant Administrator, Office of Public Health Science (OPHS) x. Dr. Philip Bronstein, Assistant Administrator (OFO) 	<ul style="list-style-type: none"> vi. Any representative of JBS, including CEO Andre Nogueira and Cameron Bruett vii. Any representative of the National Pork Producers Council viii. Any representative of the American Association of Meat Processors ix. Any representative of the National Chicken Council x. Any representative of the American Meat Institute xi. Any representative of the National Cattlemen’s Beef Association, including Colin Woodall xii. Any representative of the National Meat Association xiii. Any representative of the Sysco Corporation, including Kevin Hourican xiv. Any representative of Perdue Farms, including Randy Day xv. Any representative of the Georgia Poultry Foundation xvi. Georgia Governor Brian Kemp, or anyone communicating on behalf of Governor Kemp, such as a chief of staff, assistant, or scheduler xvii. Alabama Governor Kay Ivey, or anyone communicating on behalf of Governor Ivey, such as a chief of staff, assistant, or scheduler xviii. South Dakota Governor Kristi Noem, or anyone communicating on behalf of Governor Noem, such as a chief of staff, assistant, or scheduler⁶
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⁶ Public reporting indicates that Secretary Perdue, at a minimum, has been in contact with South Dakota Governor Kristie Noem. See James Leggate, *Smithfield Foods Plant Closed by Coronavirus May Reopen After Outcry*, FOX BUS., Apr. 15, 2020, <https://www.foxbusiness.com/markets/smithfield-foods-plant-closed-coronavirus-reopen-outcry> (“Gov. Kristie Noem said the state had been in contact with Perdue, Vice President

	xix. Sioux Falls Mayor Paul TenHaken
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Please provide all responsive records from March 13, 2020, through the date of the search.

2. Any email message (including complete email chains, email attachments, calendar invitations, and attachments thereto) sent from Secretary Perdue, or his Chief of Staff, about potential or actual coronavirus outbreaks at food processing plants, including but not limited to actual outbreaks at the Smithfield (Sioux Falls, South Dakota), Tysons Food (Columbus Junction, Iowa), Tysons Food (Waterloo, Iowa), Tysons Food (Camilla, Georgia), Cargill and JBS (Souderton, Pennsylvania), JBS (Greeley, Colorado), Pilgrim's Pride (Guntersville, Alabama), and Cargill (Hazleton, Pennsylvania) plants.

In an effort to accommodate USDA and reduce the number of potentially responsive records, American Oversight agrees that the search for responsive email communications may be limited to emails sent by Secretary Perdue and his Chief of Staff. Despite this search accommodation, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. For example, if Secretary Perdue sent a response to an incoming message about the outbreak at the Smithfield plant in Sioux Falls, both the original email and his response should be included.

Please provide all responsive records from March 13, 2020, through the date of the search.

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."⁷ The public has a significant interest in the federal government's response to this national public health

Mike Pence and the company and working on a plan for the plant to reopen 'as soon as it's safe.'").

⁷ 5 U.S.C. § 552(a)(4)(A)(iii).

emergency.⁸ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including how USDA is responding to the unique needs of food process workers and potential food shortages that could result from coronavirus outbreaks at processing plants.⁹ 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.¹⁰ 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.¹¹

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.¹² 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;¹³ 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

⁸ *Coronavirus Disease 2019 (COVID-19) Situation Summary*, *supra* note 1.

⁹ Gangitano, *supra* note 3.

¹⁰ See 5 U.S.C. § 552(a)(4)(A)(iii).

¹¹ American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 9, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 9, 2020).

¹² News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹³ *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>.

reveal;¹⁴ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁵ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁶ 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.¹⁷

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and your agency's regulations, 7 C.F.R. § 1.6(e), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it receives from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request: the novel coronavirus pandemic and its effects on the food supply chain and the safety of meat processing inspectors and plant workers.¹⁸ First, American Oversight has requested records with the potential to shed light on the steps the administration has taken to respond to the novel coronavirus outbreak, which has resulted in a major public health emergency. Because the virus has spread rapidly, has already killed tens thousands of

¹⁴ 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>.

¹⁵ *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>.

¹⁶ *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>.

¹⁷ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹⁸ See Gangitano, *supra* note 3; Katz, *supra* note 4.

people in the United States,¹⁹ and is significantly affecting Americans' finances,²⁰ there is plainly an urgent need to inform the public about how USDA and other federal agencies are responding to the virus. The exceptionally widespread news reporting on coronavirus demonstrates that the public urgently needs information about the federal government's efforts and policies concerning the subject matter of this request.²¹ Second, factual developments have demonstrated a series of government failures to appropriately handle decisions regarding the virus, including concerns that FSIS inspectors were forbidden from wearing protective masks and are not being provided proper PPE,²² as well as an effort by government officials to minimize press coverage and reduce public information²³ about the testing of coronavirus cases. There is also widespread public concern that public health officials are being prevented from speaking about the coronavirus²⁴—information that is critical for keeping food processing plant workers safe and educating the general public on steps to contain the future spread of the virus, mitigate the outbreaks that have already occurred, and evaluate the effectiveness of the government's response. Further, while USDA officials have publicly claimed that Americans should not worry about food shortages, industry officials have begun to raise concerns about shortages of meat.²⁵

Moreover, I certify to be true and correct to the best of my knowledge and belief that there is an urgent need to inform the public about decisions regarding coronavirus. American Oversight's request seeks information that can shed light on decisions that have been made—including whether and to what extent USDA is protecting its inspectors and working to prevent shortages in meat. The public, including food processing employees

¹⁹ *Coronavirus Map: Tracking the Global Outbreak*, *supra* note 2.

²⁰ Heather Long, *U.S. Now Has 22 Million Unemployed, Wiping Out a Decade of Job Gains*, WASH. POST (Apr. 16, 2020, 9:13 AM EST),

<https://www.washingtonpost.com/business/2020/04/16/unemployment-claims-coronavirus/>.

²¹ Adam Taylor et al., *Live Updates: Trump to Issue Guidelines on Easing U.S. Coronavirus Restrictions; Unemployment Claims Continue to Soar*, Wash. Post (Apr. 16, 2020, 11:20 AM),

<https://www.washingtonpost.com/world/2020/03/04/coronavirus-live-updates/>;

Coronavirus Live Updates: California Breaks Grim Record: More Than 100 Deaths Reported in One Day, L.A. TIMES (Apr. 16, 2020, 10:38 AM),

<https://www.latimes.com/california/liveblog/coronavirus-live-updates-thursday-april-2>;

Ben Westcott et al., *Live Updates: Coronavirus Cases Surpass 2 Million Globally*, CNN

(Apr. 16, 2020, 11:43 AM) <https://www.cnn.com/world/live-news/coronavirus-pandemic-04-02-20-intl/index.html>.

²² Katz, *supra* note 4.

²³ Brianna Ehley, *Trump's Team Shifts Tone from Preventing Coronavirus to Containing It*,

POLITICO (Mar. 2, 2020, 7:52 PM), <https://www.politico.com/news/2020/03/02/trump-coronavirus-pence-119051>.

²⁴ Michael Shear & Maggie Haberman, *Pence Will Control All Coronavirus Messaging from Health Officials*, N.Y. TIMES, Feb. 27, 2020,

<https://www.nytimes.com/2020/02/27/us/politics/us-coronavirus-pence.html>.

²⁵ Zarroli, *supra* note 5.

and their families, urgently needs the information to understand the extent of the growing health crisis and make decisions that promote public health and mitigate the spread of the disease.

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²⁶ American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."²⁷ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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.²⁸ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.²⁹

Accordingly, American Oversight's request satisfies the criteria for expedition.

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:

²⁶ See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²⁷ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

²⁸ American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 14, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 14, 2020).

²⁹ See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, 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>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *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>; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT,

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- 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.³⁰ 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.³¹
- 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,³² 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

<https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>; *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>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

³⁰ 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).

³¹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

³² 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>.

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 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 Megan Field at foia@americanoversight.org or

202.897.2465. 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", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight