



June 5, 2020

VIA EMAIL

Freedom of Information Officer
U.S. Centers for Disease Control and Prevention
1600 Clifton Road NE
Building 57, Room MS D-54
Atlanta, GA 30333
FOIARequests@cdc.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 your agency, 45 C.F.R Part 5, 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 across the globe, sickened millions of people, and resulted in hundreds of thousands of deaths.²

The virus has spread rapidly across meat processing plants, with over 115 facilities in nineteen states reporting outbreaks.³ At least 4,913 meat processing plant workers have contracted the virus and twenty have passed away from it.⁴ The CDC plays a critical role in gathering and analyzing data from factories, responding to requests for assistance from state and local authorities, and providing guidance for safety improvements.

American Oversight submits this request to shed light on how the CDC is responding to Coronavirus outbreaks in meat processing facilities and what the agency is doing to protect the approximately 500,000 Americans who work in those facilities.

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

² *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (May 7, 2020, 8:22 AM) <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

³ Dyal JW, et al. *COVID-19 Among Workers in Meat and Poultry Processing Facilities — 19 States, April 2020*, CDC, May 8, 2020, [http://dx.doi.org/10.15585/mmwr.mm6918e3external icon](http://dx.doi.org/10.15585/mmwr.mm6918e3externalicon).

⁴ *Id.*



Requested Records

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

1. All email communications (including emails, email attachments, and calendar invitations) about actual or potential COVID-19 outbreaks in meat processing facilities, between (a) the CDC officials described below and (b) anyone communicating with an email address ending in eop.gov, that contain any of the described key terms:

CDC Officials:

- A. Robert Redfield, Director
- B. Kyle McGowan, Chief of Staff
- C. Jay Butler, Deputy Director for Infectious Diseases
- D. Nancy Messonnier, National Center for Immunization and Respiratory Diseases
- E. Anne Schuchat, Principal Deputy Director
- F. John Howard, MD, Director, National Institute for Occupational Safety and Health

Key Terms:

- A. Meat
- B. Pork
- C. Ham
- D. Beef
- E. Poultry
- F. "food shortage"
- G. JBS
- H. Greeley
- I. Smithfield
- J. "Sioux Falls"
- K. "South Dakota"
- L. Sonny
- M. Perdue
- N. USDA
- O. FSIS
- P. Eugene
- Q. Scalia
- R. liability

Please provide all responsive records from April 15, 2020, through May 30, 2020.

2. All final directives, guidance, or memoranda from anyone in the Executive Office of the President (including the White House, the Office of the Vice President, and the Coronavirus Task Force) to the CDC officials named below, regarding actual or potential COVID-19 outbreaks in meat processing facilities.

CDC Officials:

- A. Robert Redfield, Director
- B. Kyle McGowan, Chief of Staff
- C. Jay Butler, Deputy Director for Infectious Diseases
- D. Nancy Messonnier, National Center for Immunization and Respiratory Diseases
- E. Anne Schuchat, Principal Deputy Director
- F. John Howard, MD, Director, National Institute for Occupational Safety and Health

Please provide all responsive records from April 15, 2020, through May 30, 2020.

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."⁵ The public has a significant interest in understanding how the CDC is responding to outbreaks in meat processing plants.⁶ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether CDC's guidance to factory owners was impacted by private influences outside of the agency. American Oversight is committed to transparency and makes the

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ 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>; Danielle Wiener-Bronner, *Tyson Warns More Meat Plant Closures Are Coming*, CNN BUSINESS, <https://www.cnn.com/2020/05/04/business/tyson-meat-plant-closures/index.html>; Mike Dorning, *Thirty Workers, Four USDA Inspectors Dead Amid Meat Plant Coronavirus Outbreaks*, TIME (May 14, 2020, 3:50 PM), <https://time.com/5836973/usda-inspector-meat-workers-dead-coronavirus/>.

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.⁷ 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.⁸

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.⁹ 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;¹⁰ 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;¹¹ posting records regarding potential self-dealing at the Department of Housing &

⁷ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ American Oversight currently has approximately 15,500 page likes on Facebook and 102,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 20, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 20, 2020).

⁹ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹⁰ 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>.

¹¹ 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>.

Urban Development and related analysis;¹² posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹³ 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.¹⁴

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 45 C.F.R. § 5.27, 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.¹⁵

First, American Oversight has requested records that concern matters of widespread public concern: federal leaders' response to novel coronavirus outbreak and, in particular, to outbreaks in meat processing facilities. The extraordinary media interest in coronavirus¹⁶ and meat processing plant outbreaks¹⁷ demonstrates that the public urgently

¹² *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>.

¹³ *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>.

¹⁴ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹⁵ 45 C.F.R. § 5.27(b)(2).

¹⁶ Adam Taylor, et al., *Live Updates: States Move to Reopen as U.S. Coronavirus Cases Near 1 Million; White House Issues Testing Guidance*, WASH. POST (Apr. 28, 2020, 10:42 AM EST), <https://www.washingtonpost.com/coronavirus/>; *Coronavirus Live Updates: Coronavirus Worsens in L.A. County as Hopes of an Early Reopening Fade*, L.A. TIMES (Apr. 28, 2020, 8:24 AM), <https://www.latimes.com/california/liveblog/coronavirus-live-updates-tuesday-april-28>; Ben Westcott, et al., *Live Updates: Dr. Fauci on a Second Wave of Coronavirus: "I'm Almost Certain It Will Come Back"*, CNN (Apr. 28, 2020, 10:38 AM) <https://www.cnn.com/us/live-news/us-coronavirus-update-04-28-20/index.html>.

¹⁷ See, e.g. Nicole Narea, *Why Meat Packing Plants Have Become Coronavirus Hot Spots*, VOX (May 19, 2020, 8:40 AM), <https://www.vox.com/2020/5/19/21259000/meat-shortage-meatpacking-plants-coronavirus>; Konstantin Toropin, *CDC Issues Recommendations for Closed South Dakota Smithfield Plant Following Coronavirus Outbreak*, CNN (Apr. 23, 2020, 7:58 PM),

desires and needs information about the CDC's and other federal agencies' efforts to respond to and prevent the outbreaks.

Because the virus has spread rapidly, has already killed over 90,000 people in the United States,¹⁸ and has dramatically affected the economy,¹⁹ there is plainly an urgent need to inform the public about how federal agencies are responding to the virus. There is a particular need to provide the public with information about how the federal government is responding to outbreaks in meat processing facilities.

The nearly half a million Americans who work in the meat processing industry—many of which do not have paid vacation or sick leave²⁰—along with their family and community members, urgently need more information about why CDC guidance to factory operators has apparently become less obligatory. Individuals in these communities urgently need to understand why the CDC's guidance to two facilities with COVID-19 outbreaks, one in Colorado and one in South Dakota, changed dramatically within the span of a few days,²¹ in order to make the potentially life-threatening decision of whether it is safe to return to their jobs or to remain in their communities.²² The change in CDC's tone has created confusion amongst public health officials and plant workers, some of which are returning to work despite testing positive for the disease.²³ The requested records would shed light

<https://www.cnn.com/2020/04/23/us/cdc-report-smithfield-plant-south-dakota/index.html>;

¹⁸ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (May 26, 2020, 2:19 PM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

¹⁹ See, e.g., Patricia Cohen & Tiffany Hsu, 'Rolling Shock' as Job Losses Mount Even with Reopenings, N.Y. TIMES, May 14, 2020, <https://www.nytimes.com/2020/05/14/business/economy/coronavirus-unemployment-claims.html>.

²⁰ Dyal JW, *supra* note 3.

²¹ Rachel Maddow, *Marked Change in Tone in CDC Meat Plant Reports Raises Questions*, MSNBC, May 1, 2020 <https://www.msnbc.com/rachel-maddow/watch/marked-change-in-tone-in-cdc-meat-plant-reports-raises-questions-82911301638>.

²² Luke Runyon & Eric Whitney, *Workers Scared As Trump Orders Meat Plants To Open During Coronavirus Crisis*, NPR (Apr. 29, 2020, 8:17 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/29/847937625/workers-scared-as-trump-orders-meat-plants-to-open-during-coronavirus-crisis>.

²³ See, e.g. Michael Puente, *Meatpacking Workers' Dilemma: Quit Job Or Face COVID-19 Risks*, NPR, May 14, 2020, <https://www.npr.org/local/309/2020/05/14/856162183/meatpacking-workers-dilemma-quit-job-or-face-c-o-v-i-d-19-risks> ("Despite testing positive, Maria returned to the plant this week because she was expected at work. . . . The woman, who's worked for Smithfield for more than two decades, said she felt she had no choice but to return to the plant. She said that, prior to the temporary shutdown, beard nets had been used as a sort of nose and

on whether individuals outside of the CDC, who have interests besides public health, have attempted to or have actually influenced CDC's response to the outbreaks.

Additionally, in light of broad concerns about potential food shortages²⁴ and increased grocery prices,²⁵ Americans, in general, need a better understanding of whether CDC's responses to meat processing plant outbreaks are being affected by political or industry pressure. For example, there is widespread concern that meat industry executives may be influencing federal officials' response to the COVID-19 outbreaks in meat processing facilities.²⁶ And that federal officials, outside of the CDC, are in turn pressuring CDC officials to change their guidance to facilities.²⁷ The requested records have the potential to either reassure the American public that CDC officials are not being influenced by special interests or to shed light on potential inappropriate pressure on the agency's leadership. This information is urgently needed by Americans facing unprecedented economic insecurity, who must decide how to grocery shop, to manage their families' budgets, and to demand accountability of their political leaders.

I further certify that American Oversight is primarily engaged in disseminating information to the public.²⁸ 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,²⁹ 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."³⁰ American Oversight uses the information gathered, and its analysis of it, to educate the

mouth covering, social distancing guidelines were not being followed and one person was allowed to work despite having a 102-degree temperature.").

²⁴ Gangitano *Supra* note 6; Jaewon Kang & Jacob Bunge, *A Smart Guide to the U.S. Meat Shortage*, WALL ST. J. (May 6, 2020, 8:37 AM), <https://www.wsj.com/articles/a-smart-guide-to-the-u-s-meat-shortage-11588768651>; Melissa Repko & Amelia Lucas, *The Meat Supply Chain is Broken. Here's Why Shortages are Likely to Last During the Coronavirus Pandemic*, CNBC, (May 7, 2020, 1:55 PM), <https://www.cnbc.com/2020/05/07/heres-why-meat-shortages-are-likely-to-last-during-the-pandemic.html>.

²⁵ Jordan Strickland, *USDA Finds Grocery Prices Rising At Highest Rate Since 2012*, FORBES (May 27, 2020, 7:08 AM), <https://www.forbes.com/sites/jordanstrickler/2020/05/27/usda-finds-grocery-prices-rising-at-highest-rate-since-2012/#191f26ae44c6>.

²⁶ Michael Corkery, et al., *Powerful Meat Industry Holds More Sway After Trump's Order*, N.Y. TIMES, Apr. 29, 2020, <https://www.nytimes.com/2020/04/29/business/coronavirus-trump-meat-plants.html>.

²⁷ Maddow, *supra* note 21.

²⁸ 45 C.F.R. § 5.27(b)(2).

²⁹ 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).

³⁰ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

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.³¹ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.³²

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:

- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and

³¹ American Oversight currently has approximately 15,500 page likes on Facebook and 102,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 20, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 20, 2020).

³² 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, <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>.

transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

- 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 account. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.³³ 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.³⁴
- 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,³⁵ 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 files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

³³ 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).

³⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

³⁵ 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>.

- 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 expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers
Executive Director
American Oversight