



September 25, 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.

Since late 2019, the coronavirus virus has spread across the globe, sickened tens-of-millions of people, and resulted in more than 200,000 deaths in the U.S. alone.¹ While the country as a whole struggles to respond to the virus, Americans working in meat-processing plants have been hit especially hard.² Recent reporting indicates extensive contact between top USDA officials and representatives of major meat-processing companies or trade associations, in which these organizations appealed for government intervention on behalf of these companies. These requests included a less rigorous testing regimen for employees of meat-processing companies, even as processing plants were becoming major sources of community spread, and leniency on safety measures such as cutting line speeds.³

¹ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (Sept. 25, 2020, 12:02 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

² *See Update: COVID-19 Among Workers in Meat and Poultry Processing Facilities - United States*, April-May 2020, Centers for Disease Control, July 10, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6927e2.htm>; Anna Stewart, *Why Meat Processing Plants Have Become Covid-19 Hotbeds*, CNN (June 27, 2020, 11:23 AM), <https://www.cnn.com/2020/06/27/health/meat-processing-plants-coronavirus-intl/index.html>.

³ Sky Chadde et al., *A Week Before Trump's Order Protecting Meat Plants, Industry Sent Draft Language to Feds*, USA Today (Sept. 14, 2020, 9:51 PM), <https://www.usatoday.com/story/news/2020/09/14/covid-19-meat-plants-sought-feds-protection-local-health-depts/5797051002/>; Michael Grabell & Bernice Yeung, *Emails Show the Meatpacking Industry Drafted an Executive Order to Keep Plants Open*, ProPublica (Sept. 14, 2020, 2:43 PM), <https://www.propublica.org/article/emails-show-the-meatpacking-industry-drafted-an-executive-order-to-keep-plants-open>.



American Oversight seeks records with the potential to shed further light on how USDA is protecting the health of workers during the coronavirus pandemic, and whether or to what extent federal policy is being influenced by special interests.

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:

All email communications (including emails, complete email chains, 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, including but not limited to at the email domains provided.

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 executive assistants, personal assistants, or schedulers ii. Chief of Staff to the Secretary, Joby Young iii. Deputy Secretary of Agriculture, Stephen Censky iv. Senior Advisor, Rebeckah Adcock v. Under Secretary for Food Safety, Dr. Mindy Brashears vi. Chief of Staff for the Office of Food Safety, Shawna Newsome vii. Under Secretary for Marketing and Regulatory Programs, Greg Ibach viii. Paul Kiecker, Administrator (FSIS) 	<ul style="list-style-type: none"> i. Any representative of the government of Kane County, IL (co.kane.il.us, kanehealth.com, or countyofkane.org) ii. Any representative of the government of the government of Hamilton County, TN (hamiltontn.gov) iii. Koch Foods (kochfoods.com)

Please provide all responsive records from March 1, 2020, through June 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.”⁴ The public has a significant interest in the federal government’s response to this national public health emergency. 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 needs of meat-processing plant workers and to what extent food processing companies have attempted to exert influence upon federal regulators to the detriment of worker safety and the public generally.⁵ 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.⁶ 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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ See, e.g., *supra* note 2; Michael Corkery & David Yaffe-Bellany, *As Meat Plants Stayed Open to Feed Americans, Exports to China Surged*, N.Y. Times, updated June 23, 2020, <https://www.nytimes.com/2020/06/16/business/meat-industry-china-pork.html>.

⁶ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ American Oversight currently has approximately 15,600 page likes on Facebook and 105,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 22, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 22, 2020).

⁸ See *generally News*, American Oversight, <https://www.americanoversight.org/blog>.

to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁹ posting records and editorial content about the federal government’s response to the coronavirus pandemic;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 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;¹² and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹³

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

⁹ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹⁰ *See generally The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

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>.

¹² *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>.

¹³ *See generally Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; *see, e.g., New Information on Pompeo’s 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

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 continued effects of the coronavirus pandemic on the safety of meat-processing plant workers and their communities, and whether outside interests are influencing federal policy with respect to this matter.¹⁴ 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 killed more than 200,000 people in the United States and still is on the rise in many parts of the country,¹⁵ and because meat-processing plants have largely avoided censure for inadequate worker protections¹⁶ while also being deemed "essential,"¹⁷ there is plainly an urgent need to inform the public about how USDA is responding to the spread of the virus in meat-processing facilities. The nearly half-a-million Americans who work in the meat-processing industry,¹⁸ along with their family and community members, urgently need more information about USDA's communications with meat-processing facilities and their representatives. Individuals in communities with meat-processing facilities urgently need to understand whether special interests are influencing USDA's decision-making regarding critical public health decisions.

The urgency of these records is further proven by reporting on a series of government failures to appropriately handle decisions regarding the virus in meat-processing facilities, including: concerns that FSIS inspectors were initially forbidden from wearing protective masks and are not being provided proper PPE;¹⁹ the pronounced lack of enforcement actions on the part of the Occupational Health and

¹⁴ See *supra* note 3; Stewart, *supra* note 2; Corkery & Yaffe-Bellany, *supra* note 5.

¹⁵ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (Sept. 25, 2020, 12:02 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

¹⁶ Ximena Bustillo, *U.S. Issues First Covid-19 Fine to Meatpacking Plant Totaling \$13,500*, Politico (Sept. 10, 2020, 5:53 PM), <https://www.politico.com/news/2020/09/10/osha-smithfield-coronavirus-fine-411925>.

¹⁷ Liz Crampton & Gabby Orr, *Trump Orders Meat Plants to Stay Open As Worker Deaths Rise*, Politico (Apr. 28, 2020, 9:46 PM), <https://www.politico.com/news/2020/04/28/trump-to-order-meat-plants-to-stay-open-215555>.

¹⁸ Jonathan W. Dyal et al. *COVID-19 Among Workers in Meat and Poultry Processing Facilities — 19 States*, April 2020, CDC, May 8, 2020, <https://doi.org/10.15585/mmwr.mm6918e3>.

¹⁹ 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/>

Safety Administration,²⁰ the agency primarily responsible for protecting workers' safety; and the president's own repeated rejection of basic public safety practices, like mask-wearing,²¹ and his insistence that the virus will "go away" even as case counts and fatalities continue to rise.²² There is also reporting that the decisions of local public health officials regarding poor working conditions within meat-processing plants have been overridden at the behest of meat companies.²³ The lenience of USDA and other federal officials is especially alarming given the reporting that while the meat industry was lobbying to be deemed "essential" to prevent American "food shortages" so that it could keep plants open, the industry also exported records amounts of meat to foreign markets.²⁴ Reporting on these companies specifically raises serious concerns about whether the public can trust USDA's public statements and decisions that affect them.²⁵ The records requested by American Oversight—USDA official's communications with representatives of meatpacking companies or state health officials—are urgently needed by employees of these companies, their families, their communities, public health officials of other affected states and communities, and members of the general public, who are desperately trying to contain the virus and, thus, whose health depends on the safety of meat-processing facilities.

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

²⁰ Bustillo, *supra* note 16.

²¹ Matthew Choi, *Trump Assails, Misrepresents Biden on Mask Mandate in Partisan White House Briefing*, Politico (Aug. 13, 2020, 7:37 PM), <https://www.politico.com/news/2020/08/13/trump-joe-biden-face-masks-395048>.

²² J.M. Rieger, *24 Times Trump Said the Coronavirus Would Go Away*, Wash. Post (Aug. 5, 2020, 2:56 PM), https://www.washingtonpost.com/video/politics/24-times-trump-said-the-coronavirus-would-go-away/2020/04/30/d2593312-9593-4ec2-aff7-72c1438fca0e_video.html.

²³ *See* Chadde et al., *supra* note 3.

²⁴ Corkery & Yaffe-Bellany, *supra* note 5.

²⁵ *See supra* note 3.

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 *See supra*, note 7.

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:

- 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

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, <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).

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 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,

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>.

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 Emma Lewis at foia@americanoversight.org or (202) 919-6303. 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