



October 13, 2020

VIA EMAIL

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

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight and Union of Concerned Scientists (collectively Requesters) make the following request for records.

Two divisions of the U.S. Department of Agriculture (USDA)—the Economic Research Service (ERS) and the National Institute of Food and Agriculture (NIFA)—currently are in the process of relocating from Washington, D.C. to a privately owned building in Kansas City, Missouri, known as 805 Penn. This move has resulted in significant attrition of ERS and NIFA employees, delayed the publication of important research reports, and halted the release of millions of dollars in federal funding.¹ The motivations behind and legality of the move have also been sharply questioned by a variety of private and public stakeholders.²

¹ Ben Guarino, *USDA Relocation Has Delayed Key Studies and Millions in Funding, Employees Say*, Wash. Post (Oct. 2, 2019, 7:00 AM), <https://www.washingtonpost.com/science/2019/10/02/usda-relocation-has-delayed-key-studies-millions-funding-employees-say/>.

² See, e.g., Matt Shuham, *Mulvaney Admits to Ulterior Motive for Suspicious Move of USDA Experts*, Talking Points Memo (Aug. 7, 2019, 6:00 AM), <https://talkingpointsmemo.com/muckraker/in-40-seconds-mulvaney-revealed-truth-about-moving-govt-scientists-to-real-america>; U.S. Dep't of Agric. Office of Inspector Gen., *USDA's Proposal to Reorganize and Relocate the Economic Research Service and National Institute of Food and Agriculture* (Aug. 2019), <https://www.usda.gov/oig/webdocs/91801-0001-23.pdf>; Ltr. from Rep. Wexton et al., to Comp. Gen. Dodaro, Dec. 11, 2019, <https://wexton.house.gov/sites/wexton.house.gov/files/12.11.19%20letter%20to%20gao%20re%20usda%20cba%20review.pdf>; Ltr. from Sens. Roberts and Stabenow to Secretary Perdue, Sept. 7, 2018, <https://www.soils.org/files/science->

Requesters seek records with the potential to shed light on the decisions to move to the Greater Kansas City Region generally, and 805 Penn specifically.

Requested Records

American Oversight and Union of Concerned Scientists request that the USDA produce the following records within twenty business days:

1. All email communications (including email messages, complete email chains, calendar invitations and any attachments thereto) sent by for former Deputy Assistant Secretary for Administration Donald Bice.

Please provide all responsive records from May 21, 2019, through May 24, 2019.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to electronic communications sent by Mr. Bice. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Mr. Bice's response to an email and the initial received message are responsive to this request and should be produced.

2. All voice mail messages, voice memos, text messages and similar electronic messaging applications (such as Signal, WhatsApp, Twitter DMs, Jabber, etc.) sent or received by former Deputy Assistant Secretary for Administration Donald Bice.

Please provide all responsive records from May 21, 2019, through May 24, 2019.

3. All calendars or calendar entries for former Deputy Assistant Secretary for Administration Donald Bice, including any calendars maintained on behalf of Mr. Bice, from May 1, 2019, through June 13, 2019.

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

[policy/letters/2018-09-07-nifa-reorg-senate-ag-letter.pdf](https://www.usda.gov/policy/letters/2018-09-07-nifa-reorg-senate-ag-letter.pdf); Ltr. from Rep. Bishop et al., to Secretary Perdue, Aug. 30, 2018, <https://bishop.house.gov/media-center/press-releases/agriculture-appropriations-subcommittee-members-send-letter-expressing>.

The search should include any calendars associated with Mr. Bice's individual email account, as well as any official calendars maintained for him, including by his administrative assistant or scheduler.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight and Union of Concerned Scientists request 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.

Requesters seek 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."³ The public has a significant interest in decisions regarding whether to relocate and/or reorganize federal agency offices. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the legitimacy of USDA's relocation of hundreds of federal employees from Washington, D.C., to Kansas City, Missouri. Requesters are 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 our analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁴ As a 501(c)(3) nonprofits, American Oversight and Union of Concerned Scientists do not have a commercial purpose and the release of the information requested is not in our 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

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses

³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ 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).

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

Union of Concerned Scientists (UCS) is a science-based public interest organization with more than 500,000 supporters—including parents, businesspeople, scientists, teachers, and students—throughout the United States. To help further its work of using sound scientific analysis—not political calculations or corporate hype—to create a healthy, safe, and sustainable future, as well as promote scientific integrity in government science, UCS seeks to provide its members and activists, as well as the general public, up-to-date information, news, and commentary on various aspects of science policy.

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>.

UCS consistently publishes in-depth reports on topics of critical interest.¹² It also publishes newsletters, fact sheets, blogs and other publications in print and electronic form. Moreover, UCS serves as a resource for the media and testifies before Congress, including on issues related to scientific integrity.

UCS maintains a public website, www.ucsusa.org, with science-policy related information and news. Its website is visited an average of 15,000 times each day. In March of 2015, UCS had over one million unique visitors to its website. Visitors to the website include scientists, teachers, businesspeople, federal and state officials, and other concerned citizens. Moreover, information posted on UCS's website is often linked to websites of other organizations. UCS also has a blog, available at blog.ucsusa.org, and is active on Facebook and Twitter.

UCS has a long history of successfully working with the news media to hold government officials and agencies accountable. For example, UCS staff possess detailed knowledge of political interference in science at the EPA.¹³ Its work in this area has been the subject of major congressional hearings¹⁴ and news coverage¹⁵.

Accordingly, American Oversight and Union of Concerned Scientists qualify for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, Requesters provide 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.

¹² Visit www.ucsusa.org for numerous examples of reports published on a variety of different topics.

¹³ See <http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/interference-at-the-epa.html> for more information.

¹⁴ See *Allegations of Political Interference with the Work of Government Climate Change Scientists: Hearing Before the H. Comm. on Oversight & Gov. Reform*, 110th Cong. (2007), <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg34913/html/CHRG-110hhrg34913.htm>.

¹⁵ See, e.g., Dina Cappillo, *Groups to EPA: Stop Muzzling Science Advisers*, SAN DIEGO UNION-TRIBUNE (Aug. 23, 2014, 10:44 AM), <https://www.sandiegouniontribune.com/sdut-groups-accuse-epa-of-muzzling-outside-advisers-2014aug12-story.html>; Christopher Lee, *Scientists Report Political Interference*, WASH. POST, April 24, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/23/AR2008042303074.html>.

- 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.¹⁶ 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; Requesters have 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.¹⁷
- 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,¹⁸ 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

¹⁶ 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).

¹⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁸ 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>.

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 Requesters, please do not hesitate to contact us to discuss this request. We welcome 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, Union of Concerned Scientists, 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 Requesters, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. We look 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 and Union of Concerned Scientists' 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



Ricardo J. Salvador
Director and Senior Scientist
Food and Environment Program
Union of Concerned Scientists