

May 17, 2021

**VIA EMAIL**

Office of the Secretary  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210  
[foiarequests@dol.gov](mailto:foiarequests@dol.gov)

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

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

On January 21, 2021, President Biden issued an executive order directing the Occupational Health and Safety Administration (OSHA) to consider issuing an Emergency Temporary Standard (ETS) by March 15, 2021, to protect workers from exposure to Covid-19.<sup>1</sup> OSHA submitted a draft ETS to the White House Office of Information and Regulatory Affairs (OIRA) on April 26, 2021,<sup>2</sup> but as of time of writing, the agency has yet to enact a standard.

Requesters seek records with the potential to shed light on the delay in OSHA's decision whether to issue an ETS, including whether or to what extent external parties may have advocated against the enactment of enhanced worker protections.

**Requested Records**

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

All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between the DOL officials listed in Column A, below, and any of the entities

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<sup>1</sup> Exec. Order No. 13,999, 86 Fed Reg. 7,211 (Jan. 21, 2021).

<sup>2</sup> *OSHA Moves Closer to Issuing Emergency Temporary Standard on COVID-19*, Safety & Health Mag., Apr. 28, 2021, <https://www.safetyandhealthmagazine.com/articles/21162-osha-moves-closer-to-issuing-emergency-temporary-standard-on-covid-19>.



listed in Column B, below, including any employees or representatives using the listed email domains.

Please provide all responsive records from January 20, 2021, through the date the search is conducted.

<b>Column A: DOL Officials</b>	<b>Column B: External Entities</b>
<ol style="list-style-type: none"> <li>1. Secretary of Labor Martin Walsh, or anyone communicating on his behalf (such as a scheduler or assistant)</li> <li>2. Former Acting Secretary of Labor Al Stewart, or anyone communicating on his behalf (such as a scheduler or assistant)</li> <li>3. Chief of Staff Daniel Arrigg Koh</li> <li>4. Deputy Chief of Staff Allison Zelman</li> <li>5. Senior Counselor to the Secretary M. Patricia Smith</li> <li>6. Senior Policy Advisor Josh Orton</li> </ol>	<ol style="list-style-type: none"> <li>1. American Association of Meat Processors (@aamp.com)</li> <li>2. American Farm Bureau Federation (@fb.org)</li> <li>3. Cargill (@cargill.com)</li> <li>4. Cattlemen’s Beef Board (@beefboard.org)</li> <li>5. Consumer Brands Association (@consumerbrandsassociation.org)</li> <li>6. Iowa Meat Processors Association (@iowameatprocessors.org)</li> <li>7. Iowa Pork Producers Association (@iowapork.org)</li> <li>8. JBS (@jbssa.com)</li> <li>9. Livestock Marketing Association (@lmaweb.com)</li> <li>10. Michael Torrey Associates (@torreydc.com)</li> <li>11. National Beef (@nationalbeef.com)</li> <li>12. National Cattlemen’s Beef Association (@ncba.org)</li> <li>13. National Chicken Council (@chickenusa.org)</li> <li>14. National Pork Board (@pork.org)</li> <li>15. National Pork Producers Council (@nppc.org)</li> <li>16. North American Meat Institute (@meatinstitute.org)</li> <li>17. Perdue Farms Inc. (@perdue.com)</li> <li>18. The Poultry Federation (@thepoultryfederation.com)</li> <li>19. The Russell Group (@russellgroupdc.com)</li> <li>20. Smithfield Foods (@smithfield.com or @smithfieldfoods.com)</li> <li>21. Triumph Foods (@triumphfoods.com)</li> <li>22. Tyson Foods Inc. (@tyson.com)</li> <li>23. US Poultry and Egg Association (@uspoultry.org)</li> </ol>

Please note that Requesters do not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if one of the listed officials received a mass-distribution news clip email from the American Association of Meat Processors, that initial email would not be responsive to this request. However, if the official forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

### **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.”<sup>3</sup> The public has a significant interest in the actions taken by DOL to protect workers from exposure to Covid-19.<sup>4</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether or to what extent business interests may have attempted to exert influence over agency decision-making with regards to the issuance of an ETS. Requesters are committed to transparency and make 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.<sup>5</sup> As 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

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<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>4</sup> *See supra*, notes 1 & 2.

<sup>5</sup> *See* 5 U.S.C. § 552(a)(4)(A)(iii).

also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>6</sup>

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.<sup>7</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;<sup>8</sup> posting records and editorial content about the federal government's response to the Coronavirus pandemic;<sup>9</sup> 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;<sup>10</sup> 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;<sup>11</sup> and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.<sup>12</sup>

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<sup>6</sup> American Oversight currently has approximately 15,680 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 10, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 10, 2021).

<sup>7</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>8</sup> *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> *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>.

<sup>12</sup> 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>.

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.

UCS consistently publishes in-depth reports on topics of critical interest.<sup>13</sup> 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](http://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](http://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.<sup>14</sup> Its work in this area has been the subject of major congressional hearings<sup>15</sup> and news coverage.<sup>16</sup>

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

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<sup>13</sup> Visit [www.ucsusa.org](http://www.ucsusa.org) for numerous examples of reports published on a variety of topics.

<sup>14</sup> See <http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/interference-at-the-epa.html> for more information.

<sup>15</sup> 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>.

<sup>16</sup> 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, Apr. 24, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/23/AR2008042303074.html>.

## 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:

- Our request includes all prior messages sent or received in an 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.<sup>17</sup> 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.<sup>18</sup>
- 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,<sup>19</sup> 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

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<sup>17</sup> 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).

<sup>18</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>19</sup> 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>.

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 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 American Oversight, 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 Monahan at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5244.

Sincerely,



Austin R. Evers  
Executive Director  
American Oversight



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