



July 29, 2020

Austin R. Evers
Executive Director
American Oversight
Suite B255
1030 15th Street, NW
Washington, DC 20005

RE: Freedom of Information Act Request Nos. 889331 and 889333 Regarding the Release of OSHA Laboratory Results Concerning the Evaluation of Commercial Talc for Asbestos Fibers

Dear Mr. Evers:

This determination is in response to your two Freedom of Information Act (FOIA) requests, FOIA Request No. 889331 and FOIA Request No. 889333, which were both dated February 21, 2020 and received in our office on March 2, 2020. OSHA has completed a search for records that are responsive to your requests and makes the following determinations.

In FOIA Request No. 889331, you asked for:

The results of the asbestos “confirmation test” of Johnson & Johnson’s Baby Powder lot #22318RB, which was run at OSHA’s laboratories.

You added:

This test followed AMA Analytical Service Inc’s test of Johnson’s Baby Powder lot #22318RB that revealed positive results of asbestos. FDA officials confirmed that they had the results of this “confirmation test” to staff members of the House Subcommittee on Economic and Consumer Policy, on November 25, 2019.

OSHA’s laboratory at the Salt Lake Technical Center in Utah did not perform a “confirmation test” of Johnson & Johnson’s Baby Powder lot #22318RB. We are, therefore, providing you with a no records response to FOIA Request No. 889331.

OSHA notes that it has in the past conducted testing of talc samples in connection with Food and Drug Administration (FDA) requests. See, e.g., <https://www.fda.gov/media/122413/download>. However, again, OSHA did not conduct testing of Johnson & Johnson’s Baby Powder lot #22318RB.

OSHA notes also that FDA consulted with OSHA about testing AMA Analytical Services, Inc. conducted for FDA on lot #22318RB. See <https://www.fda.gov/media/131989/download>.

However, OSHA does not consider this consultation to constitute a “confirmation test” on lot #22318RB. OSHA has in its possession some records that originated with FDA that are relevant to, or discuss, OSHA’s consult. OSHA suggests you request these records from FDA. If you request these records from OSHA, OSHA will refer the records to FDA for processing under the FOIA.

In FOIA Request No. 889333, you asked for:

All email communications (including complete email chains, email attachments, calendar invitations, and attachments thereto) about whether to release the results of the “confirmation test” described above, including communications that indicate a final decision. This request for communications encompasses both internal government communications as well as communications between your agency and Johnson & Johnson (including anyone with an email address ending in @jnj.com).

Footnote 2 in your request references “Food and Drug Administration, Baby Powder Manufacturer Voluntarily Recalls Products for Asbestos, Oct. 18, 2019, <https://www.fda.gov/news-events/press-announcements/babypowder-manufacturer-voluntarily-recalls-products-asbestos>.” That reference makes clear that FOIA Request No. 889333 also seeks records in connection with a “confirmation test” of Johnson & Johnson’s Baby Powder lot #22318RB, which was run at OSHA’s laboratories. Again, OSHA did not conduct testing of Johnson & Johnson’s Baby Powder lot #22318RB. Therefore, OSHA is also providing a no records response to your FOIA Request No. 889333.

If you have any questions concerning OSHA’s response to your FOIA requests, please contact Robert B. Turnage at 202-693-2036 or Turnage.Robb@dol.gov.

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. The appeal should also include a copy of your initial request and a copy of this letter.

If you appeal, you may mail your appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, NW, Washington, DC 20210 or fax your appeal to (202) 693-5538. Alternatively, you may email your appeal to foiaappeal@dol.gov; appeals submitted to any other email address will not be accepted. The envelope (if mailed), subject line (if emailed), or fax cover sheet (if faxed), and the letter indicating the grounds for appeal, should be clearly marked: “Freedom of Information Act Appeal.”

In addition to filing an appeal, you may contact the Department’s FOIA Public Liaison, Thomas G. Hicks, Sr., at (202) 693-5427 or hicks.thomas@dol.gov for assistance in resolving disputes. You also may contact the Office of Government Information Services (OGIS) for assistance. OGIS offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect

your right to pursue litigation. You may mail OGIS at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001. Alternatively, you may send an email using the link from their website at <https://ogis.archives.gov>, or address it directly to ogis@nara.gov. Finally, you can contact

OGIS by telephone: (202) 741-5770; fax: (202) 741-5769; or toll-free: 1-877-684-6448. It is also important to note that the service offered by OGIS is not an alternative to filing an administrative FOIA appeal.

Thank you for your interest in occupational safety and health.

Sincerely,

**Lee Anne
Jillings** Digitally signed by
Lee Anne Jillings
Date: 2020.07.29
18:32:47 -04'00'

Lee Anne Jillings, Acting Director
Directorate of Technical Support and Emergency Management