



United States
Department of
Agriculture

Office of the General Counsel
1400 Independence Ave. SW
Washington, DC 20250-1400

November 30, 2020

Delivered via Electronic Mail

Austin R. Evers
American Oversight
1030 15th Street NW, Suite B255
Washington, District of Columbia 20005
foia@americanoversight.org

**Re: Freedom of Information Act (FOIA) Request No. 2020-OSEC-03716-F
First Interim Response**

Dear Mr. Evers:

This is an interim response to the above-referenced FOIA request received by the Departmental FOIA Office (DFO). The request sought:

All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between any of the USDA officials listed below and anyone in the Executive Office of the President (including anyone with an email address ending in eop.gov).

Agency Officials

- a. Sonny Perdue, Secretary of Agriculture, including anyone communicating on his behalf, such as executive assistants, personal assistants, or schedulers
- b. Stephen Censky, Deputy Secretary of Agriculture
- c. Anyone serving in the role of Chief of Staff for the Secretary, including Joby Young
- d. Rebeckah Adcock, Senior Adviser
- e. Pam Miller, Administrator, Food and Nutrition Service
- f. Shiela Corley, Chief of Staff to the Administrator, Brandon Lipps, Deputy Under Secretary, Food and Nutrition Service and anyone acting on his behalf such as a chief or deputy chief of staff, scheduler, assistant, or advisor;

Please provide all responsive records from January 30, 2020, through the date of the search.

On April 28, 2020, you modified your request by narrowing the listed custodians to "Secretary Perdue, anyone serving in the role of Chief of Staff to the Secretary, including Joby Young, and Senior Advisor Rebeckah Adcock."

Your request is being processed under the FOIA, 5 U.S.C. § 552.

A search for responsive records was conducted by the DFO's telecommunications provider, the Client Experience Center (CEC). The CEC provides comprehensive, fee-for-service information technology (IT) associated operations, security, and technical support services to USDA end users. The CEC also implements and manages enterprise IT solutions for users Department-wide. The CEC searched the email accounts associated with the custodians mentioned in your modified request. The CEC search located records responsive to your FOIA request. For this first interim, the DFO reviewed a total of forty-three (43) pages of emails and the accompanying attachments.

The DFO continues to process your request.

Following a review of the responsive records, the DFO has determined certain information contained in the records released in this interim response should be withheld pursuant to 5 U.S.C. § 552 (b)(5) and (b)(6) (FOIA Exemptions 5 and 6). Additionally, twenty-eight (28) pages of records have been withheld in their entirety under FOIA Exemption 5. Below is an explanation of the information that has been withheld.

FOIA Exemption 5 – Deliberative

FOIA Exemption 5 protects from disclosure those “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” One of the frequently invoked FOIA Exemption 5 privileges is the deliberative process privilege. To fall within FOIA's deliberative process privilege, the records must be both pre-decisional and deliberative; the records must precede the adoption of an agency policy and include the opinions, recommendations, or deliberations on a legal or policy matter.

In this instance, the DFO is withholding, under the deliberative process privilege, pre-decisional intra- and inter-agency discussions on agency actions relating to proposed social media releases; proposed meetings; and proposed language for documents. The DFO is also fully withholding four (4) pages of records that consist of drafts for a proposal, talking points, and a document for agency guidance.

These items are pre-decisional in that they are antecedent to any final agency decision. These items are also deliberative in that they reflect the evolving, back-and-forth process between agency employees that is so integral to the Executive Branch decision-making process; more specifically, the development of potential recommendations made by agency advisors for use in making policy decisions.

If these pre-decisional, deliberative communications were released to the public, USDA and other Executive Branch employees would be much more cautious in their discussions with each other, and in candidly discussing and providing all pertinent information and viewpoints in a timely manner to agency decision-makers. This lack of candor would also seriously impair the Department's ability to engage in forthright, internal discussions necessary for efficient and proper agency decision-making.

FOIA Exemption 5 – Attorney-Client

The DFO is also withholding information under the attorney-client privilege. This privilege protects confidential communication between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinion given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client supplied information. In this instance, the DFO is withholding information whereby legal advice is being provided by the Department's counsel.

These confidential communications are shielded from disclosure in order to encourage open and frank discussions between the Department and its legal advisors. Ensuring the Department receives sound legal advice promotes public policy, and this advice depends on counsel being fully informed. The release of these confidential communications would inhibit the Department's ability to provide pertinent information and would impair the Department's counsel from making well-informed legal decisions.

FOIA Exemption 5 – Attorney Work Product

The attorney work-product protects materials prepared by an attorney or others in anticipation of litigation by shielding materials which would disclose the attorney's theory of the case or trial strategy. The privilege is available once specific claims have been identified that make litigation probable.

The materials that have been withheld under the attorney work-product privilege were prepared by or for a Department attorney in reasonable anticipation of litigation and reflect the parties' pre-litigation thoughts. We conclude that the withheld materials are protected in full from disclosure by the attorney work-product privilege of Exemption 5.

Exemption 5 – Presidential Communications Privilege

FOIA Exemption 5 protects from disclosure those "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Exemption 5 may incorporate virtually all civil discovery privileges; if a document is immune from civil discovery, it is similarly protected from mandatory disclosure under the FOIA. Rule 501 of the Federal Rules of Evidence allows courts to create privileges as necessary, which may be thereafter recognized under Exemption 5. The presidential communications privilege is one such privilege that has been recognized by courts under Exemption 5.

The presidential communications privilege protects communications among the President and his advisors. It applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones. The records being withheld here consist of documents that were solicited and received by the President or his immediate White House advisers who have broad and significant responsibility for investigating and formulating the advice to be given to the President. Accordingly, upon the advice of the White House Counsel's Office, certain

information and twenty-four (24) pages of responsive records are being withheld under the presidential communications privilege.

FOIA Exemption 6

Exemption 6 generally is referred to as the “personal privacy” exemption. It provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Application of the exemption involves balancing the public’s interest in disclosure against individuals’ privacy interests.

The information withheld under Exemption 6 consists of mobile phone numbers, direct phone numbers, unpublished business contact information, email addresses and telephone numbers belonging to employees of the Executive Office of the President (EOP), individuals’ personal reflections, and the alias email address for Secretary Sonny Perdue. This information qualifies as “similar files” because it is information in which individuals have a privacy interest. Releasing mobile phone numbers, direct phone numbers, unpublished business contact information, and the contact information of employees belonging to the EOP could subject the individuals to unwarranted or unsolicited communications. Although the release of individuals’ personal reflections would not likely result in unsolicited communications, this information is private in nature and its release does not shed light on governmental operations. Because there is a viable privacy interest that would be threatened by disclosure, Exemption 6 authorizes this office to withhold the information. Accordingly, we have determined that the public interest in the information’s release does not outweigh the overriding privacy interests in keeping it confidential.

With regard to the alias email address for Secretary Sonny Perdue, the agency has a significant interest in ensuring that its officials have the capacity to safely perform a full range of official functions, including emergency operations, continuity of operations, and devolution planning and execution. These functions could not be accomplished if public email-writing campaigns impeded communications to the email accounts from which officials operate in emergency situations. In the event of emergency, not only are alias accounts necessary for safe and efficient emergency operations, but also so that family members can reach otherwise unavailable officials. While the existence of such alias email accounts and certain content of emails released therefrom may shed light on agency functions, the actual email addresses do not in and of themselves advance a public interest—particularly when balanced against the critical interest of agency officials in maintaining safe and responsible communication with critical business contacts including those in The White House, during emergency situations and situations presenting potential national security threats. That said, in response to records requests, it is the agency’s policy to process and release responsive documents derived from searches of all agency email accounts (including alias email accounts) to the extent not otherwise exempt or prohibited by law. Furthermore, we note that the disclosure of officials’ primary official email accounts serves as the most appropriate point of contact for the public and poses the least amount of risk or threat in emergency operations.

Austin R. Evers

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You have the right to appeal the DFO's determinations. Due to the need to issue more than one determination in order to fully resolve your request, your appeal rights for all determinations in response to this request will be provided to you in our final response letter.

You may seek dispute resolution services from the DFO's FOIA Public Liaison, Ms. Camille Aponte. Ms. Aponte may be contacted by telephone at (202) 505-0271, or electronically at Camille.Aponte@usda.gov or USDAFOIA@usda.gov.

You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit <https://www.archives.gov/ogis/mediation-program/request-assistance> for information about how to request OGIS assistance in relation to a FOIA request.

If you have any questions regarding the processing of this request, please contact Ms. Melanie Enciso at (202) 694-5982, or electronically at melanie.enciso@usda.gov or USDAFOIA@usda.gov.

For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at www.dm.usda.gov/foia.

The DFO appreciates your patience as we continue processing the remainder of your FOIA request.

Sincerely,



Alexis R. Graves
Departmental FOIA Officer
Office of the General Counsel

Enclosures: Responsive Records (15 pages)

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Julie Radford](#) (b)(6)
Subject: Just checking
Date: Wednesday, April 29, 2020 4:37:45 PM

You called me earlier so just trying to catch you to make sure you don't need anything further.
I can cease and desist if you're good to go.

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Julie Radford](#) (b)(6)
Subject: Walking into WW
Date: Wednesday, April 29, 2020 2:30:54 PM

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Radford, Julie T. EOP/WHO](#)
Subject: Local producers/farmers
Date: Wednesday, April 29, 2020 12:11:00 PM

Hi-

See below a few resources that should cover the U.S. for small farms that sell locally through direct to consumer or farmers markets. Two are USDA public resources. These may not cover all farms (i.e. may not include small enterprises that market to restaurants, etc.). One additional resource I would suggest for that is the state agriculture commissioner. Many states have their own directories and state programs for smaller producers.

Please let me know your thoughts and additional questions. Standing by to assist further.

-Joby

AMS's Marketing Services Division contains local food directories with this information. Two relevant directories include the on-farm stand directory:

<https://www.ams.usda.gov/local-food-directories/onfarm>

And community supported agriculture directory:

<https://www.ams.usda.gov/local-food-directories/csas>

These are voluntary directories, so they are not comprehensive, although AMS strives to maintain their accuracy. These two are a direct marketing link to farmers.

Another commonly used resources is LocalHarvest:

<https://www.localharvest.org/csa/>

Again, this links to farms that offer community supported agriculture (CSA) opportunities.

This resource is a directory for DC/VA/MD/PA region.

<https://www.futureharvestcasa.org/resources/find-farmer-or-market-map>



Joby Young

Chief of Staff
 United States Department of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Bennett, Elizabeth T. EOP/WHO](#); [Troye, Olivia EOP/NSC](#)
Subject: Fwd: EO one-pager
Date: Wednesday, April 29, 2020 9:43:28 AM
Attachments: [SP Talking Points on Executive Order.docx](#)
 Attachment (1 page) withheld in full under FOIA Exemption 5: Deliberative/Pre-decisional

Draft talking points for 10am

Joby Young
 Chief of Staff
 U.S. Dept. of Agriculture

From: Rodgers, Meghan - OC, Washington, DC <meghan.rodgers@usda.gov>
Sent: Wednesday, April 29, 2020 9:41:12 AM
To: Newsome, Shawna - OSEC, Washington, DC <Shawna.Newsome@usda.gov>; Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Rollins, Blake - OSEC, Washington, DC <blake.rollins@usda.gov>; Beal, Mary Dee - OSEC, Washington, DC <MaryDee.Beal@usda.gov>; Shuford, Campbell - OSEC, Washington, DC <campbell.shuford@usda.gov>; Hoskins, Dudley - OSEC, Washington, DC <dudley.hoskins@usda.gov>
Cc: Ghee, Hailey - OSEC, Washington, DC <hailey.ghee@usda.gov>; Crowe, Taylor - OSEC, Washington, DC <Taylor.Crowe@usda.gov>
Subject: RE: EO one-pager

And here are talking points for the call for SP

From: Newsome, Shawna - OSEC, Washington, DC <Shawna.Newsome@usda.gov>
Sent: Wednesday, April 29, 2020 9:39 AM
To: Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Rollins, Blake - OSEC, Washington, DC <blake.rollins@usda.gov>; Beal, Mary Dee - OSEC, Washington, DC <MaryDee.Beal@usda.gov>; Shuford, Campbell - OSEC, Washington, DC <campbell.shuford@usda.gov>; Rodgers, Meghan - OC, Washington, DC <meghan.rodgers@usda.gov>; Hoskins, Dudley - OSEC, Washington, DC <dudley.hoskins@usda.gov>
Subject: RE: EO one-pager

updated

Shawna Newsome
 Office of Food Safety
 Cell: (b)(6)

From: Newsome, Shawna - OSEC, Washington, DC
Sent: Wednesday, April 29, 2020 9:36 AM
To: Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Rollins, Blake - OSEC, Washington, DC <blake.rollins@usda.gov>; Beal, Mary Dee - OSEC, Washington, DC <MaryDee.Beal@usda.gov>; Shuford, Campbell - OSEC, Washington, DC <campbell.shuford@usda.gov>; Rodgers, Meghan - OC,

Washington, DC <meghan.rodgers@usda.gov>; Hoskins, Dudley - OSEC, Washington, DC
<dudley.hoskins@usda.gov>

Subject: EO one-pager

Here you go

Shawna Newsome

Chief of Staff

Office of Food Safety, USDA

1400 Independence Ave., SW

Washington, D.C. 20250

Cell: (b)(6)

Email: shawna.newsome@usda.gov

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Troye, Olivia EOP/NSC](#); [Bennett, Elizabeth T. EOP/WHO](#)
Subject: Fwd: EO one-pager
Date: Wednesday, April 29, 2020 9:42:24 AM
Attachments: [EOonepager.docx](#)
 Attachment (1 page) withheld in full under FOIA Exemption 5: Deliberative/Pre-decisional

Draft proposal for implementation

Joby Young
 Chief of Staff
 U.S. Dept. of Agriculture

From: Newsome, Shawna - OSEC, Washington, DC <Shawna.Newsome@usda.gov>
Sent: Wednesday, April 29, 2020 09:38
To: Young, Joby - OSEC, Washington, DC; Rollins, Blake - OSEC, Washington, DC; Beal, Mary Dee - OSEC, Washington, DC; Shuford, Campbell - OSEC, Washington, DC; Rodgers, Meghan - OC, Washington, DC; Hoskins, Dudley - OSEC, Washington, DC
Subject: RE: EO one-pager

updated

Shawna Newsome
 Office of Food Safety
 Cell: (b)(6)

From: Newsome, Shawna - OSEC, Washington, DC
Sent: Wednesday, April 29, 2020 9:36 AM
To: Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Rollins, Blake - OSEC, Washington, DC <blake.rollins@usda.gov>; Beal, Mary Dee - OSEC, Washington, DC <MaryDee.Beal@usda.gov>; Shuford, Campbell - OSEC, Washington, DC <campbell.shuford@usda.gov>; Rodgers, Meghan - OC, Washington, DC <meghan.rodgers@usda.gov>; Hoskins, Dudley - OSEC, Washington, DC <dudley.hoskins@usda.gov>
Subject: EO one-pager

Here you go

Shawna Newsome
Chief of Staff
 Office of Food Safety, USDA
 1400 Independence Ave., SW
 Washington, D.C. 20250
 Cell: (b)(6)
 Email: shawna.newsome@usda.gov

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Bennett, Elizabeth T. EOP/WHO](#)
Subject: 10 am call w potus now
Date: Tuesday, April 28, 2020 8:47:48 PM

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Julie Radford](#) (b)(6)
Subject: Follow up
Date: Tuesday, April 28, 2020 12:07:55 PM

Tried to buzz you a couple times this AM. Let me know when you have a schedule opening.

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Troye, Olivia EOP/NSC](#); [Bennett, Elizabeth T. EOP/WHO](#)
Subject: Touch base
Date: Tuesday, April 28, 2020 12:04:52 PM

Need to chat when either of you are free. Thanks!

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Bennett, Elizabeth T. EOP/WHO](#); [Chaffee, Christopher L. EOP/WHO](#)
Cc: [Troye, Olivia EOP/NSC](#); [Obenshain, Tucker T. EOP/OVP](#); [Rollins, Blake - OSEC, Washington, DC](#); [Brady, Lillie - OSEC, Washington, DC](#); [Willits, Ashley - OSEC, Washington, DC](#); [Newsome, Shawna - OSEC, Washington, DC](#)
Subject: Governor call
Date: Tuesday, April 28, 2020 9:13:53 AM

SP is yes for a (b)(5) DPP .

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Radford, Julie T. EOP/WHO](#); [James. bailey - FASContact](#); [Bruce Harris](#)
Cc: [Walker, Kathryn B. EOP/WHO](#)
Subject: Re: EXT: Farmer support touch base
Date: Monday, April 27, 2020 9:35:09 AM

Thanks all. Look forward to connecting.

Joby Young
 Chief of Staff
 U.S. Dept. of Agriculture

From: Radford, Julie T. EOP/WHO <(b)(6)>
Sent: Monday, April 27, 2020 9:20:53 AM
To: James. bailey - FASContact <(b)(6)@walmart.com>; Bruce Harris <(b)(6)@walmart.com>
Cc: Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Walker, Kathryn B. EOP/WHO <(b)(6)>
Subject: RE: EXT: Farmer support touch base

Thank you Bruce and Tres!
 Tres - Kathryn will send a few options over. Joby and I look forward to connecting with you.

-----Original Message-----

From: Tres Bailey <(b)(6)@walmart.com>
Sent: Monday, April 27, 2020 8:30 AM
To: Bruce Harris <(b)(6)@walmart.com>
Cc: Radford, Julie T. EOP/WHO <(b)(6)>; Joby Young <joby.young@usda.gov>; Walker, Kathryn B. EOP/WHO <(b)(6)>
Subject: [EXTERNAL] Re: EXT: Farmer support touch base

Hi Julie, I can make myself available any time this afternoon that works for you and Joby. Many thanks,

Tres

Sent from my iPhone

> On Apr 27, 2020, at 8:07 AM, Bruce Harris <(b)(6)@walmart.com> wrote:
 >
 > Hey Julie -
 >
 > Thanks for the note. I have to be at the White House today with Doug so I won't be able to do a call but have cc'd my colleague Tres Bailey to represent us. Tres is the company's food policy expert and the person I'd be turning to for assistance while we assess the possibilities here.
 >
 > Thx and I'll call you this AM to try and connect.
 >
 > Bruce C. Harris
 > Vice President, Federal Government Affairs
 >

>> On Apr 26, 2020, at 4:09 PM, Radford, Julie T. EOP/WHO <(b)(6)>
wrote:

>>

>> Bruce - hope you're well and getting to enjoy a little downtime this weekend.

>> Do you have availability tomorrow afternoon to hop on a quick call with myself and Joby Young, USDA COS, to follow-up on Ivanka and Doug's conversation.

>> Appreciate your time and look forward to connecting!

>> Julie

>>

>> Sent from my iPhone

(b)(5) PCP

From: Doug McMillon <(b)(6)@walmart.com>
Sent: Friday, April 24, 2020 4:42 PM
To: Radford, Julie T. EOP/WHO <(b)(6)>
Cc: Bruce Harris <(b)(6)@walmart.com>; (b)(6) IMT
Subject: [EXTERNAL] Small farmers

Hi Julie, just spoke to Ivanka the part-time school teacher. She outlined the USDA initiative to match small farmers to grocers so we can help offset the lack of demand they're experiencing given so many restaurants are closed or operating at limited capacity. Sounds like we're going to receive information about which small farmers are participating and possibly what they grow. We, the grocers, will consider ordering product for 1. Our stores/eComm businesses, 2. Distribution to food banks and 3. Distribution to organizations like World Vision, Meals on Wheels, etc. Do I have that right? Next steps?

USDA-20-1044-A-000013

Thanks, Doug

From: [Young, Joby - OSEC, Washington, DC](#)
To: [Denzel McGuire](#) (b)(6)
Subject: Fwd: RE-opening Document
Date: Friday, April 24, 2020 1:42:37 PM
Attachments: [COVIDINDUSTRYGUIDANCE_edits.docx](#)
Attachment (2 pages) withheld in full under FOIA Exemption 5: Deliberative/Pre-decisional

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>
Sent: Friday, April 24, 2020 12:12:36 PM
To: Bennett, Elizabeth T. EOP/WHO <(b)(6)>
Subject: Fwd: RE-opening Document

Tate:

Members of our leadership at USDA would like (b)(5) DPP
[REDACTED]

(b)(5) DPP
[REDACTED]

-Joby

Joby Young
Chief of Staff
U.S. Dept. of Agriculture
