



October 26, 2021

VIA EMAIL

Research, Education and Economics (REE)
Agricultural Research Service
U.S. Department of Agriculture
5601 Sunnyside Avenue
Stop 5128
Beltsville, MD 20705-5128
REEFOIA@ars.usda.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 the Agricultural Research Service (ARS), 7 C.F.R. Part 510, American Oversight and Union of Concerned Scientists (UCS) (collectively Requesters) make the following request for records.

Each year the Office of Personnel Management (OPM) administers the Federal Employee Viewpoint Survey (FEVS) to employees across federal government departments and agencies. FEVS collects information about employee views of their workplace and their satisfaction with their jobs. OPM publicly shares survey responses identified by agency (e.g., the U.S. Department of Agriculture (USDA)) on its website.¹ In some survey years and for some agencies, the publicly available data on OPM's website provides survey responses that are identified by the employee's sub-agency or work unit. In other survey years and for some respondent agencies, the employee's sub-agency or work unit is not provided in these publicly available data.

UCS requested data with sub-agency and work-unit identifiers from OPM on July 6, 2021, and was instructed to contact specific agency officials to obtain these data (see attached email communications).² Agency officials with whom UCS communicated—specifically those at USDA—instructed UCS to submit a FOIA request to obtain these data.³ In accordance with these instructions, Requesters hereby submit this FOIA request.

Requested Records

Requesters ask that the ARS produce the following records within twenty business days:

¹ Office of Personnel Management, Federal Employee Viewpoint Survey, <https://www.opm.gov/fevs/> (last visited Oct. 20, 2021).

² See Exhibit A.

³ See Exhibit B.

All FEVS data, including data reflecting the agency and sub-agency or work unit of respondents,⁴ for any respondent completing the FEVS from 2012–2020 who were identified as working at USDA’s Economic Research Service (ERS) or National Institute of Food and Agriculture (NIFA). To the extent ARS maintains these data in aggregated form, such as in a spreadsheet or within a database or other format that can be readily exported to a spreadsheet, Requesters ask for responsive data in such format. Requesters also ask for any corresponding data dictionary, code book, translation files, or other guide to variables or abbreviations of data fields.

Requesters do not object to the redaction of respondent names or other personal identifying information. However, if the agency is unable to perform sufficient redactions to address privacy or confidentiality issues, Requesters will also accept tabulations of all FEVS questions/items and corresponding responses from 2012–2020 for ERS and NIFA respondents at the sub-agency or work-unit level.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency’s regulations, American Oversight and UCS 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.”⁵ The public has a significant interest in understanding how effective government agencies and scientists are at carrying out their mission and duties. The requested data will shed light on how satisfied and effective USDA researchers and employees who support government-funded research have been over the time period under study. Requesters are committed to transparency and will make the responses ARS provides publicly available, and the public’s understanding of the government’s activities will be enhanced through our analysis and publication of these records.

Specifically, UCS intends to publish a peer-reviewed journal article that will demonstrate changes in the workforce and job satisfaction among ERS and NIFA employees from 2012 to

⁴ Other outside groups, such as the Partnership for Public Service, have access to these data and publish their own tabulations of some FEVS questions using sub-agency or work-unit level identifiers. These data are available on their website. *See* Partnership for Public Service, National Institute of Food and Agriculture, <https://bestplacestowork.org/rankings/detail/?c=AG22> (last visited Oct. 20, 2021); Partnership for Public Service, Economic Research Service, <https://bestplacestowork.org/rankings/detail/?c=AG18> (last visited Oct. 20, 2021). Consequently, we believe responsive records reflecting the data specified exist, and we expect that USDA can fulfill this request.

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

2020. UCS is particularly interested in evaluating trends in ERS and NIFA employee workplace views and job satisfaction over this time because of the changes occurring at both agencies during the prior administration's relocation of them from Kansas City, MO.⁶ UCS's analyses will inform efforts to better protect federal scientists, as well as their agencies' scientific endeavors and priorities, from political attacks in the future. American Oversight will make the data received from ARS available publicly on its website so that the public has full access to them.

This request is primarily and fundamentally for non-commercial purposes.⁷ As 501(c)(3) nonprofits, American Oversight and UCS 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.⁸

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.⁹ 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;¹⁰ posting records and editorial content about the federal government's response to the Coronavirus pandemic;¹¹ 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;¹² the posting of

⁶ Brian Lowry & Steve Vockrodt, *More Than a Year After USDA Move to Kansas City, Hundreds of Positions Remain Vacant*, Kan. City Star, Apr. 25, 2021, <https://www.kansascity.com/news/politics-government/article250889644.html>.

⁷ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ American Oversight currently has approximately 15,600 page likes on Facebook and 108,800 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 18, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 18, 2021).

⁹ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

¹⁰ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹¹ 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>.

¹² See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall*

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;¹³ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹⁴

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.¹⁵ 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 May 2021, UCS had nearly 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.¹⁶ Its work in this area has been the subject of major

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>.

¹³ *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>.

¹⁴ 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>.

¹⁵ Visit www.ucsusa.org for numerous examples of reports published on a variety of different topics.

¹⁶ See generally *Interference at the EPA: Science and Politics at the Environmental Protection Agency*, Union of Concerned Scientists, <http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/interference-at-the-epa.html> for more information.

congressional hearings¹⁷ and news coverage¹⁸.

Accordingly, American Oversight and UCS 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.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- 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.¹⁹ 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.²⁰
- 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,²¹ and many agencies have

¹⁷ 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>.

¹⁸ 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>.

¹⁹ 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).

²⁰ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²¹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential->

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 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, UCS, 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 Rachel Baron at foia@americanoversight.org or 202.897.2465. Also, if American

[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>.

Oversight and UCS's 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