



United States
Department of
Agriculture

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

March 26, 2020

Delivered via Electronic Mail

Austin R. Evers
Christine H. Monahan
American Oversight
1030 15th St. NW, Suite B255
Washington, DC 20005
foia@americanoversight.org

**RE: Freedom of Information Act (FOIA) Request 2020-DA-02927-F
Final Response**

Dear Mr. Evers and Ms. Monahan:

This correspondence and the accompanying records constitute the U.S. Department of Agriculture, Departmental FOIA Office's (DFO) final response for FOIA request **2020-DA-02927-F**. Your request seeks the following information:

The Expression of Interest submitted by 805 Penn on or before October 15, 2018, in response to USDA's solicitation for proposals for new locations for the Economic Research Service and National Institute of Food and Agriculture.

Your request was received on February 28, 2020 and has been processed under the FOIA, 5 U.S.C. §552.

An initial search for responsive records was conducted by 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 conducted a search of the email account relocation@usda.gov, the email address provided in the August 15, 2018 Federal Register Notice of Request for Expression of Interest for Potential Sites for Headquarters Office Locations. The DFO performed a manual review of the search results and identified six (6) pages of records responsive to your request. Enclosed please find Bates Number 0001; Bates Numbers 0002-0006 are comprised of an attachment, marked in red text on the enclosed record.

The DFO has determined that certain information within the records should be withheld pursuant to 5 U.S.C. §552(b)(4) (FOIA Exemption 4). Below is an explanation of the information withheld.

Application of 5 U.S.C §552(b)(4) "FOIA Exemption 4"

FOIA Exemption 4 shields from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C § 552(b)(4). The

Supreme Court recently addressed the definition of “confidential.” See *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). The DFO has determined to withhold a portion of the cover email and the entire attachment under Exemption 4. As an initial matter, the DFO has determined that the information marked as Exemption 4 meets the threshold because it was obtained from a private organization. The information is commercial and financial because it reflects the presentation of information and the materials compiled in response to USDA’s request, including information about anticipated capital and operating costs. The DFO has determined that the information is customarily and actually treated as private or closely held; accordingly, the DFO has determined to withhold the information under Exemption 4.

You may appeal this response by email at USDAFOIA@usda.gov, or by mail to Inga Bumbarly-Langston, Deputy General Counsel, Room 101-W, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-0103. Your appeal must be in writing, and it must be received electronically (or postmarked if by mail) no later than 90 calendar days from the date of this letter. The Office of the General Counsel will not consider appeals received (or postmarked) after the 90 calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above, a copy of the original request, the DFO’s response to your original request, and a statement explaining the basis of your appeal. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked “Freedom of Information Act Appeal.” You should reference FOIA Request No. 2020-DA-02927-F.

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.

Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees will be charged; therefore, your fee waiver request is moot.

If you have any questions regarding the processing of this request, please contact Brooke Geller at brooke.geller@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.

Austin R. Evers
Christine H. Monahan
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The DFO appreciates the opportunity to assist you with this matter.

Sincerely,

Alexis R. Graves

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

Enclosure: Responsive Record (Bates Number 0001)

From: [Merriman, Edward](#)
To: relocation@usda.gov
Subject: Expression of Interest
Date: Friday, October 12, 2018 12:49:48 PM
Attachments: [Response - USDA - 805 PENN.pdf](#) Attachment (5 pages 0002-0006) withheld in full under (b)(4)

To whom it may it concern,

On behalf of 805 Penn, LLC we respectfully submit an expression of interest for the relocation of the USDA's proposed relocation of the National Institute of Food and Agriculture (NFIA) and the Economic Research Service (ERS). [REDACTED] (b) (4)

[REDACTED]

Sincerely,
Edward Merriman

This email, including any attachments, is intended for the person(s) or company to whom it is addressed and may contain confidential and/or legally privileged information. If you are not the intended recipient, please be advised that you have received this message in error and that unauthorized disclosure, forwarding, printing or copying of this information is strictly prohibited and may be unlawful. Please notify the sender immediately, either at the original sender's email address, or by calling 1-800-231-0801. For all other questions please contact the company operator at (816) 391-2000.