

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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PUBLIC CITIZEN, INC.		)	
1600 20th Street NW,		)	
Washington, DC 20009,		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No. 20-1625
		)	
U.S. DEPARTMENT OF AGRICULTURE,		)	
1400 Independence Avenue SW,		)	
Washington, DC 20250,		)	
Defendant.		)	
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Public Citizen, Inc. brings this action to compel defendant U.S. Department of Agriculture (USDA) to produce records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

3. Plaintiff Public Citizen is a nonprofit, public-interest organization. Public Citizen submitted the FOIA request at issue in this action.

4. Defendant USDA is an agency of the United States and has possession of and control over records responsive to Public Citizen’s FOIA request.

## STATEMENT OF FACTS

5. On February 17, 2020, Public Citizen submitted a FOIA request to USDA's Food and Safety Inspection Service (FSIS) seeking (1) any records by which market hog establishments notified FSIS, including any FSIS District Office, of their intent to operate under the "New Swine Inspection System," and (2) any records concerning market hog establishments that notified FSIS of their intent to operate under the "New Swine Inspection System."

6. This request sought records from October 1, 2019, through the date of search.

7. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), Public Citizen requested that all fees associated with processing its FOIA request be waived.

8. FSIS acknowledged receipt of Public Citizen's FOIA request on February 18, 2020.

9. On April 17, 2020, FSIS issued a final determination denying Public Citizen's FOIA request. FSIS stated that it had identified seven pages of responsive records, which it referred to as "waiver requests," and that all seven pages were exempt from disclosure under FOIA exemption 4, 5 U.S.C. § 552(b)(4). FSIS asserted that these records fell within exemption 4 because they "contain commercial or financial information that is customarily be treated as private by the business submitters."

10. FSIS's response did not state whether FSIS had searched for or located any records responsive to the second part of Public Citizen's request.

11. Although Public Citizen's request was not limited to any office, division, or branch of FSIS, FSIS stated that it had searched for records only in the Office of Field Operations.

12. On April 24, 2020, Public Citizen appealed FSIS's denial of its FOIA request.

13. First, Public Citizen's appeal explained that FSIS's search was inadequate both because it appeared to have ignored the second part of the request and because it was limited to

the Office of Field Operations. As evidence of the inadequacy of the search, Public Citizen directed FSIS's attention to several publicly available documents, including records listed on FSIS's own website, that were clearly responsive to the request, should have been produced, and were not.

14. Second, Public Citizen's appeal explained that FSIS's invocation of FOIA exemption 4 for the records at issue was incorrect as a matter of law because FSIS did not provide an assurance of privacy to establishments that notified it of their intent to adopt the New Swine Inspection System. To the contrary, FSIS has previously identified plants that have adopted the New Swine Inspection System or similar programs on its own website and in other public documents. In addition, there is no indication that establishments "customarily and actually" treat their participation in the New Swine Inspection System as private, as demonstrated by public materials cited in the appeal.

15. For these reasons, Public Citizen requested that FSIS renew its search, including of additional custodians' records, and produce the seven withheld pages.

16. On April 27, 2020, FSIS confirmed that it had received the appeal on April 24, 2020.

17. Under 5 U.S.C. § 552(a)(6)(A)(ii), FSIS had 20 working days to make a determination with respect to Public Citizen's appeal.

18. On May 28, 2020, Public Citizen contacted FSIS to inquire about the status of the appeal and note that more than 20 days had passed.

19. On May 29, 2020, FSIS informed Public Citizen that the Office of General Counsel was still processing the appeal. FSIS provided no explanation for the delay and no estimate regarding when the agency would issue a final determination.

20. More than 20 working days have passed since Public Citizen's April 24, 2020 appeal and FSIS has neither ruled on the appeal nor produced any records in response to Public Citizen's FOIA request.

21. Public Citizen has exhausted its administrative remedies with respect to its FOIA request to FSIS.

### **CLAIM FOR RELIEF**

22. Public Citizen has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested. No legal basis exists for the failure of USDA to disclose the records to Public Citizen.

### **PRAYER FOR RELIEF**

WHEREFORE, Public Citizen requests that this Court:

- A. Declare unlawful USDA's withholding of the requested records;
- B. Order USDA to make the requested records available to Public Citizen without delay and at no cost;
- C. Award Public Citizen its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- D. Grant all other appropriate relief.

Dated: June 19, 2020

Respectfully submitted,

/s/ Adam R. Pulver  
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