

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

_____)	
PUBLIC CITIZEN,)	
1600 20th Street NW)	
Washington, DC 20009,)	
)	
Plaintiff,)	Civil Action No. 20-2495
)	
v.)	
)	
U.S. DEPARTMENT OF LABOR,)	
200 Constitution Avenue NW)	
Washington, DC 20210,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Public Citizen brings this action to compel defendant U.S. Department of Labor (DOL) 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 organization and submitted the FOIA request at issue in this action.

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

FACTS

5. On May 1, 2020, Public Citizen submitted to DOL a FOIA request seeking records relating to the agency’s response to the COVID-19 pandemic and its impact on the health and

safety of workers at meat and poultry processing facilities in the United States. A true and correct copy of that request is attached as Exhibit 1.

6. Specifically, the FOIA request asked for four categories of records created from March 13, 2020, through the date of search: (1) “Any communications related to COVID-19, the coronavirus, and/or plant closures, slowdowns, or openings related to the pandemic between Department of Labor officials or staff and representatives of” nine specified entities (six poultry and meat processing companies and three industry groups); (2) “Any communications between Department of Labor officials or staff and Department of Agriculture officials and staff relating to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus,” (3) “All records regarding the ‘Statement of Enforcement Policy’ issued by Solicitor of Labor Kate O’Scannlain and Principal Deputy Assistant Secretary for OSHA Loren Sweatt, on April 28, 2020,” and (4) “All records concerning the applicability of state and local public health, worker safety, or consumer protection law, or state tort law to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.”

7. Public Citizen requested expedited processing of this request, pursuant to FOIA, 5 U.S.C. § 552(a)(6)(E)(1), and DOL regulation, 29 C.F.R. § 70.25(e). In support of its request for expedited processing, Public Citizen cited the number of workers at meat processing facilities that had already contracted COVID-19 and/or died from it, and the lack of public information about DOL’s efforts to protect these workers.

8. Public Citizen requested that DOL waive any fees associated with responding to the FOIA request.

9. DOL received Public Citizen’s FOIA request on May 1, 2020.

10. On May 4, 2020, DOL acknowledged Public Citizen's FOIA request and assigned it to the Occupational Safety and Health Administration (OSHA), the Office of the Solicitor of Labor (SOL), the Office of the Assistant Secretary for Policy (OASP), the Office of the Secretary (OSEC), the Office of Congressional and Intergovernmental Affairs (OCIA), and the Office of Public Affairs (OPA).

11. On May 12, 2020, DOL told Public Citizen that "[t]he Department has decided to consolidate [Public Citizen's] request for processing purposes."

12. On May 18, 2020, DOL asked Public Citizen to voluntarily narrow the scope of its requests.

13. That same day, Public Citizen responded and agreed to narrow its request, as reflected in Exhibit 2.

14. On May 21, 2020, DOL confirmed receipt of Public Citizen's response, and stated it would "get a sense of the # of records that would be responsive" and "w[ould] get back to [Public Citizen] soon."

15. On July 10, 2020, DOL provided a status update as to five DOL components. It stated that OASP had no responsive records. It stated that "SOL, OSHA and OSEC [we]re conducting search and review of their records," and that OSHA anticipated beginning a review of responsive records within "two or so more weeks." DOL stated that OCIA had "located 72 pages" and was in the process of reviewing them. DOL did not address OPA. DOL indicated that it "plan[ned] to provide an interim Departmental response in the near future to include OASP and responsive records from OCIA."

16. On July 22, 2020, DOL e-mailed stating that "OSEC indicates they do not have responsive records."

17. On August 4, 2020, Public Citizen requested an update as to the status of the request.

18. On August 5, 2020, DOL advised that its FOIA office was “waiting for [a] signed response letter” from OCIA, that SOL was “completing their search,” and that it had “received the 1st batch of records from OSHA for review.”

19. Public Citizen requested further status updates on August 17, 2020, and August 27, 2020. DOL did not respond to those requests for updates.

20. Under 5 U.S.C. § 552(a)(6)(A)(i), DOL had 20 working days to respond to Public Citizen’s FOIA request.

21. Far more than 20 working days have passed since Public Citizen’s request. DOL has neither made a determination on Public Citizen’s FOIA request nor produced any records in response to the request.

22. Under 29 C.F.R. § 70.25, DOL had 10 calendar days to respond to Public Citizen’s request for expedited processing.

23. More than 10 working days have passed since Public Citizen’s request, and DOL has not made a determination on Public Citizen’s request for expedited processing.

24. DOL has not provided a response to Public Citizen’s request for a fee waiver.

CLAIM FOR RELIEF

25. Public Citizen has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested.

26. DOL has no legal basis for refusing to produce the records responsive to Public Citizen’s request.

PRAYER FOR RELIEF

Public Citizen requests that this Court:

- A. Declare that DOL's failure to provide the records responsive to Public Citizen's FOIA request is unlawful;
- B. Order DOL to make the requested records available to Public Citizen at no charge and without delay;
- C. Award Public Citizen its costs and reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E); and
- D. Grant all other appropriate relief.

Dated: September 8, 2020

Respectfully submitted,

/s/ Adam R. Pulver
Adam R. Pulver (DC Bar No. 1020475)
Adina H. Rosenbaum (DC Bar No. 490928)
Public Citizen Litigation Group
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Counsel for Plaintiff



1600 20th Street, NW • Washington, D.C. 20009 • 202/588-1000 • www.citizen.org

May 1, 2020

VIA EMAIL

U.S. Department of Labor
Office of the Solicitor
200 Constitution Avenue NW
Washington, DC 20210
foiarequests@dol.gov

RE: Freedom of Information Act Request and Request for Expedition

Dear FOIA Officer:

On behalf of Public Citizen, and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I request that copies of the following be provided on an expedited basis:

1. Any communications related to COVID-19, the coronavirus, and/or plant closures, slowdowns, or openings related to the pandemic between Department of Labor officials or staff and representatives of
 - Smithfield Foods,
 - Tysons Food,
 - Cargill,
 - Pilgrim's Pride,
 - JBS,
 - Hormel,
 - the National Pork Producers Council,
 - the National Chicken Council, or
 - the National Meat Association.
2. Any communications between Department of Labor officials or staff and Department of Agriculture officials and staff relating to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.
3. All records regarding the "Statement of Enforcement Policy" issued by Solicitor of Labor Kate O'Scannlain and Principal Deputy Assistant Secretary for OSHA Loren Sweatt, on April 28, 2020.
4. All records concerning the applicability of state and local public health, worker safety, or consumer protection law, or state tort law to poultry, beef, and pork

EXHIBIT 1

slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.

This request applies to all records created from March 13, 2020, through the date of search.

This request is not limited to any office or sub-agency within the Department of Labor. Public Citizen anticipates that responsive records may be located in OSHA, the Office of the Solicitor, the Office of the Secretary, the Office of Congressional and Intergovernmental Affairs, the Office of the Assistant Secretary for Policy, and the Office of Public Affairs.

Public Citizen seeks expedited review of this request for the reasons identified below and requests that USDA produce the following records as soon as practicable, and at least within twenty business days. If it is your position that responsive records exist but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please note that Public Citizen seeks each record *in its entirety*. Accordingly, please provide all nonexempt portions of the records, without redacting portions of any record as “non-responsive,” “out of scope,” or the like. I request that any records produced in response to this request be provided in electronic form wherever possible.

Fee Waiver Request

Public Citizen requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because Public Citizen does not seek the records for a commercial purpose and disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” There is massive public interest in the impact of COVID-19 on the health and safety of workers at meat processing facilities, particularly in light of the number of workers in such facilities who have contracted COVID-19 and/or died from it.¹ The President has stated that these facilities are part of the nation’s “critical infrastructure”;² it is undoubtedly important for the public to know how, if at

¹ See, e.g., Carmen Dominguez, “Two of My Colleagues Died of Covid-19,” N.Y. Times, Apr. 29, 2020, <https://www.nytimes.com/2020/04/29/opinion/coronavirus-worker-deaths.html>; Jeet Heer, “Meatpacking Plants are a Front in the Covid-19 Class War,” The Nation, Apr. 29, 2020, <https://www.thenation.com/article/politics/meatpacking-coronavirus-class-war/>; Liz Crampton & Gabby Orr, “Trump orders meat plants to stay open as worker deaths rise,” Politico, Apr. 28, 2020, <https://www.politico.com/news/2020/04/28/trump-to-order-meat-plants-to-stay-open-215555>; Kyle Bagenstose, et al., “USDA inspector dies as coronavirus spreads in meat packing plants, USA Today, Apr. 24, 2020, <https://www.usatoday.com/story/news/2020/04/23/usda-inspector-dies-coronavirus-spreads-meat-packing-plants/3014597001/>.

² President Donald J. Trump, Executive Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19, Apr. 28, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/>.

all, the government is ensuring the health and safety of critical infrastructure employees. Yet, as of today, DOL has only released limited information as to how it plans to do so, in the form of voluntary, non-binding guidance and a non-enforcement policy.³

Public Citizen is a nonprofit research, litigation, and advocacy organization that represents the public interest before Congress, the executive branch, and the courts. Public Citizen fights, among other things, for strong health, safety and environmental protections for consumers and workers, and for openness and democratic accountability in government. Public Citizen has used FOIA to advance its work, has litigated FOIA cases, and has trained others to use FOIA for over 45 years.⁴

Public Citizen does not have a commercial interest in the requested records.

Public Citizen intends to share information received from this request with the public free of charge. It regularly publishes reports based upon information acquired through FOIA.⁵ Public Citizen also has a demonstrated capacity to disseminate this information. Public Citizen has several full-time staff dedicated to distributing its publications through its website, as well as via newsletters,⁶ Twitter,⁷ Facebook,⁸ email listservs, and press releases. Many of Public Citizen's reports, petitions, or other research products grab headlines in major newspapers, broadcast media,

³ CDC & OSHA, Interim Guidance, Meat and Poultry Processing Workers and Employers, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>; DOL, Statement of Enforcement Policy, <https://www.dol.gov/newsroom/releases/osha/osha20200428-1>.

⁴ Public Citizen, Freedom of Information Act, <https://www.citizen.org/our-work/government-reform/open-government/freedom-information-act>.

⁵ For examples of publications distributed through the website, see “Detained for Profit: Spending Surges Under U.S. Immigration Crackdown,” Sept. 2019, <https://www.citizen.org/article/detained-for-profit-spending-surges-under-u-s-immigration-crackdown/>; “Your Wish is My Command: Corporate Capture of the Regulatory Process Evident in Trump’s First Two Years,” May 2019, https://www.citizen.org/wp-content/uploads/Wishlist_report.pdf; “Consumer Carnage: How Federal Enforcement of Consumer-Protection Laws Has Declined Under Trump,” Mar. 2019, <https://www.citizen.org/sites/default/files/consumeragencies.pdf>.

⁶ See, e.g., Public Citizen, Health Letter, <http://www.citizen.org/healthletter>.

⁷ https://twitter.com/Public_Citizen (Public Citizen’s Twitter page).

⁸ <https://www.facebook.com/publiccitizen> (Public Citizen’s Facebook page).

social media, and academic journals.⁹ Public Citizen maintains multiple blogs,¹⁰ publishes a bi-monthly newspaper,¹¹ and issues frequent press releases.¹² Nearly every day, print and broadcast media around the world mention Public Citizen or quote its experts.¹³ Public Citizen also makes its experts available to speak to the media, at conferences, and to testify before Congress.¹⁴ Since the beginning of the COVID-19 pandemic, Public Citizen and its staff have been sharing its expertise, advocating before agencies, and disseminating information to the public about the disease and its impacts on the country.¹⁵

Accordingly, I request that you waive all fees for locating and duplicating the requested records because Public Citizen is entitled to a public interest fee waiver. If, however, a waiver is not granted, please advise me of the amount of any proposed search, review, and reproduction charges before you conduct those activities.

Request for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and your agency's regulations, 29 C.F.R. § 70.25(e), Public Citizen requests that your agency expedite the processing of this request.

The information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and Public Citizen is primarily engaged in disseminating the information it receives from public records requests to the public. See 29 C.F.R. § 70.25(e)(ii). Yesterday, Secretary of Agriculture Perdue stated that he expects meat processing plants that have

⁹ See, e.g., Dymond Green & Tala Hadavi, "Why big banks could be killing private prisons," CNBC, Jan. 2, 2020 (<https://www.cnbc.com/2020/01/02/why-private-prisons-geo-group-and-corecivic-are-struggling-under-trump.html>) (citing 2019 Public Citizen report); Christopher Rowland, "Whopping jury award against Johnson & Johnson sends a signal to drug industry," Wash. Post, Oct. 9, 2019 (discussing Public Citizen research).

¹⁰ See, e.g., Consumer Law & Policy Blog, <http://pubcit.typepad.com/>; Eyes on Trade, <http://citizen.typepad.com/eyesontrade/>.

¹¹ See, e.g., Public Citizen, Public Citizen News (November/December 2019), <https://www.citizen.org/wp-content/uploads/Nov-Dec-PC-News.pdf>.

¹² Public Citizen, Latest Public Citizen Press Releases, <https://www.citizen.org/news/type/press/>.

¹³ See Public Citizen, "In the News," <https://www.citizen.org/news/type/in-the-news/> (collecting media quoting Public Citizen staff experts).

¹⁴ Public Citizen, "Experts," <https://www.citizen.org/experts/>.

¹⁵ Public Citizen's actions and alerts related to COVID-19 are gathered at <https://www.citizen.org/tags/combating-coronavirus/> and include petitions, calls to action, and public information materials.

closed due to the COVID-19 pandemic to reopen in “days not weeks.”¹⁶ The same day, in a court hearing, a plant operator, Smithfield Foods, indicated that OSHA officials had expressed to it the agency’s position that all state laws regarding the operation of plants had been preempted. There is no public document saying as such. Indeed, other than its voluntary guidance and its non-enforcement policy, DOL has released no information to the public or to workers as to how it intends to reduce the risk of illness and death to workers in meat-processing facilities that reopen. At the same time, each day brings news of more outbreaks of COVID-19 in meatpacking plants, and both workers and members of the public are extremely concerned.¹⁷ There is an urgent need to know how DOL plans to protect the health of workers in these plants as they reopen, as well as any plans or representations that plants have shared with DOL. In addition, at least one plant operator has stated that USDA has the sole authority to regulate workplace safety at plants;¹⁸ it is urgent for workers and members of the public to know if DOL agrees with this assertion so that they govern themselves accordingly.

Second, expedited processing is appropriate since the request reflects “[a] matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.” 29 C.F.R. § 70.25(e)(iv). There have been dozens of stories in the media every day about the impact of COVID-19 on meatpacking workers—and many expressly called into question DOL’s “integrity” in responding to the pandemic.¹⁹ The

¹⁶ Mike Dorning, “Meat Plants to Reopen in ‘Days Not Weeks,’ USDA Boss Says,” Bloomberg, Apr. 30, 2020, <https://www.bloomberg.com/news/articles/2020-04-30/meat-plants-to-reopen-days-not-weeks-under-trump-order-perdue>.

¹⁷ *See, e.g.*, Penelope Overton, “Eight workers at Tyson Foods plant in Portland test positive; state says all 400 should be tested,” Portland Press-Herald, Apr. 30, 2020, <https://www.pressherald.com/2020/04/29/outbreak-reported-at-portland-meat-packing-plant/>; articles cited in note 1.

¹⁸ *See* “Smithfield Says Trump Order Should Sink Plant Safety Suit,” Law360, Apr. 29, 2020, <https://www.law360.com/benefits/articles/1268795/smithfield-says-trump-order-should-sink-plant-safety-suit>.

¹⁹ *See, e.g.*, Rebecca Rainey, “OSHA enforcement dwindles as workers fall ill,” Politico, May 1, 2020, <https://www.politico.com/newsletters/morning-shift/2020/05/01/osha-enforcement-dwindles-as-workers-fall-ill-787270> Erik Gunn, “COVID-19 outbreaks highlight meatpacking plant conditions,” Wisconsin Examiner, Apr. 30, 2020, <https://wisconsinexaminer.com/2020/04/30/covid-19-outbreaks-highlight-meatpacking-plant-conditions/>; Matt Cortina, “Why are meatpacking plant employees in Colorado dying of COVID-19?,” Boulder Weekly, Apr. 30, 2020, <https://www.boulderweekly.com/cuisine/why-are-meatpacking-plant-employees-in-colorado-dying-of-covid-19/>; Bart Pfankuch & Nick Lowrey, “Special Report: Regulation gaps and missed opportunities allowed COVID-19 to spread freely in U.S. meatpacking plants,” S.D. News Watch, Apr. 29, 2020, <https://www.sdnewswatch.org/stories/special-report-regulation-gaps-and-missed-opportunities-allowed-covid-19-to-spread-in-u-s-meatpacking-plants/>; Noam Schreiber, “Protecting Workers From Coronavirus: OSHA Leaves It to Employers,” N.Y. Times, Apr. 22, 2020, <https://www.nytimes.com/2020/04/22/business/economy/coronavirus-osha-workers.html>; Kyle Bagenstose, et al., “Coronavirus at meatpacking plants worse than first thought, USA

situation has ground more dire over the past several weeks. The lack of clarity about DOL's efforts to protect workers not only causes a lack of confidence in DOL's commitment to its statutory mission, but also gives consumers reason to doubt the integrity of the food supply chain and whether the government and plants are taking adequate steps to reduce the spread of COVID-19 in their communities.

For similar reasons, a lack of expedited processing could reasonably be expected to pose an imminent threat to the life and physical safety of multiple individuals. 29 C.F.R. § 70.25(e)(1)(i). Workers in meat-packing plants are dying from COVID-19.²⁰ Workers who contract COVID-19 bring the virus into their communities, harming the physical safety of thousands of Americans. It is imperative that members of the public, including workers, know what steps DOL is requiring plants to take, and what steps plants have informed DOL they will take, in order to take steps to protect their own life and physical safety.

If you have any questions regarding this request, please contact me by phone at (202) 588-1000 or by e-mail at apulver@citizen.org.

Thank you very much for your attention to this matter.

Sincerely,

Adam R. Pulver
On behalf of Public Citizen

TODAY investigation finds," USA Today, Apr. 22, 2020, <https://www.usatoday.com/in-depth/news/investigations/2020/04/22/meat-packing-plants-covid-may-force-choice-worker-health-food/2995232001/>; Juliana Feliciano Reyes, "A meatpacking worker in Montgomery County died of coronavirus. Could it have been prevented?," Phila. Inquirer, Apr. 13, 2020, <https://www.inquirer.com/jobs/labor/souderton-jbs-hazelton-cargil-meat-packing-workers-safety-osa-coronavirus-20200413.html>; *see also* articles cited in note 1.

²⁰ *See* articles cited in notes 1 and 19.



1600 20th Street, NW • Washington, D.C. 20009 • 202/588-1000 • www.citizen.org

May 18, 2020

VIA EMAIL

Thomas G. Hicks, Sr.
FOIA Public Liaison
U.S. Department of Labor
Office of the Solicitor
200 Constitution Avenue NW
Room N2434
Washington, DC 20210
Hicks.Thomas@dol.gov

RE: FOIA 891917 – Request to Clarify and Narrow the Scope of Request

Dear Mr. Hicks:

I am in receipt of your email dated today in which you requested that Public Citizen clarify and narrow its May 1, 2020 FOIA Request. Below, please find Public Citizen's responses to your proposals as to each of the four "items" in the request, as well as to the general limitations on search you identified.

Item 1: "Any communications related to COVID-19, the coronavirus, and/or plant closures, slowdowns, or openings related to the pandemic between Department of Labor officials or staff and representatives of Smithfield Foods, Tysons Food, Cargill, Pilgrim's Pride, JBS, Hormel, the National Pork Producers Council, the National Chicken Council, or the National Meat Association."

DOL proposal: The Department of Labor is proposing for Item #1 to search for email communications of specific "OSHA personnel" and the organizations (listed below) provided by Public Citizen and the email addresses provided by DOL, using the terms: COVID-19, Coronavirus, pandemic with plant opening and plant closings/closures:

- Smithfield Foods: @smithfieldfoods.com
- Tysons Foods: @tysonfoods.com
- Cargill: @cargill.com
- Pilgrim's pride: @pilgrims.com
- JBS: @jbssa.com
- Hormel: @hormel.com
- The National Pork Producers Council: @nppc.org
- The National Chicken Council: @chickenusa.org
- The National Meat Association: @meatinstitute.org,

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms

Public Citizen agrees to limit the search terms to:

COVID
COVID-19
Coronavirus
Corona
Opening
Closing
Closure
PPE
Transmission
Testing
Outbreak
Pandemic

Custodians

Public Citizen does not agree to limit the search to OSHA personnel, particularly in light of public statements made by officials outside of OSHA. The search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office and OSH Division of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

Nature of records

Public Citizen does not agree that the agency can limit its search to email records. Public Citizen seeks all responsive “records,” as that term is defined under FOIA, 5 U.S.C. 552(f)(2), including letters, faxes, or other communications.

Item 2: “Any communications between Department of Labor officials or staff and Department of Agriculture officials and staff relating to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.”

DOL Proposal: The Department is proposing for Item #2, to search communication between “OSHA personnel” and SOL/OSH and the USDA-Food Safety Inspection Services (FSIS). (@fsis.usda.gov), since the majority of communication(s) involved OSHA and specifically FSIS at the Department of Agriculture. The recommended search terms and perimeters for Item #2

would be the following: “COVID-19” or “coronavirus” with meat processing, pork slaughtering, poultry processing, pork processing, meat inspection, poultry inspection and pork inspection.

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms

The search terms proposed by DOL are unduly narrow and would be unlikely to capture all responsive documents. Public Citizen agrees to limit the search terms as follows:

COVID
COVID-19
Coronavirus
Corona
Opening
Closing
Closure
PPE
Transmission
Outbreak
Pandemic
Testing
Death

Custodians

Public Citizen does not agree to DOL’s proposal to limit its search to OSHA personnel and to staff within the OSH Division of the Office of the Solicitor, particularly in light of public statements made by officials outside of OSHA. The search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

Item 3: “All records regarding the “Statement of Enforcement Policy” issued by Solicitor of Labor Kate O’Scannlain and Principal Deputy Assistant Secretary for OSHA Loren Sweatt, on April 28, 2020.”

DOL Proposal: The Department is proposing for Item #3 to search communications between Solicitor of Labor Kate O’Scannlain and “OSHA personnel” concerning the Statement of Enforcement Policy issued on April 28, 2020. The Department is proposing to search the emails of Kate O’Scannlain, the SOL/OSH staff and “OSHA personnel.” The recommended search terms for Item #3 would be the following: “Statement of Enforcement Policy” with “COVID-19” and/or “coronavirus.”

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms

Public Citizen maintains that this search term is excessively narrow as it would only include the formal name of a document. We are willing to narrow the search to the terms “enforcement” and “policy”, with “COVID,” “COVID-19”. “Corona,” and/or “coronavirus.”

Custodians

Public Citizen does not agree to DOL’s proposal to limit its search to OSHA personnel and to staff within the OSH Division of the Office of the Solicitor, particularly in light of public statements made by officials outside of OSHA. Instead, the search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

Item 4: “All records concerning the applicability of state and local public health, worker safety, or consumer protection law, or state tort law to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.”

DOL Proposal: The Department asserts that Item #4 is very broad. To conduct a search for Item #4, the Department proposes the following search of email communications of SOL-OSH staff and “OSHA personnel” with the following recommend search terms (listed below) with “COVID-19 or “coronavirus:”

- “state law”
- “local law”
- “public health”
- “work safety”
- “tort law”
- “consumer protection”
- “poultry processing laws”
- “beef processing laws”
- “pork processing laws”
- “meat processing laws”

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms:

In addition to the search terms listed by DOL, Public Citizen requests that the agency include the following additional search terms, to more likely ensure an adequate search for responsive documents:

Liability
Damages
Lawsuit
Preempt
Preemption
Class Action
Nuisance

Given that the search is limited to the short time period in which COVID-19 has dominated the work of the agency, searching for these additional terms, in addition to the terms listed in your proposal, is a reasonable way to identify responsive records, without excluding many responsive ones.

Custodians

Public Citizen does not agree to limit the search to OSHA personnel, particularly in light of public statements made by officials outside of OSHA, and to staff within the OSH Division of the Office of the Solicitor. The search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

General Limitations:

DOL Proposal: Please note to streamline the search for responsive and relevant records, some of the terms may be combined in the searching process. And to specifically exclude news briefings, newsletters and news clippings regarding COVID-19 from the electronic search results, the Department will use the following: (-subject:"DOL Daily Briefing")(-subject:"Weekly Update")(-subject:"News Clips")(-subject:"Morning Shift") (-subject:"Pro Employment & Immigration Report")(-subject:"News Highlights")(-subject:"Weekly News")(-subject:"First Move") (-from:bhighlig@bna.com)(-from:news-q@law360.com(-from:bloomberg@bna.com)(-from:westlaw@westlaw.com) (-from:politicoemail@politicopro.com). This may eliminate unnecessary review of news articles and media related to the subject of your FOIA request. Additionally, please note that "OSHA personnel" consists of the following:

- Loren Sweatt
- Krisann Pierce
- Mandy Edens
- Christopher Brown

- Andy Levinson
- Patrick Kapust
- Mikki Homes

Response: Public Citizen does not object to the limitations of the identified “from” email addresses. We do object to eliminating the identified “subjects” as it excludes correspondence to or from DOL staff in chains that may have begun with one of these briefings/clippings. Excluding the addresses from which these briefings/clippings are sent would appear to eliminate the briefings/clippings themselves, without eliminating follow-up communications in the same thread.

As to the list of OSHA personnel, the following individuals should be added to the list: Maureen Ruskin, Francis Mellinger, Galen Blanton, Richard Mendelson, Michael Rivera, Kurt Petermeyer, Bill Donovan, Eric Harbin, Kim Stille, Rita Lucero, and Barbara Goto.

* * *

If you have any questions regarding this response, please contact me by phone at (202) 588-1000 or by e-mail at apulver@citizen.org.

Thank you very much for your attention to this matter.

Sincerely,

Adam R. Pulver