

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

_____)	
PUBLIC CITIZEN,)	
1600 20th Street NW)	
Washington, DC 20009,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 21-cv-1408
)	
U.S. DEPARTMENT OF AGRICULTURE,)	
1400 Independence Avenue SW)	
Washington, DC 20250,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the United States Department of Agriculture (USDA) to produce records responsive to Public Citizen’s FOIA request relating to the ongoing effects of the COVID-19 pandemic at meatpacking facilities in the United States. Despite granting Public Citizen’s request for expedited processing more than one year ago, USDA has failed to complete its production of records responsive to Public Citizen’s FOIA request. Moreover, USDA has heavily redacted those records that it has produced, invoking FOIA exemptions 4, 5, and 6. Many of USDA’s redactions are improper, particularly to the extent that they withhold the names of plants where large numbers of workers contracted COVID-19 in 2020.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). 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 non-profit organization and submitted the FOIA request at issue in this action.

4. Defendant USDA is an agency of the United States. USDA has possession of and control over the records that Public Citizen seeks.

FACTUAL BACKGROUND

5. On May 1, 2020, Public Citizen submitted a FOIA request to USDA for records relating to the COVID-19 pandemic and its impact on the health and safety of workers at meat and poultry processing facilities. Specifically, Public Citizen's request sought:

- (1) "Any communications related to COVID-19, the coronavirus, and/or plant closures, slowdowns, or openings related to the pandemic between USDA officials or staff and representatives of Smithfield Foods, Tysons Food, Cargill, Pilgrim's Pride, JBS, the National Pork Producers Council, the National Chicken Council, and the National Meat Association" (Part One);
- (2) "Any communications between USDA officials or USDA staff and Department of Labor officials or staff, including, but not limited to officials or staff at the Occupational Safety and Health Administration, relating to poultry, beef, and pork slaughter and/or processing facilities, and COVID-19 or the coronavirus" (Part Two);
and
- (3) "All records concerning worker safety or occupational health at poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus" (Part Three).

The request sought records created from March 13, 2020, through the date of search, and the request was not limited to any office or sub-agency within USDA.

6. Public Citizen sought expedited processing of its FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 7 C.F.R. § 1.6(e). In support of its request for expedited processing, Public Citizen cited well-documented outbreaks of COVID-19 at meat processing facilities, leading to illness and deaths of workers, and a lack of information as to what, if any, steps the federal government and facilities were taking to reduce the spread of COVID-19 in those facilities.

7. In its FOIA request, Public Citizen sought a full waiver of fees because disclosure of the requested information would be in the public interest and not for commercial use.

8. On May 12, 2020, USDA by email acknowledged receipt of Public Citizen's FOIA request on May 4, 2020, and stated that it had assigned the request Case No. 2020-OSEC-04055-F. USDA further stated that it was granting Public Citizen's request for expedited processing of the FOIA request and that Public Citizen's request for a fee waiver was "under consideration."

9. On May 22, 2020, Public Citizen emailed USDA to request an update on the status of its request.

10. By email to Public Citizen on May 26, 2020, USDA proposed modification of Public Citizen's FOIA request as follows:

- a. As responsive to Part One, USDA would search for emails dated from March 13, 2020, to May 13, 2020, between certain USDA officials and a list of email domain names (the Email List)¹;

¹ The USDA officials are Sonny Perdue (including alias accounts); Joby Young; Matthew Christianson; Jannine Miller; Wesley Gwinn; Jacob French; Misty Giles; Peter Bachmann; Lauren Sullivan; Hailey Ghee; Ashton Saunders; Courtney Knupp; Andrew D. Fisher; Juan Caro; Stephen Censky (including alias accounts); Mindy Brashears; Paul Kiecker; Terri Nintemann; Janet Stevens; Nathan Greenwell; Carol Blake; Denise Eblen; and Philip Bronstein. The email domain names are @smithfield.com; @smithfieldfoods.com; @consumerbrandsassociation.org; @tysonfoods.com; @tyson.com; @cargill.com; @pilgrims.com; @jbssa.com; @npcc.org;

- b. As responsive to Part Two, USDA would conduct the following searches for emails dated March 13, 2020, through the date of the search: (i) a manual search for emails regarding meatpacking plants and COVID-19 in the email accounts of Paul Kiecker, Food Safety and Inspection Service (FSIS) Administrator; Terri Nintemann, FSIS Deputy Administrator; Jeremy Todd Reed, FSIS Chief Operations Officer; Yolanda Chambers, Director in Office of Management; and (ii) an electronic search for emails exchanged between the USDA officials identified in the Email List and Department of Labor officials; and
- c. USDA proposed that Public Citizen limit its FOIA request to Part One and Part Two and that Public Citizen withdraw Part Three from the FOIA request.

11. On May 26, 2020, Public Citizen responded by email that it agreed to USDA's proposed modifications to Part One and Part Two of Public Citizen's FOIA request. Public Citizen further stated that it did not agree to withdraw Part Three of its FOIA request, but that it would limit that part of its request to the custodians identified in the Email List and the following search terms: "worker," "employee," "union," "employment," or "labor" and "COVID," "COVID-19," "Coronavirus," "Corona," "opening," "closing," "closure," "PPE," "transmission," "testing," "outbreak," or "pandemic."

12. USDA informed Public Citizen by email on May 27, 2020, that it would begin searching for documents responsive to Public Citizen's request and that USDA would keep Public Citizen apprised of the status of its request.

13. On June 5, 2020, Public Citizen requested by email an update on the status of its request, for which USDA had granted expedition on May 12, 2020. USDA responded that it hoped to produce documents responsive to Part One the following week.

@aamp.com; @nationalchickencouncil.org; @chickenusa.org; @meatinstitute.org; @ncba.org; @sysco.com; @corp.sysco.com; @perdufarm.com; @perdue.com; @gapf.org; @gov.georgia.gov; @governor.alabama.gov; @sd.gov; @state.sd.us; @siouxfalls.org; and @siouxfalls.gov.

14. On June 10, 2020, USDA informed Public Citizen by email that it was planning to start its review of responsive documents and that it expected to begin producing documents it deemed not subject to any FOIA exemption by the end of the month. Public Citizen responded by email with a request for a partial production of documents responsive to its FOIA request.

15. USDA agreed by email on June 19, 2020, to make rolling productions to Public Citizen and stated that it hoped to make its first production the following week.

16. USDA did not produce records the following week.

17. Over the next two months, Public Citizen sent three emails to USDA to request an update on the status of USDA's production of records responsive to Public Citizen's expedited request. In each instance, USDA responded that it was waiting for approval to produce the documents.

18. On August 28, 2020, USDA produced 660 pages to Public Citizen in response to Part Two of Public Citizen's FOIA request (the First Interim Response). USDA redacted information on the asserted bases of FOIA exemptions 5 and 6.

19. On September 8, 2020, USDA produced 367 pages to Public Citizen in response to Part One of Public Citizen's FOIA Request (the Second Interim Response). USDA redacted information on the asserted bases of FOIA exemptions 4, 5, and 6.

20. From October 2020 to February 2021, Public Citizen requested updates on the status of USDA's response to the FOIA request six times. Although USDA initially stated that it would make an additional production in November 2020, it made no such production and provided no further estimated dates of production.

21. By email on February 9, 2021, Public Citizen made a seventh request for an update on the status of its request and expressed its intention to file suit if the records were not produced.

22. On February 10, 2021, USDA produced 474 pages to Public Citizen in response to Part One of Public Citizen's FOIA Request (the Third Interim Response). USDA redacted information on the asserted basis of FOIA exemption 4.

23. After receiving the February 10 production, Public Citizen requested by email an update on the status of its request and an estimated completion date for its request. USDA responded by email on February 11, 2021, that USDA expected to produce documents and provide its final response to Public Citizen's FOIA request by the end of the month.

24. Public Citizen asked USDA by email on February 18, 2021, whether USDA's final response would complete USDA's production to all three parts of Public Citizen's expedited FOIA request. USDA responded by email on February 18, 2021, that its forthcoming production was responsive to Part One of the request, that USDA had already produced in its August 28, 2020, production all documents responsive to Part Two of the request, and that USDA had forgotten about Part Three to the request.

25. In its February 18 email, USDA further stated that it was producing documents in response to the following FOIA request from a different requester:

Any email message (including complete email chains, email attachments, calendar invitations, and attachments thereto) sent from Secretary Perdue, or his Chief of Staff, about potential or actual coronavirus outbreaks at food processing plants, including but not limited to actual outbreaks at the Smithfield (Sioux Falls, South Dakota), Tysons Food (Columbus Junction, Iowa), Tysons Food (Waterloo, Iowa), Tysons Food (Camilla, Georgia), Cargill and JBS (Souderton, Pennsylvania), JBS (Greeley, Colorado), Pilgrim's Pride (Guntersville, Alabama), and Cargill (Hazleton, Pennsylvania) plants.

In that email, USDA asked whether Public Citizen would like to receive records responsive to the other requester's FOIA request, and if so, whether Public Citizen would rescind Part Three of Public Citizen's FOIA request.

26. Public Citizen responded by email to USDA on February 18, 2021, that it agreed to accept the records responsive to the other requester's FOIA request as a substitute for the records responsive to Part Three of Public Citizen's FOIA request.

27. Throughout March and April 2021, Public Citizen requested updates on the status of its request, and USDA responded that a final response would be forthcoming within weeks.

28. Public Citizen requested by email on May 7, 2021, an update on the status of its request, noting more than a year had passed since the request was filed.

29. On May 10, 2021, USDA produced 86 pages to Public Citizen in response to Part One and Part Three of Public Citizen's expedited FOIA Request (the Fourth Interim Response). USDA redacted information on the asserted bases of FOIA exemptions 4, 5, and 6.

30. In response to an email from Public Citizen, USDA stated in an email on May 10, 2021, that the Fourth Interim Response was not USDA's final response and that USDA hoped to complete its final production by May 21, 2021.

31. More than 20 working days have passed since Public Citizen submitted its FOIA request, for which USDA granted a request for "expedited" processing, and USDA has neither made a final determination nor made a final production of records in response to Public Citizen's FOIA request.

32. Many of the records produced by USDA in response to Public Citizen's expedited FOIA request are heavily redacted. In some instances, entire pages of records have been redacted. Some of the redactions appear to cover the same information included in public press releases. USDA's assertions of FOIA exemptions 4, 5, and 6 to justify its withholding of information are improper and without legal basis.

CAUSE OF ACTION

33. Public Citizen has a right under FOIA to the records requested in its FOIA request and to a fee waiver.

34. USDA's failure to disclose the requested records, including by extensive redaction of requested records, has no legal basis.

PRAYER FOR RELIEF

WHEREFORE, Public Citizen requests that this Court:

- A. Declare that USDA's withholding of the requested records is unlawful;
- B. Order USDA to make the requested records available to plaintiff at no cost and without delay;
- C. Award Public Citizen its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- D. Grant such other and further relief as this Court may deem just and proper.

Dated: May 24, 2021

Respectfully submitted,

/s/ Wendy Liu
Wendy Liu (D.C. Bar No. 1600942)
Adam R. Pulver (D.C. Bar No. 1020475)
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Plaintiff Public Citizen