



September 12, 2019

VIA ELECTRONIC MAIL

Alexis R. Graves
Departmental FOIA Officer
1400 Independence Avenue SW
South Building
Room 4104
Washington, DC 20250-0706
USDAFOIA@ocio.usda.gov

Tonya Woods, FOIA Director
Legislative and Public Affairs
Freedom of Information Act
4700 River Road, Unit 50
Riverdale, MD 20737
foia.officer@aphis.usda.gov

Re: Freedom of Information Act Request

Dear Ms. Graves and Ms. Woods:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 7 C.F.R. Part 1, American Oversight makes the following request for records.

In August 2019, *The Washington Post* published an article highlighting the waning enforcement of federal animal care standards.¹ One instance reported in the article suggested that the Cavalry Group, a conglomerate of animal businesses, successfully intervened on behalf of one of its members' fur farm and caused USDA to change course after inspectors had confiscated 10 raccoons.

Accordingly, American Oversight seeks records to shed light on whether and to what extent outside groups exert influence or attempt to influence USDA policy on enforcing animal care standards.

¹ Karin Brulliard & William Wan, *Caged Raccoons Drooled in 100-Degree Heat. But Federal Enforcement Has Faded.*, WASH. POST, Aug. 22, 2019, https://www.washingtonpost.com/science/caged-raccoons-drooled-in-100-degree-heat-but-federal-enforcement-has-faded/2019/08/21/9abf80ec-8793-11e9-a491-25df61c78dc4_story.html.



Requested Records

American Oversight requests that the USDA produce the following records within twenty business days:

All email communications (including emails, email attachments, calendar invitations, and attachments thereto) sent by (a) any of the USDA officials listed in Column A below to (b) any employees or representatives of any of the entities listed in Column B below:

Column A: USDA Officials	Column B: External Entities
<ul style="list-style-type: none"> i. Sonny Perdue, Secretary ii. Ray Starling, Chief of Staff iii. Heidi Green, former Chief of Staff iv. Anyone serving as White House Liaison, including former liaison Sam Clovis v. Gregory Ibach, Under Secretary, USDA’s Marketing and Regulatory Programs, and anyone serving as his Chief of Staff vi. Kevin Shea, Administrator of APHIS vii. Dr. Michael Watson, Associate Administrator of APHIS viii. Dr. Jack Shere, Associate Administrator of APHIS ix. Michael Gregoire, Associate Administrator of APHIS x. Bernadette Juarez, Deputy Administrator, Biotechnology Regulatory Services xi. Current Acting Head of Animal Care xii. Bethany Jones, Deputy Administrator, Legislative and Public Affairs xiii. Hallie Zimmers, State and Stakeholder Liaison, Legislative and Public Affairs xiv. Andrea Huberty, Imports, Regulations, and Manuals xv. Cynthia Eck, Document Control 	<ul style="list-style-type: none"> i. Sea World LLC, including any email addresses ending in @seaworld.com or @seaworld.org ii. Hubbs-Sea World Research Institute, including any email addresses ending in @hswri.org iii. Sea World of Florida iv. Cricket Hollow Zoo v. Novartis Pharmaceuticals Corporation, including any email addresses ending in @novartis.com vi. Pfizer Global Research & Development, including any email addresses ending in @pfizer.com vii. Bristol-Myers Squibb, including any email addresses ending in @bms.com viii. Primate Products LLC, including any email addresses ending in @primateproducts.com ix. Tier 1 Group LLC, including any email addresses ending in @t1g.com x. Joe Fleming Stables xi. Laughing Valley Ranch xii. Cavalry Group, including Mindy Patterson and any email addresses ending in @thecavalrygroup.com

xvi. Suzanne Bond, Public Affairs	xiii. Two Tails Ranch, including any email addresses ending in @allaboutelephants.com
xvii. Eva Ring, Management Analyst	xiv. Bearadise Ranch
	xv. Cypress Breeze Farm
	xvi. T R S Labs Inc.

In an effort to accommodate USDA and reduce the number of potentially responsive records, American Oversight agrees that the search for responsive email communications may be limited to emails sent by USDA officials. Despite this search accommodation, American Oversight still requests that complete email chains be produced, displaying both sent and received messages.

Please provide all responsive records from January 1, 2014 through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and USDA regulations at 7 C.F.R. Part 1, American Oversight requests 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.

American Oversight requests 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.”² The public has a significant interest in the enforcement of USDA’s animal care standards³ and in understanding whether and to what extent outside lobbying efforts directed at USDA have influenced policy changes. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including what precipitated USDA’s decreased animal care enforcement actions. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ Stephanie Ebbs, *Animal Welfare Laws and Concerns Over Enforcement Lead to Warnings for Pet Buyers*, ABC NEWS, Aug. 26, 2019, <https://abcnews.go.com/Politics/animal-welfare-laws-concerns-enforcement-lead-warnings-pet/story?id=65195650>.

This request is primarily and fundamentally for non-commercial purposes.⁴ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's 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.⁵

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁶ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of 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;⁷ 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;⁸ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁹ posting records and analysis relating to the federal

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ American Oversight currently has approximately 12,200 page likes on Facebook and 54,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 17, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 17, 2019).

⁶ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁷ *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>.

⁸ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall 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>.

⁹ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

government's efforts to sell nuclear technology to Saudi Arabia;¹⁰ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹¹

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides 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.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- 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.¹² 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; American Oversight has 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.¹³

¹⁰ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹¹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹² 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).

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

- 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,¹⁴ and many agencies have 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 American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes 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 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,

¹⁴ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-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>.

1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Hart Wood at foia@americanoversight.org or 202.873.1743. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight