



United States
Department of
Agriculture

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

November 5, 2020

Delivered via Electronic Mail

Austin R. Evers
Executive Director
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
foia@americanoversight.org

Ricardo J. Salvador
Director and Senior Scientist
Food and Environment Program
Union of Concerned Scientists

**Re: Freedom of Information Act (FOIA) Request No. 2020-OSEC-06216-F
Final Response**

Dear Mr. Evers and Mr. Salvador:

This is the Departmental FOIA Office's (DFO) final response to the above-referenced FOIA request, which sought:

All final directives, orders, decisions, protocols, or guidance to contractors pertaining to the distribution of signed letters from President Trump as part of the Farmers to Families Food Box program produced by or provided to your agency, including but not limited to:

- i. Whether the signed letter's inclusion is mandatory or voluntary for contractors;
- ii. Whether or not contractors are financially responsible for any portion of the production and distribution of the signed letter;
- iii. Any other specific guidance to contractors regarding the inclusion of the signed letter.

Please provide all responsive records from June 1, 2020 through the date the search is conducted.

Your request was processed under the FOIA, 5 U.S.C. § 552.

A 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. Responsive records totaling two (2) pages were identified.

Following a review of the responsive records, the DFO has determined that certain information contained therein should be withheld pursuant to 5 U.S.C. § 552(b)(5) and (6) (FOIA Exemptions 5 and 6). Below is an explanation of the information that has been withheld.

FOIA Exemption 5 - Deliberative

FOIA Exemption 5 protects from disclosure those “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” One of the frequently invoked FOIA Exemption 5 privileges is the deliberative process privilege. To fall within FOIA’s deliberative process privilege, the records must be both pre-decisional and deliberative; the records must precede the adoption of an agency policy and include the opinions, recommendations, or deliberations on a legal or policy matter.

In this instance, the DFO is withholding, under the deliberative process privilege, pre-decisional intra-agency records consisting of portions of an email reflecting policy determinations regarding matters under consideration by the USDA. Disclosure of such information would have a chilling effect on the ability of agency officials to engage in free and frank discussions regarding policy and also may cause confusion on the agency’s actual position on the policy at issue.

FOIA Exemption 6

Exemption 6 generally is referred to as the “personal privacy” exemption. It provides that the disclosure requirements of FOIA do not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Application of the exemption involves balancing the public’s interest in disclosure against individuals’ privacy interests.

The information withheld under Exemption 6 includes a cell phone number. This information qualifies as “similar files” because it is information in which individuals have a privacy interest. Moreover, releasing the information could subject the individuals to unwarranted or unsolicited communications. Since there is a viable privacy interest that would be threatened by disclosure, Exemption 6 authorizes this office to withhold the information. Accordingly, we have determined that the public interest in the information’s release does not outweigh the overriding privacy interests in keeping it confidential.

The information withheld under Exemption 6 also includes an alias email address for Secretary Sonny Perdue. The agency has a significant interest in ensuring that its officials have the capacity to safely perform a full range of official functions, including emergency operations, continuity of operations, and devolution planning and execution. These functions could not be accomplished if public email-writing campaigns impeded communications to the email accounts from which officials operate in emergency situations. In the event of emergency, not only are alias accounts necessary for safe and efficient emergency operations, but also so that family members can reach otherwise unavailable officials. While the existence of such alias email accounts and certain content of emails released therefrom may shed light on agency functions, the actual email addresses do not in and of themselves advance a public interest—particularly when balanced against the

critical interest of agency officials in maintaining safe and responsible communication with critical business contacts including those in The White House, during emergency situations and situations presenting potential national security threats. That said, in response to records requests, it is the agency's policy to process and release responsive documents derived from searches of all agency email accounts (including alias email accounts) to the extent not otherwise exempt or prohibited by law. Furthermore, we note that the disclosure of officials' primary official email accounts serves as the most appropriate point of contact for the public and poses the least amount of risk or threat in emergency operations.

You may appeal this response by email at USDAFOIA@usda.gov. Your appeal must be in writing, and it must be received electronically no later than 90 calendar days from the date of this letter. The OGC will not consider appeals received 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 should be marked "Freedom of Information Act Appeal." You should also reference FOIA No. 2020-OSEC-06216-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.

If you have any questions regarding the processing of this request, please contact Mr. Steven Gitelman at 202-772-9091 (telework), or by email at steven.gitelman@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. The DFO appreciates the opportunity to assist you with this matter.

Sincerely,



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

Enclosure: Responsive Records (2 pages)

From: Young, Joby - OSEC, Washington, DC

Sent: Friday, July 24, 2020 8:41 AM

To: Ibach, Greg - OSEC, Washington, DC

CC: Rollins, Blake - OSEC, Washington, DC; Barbic, Ken - OSEC, Washington, DC; Beatty, Mike - OPPE, Washington, DC; Hoskins, Dudley - OSEC, Washington, DC; Walker, Lorren - OSEC, Washington, DC; Summers, Bruce - AMS; Densel, Brock - AMS; Young, Benjamin - OGC, Washington, DC

Subject: RE: Farmers to Families Food Box Phase 3 Notification

Great job team!



Joby Young
Chief of Staff
United States Department of Agriculture

From: Ibach, Greg - OSEC, Washington, DC <Greg.Ibach@usda.gov>

Sent: Thursday, July 23, 2020 12:50 PM

To: (b) (6) OSEC, Washington, DC (b) (6)@usda.gov

Secretary Perdue

Cc: Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Rollins, Blake - OSEC, Washington, DC <blake.rollins@usda.gov>; CLS1, SLC1 - OSEC, Washington, DC <SLC1@usda.gov>; Barbic, Ken - OSEC, Washington, DC <Ken.Barbic@usda.gov>; Rich, Michawn - OC, Washington, DC <michawn.rich@usda.gov>; Beatty, Mike - OPPE, Washington, DC <mike.beatty@usda.gov>; Hoskins, Dudley - OSEC, Washington, DC <dudley.hoskins@usda.gov>; Walker, Lorren - OSEC, Washington, DC <Lorren.Walker@usda.gov>; Summers, Bruce - AMS <Bruce.Summers@usda.gov>; Densel, Brock - AMS <brock.densel@usda.gov>; Young, Benjamin - OGC, Washington, DC <Benjamin.Young@usda.gov>

Subject: Farmers to Families Food Box Phase 3 Notification

Pre-Decisional/Deliberative

Sir,

AMS will be announcing the Phase 3 solicitation for the Farmers to Families Food Box Program tomorrow, Friday the 24th, after 1:00 PM (ET).

(b)(5) - Deliberative

(b)(5) - Deliberative

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Tomorrow's announcement will also include a notice of a webinar that AMS, in coordination with OPPE, will host next Tuesday, July 28th, to walk potential contractors through this new contracting process and highlight the above changes.

Please let me know if you have any questions or would like to discuss further at any point. -- Greg



Greg Ibach

Under Secretary
Marketing & Regulatory Programs

United States Department of Agriculture
228-W Whitten Building
Office: (b) (6)
Cell: (b) (6)
greg.ibach@osec.usda.gov

December 8, 2020

Delivered via Electronic Mail

Austin Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005
foia@americanoversight.org

Re: Final Response to FOIA Request 2020-AMS-00279-F

Dear Mr. Evers:

This is the final response to your Freedom of Information Act (FOIA) request to the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS). Your request was received on September 9, 2020 and sought access to the following:

All final directives, orders, decisions, protocols, or guidance to contractors pertaining to the distribution of signed letters from President Trump as part of the Farmers to Families Food Box program produced by or provided to your agency, including but not limited to:

- i. Whether the signed letter's inclusion is mandatory or voluntary for contractors;
- ii. Whether or not contractors are financially responsible for any portion of the production and distribution of the signed letter;
- iii. Any other specific guidance to contractors regarding the inclusion of the signed letter.

(Date Range for Record Search: April 24, 2020 through the date of the search)

The AMS FOIA staff works with subject matter experts across the Agency to locate responsive documents. For this request, a search was conducted within the Commodity Procurement Program (CP). CP is responsible for facilitating the marketing of American agricultural products through the purchase and delivery of 100 percent domestic foods to Federal food and nutrition program recipients. AMS' search began on September 9, 2020.

We have processed five pages that are responsive to your request. After a thorough review, we have determined that these pages may be released in their entirety. Accordingly, this request is granted in full.

Also, although FOIA does not require an agency to answer questions, analyze data, or create records in response to a FOIA request, in accordance with USDA's FOIA regulations, 7 C.F.R. § 1.7, AMS is providing the following information. Inclusion of the letter was voluntary for vendors who were awarded contracts in May and had contracts extended in June. Vendors awarded new contracts in June were required to include the letters in the boxes and vendors who were awarded contracts during the Round 3 solicitations were also required to include the letters

in the boxes. The letters were not provided to the vendors; instead vendors were required to print off the letters themselves. The language specific to the letter in the BOA solicitation is as follows:

(b) Government reserves the right to require labeling, stickering or identification in and/or on boxes that identify the Farmers to Families Food Box Program, USDA and/or additional program specific information as deemed required by the Contracting Officer.

This language can be found at the beginning of page 9 in the solicitation, located here: https://www.ams.usda.gov/sites/default/files/media/FFFB_solicitationRound3.pdf

This concludes processing of your request. You may appeal our determination within 90 days from the date of this letter. Your appeal should be clearly marked to indicate that it contains a FOIA appeal and include specific reasons why you believe modification of the initial action is warranted. Any such appeal can be sent electronically to ams.foia@usda.gov and should be addressed to:

Bruce Summers
Administrator
Agricultural Marketing Service
1400 Independence Avenue, S.W.
Stop 0201, Room 3071
Washington, D.C. 20250-0201

If you have any questions about the way this request was handled, please contact Natalie Anderson, Government Information Specialist, at (202) 503-5370 or natalie.anderson@usda.gov. If you have general questions or concerns regarding AMS' FOIA procedures or regulations, please contact our FOIA Public Liaison, Bill Allen, at (202) 720-3785 or via email at ams.foia@usda.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll-free at 1-(877) 684-6448; or facsimile at (202) 741-5769.

Thank you for your interest in AMS programs and policies.

Sincerely,

Mark R. Brook

Mark R. Brook
FOIA Officer
Agricultural Marketing Service

Enclosure

From: [Cottrell, David - AMS](#)
To: [Cole, Hilary - AMS](#)
Subject: FW: Farmers to Families Food Box – Labeling and Letter Requirement
Date: Tuesday, November 3, 2020 3:25:34 PM
Attachments: [Farmers to Families Food Box letter.pdf](#)
[FarmerstoFamiliesFoodBoxSticker.pdf](#)
[image001.png](#)
[image002.png](#)
Importance: High

See attached

David J. Cottrell Jr.
Contract Specialist
Vegetable Branch
Domestic Commodity Procurement Division
AMS-Commodity Procurement Program
202-260-9183 Phone
202-720-2782 Fax

Together We're Making a Difference: American Agriculture for the American People



From: Cottrell, David - AMS
Sent: Thursday, September 17, 2020 5:12 PM
Subject: Farmers to Families Food Box – Labeling and Letter Requirement
Importance: High

Good Afternoon,

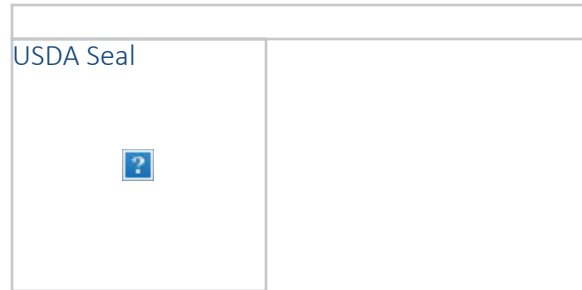
In accordance with AGAR 452.247-71 Marking Deliverables, as contained in your Farmers to Families Food Box Contract, the attached letter must be included in all food boxes being distributed. Additionally, the attached label must be affixed (either directly printed on or added via a sticker or label) to a visible, exterior portion of all boxes being distributed.

Thank you,

David J. Cottrell Jr.
Contract Specialist
Vegetable Branch
Domestic Commodity Procurement Division

AMS-Commodity Procurement Program
202-260-9183 Phone
202-720-2782 Fax

Together We're Making a Difference: American Agriculture for the American People



THE WHITE HOUSE
WASHINGTON

Dear Family,

As President, safeguarding the health and well-being of our citizens is one of my highest priorities. As part of our response to the coronavirus, I prioritized sending nutritious food from our farmers to families in need throughout America. We are partnering with local organizations, farms, and ranches to ensure that you receive locally-sourced fresh fruits and vegetables as well as dairy and meat products.

Over the last four weeks, we have delivered 50 million Farmers to Families Food Boxes to American families, and we will continue to serve those most in need during this challenging time.

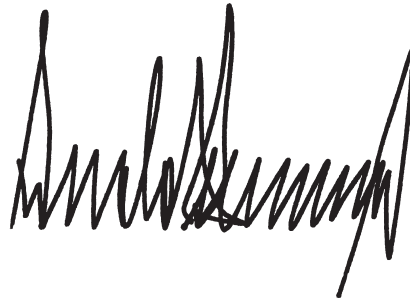
As our country reopens, I urge all Americans to continue to adhere to the important precautions set forth in the President's Coronavirus Guidelines for America and by the Centers for Disease Control and Prevention regarding how to best protect yourself and your family. A few key best practices to support our nationwide recovery are:

1. Practice good hygiene and wash your hands;
2. People who feel sick should stay home;
3. Protect the most vulnerable individuals, including those 80+ years of age and those with pre-existing conditions.
4. Practice social distancing and consider wearing a face covering when in public

To learn more, please visit: www.coronavirus.gov

You and your loved ones are cherished members of our great American family. This pandemic has brought many hardships on millions of hardworking individuals and communities through no fault of their own. We will support America's recovery every step of the way. Together, we will overcome this challenge, and our Nation will emerge from this crisis stronger than ever before.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donald Trump', with a stylized, jagged flourish at the end.

Donald J. Trump
President of the United States

THE WHITE HOUSE
WASHINGTON

Estimada Familia:

Como Presidente, una de mis prioridades principales es proteger la salud y el bienestar de nuestros ciudadanos. Como parte de nuestra respuesta al coronavirus, establecí la prioridad de enviar alimentos nutritivos de nuestros agricultores a las familias necesitadas en todo el país. Nos hemos unido con las organizaciones locales, granjas y haciendas para asegurarnos de que usted reciba frutas y vegetales frescos producidos localmente, al igual que productos lácteos y de carne.

En las últimas cuatro semanas, hemos entregado a las familias americanas 50 millones de Cajas de Alimentos de los Agricultores a las Familias y continuaremos sirviendo a los más necesitados durante estos tiempos difíciles.

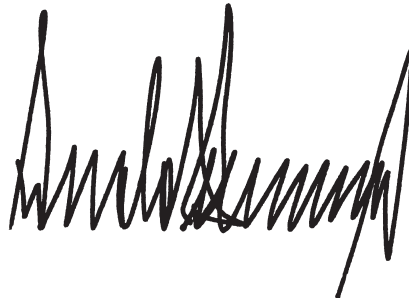
Exhorto a todos los americanos a continuar cumpliendo las importantes precauciones establecidas en las Directrices del Presidente sobre el Coronavirus para los Estados Unidos y por los Centros para el Control y la Prevención de Enfermedades sobre cómo pueden protegerse mejor usted y su familia. Algunas de las mejores prácticas cruciales para apoyar nuestra recuperación en todo el país son:

1. Practique buenos hábitos de higiene y lávese las manos
2. Las personas que están enfermas deben quedarse en casa
3. Proteja a las personas más vulnerables, incluyendo a los mayores de 80 años y a quienes tienen condiciones preexistentes
4. Practique la distancia social y considere usar un cubrebocas cuando salga a lugares públicos

Para obtener más información, visite: www.coronavirus.gov

Usted y sus seres queridos son apreciados miembros de nuestra gran familia americana. Esta pandemia trajo muchas dificultades a millones de personas y comunidades muy trabajadoras sin tener culpa de ello. Nosotros apoyaremos la recuperación del país en cada paso del camino. Juntos superaremos este desafío, y nuestra nación saldrá de esta crisis más fuerte que nunca.

Atentamente,



Donald J. Trump
Presidente de los Estados Unidos

