

**U.S. Department of Labor**

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210



April 9, 2021

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Via Email ([Benjaminw@legalaidnc.org](mailto:Benjaminw@legalaidnc.org)) ([Rmcfarland@justice4all.org](mailto:Rmcfarland@justice4all.org))

Re: Freedom of Information Act Response Letter  
Tracking Number 2021-F-06458

Dear Mr. Williams:

Thank you for your Freedom of Information Act (FOIA) request dated November 16, 2020, previously assigned to FOIA Tracking Number 2021-F-06458, which was referred to the Office of Foreign Labor Certification (OFLC). You requested documents pertaining to public records relating to how the Chicago National Processing Center (CNPC) determines whether an H-2A employer's request for a declaration of contract impossibility will be approved or denied.

OFLC Subject Matter Experts located 142 pages of which 22 pages are responsive and available for public disclosure. The majority of documents are subject to Exemption 5 of the FOIA. Under the provisions of the Freedom of Information Act at 5 United States Code (USC) § 552(b)5, Exemption 5 as amended, protects the decision making processes of Government agencies, advisory opinions, recommendations and deliberations. The purpose of this privilege is to encourage open, frank discussions on matters of policy between subordinates and supervisors; to protect against premature disclosure of proposed policies before they are finally adopted; and to protect against public confusion that might result from disclosure of reason and rationales that were not in fact ultimately the ground for an agency decision. The deliberative process privilege also permits the Government to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

Due to the nature of this request, OFLC has determined that the records in this partial response must be withheld. Although a few documents subject to Exemption 5 may have portions that could be released, without the heavily redacted information as well, the documents would not provide any informational value or give tangible information about the Government's proposal to modernize the H-2A Temporary (Agricultural) Labor Certification Program. Therefore, we are withholding these records pursuant to Exemption 5 of the FOIA, 5 U.S.C 552(b)(5).


Partial denials or redactions represent adverse disclosure decisions. If you need further assistance, or wish to discuss any aspect of your request please contact ColleenThompkins, Branch Chief, Information Services Branch, at 202-513-7389, or Mr. Thomas Hicks, Esq., DOL FOIA Public Liaison at 202-693-5427, at the U.S. Department of Labor, Office of the Solicitor, Management and Administrative Legal Services, Office of Information Services, 200 Constitution Avenue, N.W., Room N2420, Washington, D.C. 20210, or Email: [Hicks.Thomas@dol.gov](mailto:Hicks.Thomas@dol.gov).

Alternatively, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration 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, MD 20740-6001, E-mail: [ogis@nara.gov](mailto:ogis@nara.gov), Web: <https://ogis.archives.gov>, Telephone: 202-741-5770, Fax: 202-741-5769, Toll-free: 1-877-684-6448.

You have a right to administrative appeal **by writing** to the Solicitor of Labor within 90 days from the date of this letter. You must include the grounds for the appeal, a copy of your initial request, and any amendments thereof. You may also include supporting statements or arguments, but this is not required. To facilitate processing, please include your mailing address, and daytime telephone number in your response.

Please clearly mark the envelope and appeal letter as "FOIA Appeal" addressed as follows: "Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, D.C. 20210." Appeals may be sent via email to [foiaappeal@dol.gov](mailto:foiaappeal@dol.gov), exclusively, as submissions to any other email address will not be accepted. **\*\*NOTE: Any amendment to the appeal must be in writing and received prior to an appeal decision.**

Sincerely,



Colleen Thompkins  
Branch Chief, Information Services  
Office of Foreign Labor Certification