

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SEP - 5 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

BY
DEPUTY _____

----- X

JP DARBY SERVICES, LLC

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff,

-versus-

ACTING SECRETARY JULIE SU
UNITED STATES DEPARTMENT OF LABOR,

Defendant.

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I. NATURE OF ACTION

1. JP Darby Services, LLC brings this lawsuit to compel compliance by the United States Department of Labor (hereafter Department of Labor) with the Freedom of Information Act (5 USC 552) in connection with a Freedom of Information Act (FOIA) request filed by Jeffrey P. Darby (Member and Manager of JP Darby Services, LLC) via email to foiarequests@dol.gov on May 16, 2023.

(Attachment 1)

2. The Department of Labor replied via email on May 21, 2023 and restated the request as: "*Employees' Confidential Financial Disclosure Reports (OGE Form 450s)* since 2021; FYs 2016-2023 SES employee demographics; number of non-SES employees in FYs 2016-2023; and *Continuous Personal Dust Monitor (CPDM)* records, including a September 2021 incident at *Warrior Met Coal #7 Mine* in Brookwood, AL." Two tracking numbers were assigned: **2023-F-09291**, and, for the CPDM records only, **2023-F-09292**. The Office of the Assistant Secretary for Administration and Management (OASAM) was to respond to **2023-F-09291**, and the Mine Safety and Health Administration (MSHA) was to respond to **2023-F-09292**. The **2023-F-0291** email is **Attachment 2**, and the **2023-F-0292** email is **Attachment 3**.
3. The Department of Labor emails on May 21, 2023 neglected to include the request for *SES employee names and bonuses from FY 2016 to 2023, inclusive*, as part of either tracking number.
4. From June 14 to 27, 2023, Plaintiff and MSHA exchanged emails pertaining to **2023-F-09292**. (**Attachment 4**)
5. On June 21, 2023, MSHA emailed Plaintiff a letter in PDF signed by Timothy Watkins, Deputy Administrator for Mine Safety and Health Enforcement, stating that the FOIA request for **2023-F-09292** could not be met within the statutory timeframe. To date, the Department has not provided the information requested. The email is **Attachment 5** and the PDF is **Attachment 6**.

6. On August 28, 2023, the Department of Labor, through the Solicitor of Labor, Office of Legal Counsel emailed a letter in PDF signed by Shankar Duraiswamy, Deputy Solicitor of Labor for National Operations. This letter was their response to the *OGE Form 450* portion of the May 16 request under a heretofore unknown tracking number **FY-23-09364** and stated that this information was exempt from FOIA disclosure by 5 USC 552(b)(3)(A) and (B), (b)(4), and (b)(6); this would need to be requested through the Office of Government Ethics (OGE) Form 201. Plaintiff's Member and Manager Jeffrey P. Darby confirmed receipt via email the same date but stated he did not know if the letter was responsive to his request. The transmitting email is **Attachment 7** and the letter in PDF is **Attachment 8**.
7. Notwithstanding the Defendant's position in **FY-23-09364**, the Defendant has violated FOIA by failing to respond to Plaintiff's requests within the statutorily prescribed time limit, and by failing to provide a legitimate reason for non-compliance. Defendant has unlawfully withheld the requested, releasable information.
8. Plaintiff now asks the Court to order Defendant USDOL to respond to the request and to disclose all responsive records improperly withheld from Plaintiff.

II. JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

10. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

11. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

III. PARTIES

12. Plaintiff JP Darby Services, LLC is represented by its Member and Manager and 100% shareholder, Jeffrey Paul Darby, and has its principal place of operation at 1515 N. 26th Street in Nederland, Jefferson County, Texas 77627. JP Darby Services, LLC is a Limited Liability Company organized under Chapter 8 of the Texas Business Organizations Code on October 14, 2022.

13. Defendant Acting Secretary of Labor Julie Su is the presidentially-appointed and Senate-confirmed official who oversees the United States Department of Labor, the cabinet-level department that oversees working conditions and work-related benefits and rights and is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). Defendant is headquartered at 200 Constitution Avenue, NW, Washington, DC 20210.

IV. STATUTORY FRAMEWORK

14. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A).

15. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. *Id.* § 552(a)(6)(A).

16. The determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013).

17. An agency may be entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that “unusual circumstances” exist that warrant additional time. 5 U.S.C. § 552(a)(6)(B).

18. An agency must immediately notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right of such person to appeal an adverse determination. *Id.* § 552(a)(6)(A)(i).

19. An agency’s failure to comply with any timing requirements is deemed constructive denial and satisfies the requester’s requirement to exhaust administrative remedies. *Id.* § 552(a)(6)(C)(i).

20. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency’s

continued withholding of public records. *Id.* § 552(a)(4)(B).

V. FACTS

21. Numbers 1 through 7 above are incorporated herein by reference.
22. Because the Department of Labor failed to provide any substantive responses to the Request within the statutory timeframe (their Reply at Item 5 above was well outside the 20 business days required by the Act), it has constructively denied the Request. As such, Plaintiff has exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).
23. Plaintiff has a legal right to the requested records (those at Item 5 above are possibly excluded). Defendant has improperly withheld those records, forcing Plaintiff to file this lawsuit to enforce its rights under FOIA.

VI. STATEMENT OF CLAIMS

COUNT 1: Failure to Respond to Request Within Statutory Timeframe

24. Plaintiff re-alleges and incorporates the foregoing paragraphs as set forth in full.

25. Defendant failed to respond to the Request within the statutorily mandated timeframe, in violation of Plaintiff's rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(6)(A)(i) and (a)(6)(B).

COUNT 2: Failure to Produce Responsive Records

26. Plaintiff re-alleges and incorporates the foregoing paragraphs as set forth in full.

27. Defendant failed to make reasonable efforts to search for records responsive to the Request, in violation of Plaintiff's rights under FOIA, including, but not limited to, 5 U.S.C. § 552(a)(3).

28. Defendant failed to disclose and produce any records responsive to the Request, in violation of Plaintiff's rights to those records under FOIA, including, but not limited to, 5 U.S.C. § 552(a)(3)(A).

29. Defendant failed to disclose and produce records responsive to the Request without a legal basis for withholding such records, in violation of FOIA, including but not limited to, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A).

30. Plaintiff is entitled to its reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, JP Darby Services, LLC requests that this Court:

- (a) Find that Defendant's failure to timely respond to or disclose records was unlawful;
- (b) Order Defendant to search for and promptly disclose all records responsive to Plaintiff's Request;
- (c) Award Plaintiff attorneys' fees and costs; and
- (d) Grant such other relief as the Court may deem just and proper.

Respectfully Submitted,



JP DARBY SERVICES, LLC

Jeffrey P. Darby

Member and Manager

1515 N. 26th St.
Nederland, TX 77627
(409) 719-8223

ATTACHMENT 1

Freedom of Information Act (FOIA) Request - JP Darby Services, LLC - May 16, 2023

From: Jeff Darby (jeffdarby@yahoo.com)

To: foiarequests@dol.gov

Cc: jeffdarby@yahoo.com

Date: Tuesday, May 16, 2023 at 04:05 PM CDT

This is a request for records under the Freedom of Information Act. The term "record" is to be construed broadly and can mean anything kept in any system of records whether electronic or hard copy.

1. Confidential Financial Disclosure Report (OGE Form 450) for all United States Department of Labor employees (whether political appointee or career) at GS-14 and above, including the Secretary, Deputy Secretary, Assistant Secretaries and the Deputy Assistant Secretaries for 2021, 2022, and 2023. Any bargaining unit employee (whether National Council of Field Labor Locals, AFGE Local 12, or National Union of Labor Investigators) within this group can be excluded.

2. A. Names, titles, agencies, and duty stations of all Senior Executive Service (SES) employees at the United States Department of Labor during the last seven years (Fiscal Years 2016 to 2023, inclusive).

2. B. Number of DOL employees during Fiscal Years 2016 to 2023. It is my belief the number of SES employees is up while the number of DOL employees is down.

3. Assistant Secretary for Mine Safety and Health Chris Williamson has required coal mining companies to purchase Continuous Personal Dust Monitors (CPDMs) that are to be worn by underground coal miners.

A. Please provide all internal and external communications, studies, reports, and other systems of record showing the effectiveness (or lack thereof) of CPDMs.

B. The cost of each CPDM is some \$20,000. Please provide any and all:

- i. Cost/benefit analyses concerning the use of CPDMs.
- ii. The number and location of all underground coal mines where CPDMs are used.
- iii. The number of CPDMs at each mine along with the mines' locations.

C. Any reports, conclusions, memos, records, or results that show hazards caused by CPDM usage must also be disclosed (such as a fire, ignition, or explosion caused by a CPDM or within a CPDM). It has been reported that a CPDM caught fire at the Warrior Met Coal #7 Mine in Brookwood, Alabama on or about September 2021; please provide all information pertaining to this event as well.

4. Back to the SES at DOL, please provide the name of each SES and the amount of his/her performance bonus for each FY from FY 2016 to the present.

I am a member of the International Labor Communications Association and thus a member of the media. The information you provide will be studied, analyzed, and reported on to interested

parties. I request a fee waiver.

These records can be sent to me at jeffdarby@yahoo.com. If they are too voluminous for email, you may send a drive to the address shown below.

Please contact me if you have any questions. Thank you.

Jeffrey P. Darby
JP Darby Services, LLC
1515 N. 26th St.
Nederland, TX 77627
(409) 719-8223
jeffdarby@yahoo.com

<https://www.linkedin.com/in/jeff-darby-b7201773/>

Member, International Labor Communications Association (<https://laborcommunicators.org/>)

ATTACHMENT 2

Acknowledgment

From: miller.darlene@dol.gov
To: jeffdarby@yahoo.com
Cc: oliver.ramona@dol.gov; march.candy.a@dol.gov
Date: Sunday, May 21, 2023 at 11:42 AM CDT

May 21, 2023

Jeffrey P. Darby
JP Darby Services, LLC
1515 North 26th Street
Nederland, TX 77627

Jeffrey:

This acknowledges receipt of your FOIA request for *Employees' Confidential Financial Disclosure Reports (OGE Form 450s)* since 2021; FYs 2016-2023 SES employee demographics; number of non-SES employees in FYs 2016-2023; and *Continuous Personal Dust Monitor (CPDM)* records, including a September 2021 incident at *Warrior Met Coal #7 Mine* in Brookwood, AL. It has been assigned to OASAM with tracking number **2023-F-09291**. You may use this number to track the progress of your request at <https://efoia.dol.gov/app/CheckStatus.aspx>. If you need to contact the agency about it for any reason, please submit your inquiry through March.Candy.A@dol.gov or phone 202-693-7286. In addition, it would be helpful to include the tracking number in the subject line of any submission to them or to have it available at the time of a call.

Sincerely,

Darlene Miller | *Government Information Specialist, Office of Information Services*
Division of Management and Administrative Legal Services (MALS) | Office of the Solicitor
U S Department of Labor | 200 Constitution Avenue NW N2420 | Washington DC 20210
Phone: 202-693-5442 | Fax: 202-693-5389 | Email: miller.darlene@dol.gov | e-FOIAs: foiarequests@dol.gov

ATTACHMENT 3

Acknowledgment

From: Miller.Darlene@dol.gov (miller.darlene@dol.gov)

To: jeffdarby@yahoo.com

Cc: oliver.ramona@dol.gov; msha.foia@dol.gov

Date: Sunday, May 21, 2023 at 11:47 AM CDT

May 21, 2023

Jeffrey P. Darby
JP Darby Services, LLC
1515 North 26th Street
Nederland, TX 77627

Jeffrey:

Your FOIA request for *Employees' Confidential Financial Disclosure Reports (OGE Form 450s)* since 2021; FYs 2016-2023 SES employee demographics; number of non-SES employees in FYs 2016-2023; and *Continuous Personal Dust Monitor (CPDM)* records, including a September 2021 incident at *Warrior Met Coal #7 Mine* in Brookwood, AL. It has been assigned to MSHA with tracking number **2023-F-09292** to respond to the *CPDM* part. You may use this number to track the progress of your request at <https://efoia.dol.gov/app/CheckStatus.aspx>. If you need to contact the agency about it for any reason, please submit your inquiry through MSHA.FOIA@dol.gov or phone 202-693-9440. In addition, it would be helpful to include the tracking number in the subject line of any submission to them or to have it available at the time of a call.

Sincerely,

Darlene Miller | *Government Information Specialist, Office of Information Services*
Division of Management and Administrative Legal Services (MALS) | Office of the Solicitor
U S Department of Labor | 200 Constitution Avenue NW N2420 | Washington DC 20210
Phone: 202-693-5442 | Fax: 202-693-5389 | Email: miller.darlene@dol.gov | e-FOIAs: foiarequests@dol.gov

ATTACHMENT 4

Re: REQUEST: FOIA 2023-F-09292

From: Jeff Darby (jeffdarby@yahoo.com)

To: proctor.kimberlee@dol.gov

Cc: thacker.casey@dol.gov; proctor.kimberlee@dol.gov; jeffdarby@yahoo.com

Date: Tuesday, June 27, 2023 at 01:27 PM CDT

I don't know when MSHA started the process of studying and ultimately mandating CPDMs.

Let's assume for a second that the study and review of CPDMs began in 2013. The date range would be 2013 to the present. If it began earlier (say 2008), then I would need to expand it to 2008 to the present.

You're playing a game of "hide the ball". I am trying to learn when MSHA began the process that ultimately led to the agency mandating the regulated community to use CPDMs. You (meaning MSHA) know when this was, but you are demanding that I tell you when?

My date range for this request is 2013 and ongoing.

The Department's time is already up on this request, so neither DOL nor MSHA can charge me any fees.

Jeff Darby

JP Darby Services, LLC

1515 N. 26th St.

Nederland, TX 77627

(409) 719-8223

jeffdarby@yahoo.com

<https://www.linkedin.com/in/jeff-darby-b7201773/>

Member, International Labor Communications Association (<https://laborcommunicators.org/>)

On Tuesday, June 27, 2023 at 12:29:04 PM CDT, Proctor, Kimberlee A - MSHA <proctor.kimberlee@dol.gov> wrote:

Hi Mr. Darby,

That is information that we will need to receive from you. As the requestor, you need to identify the date ranges. We will then conduct a search to see if we have any responsive documents within the date ranges identified by you.

Thank you,

Kimberlee

From: Jeff Darby <jeffdarby@yahoo.com>
Sent: Thursday, June 22, 2023 3:33 PM

To: Proctor, Kimberlee A - MSHA <Proctor.Kimberlee@dol.gov>; Jeff Darby <jeffdarby@yahoo.com>
Cc: Thacker, Casey E. - MSHA <Thacker.Casey@DOL.GOV>; Proctor, Kimberlee A - MSHA <Proctor.Kimberlee@dol.gov>
Subject: Re: REQUEST: FOIA 2023-F-09292

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

How far back do these go?

Jeff Darby

JP Darby Services, LLC

1515 N. 26th St.

Nederland, TX 77627

(409) 719-8223

jeffdarby@yahoo.com

<https://www.linkedin.com/in/jeff-darby-b7201773/>

Member, International Labor Communications Association (<https://laborcommunicators.org/>)

On Thursday, June 22, 2023 at 01:52:37 PM CDT, Proctor, Kimberlee A - MSHA <proctor.kimberlee@dol.gov> wrote:

Mr. Darby,

I am following up on my question regarding date ranges for Items #3A and #3C. Can you please provide me with this information as soon as possible?

Kimberlee

From: Proctor, Kimberlee A - MSHA <Proctor.Kimberlee@dol.gov>
Sent: Wednesday, June 14, 2023 5:00 PM
To: jeffdarby@yahoo.com
Cc: Thacker, Casey E. - MSHA <Thacker.Casey@DOL.GOV>; Proctor, Kimberlee A - MSHA <Proctor.Kimberlee@dol.gov>
Subject: REQUEST: FOIA 2023-F-09292

Mr. Darby,

The Mine Safety and Health Administration (MSHA) has been assigned to respond to a portion of your FOIA request dated May 16, 2023. Within MSHA, your request has been assigned FOIA number 2023-F-09292.

We continue to process your request, however, to address a couple of items we are seeking clarification. Please provide a date range for responsive documents for the following items:

1. Item #3A – All communications, studies and report effectiveness of CPDMs.
2. Item #3C – Any reports, conclusions, memos, records, or results that show hazards caused by CPDM usage...

Thank you,

Kimberlee Proctor
MSHA Enforcement
FOIA Coordinator

ATTACHMENT 5

FOIA - Request: 2023-F-09292-Acknowledgment

From: Thacker.Casey@DOL.GOV (thacker.casey@dol.gov)

To: jeffdarby@yahoo.com

Cc: proctor.kimberlee@dol.gov

Date: Wednesday, June 21, 2023 at 10:30 AM CDT

Hello,

Attached you will find the acknowledgment letter for FOIA Request 2023-F-09292.

We continue to process this request.

Please reach out with any comments or concerns.

Thank you,

Casey E. Thacker



FOIA 2023-F-09292 Darby Acknowledgment Letter_Signed.pdf
1.2MB

ATTACHMENT 6

U.S. Department of Labor

Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, Virginia 22202-5452



June 20, 2023

Jeffrey P. Darby
JP Darby Services, LLC
1515 N. 26th St.
Nederland, TX 77627

Re: Freedom of Information Act Request Acknowledgement – Tracking No. 2023-F-09292

Dear Mr. Darby:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated May 16, 2023, addressed to U.S. Department of Labor (DOL). Your request has been referred to the Mine Safety and Health Administration (MSHA) and has been assigned Tracking Number 2023-F-09292. Please refer to this number in any future correspondence relative to your FOIA request.

In your request, you asked for the following documents, records, or information:

“1. Confidential Financial Disclosure Report (OGE Form 450) for all United States Department of Labor employees (whether political appointee or career) at GS-14 and above, including the Secretary, Deputy Secretary, Assistant Secretaries and the Deputy Assistant Secretaries for 2021, 2022, and 2023. Any bargaining unit employee (whether National Council of Field Labor Locals, AFGE Local 12, or National Union of Labor Investigators) within this group can be excluded.

2. A. Names, titles, agencies, and duty stations of all Senior Executive Service (SES) employees at the United States Department of Labor during the last seven years (Fiscal Years 2016 to 2023, inclusive).

2. B. Number of DOL employees during Fiscal Years 2016 to 2023. It is my belief the number of SES employees is up while the number of DOL employees is down.

3. Assistant Secretary for Mine Safety and Health Chris Williamson has required coal mining companies to purchase Continuous Personal Dust Monitors (CPDMs) that are to be worn by underground coal miners.

A. Please provide all internal and external communications, studies, reports, and other systems of record showing the effectiveness (or lack thereof) of CPDMs.

B. The cost of each CPDM is some \$20,000. Please provide any and all:

- i. Cost/benefit analyses concerning the use of CPDMs.
- ii. The number and location of all underground coal mines where CPDMs are used.
- iii. The number of CPDMs at each mine along with the mines' locations.

Freedom of Information Act Request Acknowledgement – Tracking No. 2023-F-09292

C. Any reports, conclusions, memos, records, or results that show hazards caused by CPDM usage must also be disclosed (such as a fire, ignition, or explosion caused by a CPDM or within a CPDM). It has been reported that a CPDM caught fire at the Warrior Met Coal #7 Mine in Brookwood, Alabama on or about September 2021; please provide all information pertaining to this event as well.

4. Back to the SES at DOL, please provide the name of each SES and the amount of his/her performance bonus for each FY from FY 2016 to the present.”

The Mine Safety and Health Enforcement office will provide a response to item number 3. The Department of Labor’s Office of the Assistant Secretary for Administration and Management has been assigned to respond to item numbers 2 and 4, while the Solicitor’s Office has been assigned to respond to item number 1.

You requested a fee waiver. Because we are uncertain that any applicable fees will exceed our minimum charge, we are not addressing your request for a fee waiver at this time. However, if we determine there will be fees associated with processing your request, we will contact you at that time.

Due to the unusual circumstances surrounding the records you are seeking, the statutory time limits for processing your request cannot be met. There is a need to consult with another agency or two or more agency components and a need to search for and collect records from separate offices. Based on these unusual circumstances, we estimate that you will receive a response within 60 working days of the date of this letter.

If you have any questions or wish to discuss narrowing the scope of your request or an alternative time frame for the processing of your request, you may contact at Kimberlee Proctor at 202-693-9477 or proctor.kimberlee@dol.gov or the DOL FOIA Public Liaison, Thomas Hicks, at (202) 693-5427 or hicks.thomas@dol.gov. Alternatively, you may contact the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA) to inquire about the 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, College Park, MD 20740-6001
Phone - (202) 741-5570
Toll free - (877) 684-6448
Fax - (202) 741-5769
Email - ogis@nara.gov

Please note that FOIA applies to existing records and does not require agencies to conduct research or generate documents based on that research. The FOIA requires that agencies generally disclose records unless agencies are authorized or required to withhold requested records, either in whole or part due to one or more of the nine established exemptions.

Freedom of Information Act Request Acknowledgement – Tracking No. 2023-F-09292

For information about FOIA practices and procedures, please visit our website at www.msha.gov or visit the DOL website at www.dol.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy R. Watkins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Timothy R. Watkins
Deputy Administrator for Mine Safety and Health Enforcement
Mine Safety and Health Administration

ATTACHMENT 7

Fw: Letter of Response to your FOIA request dated May 16th 2023 (Tracking# FY23-F-09364)

From: Jeff Darby (jeffdarby@yahoo.com)

To: morgan.patricia@dol.gov; jeffdarby@yahoo.com; myers.vanessa.j@dol.gov

Date: Monday, August 28, 2023 at 08:57 PM CDT

I am in receipt of the email.

Whether the Letter of Response satisfies my FOIA request or not is yet to be determined. I can say that this reply is extremely out of compliance with FOIA's 20 working day limit (received on working day 71).

Jeffrey P. Darby, PHR
JP Darby Services, LLC
1515 N. 26th St.
Nederland, TX 77627
(409) 719-8223
jeffdarby@yahoo.com

<https://www.linkedin.com/in/jeff-darby-b7201773/>

Member, International Labor Communications Association (<https://laborcommunicators.org/>)

----- Forwarded Message -----

From: Morgan.patricia@dol.gov <morgan.patricia@dol.gov>

To: "jeffdarby@yahoo.com" <jeffdarby@yahoo.com>

Cc: "myers.vanessa.j@dol.gov" <myers.vanessa.j@dol.gov>

Sent: Monday, August 28, 2023 at 01:33:53 PM CDT

Subject: Letter of Response to your FOIA request dated May 16th 2023 (Tracking# FY23-F-09364)

Good Afternoon,

Please see attached response to your FOIA request dated May 16th 2023 (tracking# FY-23-09364). Please confirm that you have received this email.

Patricia Morgan
Secretary
SOL-Office of Legal Counsel
morgan.patricia@dol.gov



20230828150910871.pdf

86.2kB

ATTACHMENT 8

FOIA Public Liaison, Thomas Hicks, at 202-693-5427 or by email at Hicks.Thomas@dol.gov. Alternatively, you may contact the Office of Government Information Services (OGIS), within the National Archives and Records Administration, to inquire about the 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, College Park, MD 20740-6001. You can also reach that office by e-mail at ogis@nara.gov, by phone at 202-741-5770, by fax at 202-741-5769, or by calling toll-free at 1-877-684-6448.

Additionally, if you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. The envelope and letter of the appeal should be clearly marked "Freedom of Information Act Appeal." Any amendment to the appeal must be made in writing and received prior to a decision. The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. Appeals may also be submitted by email to foiaappeal@dol.gov. Appeals submitted to any other email address will not be accepted.

Sincerely,

Shankar
Duraismwamy

Digitally signed by
Shankar Duraismwamy
Date: 2023.08.23
09:22:08 -04'00'

Shankar Duraismwamy
Deputy Solicitor for National Operations

U. S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210



August 23, 2023

Jeffrey P. Darby
JP Darby Services, LLC
1515 N. 26th St.
Nederland, TX 77627
jeffdarby@yahoo.com

RE: FOIA Request No. 2023-F-09364

Dear Mr. Darby:

This letter is in response to your Freedom of Information Act (FOIA) request dated May 16, 2023 (tracking # 2023-F-09364) wherein you requested:

Confidential Financial Disclosure Reports (OGE Form 450) for all United States Department of Labor employees (whether political appointee or career) at GS-14 and above, including the Secretary, Deputy Secretary, Assistant Secretaries and the Deputy Assistant Secretaries for 2021, 2022, and 2023. Any bargaining unit employee (whether National Council of Field Labor Locals, AFIGE Local 12, or National Union of Labor Investigators) within this group can be excluded.

The Office of Legal Counsel (OLC), Office of the Solicitor cannot produce any responsive documents for this request. Confidential financial disclosure reports are not subject to FOIA because they “contain sensitive commercial and financial information, as well as personal privacy-protected information,” and are thus “exempt from being released to the public, under exemptions 3(A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3)(A) and (B), (b)(4), and (b)(6).” 5 C.F.R. § 2634.901. Furthermore, Confidential reports are specifically characterized as “confidential” and are required to be withheld from the public by the Ethics in Government Act, 5 U.S.C. § 13109; 5 C.F.R. § 2634.901. Agencies are not granted any discretion on this issue. *Id.*

Any publicly available financial reports for the listed officials must be requested through Office of Government Ethics (OGE) Form 201. You can find the form online at the following websites:

- [https://www.oge.gov/web/OGE.nsf/0/FE125A54B5831BEA852585B6005A2413/\\$FILE/OGE%20Form%20201%20\(OMB%20Approved%20May%202023\).pdf](https://www.oge.gov/web/OGE.nsf/0/FE125A54B5831BEA852585B6005A2413/$FILE/OGE%20Form%20201%20(OMB%20Approved%20May%202023).pdf)
- <https://extapps2.oge.gov/201/Presiden.nsf/201+Request?OpenForm>.

Other agencies within the Department of Labor will be responsible for conducting a reasonable search for the remaining requests, and will respond accordingly.

If you have questions about this response you may contact Vanessa Myers, Senior Attorney, Office of Legal Counsel, at 202-693-5702 or by email at Myers.Vanessa.J@dol.gov, Sabrina Gray, Counsel for Ethics, at 202-674-4896 or by email at Gray.Sabrina.A@dol.gov; or the DOL