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May 18, 2020

VIA EMAIL

Thomas G. Hicks, Sr.
FOIA Public Liaison
U.S. Department of Labor
Office of the Solicitor
200 Constitution Avenue NW
Room N2434
Washington, DC 20210
Hicks.Thomas@dol.gov

RE: FOIA 891917 – Request to Clarify and Narrow the Scope of Request

Dear Mr. Hicks:

I am in receipt of your email dated today in which you requested that Public Citizen clarify and narrow its May 1, 2020 FOIA Request. Below, please find Public Citizen's responses to your proposals as to each of the four "items" in the request, as well as to the general limitations on search you identified.

Item 1: "Any communications related to COVID-19, the coronavirus, and/or plant closures, slowdowns, or openings related to the pandemic between Department of Labor officials or staff and representatives of Smithfield Foods, Tysons Food, Cargill, Pilgrim's Pride, JBS, Hormel, the National Pork Producers Council, the National Chicken Council, or the National Meat Association."

DOL proposal: The Department of Labor is proposing for Item #1 to search for email communications of specific "OSHA personnel" and the organizations (listed below) provided by Public Citizen and the email addresses provided by DOL, using the terms: COVID-19, Coronavirus, pandemic with plant opening and plant closings/closures:

- Smithfield Foods: @smithfieldfoods.com
- Tysons Foods: @tysonfoods.com
- Cargill: @cargill.com
- Pilgrim's pride: @pilgrims.com
- JBS: @jbssa.com
- Hormel: @hormel.com
- The National Pork Producers Council: @nppc.org
- The National Chicken Council: @chickenusa.org
- The National Meat Association: @meatinstitute.org,

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms

Public Citizen agrees to limit the search terms to:

COVID
COVID-19
Coronavirus
Corona
Opening
Closing
Closure
PPE
Transmission
Testing
Outbreak
Pandemic

Custodians

Public Citizen does not agree to limit the search to OSHA personnel, particularly in light of public statements made by officials outside of OSHA. The search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office and OSH Division of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

Nature of records

Public Citizen does not agree that the agency can limit its search to email records. Public Citizen seeks all responsive “records,” as that term is defined under FOIA, 5 U.S.C. 552(f)(2), including letters, faxes, or other communications.

Item 2: “Any communications between Department of Labor officials or staff and Department of Agriculture officials and staff relating to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.”

DOL Proposal: The Department is proposing for Item #2, to search communication between “OSHA personnel” and SOL/OSH and the USDA-Food Safety Inspection Services (FSIS). (@fsis.usda.gov), since the majority of communication(s) involved OSHA and specifically FSIS at the Department of Agriculture. The recommended search terms and perimeters for Item #2

would be the following: “COVID-19” or “coronavirus” with meat processing, pork slaughtering, poultry processing, pork processing, meat inspection, poultry inspection and pork inspection.

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms

The search terms proposed by DOL are unduly narrow and would be unlikely to capture all responsive documents. Public Citizen agrees to limit the search terms as follows:

COVID
COVID-19
Coronavirus
Corona
Opening
Closing
Closure
PPE
Transmission
Outbreak
Pandemic
Testing
Death

Custodians

Public Citizen does not agree to DOL’s proposal to limit its search to OSHA personnel and to staff within the OSH Division of the Office of the Solicitor, particularly in light of public statements made by officials outside of OSHA. The search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

Item 3: “All records regarding the “Statement of Enforcement Policy” issued by Solicitor of Labor Kate O’Scannlain and Principal Deputy Assistant Secretary for OSHA Loren Sweatt, on April 28, 2020.”

DOL Proposal: The Department is proposing for Item #3 to search communications between Solicitor of Labor Kate O’Scannlain and “OSHA personnel” concerning the Statement of Enforcement Policy issued on April 28, 2020. The Department is proposing to search the emails of Kate O’Scannlain, the SOL/OSH staff and “OSHA personnel.” The recommended search terms for Item #3 would be the following: “Statement of Enforcement Policy” with “COVID-19” and/or “coronavirus.”

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms

Public Citizen maintains that this search term is excessively narrow as it would only include the formal name of a document. We are willing to narrow the search to the terms “enforcement” and “policy”, with “COVID,” “COVID-19”. “Corona,” and/or “coronavirus.”

Custodians

Public Citizen does not agree to DOL’s proposal to limit its search to OSHA personnel and to staff within the OSH Division of the Office of the Solicitor, particularly in light of public statements made by officials outside of OSHA. Instead, the search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

Item 4: “All records concerning the applicability of state and local public health, worker safety, or consumer protection law, or state tort law to poultry, beef, and pork slaughter and/or processing facilities, in connection with COVID-19 or the coronavirus.”

DOL Proposal: The Department asserts that Item #4 is very broad. To conduct a search for Item #4, the Department proposes the following search of email communications of SOL-OSH staff and “OSHA personnel” with the following recommend search terms (listed below) with “COVID-19 or “coronavirus:”

- “state law”
- “local law”
- “public health”
- “work safety”
- “tort law”
- “consumer protection”
- “poultry processing laws”
- “beef processing laws”
- “pork processing laws”
- “meat processing laws”

Response: Public Citizen does not agree to limit its request to the extent proposed by DOL. We are willing to limit the request as described below.

Search terms:

In addition to the search terms listed by DOL, Public Citizen requests that the agency include the following additional search terms, to more likely ensure an adequate search for responsive documents:

Liability
Damages
Lawsuit
Preempt
Preemption
Class Action
Nuisance

Given that the search is limited to the short time period in which COVID-19 has dominated the work of the agency, searching for these additional terms, in addition to the terms listed in your proposal, is a reasonable way to identify responsive records, without excluding many responsive ones.

Custodians

Public Citizen does not agree to limit the search to OSHA personnel, particularly in light of public statements made by officials outside of OSHA, and to staff within the OSH Division of the Office of the Solicitor. The search should also include documents in the custody and control of staff in the Office of the Secretary and Deputy Secretary (including but not limited to the Secretary and Deputy Secretary, Rachel Mondl, Catherine Bartley, Andrew Kilberg, Nathan Mehrens, Brett Swearingen), the front office of the Office of the Solicitor, Bob Bozzuto, Dean Heyl, Denisha Braxton, Simone Walter, Jonathan Wolfson and Alison Kilmartin.

General Limitations:

DOL Proposal: Please note to streamline the search for responsive and relevant records, some of the terms may be combined in the searching process. And to specifically exclude news briefings, newsletters and news clippings regarding COVID-19 from the electronic search results, the Department will use the following: (-subject:"DOL Daily Briefing")(-subject:"Weekly Update")(-subject:"News Clips")(-subject:"Morning Shift") (-subject:"Pro Employment & Immigration Report")(-subject:"News Highlights")(-subject:"Weekly News")(-subject:"First Move") (-from:bhighlig@bna.com)(-from:news-q@law360.com(-from:bloomberg@bna.com)(-from:westlaw@westlaw.com) (-from:politicoemail@politicopro.com). This may eliminate unnecessary review of news articles and media related to the subject of your FOIA request. Additionally, please note that "OSHA personnel" consists of the following:

- Loren Sweatt
- Krisann Pierce
- Mandy Edens
- Christopher Brown

- Andy Levinson
- Patrick Kapust
- Mikki Homes

Response: Public Citizen does not object to the limitations of the identified “from” email addresses. We do object to eliminating the identified “subjects” as it excludes correspondence to or from DOL staff in chains that may have begun with one of these briefings/clippings. Excluding the addresses from which these briefings/clippings are sent would appear to eliminate the briefings/clippings themselves, without eliminating follow-up communications in the same thread.

As to the list of OSHA personnel, the following individuals should be added to the list: Maureen Ruskin, Francis Mellinger, Galen Blanton, Richard Mendelson, Michael Rivera, Kurt Petermeyer, Bill Donovan, Eric Harbin, Kim Stille, Rita Lucero, and Barbara Goto.

* * *

If you have any questions regarding this response, please contact me by phone at (202) 588-1000 or by e-mail at apulver@citizen.org.

Thank you very much for your attention to this matter.

Sincerely,

Adam R. Pulver