

EXHIBIT B



August 10, 2020

Mr. Tom Dreisbach
c/o NPR West
9909 Jefferson Blvd
Culver City, CA 90232
SENT VIA E-MAIL: tdreisbach@npr.org

RE: Acknowledgement for FOIA Request 20-068

Dear Mr. Dreisbach,

This letter acknowledges the receipt of your Freedom of Information Act (FOIA) request dated July 31, 2020. Your request has been assigned **FOIA Number 20-068**. Please reference your FOIA number in all communications about your request. You requested the following:

- 1. All communications – including, but not limited to, written letters, memoranda, emails, voicemails, and text messages – between DFC Chief Executive Officer Adam Bohler and any individual or representative of the Eastman Kodak Company (“Kodak”) from June 1, 2020 to July 31, 2020;**
- 2. All communications – including, but not limited to, written letters, memoranda, emails, voicemails, and text messages – regarding Kodak between DFC Chief Executive Officer Adam Bohler and Peter Navarro, Assistant to the President and Director of the Office of Trade and Manufacturing Policy from June 1, 2020 to July 31, 2020; and**
- 3. All communications – including, but not limited to, written letters, memoranda, emails, voicemails, and text messages – regarding Kodak between DFC Chief Executive Officer Adam Bohler and Jared Kushner, Assistant to the President and Senior Advisor to the President, from June 1, 2020 to July 31, 2020.**

Your request is being processed under the Freedom of Information Act (FOIA), which can be found at Section 552 of Title 5 of the United States Code. The FOIA requires agencies to search records within the agency’s control and that are reasonably likely to produce your requested records.¹ In order to ensure that an agency can do this, the FOIA requires that requesters reasonably describe

¹ See, e.g., Weisberg v. Dep’t of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983) (searches must be “reasonably calculated to uncover all relevant documents.); .

the records sought so that an agency staff member can determine what records are responsive and where they are likely to be located with a reasonable amount of effort.²

Unusual Circumstances

Whenever the statutory time limits for processing cannot be met because of “unusual circumstances” as defined by the FOIA, and DFC extends the time limits on that basis, DFC will notify the requester in writing of the unusual circumstances involved and of the date by which DFC estimates processing of the request will be completed.³ This serves as notice that the FOIA Office will be unable to complete processing your request in the time limits set forth by regulation and statute. The circumstances giving rise to this unique situation includes:

(1) In addition to an existing FOIA backlog, the FOIA Office has seen a sharp and unprecedented increase in requests in the past few weeks. DFC received fifty-five FOIA requests over four months; nearly all of these requests require the FOIA Office to search for, collect, and manually examine voluminous separate and distinct records.⁴ Many of these requests require extensive consultation and referral with other federal agencies as well as notice and opportunity to comment from submitters of potential confidential commercial information with regard to private entities and individuals named in these FOIA requests.⁵ Over the last five years, the FOIA Office received an annual average of 54 FOIA requests; this four-month increase accounts for more than the entire expected annual volume of requests based on past agency precedent.

(2) Staff turnover in the DFC FOIA Office has reduced by half the available workable hours to process FOIA requests. As a small agency, the DFC FOIA Office processing staff has gone from two individuals to one.

(3) Effective January 1, 2020, the Overseas Private Investment Corporation (OPIC) transferred all of its rights and obligations to the United States International Development Finance Corporation (DFC) under the authority of the Better Utilization of Investments Leading to Development (BUILD) Act of 2018, 22 U.S.C. §§ 9601 et seq. The agency transition from OPIC to DFC has strained resources across the agency, including IT staff and the FOIA Office. As DFC is a small agency, all FOIA Office staff have additional roles and members have taken on additional agency transition duties further reducing available workable hours to process FOIA requests.

These compounded conditions and current FOIA backlog have impacted the FOIA Office’s ability to process multiple requests at one time. Processing priority is being provided to expedited requests, in the order received, and with simple requests being processed on a first-in basis as resources are available. Simple requests are processed alongside the expedited requests. When the agency is able to begin processing your request, an updated estimated timeline will be provided based upon the results of an electronic search.

² See H.R. Rep. No. 93-876, at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271; Truitt v. Dep’t of State, 897 F.2d 540, 544-45 (D.C. Cir. 1990).

³ Id. at § 706.31(d).

⁴ See 5 U.S.C. § 552(a)(6)(B)(iii).

⁵ See e.g. 22 C.F.R § 706.30; Id. at § 706.33; See also Executive Order 12600.

Third Party Notice and Agency Consultations:

As your request seeks information about or submitted by a third party, DFC is required to provide notice and comment to that third party and any other third party submitters of potentially confidential commercial information in the records with notice and an opportunity to comment under Executive Order 12600 and DFC's regulations at 22 C.F.R. 706. This will incur additional time, the amount of which is dependent on the number and type of third-party submitters that must be contacted.

Your request also seeks information which may contain information about or obtained from another agency. DFC is required to consult with these agencies before making a determination. This process can add significant processing time as DFC is unable to control the response time of other agencies.

Fees

For fee purposes, your request is classified as news media use request.⁶ All search time, review time, and the first 100 pages of reproduction will be provided to you without charge.⁷ News media use requests generally do not incur fees and the FOIA Office does not expect to charge fees for processing this request.⁸ DFC's fee schedule is as follows:

Administrative staff time \$30.00 per hour
Professional staff time \$55.00 per hour
Duplication \$0.10 per page for photocopies or the actual cost of other formats⁹

Expedited Processing

Your request seeks expedited processing. Expedited processing is granted when requests involve either: "(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; [or] (ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information."¹⁰

Your request seeks expedited processing under the second situation. DFC's regulations require that all requests for expedited processing include a "statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing."¹¹ In addition to certifying that you are a member of the news media primarily engaged in disseminating information, your request states: "The actual or alleged government activity involves the awarding of a \$765 million U.S. government loan to Kodak 'to support the launch of Kodak Pharmaceuticals, a new arm of the company that will produce critical pharmaceutical components.' The loan is intended to support the U.S. government's ongoing response to the COVID-19 pandemic, which has killed at least 150,000 Americans, sickened millions more, and

⁶ 22 C.F.R. § 706.22.

⁷ *Id.* at § 706.23.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at § 706.31(f).

¹¹ *Id.* at § 706.31(f)(3).

caused widespread national and international disruption. This request seeks to add to the public understanding of this government loan, its role in the nation's response to the pandemic, and the use of taxpayer resources during an unprecedented national emergency."

Based on these assertions, DFC agrees that you are a "person primarily engaged in disseminating information." In order to show that there is an "urgency to inform the public about an actual or alleged Federal government activity," the agency looks to whether a request concerns a "matter of current exigency to the American public," whether the consequences of delaying a response would "compromise a significant recognized interest," whether the request concerns "federal government activity," and the credibility of the "allegations regarding governmental activity."¹² In this regard, the courts have found a distinction between the general public interest in the overall subject matter of a FOIA request and the public interest that might be served by disclosure of the actual records sought or those responsive to a particular request.¹³

Accepting as true the request's assertions solely for the purpose of determining your expedited processing request, you have demonstrated a compelling need for the records sought. Given the targeted timeframe and focus on communications between specific individuals, the FOIA Office finds the request is reasonably tailored to produce the records for which you have shown a compelling need.

Accordingly, your request for expedited processing FOIA 20-068 is **granted**. Your request will be placed in the expedited processing queue and processed "as soon as practicable."¹⁴ Please note that due to current FOIA backlog and staffing restrictions, the FOIA Office has limited capacity to process multiple complex FOIA requests at once. Also note that records responsive to this request will likely produce responsive records which may contain information about or obtained from another agency and from submitters of potential confidential commercial information. DFC is required to consult with these other agencies and to provide notice and an opportunity to comment to private third parties before making a release determination.¹⁵ The FOIA Office will place your request in the expedited queue to be processed in the order received as indicated by the assigned FOIA reference number. This request is currently tenth in the expedited processing queue.

Conclusion

You may contact me or the FOIA Public Liaison for any further assistance and to discuss any aspect of your request. Please reference the FOIA number assigned to your request in all

¹² Al-Fayed v. Cent. Int. Agency, 254 F.3d 300, 310 (D.C. Cir. 2001).

¹³ See, e.g., Elec. Privacy Info. Ctr. v. Dept. of Def., 355 F. Supp. 2d 98, 102 (D.D.C. 2004) (upholding denial of expedited processing when requester had "failed to present the agency with evidence that there is a 'substantial interest' in the 'particular aspect' of [its] FOIA request," finding that, "[t]he fact that [the requester] has provided evidence that there is some media interest in data mining as an umbrella issue does not satisfy the requirement that [it] demonstrate interest in the specific subject of [its] FOIA request"); Landmark Legal Found. v. Env. Protection Agency, 910 F. Supp. 2d 270, 277 (D.D.C. 2012) (rejecting notion that matter is urgent merely because it is of public interest or concerns public health and economic well-being because, "such a justification would likely sweep almost any FOIA request into the ambit of 'urgency' since FOIA requests are regularly designed to elicit information about how the government is performing its work").

¹⁴ 5 U.S.C. § 552(a)(6)(E)(iii).

¹⁵ 22 C.F.R. § 706.30. See also Executive Order 12600.

correspondence regarding your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about FOIA dispute resolution 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
Email: ogis@nara.gov
Phone: 202-741-5770 | Toll Free: 877-684-6448 | Fax: 202-741-5769

Sincerely,

Eric Styles
Digitally signed by Eric Styles
Date: 2020.08.10 17:45:07 -04'00'

Eric Styles
Administrative Counsel
United States International Development Finance Corporation
1100 New York Avenue, N.W.
Washington, D.C. 20527
Eric.Styles@dfc.gov