

Office of Information Affairs

Office of Information Affairs

July 19, 2023

Delivered via Electronic Mail

Sharon Friedman

P.O. Box 571

Peyton, CO 80831

terraveritas@gmail.com

Re: Final Response for Freedom of Information Act (FOIA) Request No. 2023-OSEC-03066-F

Dear Sharon Friedman:

This is the Office of Information Affairs (OIA) final response to the above-referenced FOIA request, which sought: "All communications [since September 1, 2022] with any individuals from the White House (including CEQ) on the topic of fire retardant, HR 1586 and the Forest Protection and Wildland Firefighter Safety Act of 2023."

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

The OIA is under the purview of the Office of the General Counsel (OGC) and serves as the focal point for USDA's FOIA program. It provides coordination and ensures agency-wide compliance with the FOIA. Additionally, the OIA processes requests and appeals on behalf of the Office of the Secretary (OSEC), the Under Secretaries, USDA's staff offices, and the Research, Education and Economics and Trade and Foreign Agricultural Affairs mission areas.

A search was conducted by OSEC's telecommunications provider, 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 35 pages were identified.

The OIA considered the foreseeable harm standard when reviewing the records and applying any relevant FOIA exemptions and has determined that certain information contained therein should be withheld pursuant to 5 U.S.C. § 552(b)(5) (FOIA Exemption 5) and 5 U.S.C. § 552(b)(6) (FOIA Exemption 6). Below is an explanation of the information that has been withheld.

FOIA Exemption 5 - Deliberative Process Privilege

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 OIA is withholding, under the deliberative process privilege, pre-decisional intra-agency discussions and briefings on agency actions and programs on issues relating to trade, agricultural commodities, personal matters, proposed legislation and regulations, proposed responses to media, industry, congressional and internal inquiries; proposed meeting agendas; and proposed talking points.

These items are pre-decisional in that they are antecedent to any final agency decision. These items are also deliberative in that they reflect the evolving, back-and-forth process between agency employees that is so integral to the Executive Branch decision-making process; more specifically, the development of potential recommendations made by agency advisors for use in making policy decisions.

If these pre-decisional, deliberative communications were released to the public, USDA and other Executive Branch employees would be much more cautious in their discussions with each other, and in candidly discussing and providing all pertinent information and viewpoints in a timely manner to agency decision-makers. This lack of candor would also seriously impair the Department's ability to engage in forthright, internal discussions necessary for efficient and proper agency decision-making.

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 consists of mobile phone numbers, conference call passcodes, and email addresses and phone numbers belonging to employees of the Executive Office of the President (EOP). 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. Because 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.

Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees will be charged.

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 OIA 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

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letter should include the FOIA tracking number, a copy of the original request, the OIA'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 and the appeal letter should be marked "Freedom of Information Act Appeal" and reference FOIA No. 2023-OSEC-03066-F.

You may seek dispute resolution services from the OIA's FOIA Public Liaison, Ms. Melanie Enciso. Ms. Enciso may be contacted by telephone at (202) 720-9425, or electronically at Melanie.Enciso@usda.gov or USDAFOIA@usda.gov.

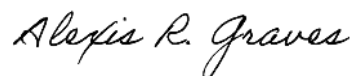
You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit <https://www.archives.gov/ogis/mediation-program/request-assistance> for information about how to request OGIS assistance in relation to a FOIA request. Provisions of the FOIA allow us 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. Harald Fuller-Bennett at 202-239-4522, or electronically at Harald.FullerBennett@usda.gov or USDAFOIA@usda.gov.

For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at Freedom of Information Act Division | USDA.

The OIA appreciates the opportunity to assist you with this matter.

Regards,



Alexis R. Graves
Director
Office of Information Affairs

Enclosure: Responsive Records (35 pages)