

## Office of Information Affairs

May 10, 2024

**Delivered via Electronic Mail**

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The Heritage Foundation  
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**Re: Freedom of Information Act (FOIA) Request No. 2022-OSEC-02115-F  
Final Response**

Dear Fred Lucas:

This is the U.S. Department of Agriculture (USDA), Office of Information Affairs' (OIA) final response to the above-referenced FOIA request, which sought all information regarding the USDA's strategic plan created in accordance with President Biden's Executive Order 14019, including communications between USDA officials regarding Executive Order 14019, communications between the USDA and the White House regarding Executive Order 14019, communications between the USDA and OMB-OIRA Senior Counsel K. Sabeel Rahman regarding Executive Order 14019, and the criteria and approval authority by which third-party organizations will be approved to conduct voter registration activities on federal agency premises under Executive Order 14019, for the time period from March 1, 2021 to the present.

On April 26 and May 3, 2024, this office issued interim responses in this matter.

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

The Client Experience Center's (CEC) eComply team conducted a search for responsive records. 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. The CEC searched the email accounts associated with Secretary Vilsack, his top aides, and the two USDA employees charged with drafting the USDA's strategic plan in response to Executive Order 14019 for the time period from March 1, 2021 through February 11, 2022. The CEC search identified one hundred seventeen (117) pages responsive to your request.

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) and (b)(6) (FOIA Exemptions 5 and 6). In addition,

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eighteen (18) pages of attachments and one spreadsheet have been withheld in their entirety under FOIA Exemption 5. 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 associated with President Biden’s Executive Order 14019, including a draft of the USDA’s strategic plan to promote voter registration and voter participation pursuant to Executive Order 14019. 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 5 – Attorney-Client Privilege**

The OIA is also withholding information under the attorney-client privilege. This privilege protects confidential communication between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinion given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client supplied information.

In this instance, the OIA is withholding information shared internally concerning the USDA’s strategic plan to implement Executive Order 14019 whereby legal advice is being sought from and provided by the Department’s counsel. These confidential communications are shielded from disclosure in order to encourage open and frank discussions between the Department and its legal advisors. Ensuring the Department receives sound legal advice promotes public policy, and this advice depends on counsel being fully informed. The release of these confidential

communications would inhibit the Department's ability to provide pertinent information and would impair the Department's counsel from making well-informed legal decisions.

### **Exemption 5 – Presidential Communications Privilege**

Another Exemption 5 privilege is the presidential communications privilege. Exemption 5 may incorporate virtually all civil discovery privileges; if a document is immune from civil discovery, it is similarly protected from mandatory disclosure under the FOIA. Rule 501 of the Federal Rules of Evidence allows courts to create privileges as necessary, which may be thereafter recognized under Exemption 5. The presidential communications privilege is one such privilege that has been recognized by courts under Exemption 5.

The presidential communications privilege protects communications among the President and his advisors. It can apply to documents in their entirety and covers final and post-decisional materials as well as pre-deliberative ones. The records being withheld here consist of email communications concerning President Biden's Executive Order 14019 and attached records that were solicited and received by the President or his immediate White House advisers who have broad and significant responsibility for investigating and formulating the advice to be given to the President. Accordingly, upon the advice of the White House Counsel's Office, the information is being withheld under the presidential communications privilege.

### **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 a mobile phone number, direct phone numbers, a personal email address, email addresses and telephone numbers belonging to employees of the Executive Office of the President (EOP), teleconference numbers, links, and access codes, and links to a confidential database. This information qualifies as "similar files" because it is information in which individuals have a privacy interest. Releasing individuals' contact information could subject the individuals to unwarranted or unsolicited communications, or even harassment. As for the teleconference numbers, links, and access codes, some of the numbers may be tied to specific individuals' conference lines, and participants have a privacy interest in ensuring no uninvited individual is listening in on their calls. The other information withheld is private and confidential in nature and does not advance one's understanding of the government's operations. 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.

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You may appeal this response by email at [USDAFOIA@usda.gov](mailto: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 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. 2022-OSEC-02115-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) 720-9462, or electronically at [Melanie.Enciso@usda.gov](mailto:Melanie.Enciso@usda.gov) or [USDAFOIA@usda.gov](mailto:USDAFOIA@usda.gov).

You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit [Request OGIS Assistance | National Archives](#) 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 Susan Ruppel at 202-690-5220 or electronically at [susan.ruppel@usda.gov](mailto:susan.ruppel@usda.gov) or [USDAFOIA@usda.gov](mailto: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.

Sincerely,

*Alexis R. Graves*

Alexis R. Graves  
Director  
Office of Information Affairs

Enclosure: Responsive Records (99 pages)