



Know your environment.
Protect your health.

VIA E-MAIL

September 24, 2018

FSA FOIA Team
1400 Independence Ave., SW Stop 0506
Room 4078-S
Washington, D.C. 20250
FSA.FOIA@wdc.usda.gov

Re: **Freedom of Information Act Request**

Dear FOIA Officer:

On August 27, 2018, U.S. Secretary of Agriculture Sonny Perdue announced details on the United States Department of Agriculture's (USDA's) authorization of up to \$12 billion to aid farmers harmed by tariffs.¹ In part, the USDA is assisting farmers using the Market Facilitation Program (MFP) administered by the Farm Service Agency (FSA) to provide direct payments to farmers. The USDA has started processing MFP payments to farmers.² The Washington Post reported on September 21, 2018 that the USDA has approved 7,851 applications for MFP payments and in the month of September has given \$25.8 million to aid farmers.³ The Environmental Working Group (EWG) would like to request information on the USDA's direct MFP payments to farmers.

Under the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, 7 U.S.C. § 8791, corresponding USDA regulations, 7 C.F.R. Part 1, EWG hereby requests copies of the following FSA payment records⁴ located within the USDA:

1. All records of direct MFP payments made in accordance with the August 27, 2018 press release to corn, cotton, dairy, hog, sorghum, soybean, and wheat producers.

¹ USDA Press Release, August 27, 2018, <https://www.usda.gov/media/press-releases/2018/08/27/usda-announces-details-assistance-farmers-impacted-unjustified>.

² Jeff Stein, "Bailout checks begin arriving for farmers, as Trump's trade war escalates," Washington Post (September 21, 2018) https://www.washingtonpost.com/business/2018/09/21/bailout-checks-begin-arriving-farmers-trumps-trade-war-escalates/?utm_term=.1a3757221c00

³ *Id.*

⁴ For purposes of this FOIA request, "records" means information of any kind, including writings; memoranda; e-mails, including their subject lines, names of recipients and their e-mail addresses, and any attachments; text messages; letters; notes; meeting requests; calendar entries, including the names of invitees and their e-mail addresses, and any attachments; meeting minutes; documents; drawings; graphs; charts; photographs; electronic and magnetic meeting recordings; records of telephone conversations, including cell-phone records; and any other compilation of data from which information can be obtained.



Know your environment.
Protect your health.

This request includes the payment information and names and addresses of payment recipients.

The disclosure of the requested payment information, including the name and addresses of recipients of payments, is authorized under section 1619 of the Food, Conservation, and Energy Act of 2008 (Section 1619), codified at 7 U.S.C. § 8791.⁵ Just this month, the FSA updated its guidance on providing payment information and the name and address of payment recipients under FOIA.⁶ This guidance specifically states that Section 1619 provides that the “names, addresses, or both, of agricultural producers and owners of agricultural land who have received payments, can be released on records that include information about the payments received.”⁷

EWG seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, calendar invitations, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production. **EWG can accept these files in a number of formats, including compressed data files transferred to us through the internet File Transfer Protocol (ftp), or on CD-ROM. Please be sure to unpack any “packed” data fields in these tables prior to providing the data to us.**

Please search all records regarding agency business in relation to this matter. You may not exclude searches of files in the personal custody of your officials or files sent to or retained in personal email accounts. EWG has a right to records obtained in those files even if the material has not yet been moved to official systems or if personnel have failed to meet their obligation to move those files to official systems.

EWG respectfully requests that USDA make every reasonable effort to provide the requested records within the 20-working day limit required by USDA regulations, 7 C.F.R. § 1.7.

Copies should be mailed or e-mailed within 20 working days of receipt of this request to:

⁵ USDA payments to farmers, including names and addresses, are disclosable under FOIA. *See Washington Post Co. v. United States Dep’t of Agr.*, 943 F. Supp. 31, 36 (D.D.C. 1996).

⁶ FSA Notice APP-70, September 11, 2018, https://www.fsa.usda.gov/Internet/FSA_Notice/app_70.pdf

⁷ *Id.*



Know your environment.
Protect your health.

Caroline Leary
General Counsel
Environmental Working Group
1436 U Street NW, Suite 100
Washington, DC 20009
cleary@ewg.org

Should you determine that portions of the requested records are exempt from disclosure under the FOIA, please segregate those portions and mail the remaining records within the statutory time limit. For any records or portions of records that you determine to be exempt, please provide a specific description of the record or portion of the record exempted along with a particularized description of the exemption. EWG will accept the requested records with all federal Privacy Act-protected information redacted.

EWG is a non-profit public interest organization dedicated to using the power of information to protect public health and the environment. EWG works to ensure a sustainable future for America's working farms and ranches. The food the U.S. produces and the way we produce has profound effects—good and bad—on the public's health, quality of life and the environment. EWG has used data previously obtained from USDA to create the EWG's Farm Subsidy Database, which provides the public detailed information on how taxpayer money is used to support farmers.⁸ The database tracks \$349 billion in farm subsidies from commodity, crop insurance, disaster programs, and conservation payments paid between 1995 and 2016.

The records requested herein are akin to records previously requested by and disclosed to EWG by the USDA. Thus, EWG's request for the release of pertinent records is consistent with the USDA's stated approach to further support the public's confidence and understanding of farm subsidy payments and programs. As such, EWG looks forward to the timely receipt of the requested documents.

Fee Waiver

EWG's request satisfies the statutory requirements for a fee waiver, namely that "it is likely to contribute significantly to public understanding of the operations or activities of the government, and it is not primarily in the commercial interest of the requester."⁹ According to 7 C.F.R. Part 1, Appendix A to Subpart A, § 6(a)(1), when determining whether to waive or reduce fees, the USDA must take into account the following factors: (a) if the subject matter concerns the operations or activities of the government; (b)

⁸ ENVTL. WORKING GROUP, EWG's Farm Subsidy Database, <https://farm.ewg.org/>

⁹ 5 U.S.C. § 552(a)(4)(A)(iii) (2012). *See also* 7 C.F.R. § 1, Appendix A to Subpart A § 6; *DOJ v. Reporters Comm. for Free Press*, 489 U.S. 749, 773 (1989) (internal citations omitted).



whether the disclosure is likely to contribute to the understanding of government operations or activities; (c) if the disclosure contributes to the public understanding; (d) whether the contribution to public understanding is “significant”; (e) if the existence and magnitude of a commercial interest would be furthered by the disclosure; and (f) whether the disclosure is primarily in the public interest.

a. The subject matter concerns the operations or activities of the government.

The requested records will shed light on the USDA’s operations and activities. EWG seeks to understand how the USDA is using taxpayer funds to help farmers manage disrupted markets and deal with surplus commodities. Accordingly, the subject matter of the requested payment records concerns identifiable operations or activities of the government.

b. The disclosure is likely to contribute to the understanding of government operations or activities.

The requested records are likely to contribute to an improved understanding of the government’s assistance of American farmers. A significant public interest lies in shedding light on the workings of the USDA and the administration of its announced \$12 billion aid relief due to tariffs on agricultural goods. Additionally, providing transparency as to the funds the USDA provides to farmers would support greater clarity to the public on how taxpayer funds are spent.

c. The disclosure contributes to the understanding of the public at large.

Disclosure of the requested documents will contribute to the understanding of the “public at large,” as opposed to that of a narrow segment of the population. EWG has both specialized knowledge and the ability and intention to share the requested information. EWG routinely disseminates the information it receives through FOIA requests via comprehensive analyses and media releases, as well as by direct distribution through posting on EWG’s website and e-mailing the organization’s million-strong supporters and other like-minded parties throughout the country.

EWG also disseminates information to the public through congressional testimony, comments to federal agencies, and, when necessary, through the judicial system. Through these various mediums, disclosure to EWG will thus contribute to understanding of the public at large.

d. The disclosure contributes “significantly” to the public understanding.



Know your environment.
Protect your health.

Since Secretary Perdue's announcement of proposed tariff relief aid to farmers under the FSA's Market Facilitation Program, substantial public interest has been directed to how and to whom the payments will be administered. Accordingly, shining light on the USDA's payments to farmers using taxpayer funds by disclosure of the requested materials would contribute "significantly" to the public understanding of the USDA's activities.

e. There is no commercial interest that would be furthered by the disclosure.

EWG's interest in disclosure of records relating to MFP payments to farmers is purely noncommercial. EWG is a well-known non-profit public interest organization that has no intention of using this information in a manner that "furthers a commercial, trade, or profit interest as those terms are commonly understood." Any publication of any analysis of the requested information would be for the sole purpose of dissemination to the public to educate any interested persons about the USDA's payments to farmers under the program.

f. The disclosure is primarily in the public interest.

As discussed above, the disclosure of the requested information is purely noncommercial, and wholly in the public interest. Because EWG has no commercial interest, there is no need to balance any commercial interest against the public interest.

For all of these reasons, EWG asks USDA to waive search or review fees related to this request in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 7 C.F.R. Part 1, Appendix A to Subpart A, §6. If USDA cannot grant a fee waiver, EWG is willing pay up to \$100.00 so that USDA may conduct the requested search in a timely fashion. In any event, EWG's request for a fee waiver should not be construed as an extension of time in which to reply to this request.

EWG looks forward to your response to this request within 20 business days, as provided under 5 U.S.C. § 552(a)(6)(A)(i) and 7 C.F.R. §1.7. If you require further clarification about this request or anticipate any problems with releasing the requested documents, please contact me at 202-939-9151.

Sincerely,

/s/ Caroline Leary

Caroline Leary
General Counsel
Environmental Working Group