

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ORGANIZATION FOR COMPETITIVE  
MARKETS,

Plaintiff,

vs.

OFFICE OF INSPECTOR GENERAL,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,

Defendant

and

NATIONAL CATTLEMEN’S BEEF  
ASSOCIATION,

Defendant-Intervenor

**Civil Action No. 1:14-cv-1902-EGS**

**DEFENDANT OFFICE OF INSPECTOR GENERAL UNITED STATES DEPARTMENT  
OF AGRICULTURE AND DEFENDANT-INTERVENOR NATIONAL CATTLEMEN’S  
BEEF ASSOCIATION’S JOINT MOTION FOR ORDER REQUIRING RETURN OF  
DOCUMENTS AND IMMEDIATE PROTECTIVE ORDER PENDENTE LITE  
AGAINST DISTRIBUTION OR PUBLICATION OF INFORMATION**

Defendant Office of Inspector General, United States Department of Agriculture (“USDA”) and Defendant-Intervenor National Cattlemen’s Beef Association (“NCBA,” and with USDA, “Defendants”), by and through their undersigned counsel, respectfully request that this Court: (1) enter an immediate protective order, pendente lite, that prohibits Plaintiff Organization for Competitive Markets (“OCM”) from copying, disseminating, or otherwise making public the Previously-Produced Records (as defined herein) until further order of this Court; and further, (2) enter an order requiring OCM to return the Previously-Produced Records to USDA for review and processing, as required by Executive Order 12,600 and 7 C.F.R. § 1.12 (“Motion”).

In support of this motion, Defendants states as follows:

**USDA Recently Notified NCBA of the Previously-Produced Records**

On May 10, 2018, counsel at USDA informed NCBA's undersigned counsel that, as a result of an internal accounting of USDA's response to OCM's April 11, 2013 FOIA Request ("OCM FOIA Request"), USDA discovered that, on July 24, 2013, its Agricultural Marketing Service ("AMS") had produced to OCM approximately 7,500 pages of records ("Previously-Produced Records").<sup>1</sup> These Previously-Produced Records included among them a large number of documents originating with or containing NCBA information. See May 29, 2018 Declaration of Douglas L. Evans ("Evans Decl.") at ¶ 3, attached hereto. A copy of the July 24, 2013 AMS transmittal letter to OCM ("July 24, 2013 Letter") is attached to the Evans Decl. as Exhibit 1.

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<sup>1</sup> By way of further explanation, USDA states as follows: After the Court issued its April 12, 2018 Order (ECF No. 76), as USDA sought to ensure compliance with the Court's order, USDA discovered that the Previously-Produced Records were released in July 2013—a period prior to the complaint that initiated this case. Because AMS, the sub-agency that made this release, did not retain a copy of it, USDA AMS's counsel, through Defendant's undersigned counsel, recently requested that OCM return a copy of the release to USDA. This would permit USDA to confirm specifically what had been released. OCM's counsel responded to the effect that they would check for the Previously-Produced Records, but preferred to have USDA focus on releasing the documents subject to the Court's April 12, 2018 Order, and, as of this filing, has not provided to USDA the Previously-Produced Records. Accordingly, in lieu of waiting for OCM to respond by returning the requested copy, USDA has sought to replicate the 2013 USDA OIG referral and USDA AMS release to OCM of approximately 7,500 pages, and shared with NCBA's counsel certain records pertaining to or originating from NCBA. Prior to this development, USDA had undertaken intensive efforts to ensure compliance with the Court's April 12, 2018 and believed it was on track to meet the August 31, 2018 deadline. USDA will make every effort to comply with this deadline notwithstanding this new development, but is aware that compliance may depend to some extent on the cooperation of third parties beyond USDA's control. NCBA states that it was not aware until today, May 29, 2018, that USDA had previously informed OCM of its concern about the Previously-Produced Records or that OCM had failed to comply with USDA's request that OCM provide a copy of the Previously-Produced Records.

**The Previously-Produced Records & NCBA's Review of the Additional Records**

In the July 24, 2013 Letter, AMS notes that “of the 7,544 pages, 6,923 pages are being released in their entirety, 33 are being released with redactions made pursuant to Exemption 5 of the FOIA, and 588 pages are being released with redactions pursuant to Exemption 6.” Evans Decl., Exh. 1 at 1. The July 24, 2013 Letter also noted that “the information withheld under [FOIA Exemption (b)(6)] consists of employee names, signatures, personal email addresses and cellular telephone numbers, the disclosure of which would represent a clearly unwanted invasion of personal privacy.” *Id.* Thus, according to the July 24, 2013 Letter, over 90 percent of the Previously-Produced Records were released without any redactions and, at this time, USDA cannot specifically identify which of those records within the Previously-Produced Records were redacted and which of those released in their entirety.

Upon learning of this production, NCBA requested copies of the Previously-Produced Records. On May 18, 2018 and May 21, 2018 USDA provided to NCBA's counsel a total of 3,009 pages of the Previously-Produced Records (this subset provided to NCBA is referred to as the “Additional Records”).<sup>2</sup> Evans Decl. ¶¶ 5, 11. USDA AMS also informed NCBA that it believed the Additional Records had been released to OCM in full and without any redactions, except as to whatever Exemption (b)(6) redactions may have occurred as described in AMS's July 24, 2013 transmittal letter. *Id.* ¶ 6. The Additional Records received from USDA do not

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<sup>2</sup> The Additional Records also contain confidential and proprietary information for five Qualified State Beef Councils: the Kansas Beef Council, Michigan Beef Industry Commission, Nebraska Beef Council, Pennsylvania Beef Council, and Texas Beef Council. Counsel for these entities (which is also counsel to NCBA in this matter) has also requested USDA to obtain the return of the Additional Records, as they apply to each of them. This would enable each of the five to review their respective documents, make recommendations as to the application of FOIA Exemption (b)(4) as appropriate, and object to any proposed disclosure with which they disagree, as required by USDA's regulations.

note any exemption bases for NCBA's confidential business information or for the private and personal information of NCBA's employees and other individuals. *Id.* ¶ 7.

NCBA promptly but preliminarily reviewed the Additional Records and determined that they included a significant number of NCBA-related records with confidential and proprietary NCBA business information. Evans Decl. ¶ 6. NCBA considers this information to be confidential and proprietary NCBA business information of the type that NCBA would normally request be redacted as exempt from disclosure under FOIA Exemption (b)(4). *Id.* ¶ 7. Specifically, the Additional Records include NCBA's general ledgers and detailed accounting journals that show NCBA payroll, employee benefits, operating expenses, rent, travel, and contract payment data. *Id.* ¶ 8. NCBA's review also indicated, in NCBA's opinion, that other documents within the Additional Records are not responsive to the OCM FOIA Request. *Id.* ¶ 10.

Of even greater concern, however, is that the Additional Records also contain sensitive personal information for NCBA employees and other individuals, including names and information from which salaries and benefits could be determined. Evans Decl. ¶ 9. A representative redacted sample is attached as Exhibit 2 to the Evans. Decl. NCBA has redacted the employee names in these sample pages to protect the significant privacy interests of each of those individuals, as well as the dates, hours, allocated hours, salaries, benefits, fund sources, and related information, but the documents as they appear among the Additional Records (and presumably as they were produced to OCM) do not contain such redactions. *Id.*; Evans Decl., Exh. 2.

**The Need for an Order Requiring that OCM Not Disseminate the Previously-Produced Records**

Defendants request that this Court enter an order requiring that OCM not copy, disseminate, or otherwise make public the Previously-Produced Records unless and until further order of this Court, pending litigation of this Motion seeking return of the Previously-Produced Records. While the Previously-Produced Records were provided to OCM by USDA AMS in July 2013, it does not appear that OCM has publicly published on its website the subset of the Additional Records. Evans Decl. ¶ 12. Nor is there any information about the Previously-Produced Records currently on OCM's website, blogs, or newsletters. Evans Decl. ¶ 12. Nonetheless, as NCBA explained in its August 11, 2017 Motion for Summary Judgment filings, OCM's website, press releases, blogs, and newsletters is replete with references to NCBA and the OCM FOIA Request. See Supplemental Evans Declaration, ECF No. 61-4 ¶¶ 9-18; NCBA Statement of Points and Authorities, ECF No. 61 at 13-15. The absence of any specific references to the Previously-Produced Records or Additional Records in Court filings or in public information further suggests the limited nature so far of any release of these records.

However, Defendants are concerned that OCM may publicize or otherwise disseminate the Additional Records during the period in which Defendants are litigating their request for relief from this Court. *Id.* ¶ 13. Defendants' concern is a reasonable one, based on OCM's previous publication of information received as a result of its FOIA Request. For example, on March 31, 2017, OCM published and disseminated documents received from USDA incident to the OCM FOIA Request. *Id.* ¶ 12; Supplemental Evans Declaration, ECF No. 61-4 ¶ 15. In that instance, upon release to OCM by USDA on March 31, 2017, OCM immediately posted the records on its website and also immediately sent a press release to dozens of major news and media organizations with a link to electronically download the records. *Id.*

This concern is heightened significantly for NCBA in light of the fact that USDA AMS, through counsel, contacted OCM, requesting a copy of the Previously-Produced Records, and that OCM has failed to comply with that request. Thus, OCM has already been alerted about the Previously-Produced Records and, as far as the Defendants can tell, has not disseminated them further or publicized them. Absent an immediate protective order pendente lite, however, having been informed of the sensitive nature of this information, OCM could immediately publicize or otherwise disseminate the Additional Records while Defendants seek further relief from this Court. If OCM did so, OCM would have obstructed Defendants' efforts to ensure that the USDA FOIA Regulations are followed, and would permanently publicize NCBA's business information as well as the personal, sensitive information of numerous individuals, sacrificing those individuals' privacy as well as their potential personal and financial well-being.

Therefore, Defendants request that the Court issue an immediate protective order, as attached hereto, requiring that OCM not copy, disseminate, or otherwise make public the Previously-Produced Records until further order of this Court. Such a protective order is necessary and appropriate under these unique circumstances.

**An Order Requiring OCM to Return the Previously-Produced Records to USDA for Processing According to Its Regulations is Appropriate**

It is within this Court's authority to issue an order requiring a FOIA requestor to return to an agency inadvertently produced records. *See Martin Marietta Corp. v. Dalton*, 974 F. Supp. 37, 40 (D.D.C. 1997) ("The prior release of information to a limited number of requesters does not necessarily make the information a matter of common public knowledge, nor does it lessen the likelihood that [the business submitter] might suffer competitive harm if it is disclosed again, this time at the behest of acknowledged commercial adversaries."); *see also Hersh & Hersh v. U.S. Dept. of Health and Human Servs.*, 2008 WL 901539, at \*9 (N.D. Cal. Mar. 31, 2008)

(ordering FOIA requestor to “return the earlier production in whole” because of agency’s inadvertent production and ordering that “any inadvertently produced documents that have been filed in the public docket [ ] shall be withdrawn”). Nor is the mere elapsing of time sufficient to bar an order requiring return of inadvertently disclosed records. *Pub. Citizen Health Research Grp. v. FDA*, 953 F. Supp. 400, 405-06 (D.D.C. 1996) (ordering inadvertently released FOIA records filed in public docket to be sealed and rejecting argument that “because Defendant-Intervenors did not act immediately to request a protective order, they have waived their right to do so”).

Here, USDA contends that the mistaken release of the Previously-Produced Records without further redaction was inadvertent, and occurred without submittal to NCBA. NCBA states that, upon its first review of the Additional Records after May 21, 2018, its counsel promptly notified USDA of its concerns that the Previously-Produced Records had been provided to OCM contrary to USDA’s FOIA regulations and that there was sensitive personal information and confidential business information subject to Exemption (b)(4) and (b)(6) redaction or withholding contained within the Additional Records. USDA states that its counsel, upon discovering the potential releases in Previously-Produced Records (which predated the complaint in this case), contacted NCBA to propose a joint motion for the appropriate protection of any material that was released without proper redaction, and USDA joins NCBA in making this Motion.

By all accounts, the further dissemination of the Previously-Produced Records was and remains limited or non-existent. *See* Evans Decl. ¶ 12. The Previously-Produced Records and the subset of Additional Records have not, to the best of Defendants’ knowledge, been filed in any court proceeding, or made widely public, unlike other cases where the court has ordered the

return of records and sealed portions of the public docket after the fact. *See Hersh*, 2008 WL 901539, at \*9; *Pub. Citizen*, 953 F. Supp. at 405-06. Nor are they currently on OCM's website, or readily apparent on its blog or in its newsletters. Evans Decl. ¶ 14. Critically, even if the inadvertent release of these records had been publicly disseminated in some capacity, such a release does not "necessarily make the information a matter of common public knowledge, nor does it lessen the likelihood" that NCBA (and any other business submitter entities) and the affected individuals might suffer harm. *See Dalton*, 974 F. Supp. at 40. Nonetheless, the likelihood of harm and the invasion of privacy exist unless and until the Previously-Produced Records are returned to USDA so that they can be reviewed and processed in accordance with the required FOIA administrative review procedures.

For these reasons, Defendants respectfully request that this Court order OCM to return to USDA all copies of the Previously-Produced Records, in whatever format they may exist, and, further, that the Court order OCM to not disseminate any information contained in those records. This will allow USDA AMS to properly redact personal information under Exemption (b)(6) and also engage in its business submitter review process required by Executive Order 12,600 and 7 C.F.R. § 1.12. NCBA contends that the (b)(4) exemption would apply to the Additional Records containing NCBA's confidential and business information, but, at this point, NCBA only seeks the complete return of the Previously-Produced Records (of which a subset are the Additional Records) so that USDA can engage in the process prescribed by USDA's regulations.

OCM has no legitimate reason for objecting to the return of the Previously-Produced Records for this purpose. A return of the Previously-Produced Records to USDA is consistent with the interests of justice and will benefit all concerned parties as it will ensure that OCM ultimately receives those records that are responsive to the OCM FOIA Request, while protecting



individuals' sensitive personal information and any confidential business information of business submitter entities including NCBA.

Pursuant to D.D.C. Local Rule 7(m), counsel for Defendants have conferred with counsel for Plaintiff. OCM's counsel has stated that "OCM is unable to take a position on the motion until it is informed which records are at issue and what personally identifiable information they contain."

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**WHEREFORE**, for the foregoing reasons, Defendants respectfully request that this Court order OCM from copying, disseminating, or otherwise making public the Previously-Produced Records until further order of this Court; that this Court order OCM to return the Previously-Produced Records to USDA for review and processing, as required by Executive Order 12,600 and 7 C.F.R. § 1.12; and grant Defendants any further relief.

Dated: May 29, 2018

/s/ Daniel C. Schwartz  
Daniel C. Schwartz (D.C. Bar # 0017749)  
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*Attorneys for Defendant-Intervenor National  
Cattlemen's Beef Association*

Respectfully submitted,

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/s/ Rhonda L. Campbell  
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**IN THE UNITED STATES DISTRICT COURT  
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**Civil Action No. 1:14-cv-1902-EGS**

**MAY 29, 2018 DECLARATION OF DOUGLAS L. EVANS**

1. My name is Douglas L. Evans. I am the Chief Financial Officer of the National Cattlemen's Beef Association ("NCBA"). I have been NCBA's Chief Financial Officer since March 2008. I am over the age of 21 years old and am fully competent to make this declaration from my own personal knowledge and knowledge that I have acquired as part of my responsibilities as Chief Financial Officer.

2. The purpose of this Declaration is to provide relevant factual bases upon which NCBA seeks an order requiring Plaintiff Organization for Competitive Markets ("OCM") from copying, disseminating, or otherwise making public the Previously-Produced Records (as herein defined) until further order of this Court. This Declaration also sets out the factual bases upon which NCBA seeks an order requiring OCM to return the Previously-Produced Records to the

United States Department of Agriculture (“USDA”) for review and processing as required by USDA’s FOIA regulations set out at 7 C.F.R. § 1.12.

3. I have been informed that, on May 10, 2018, USDA counsel informed NCBA’s counsel that, as a result of an internal accounting of USDA’s response to OCM’s April 11, 2013 FOIA Request (“OCM FOIA Request”), it had been discovered that USDA, by letter of July 24, 2013, had produced to OCM approximately 7,500 pages of records, including a large number of documents containing NCBA information. This was the first time that NCBA or its counsel were informed that these documents containing NCBA information had been produced to OCM.

4. NCBA had not been given an opportunity to review these records to determine whether the information contained therein was confidential or privileged, nor had NCBA been given an opportunity to object to the disclosure of any such information contained in these records, as required by Executive Order 12,600 and 7 C.F.R. § 1.12.

5. At the request of NCBA’s counsel, on May 18, 2018 and May 21, 2018, NCBA received from USDA two CDs containing 3,009 pages of records (“Additional Records”). These Additional Records comprise a portion of the 7,544 pages of records that USDA previously released to OCM on July 24, 2013 (“Previously-Produced Records”). A copy of USDA’s July 24, 2013 transmittal letter, which was not filed with USDA’s August 11, 2017 Motion for Summary Judgment, is attached hereto as Exhibit 1.

6. USDA has informed NCBA, through its counsel, that the Additional Records were released without any Exemption (b)(4) redactions, and USDA cannot currently determine whether the Additional Records contained any Exemption (b)(6) redactions, apart from the general statement contained in AMS’s July 24, 2013 transmittal letter that the Previously-Produced Records contained Exemption (b)(6) redactions of some kind.

7. With the assistance of counsel, I have conducted a preliminary review of the Additional Records and determined that they include a significant number of NCBA-related records that contain confidential and proprietary NCBA business information that NCBA would normally request be redacted as exempt from disclosure under FOIA Exemption (b)(4). The Additional Records do not note any exemption bases for NCBA's business information or the NCBA employees' personal information.

8. I have previously outlined the competitive harm that NCBA would suffer from public dissemination in my declarations of March 21, 2017 and August 9, 2017. See ECF Nos. 61-3, 61-4. Specifically, the Additional Records include NCBA's general ledgers and detailed accounting journals that show NCBA payroll, employee benefits, operating expenses, rent, travel, and contract payment data and should be subject to withholding under FOIA Exemption (b)(4).

9. In addition, and of even more concern, the Additional Records contain names of NCBA employees and other individuals, as well as their sensitive personal information, such as information from which their salaries and benefits and benefits could be determined. Redacted copies of representative pages are attached hereto as Exhibit 2. The employee names in these sample pages have been redacted by NCBA's counsel to protect the significant privacy interests of each of those individuals, as have the dates, hours, allocated hours, salaries, benefits, fund sources, and related information. Such disclosures violate these individuals' privacy, as the Additional Records contain individuals' sensitive personal information, and normally that information would be subject to withholding under FOIA Exemption (b)(6).

10. The Additional Records also contain several records that are not responsive to the OCM FOIA Request.

11. Except for the Additional Records, NCBA was not provided the remaining Previously-Produced Records, and so, NCBA is unable to determine whether those records also contain business information of NCBA or personally-identifiable information.

12. While it does not appear from my review that OCM has up until now publicly disseminated the Previously-Produced Records or the Additional Records, OCM has more recently disseminated and immediately published information received from USDA as a result of the OCM FOIA Request. For example, on the same day that USDA produced records to OCM (March 31, 2017), OCM published all of the records on its website and immediately sent press releases to dozens of major news and media organizations with a link to electronically download the records. *See* Supplemental Evans Declaration, ECF No. 61-4 ¶ 15. I have conducted a review and search, but am unable to currently locate any reference to or copies of the Additional Records on OCM's website, blog, or newsletters.

13. NCBA is concerned that OCM will publicize or disseminate the Additional Records while NCBA seeks relief from the Court in order to cause NCBA competitive harm and injury.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2018

  
Douglas L. Evans

# EXHIBIT 1



In reply, please refer to  
FOIA 2013-AMS-03366-F

Mr. Mike Callicrate  
President  
Organization for Competitive Markets  
P. O. Box 6486  
Lincoln, Nebraska 68506

JUL 24 2013

[callicrate@competitivemarkets.com](mailto:callicrate@competitivemarkets.com)

Dear Mr. Callicrate:

This is the final response to your April 11, 2013, Freedom of Information Act (FOIA) request originally sent to the U.S. Department of Agriculture's (USDA) Office of the Inspector General (OIG). As explained in Ms. Alison Decker's (OIG) letter to you dated May 14, 2013, she informed you that during OIG's search for responsive records, they located 7,751 pages from the work paper file for Audit Report No. 01099-0001-21. Because these documents originated with the Agricultural Marketing Service (AMS), OIG referred these documents for AMS review and response as a separate FOIA request. However, upon receipt of the referred pages, AMS conducted a page count and confirmed that only 7,544 pages were sent by OIG. Having noted a page count discrepancy, AMS informed OIG that the correct number of referred pages was 7,544, not 7,751 pages.

You requested from OIG the following records from January 1, 2010, to the present related to the recent OIG audit report on the beef checkoff (01099-0001-21):

1. All records relied on for the findings and conclusions contained in the OIG audit report;
2. All records gathered in preparation for the report (whether ultimately used to support the findings or not);
3. All records indicating or otherwise relating to the OIG's determination of relevant data set parameters;
4. All internal and external communications relating to the audit report;
5. All records that relate to the standards by which OIG determined compliance issues relating to operations and structure of the Beef Board;
6. All records referencing or relating to the 2010 independent audit and/or its consideration or exclusion from consideration for the current report.

We have compiled the enclosed records that are partially responsive to Items 1, 2, 5 and 6 of your request. We did not receive from OIG items relating to items 3 and 4 of the request. The enclosed records (7,544 pages) are being provided on the enclosed CD. Of the 7,544 pages, 6,923 pages are being released in their entirety, 33 are being released with redactions made pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)), and 588 pages are being released with redactions made pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)).

Mr. Mike Callicrate

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The information withheld under 5 U.S.C. § 552(b)(5) consists of inter- or intra- agency memoranda protected by either the deliberative process privilege or the attorney work-product privileges. In this case, the 33 pages are confidential attorney/client privileged documents between a state beef industry council and their legal counsel. The information withheld under 5 U.S.C. § 552(b)(6) consists of employee names, signatures, personal email addresses and cellular telephone numbers, the disclosure of which would represent a clearly unwarranted invasion of personal privacy. To assist you in identifying where the information has been excised, the notations (b)(5), and (b)(6) have been substituted for the excised information. These notations correspond to the section of the code invoked.

The FOIA (U.S.C. § 552(a)(4)(A)) allows for fees for document search and duplication to be assessed. However, AMS would like to make a good faith effort to provide transparency regarding OIG's audit process. We have determined that there will be no charge for the information.

You may appeal this action within 45 days from the date of this letter. Any such appeal should be in writing and addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Stop 0201, Room 3071, South Building, Washington, D.C. 20250-0201. If you decide to file an appeal, please provide specific reasons why you believe modification of initial action is warranted. To facilitate processing of the appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

Sincerely,



Valerie L. Emmer-Scott

AMS Freedom of Information Act Officer

Enclosure



# EXHIBIT 2

National Cattlem f Association

REDACTED

Employee Entry #: GI Acct Project FS Hours Burdened Rate \$ Adjustment \$ Entry: Recalc Ref Description of work Date(s) of meetings/time spent

REDACTED

**REDACTED**

Cost Description	Orig Gl Acct	Amount	Source Document	Hours	Current Distribution	Corrected Distribution	Adjustment
					10	30	50
					30	10	50
					50	30	10
					10	50	30
					30	10	50

**REDACTED**

**REDACTED**

**REDACTED**

Name: [REDACTED] | Project Code | FundSource | Total Hrs | Period |  
checkoff Policy Other Policy General No Code Total

**REDACTED**

REDACTED

Fiscal Year	Employee	Adjusted Project Code	FS	Hours	User	Former Project Code	Funding Source	Date	Total Hrs	Comments	FS 10 Alloc	FS 30 Alloc	FS 50 Alloc	Earnings charged to policy originally	Benefits charged to policy originally
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REDACTED

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**Civil Action No. 1:14-cv-1902-EGS**

**[PROPOSED] PROTECTIVE ORDER PENDENTE LITE**

Upon review and consideration of Defendant Office of Inspector General, United States Department of Agriculture (“USDA”) and Defendant-Intervenor National Cattlemen’s Beef Association’s (“NCBA,” and with USDA, “Defendants”) Joint Motion for Order Requiring Return of Documents and Immediate Protective Order Pendente Lite Against Distribution or Publication of Information (“Motion”), any response or opposition thereto, and for good cause having been shown, it is this \_\_\_\_ day of \_\_\_\_\_ 2018, hereby

ORDERED that the Motion, as to the request for entry of an immediate protective order pendente lite is GRANTED; and it is further

ORDERED that Plaintiff Organization for Competitive Markets (“OCM”) shall not copy, disseminate, disclose, or otherwise make public those 7,544 pages of records, any portion

thereof, or any information contained therein, produced to it by USDA on July 24, 2013, unless and until further order of this Court.

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Emmet G. Sullivan  
United States District Judge

Copies to: All counsel of record via CM/ECF

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**Civil Action No. 1:14-cv-1902-EGS**

**[PROPOSED] ORDER**

Upon review and consideration of Defendant Office of Inspector General, United States Department of Agriculture (“USDA”) and Defendant-Intervenor National Cattlemen’s Beef Association’s (“NCBA,” and with USDA, “Defendants”) Joint Motion for Order Requiring Return of Documents and Immediate Protective Order Pendente Lite Against Distribution or Publication of Information (“Motion”), any response or opposition thereto, and for good cause having been shown, it is this \_\_\_\_ day of \_\_\_\_\_ 2018, hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that Plaintiff Organization for Competitive Markets (“OCM”) shall return to USDA’s counsel of record, within five (5) days from the date of this Order, the 7,544 pages



records produced to it by USDA on July 24, 2013 (“Previously-Produced Records”), including any copies thereof, in any format whatsoever; and it is further

ORDERED that upon return to USDA, OCM shall file a notice with this Court certifying the return of the Previously-Produced Records; and it is further

ORDERED that OCM shall not copy, disseminate, disclose, or otherwise make public the Previously-Produced Records, any portion thereof, or any information contained therein.

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Emmet G. Sullivan  
United States District Judge

Copies to: All counsel of record via CM/ECF