UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORGANIZATION FOR COMPETITIVE MARKETS, Plaintiff, v. OFFICE OF INSPECTOR GENERAL, USDA, Defendant, and NATIONAL CATTLEMEN'S BEEF ASSOCIATION, Defendant-Intervenor.	)	Civil Action No. 14-1902 (EGS)

PLAINTIFF'S RESPONSE TO DEFENDANTS' JOINT MOTION

Yet again, this case is threatened by another potential delay. In the face of a show cause order issued to finally bring an end to the years of delays caused by Defendant in this case (*see* ECF No. 76), Defendant and Defendant-Intervenor (collectively "Defendants") now come before this Court seeking what effectively amounts to a do-over, restarting FOIA's determination deadlines, and delaying OCM's statutory right to judicial review of one of the few record releases that was actually completed prior to this litigation. ECF No. 77. Defendants even suggest that their request might cause them to violate the Court's show cause order, which is intended to finally bring an end to the do-overs and excessive delays. *Id.* at 2, fn. 1. Defendants' request is neither authorized by law nor necessary to fully resolve this matter.

At bottom, the issue presented here is which forum is proper to decide the lawfulness of the government's FOIA compliance determinations for disclosure and withholding of records responsive to OCM's 2013 FOIA request. OCM has a right to receive an agency "determination"

on its FOIA request—including a decision of which responsive records it will release, which it will withhold, and the ground for within 20 working days, and thereafter prompt production and de novo judicial review of any determination to withhold. Pursuant to this Court's order, NCBA has a right to challenge disclosure of records it claims contain confidential business information. ECF No. 39. We are, therefore, in the statutorily prescribed forum to protect the rights of all parties and resolve this case on the law. This case should be delayed no further.

Defendants have deceptively and unfairly sought an overbroad and unduly burdensome protective order.

Plaintiff did not learn about the claim that pre-litigation records might contain exempt material until the day the initial motion was filed on May 30, 2018. Contrary to assertions in their motions, Defendants *did not* request the return of records because of a concern of inadvertent release of either (b)(4) or (b)(6) information. See, for example, ECF No. 78, p. 3 (stating that "[d]espite USDA's request," OCM did not provide a copy of the 2013 records "so that USDA can determine what Exemption (b)(6) information was redacted"). The exact text of Defendant's May 1, 2018, email to OCM's counsel stated that "AMS would like to again review these records" so AMS could "confirm[] OCM was provided with all responsive records." Given the years of delay in this case caused by Defendant's decisions to "reprocess," revise its Vaughn indexes (even amidst summary judgment briefing), and semi-annual representations to the Court that it has finished processing all records in this case (only to later engage in more processing), Plaintiff understandably resisted Defendant's mere desire to "again review" records from five years back instead of just finishing the records that were the subject of the Court's April order.

Rather than make arguments based on inaccurate descriptions of the communications between counsel, OCM is content to provide a copy of the email exchange itself, from which the

Court can make its own assessment of whether there was any notice of possible inadvertent release of confidential business records or refusals to cooperate to help identify that information. Exh. 1.

Defendants next contacted counsel just a few hours before attempting to solicit a position on the return of some unidentified records that might contain personally identifiable information. Even then, no mention was made of a concern about confidential business information. OCM's response—which was included in its court filing last week—questioned how such vague information and short notice could satisfy D.C. Local Rule 7(m)'s requirement to confer in good faith to determine whether there are matters that can be resolved prior to filing the motion. Consequently, OCM was unable to take a position on the motion it had been provided so little information about.

At the time the motion was filed, Intervenor had reviewed more than 3,000 pages of the records at issue, but attached just four self-selected pages in support of its claim for a protective order covering more than 7,500 pages. ECF No. 77, p. 3; ECF No. 77-3. Defendants offered nothing that might help to narrow the scope of the protective order (e.g., page identifiers or descriptors, records reflecting expenditures of the federal beef board—which, being a public entity, cannot be withheld under Exemption 4, etc.). Many records in the July 2013 release do not involve NCBA at all. For example, Exh. 2 is from an AMS memo addressing concerns about the OIG audit findings. It contains no hint whatsoever of confidential business information.

While OCM, of course, recognizes the Court's interest in protecting the judicial proceedings until a ruling on the lawfulness of disclosure is made, Defendants' confusing pre-filing communications and vague and only minimally substantiated claims are insufficient to sustain such an unduly broad protective order. As a matter of fairness, going forward,

Defendants should provide further information that would permit the protective order to be narrowed such that no party is burdened more than necessary to preserve their rights until this case is resolved.[1]

The Beef Checkoff is a producer-funded, government-controlled spending program that must be open to the public scrutiny FOIA requires.

FOIA provides "a structural necessity in a real democracy" as a means for citizens to "know what its Government is up to." *Natl. Archives and Records Admin. v. Favish*, 541 U.S. 157, 171–72 (2004). Disclosure does not depend on the identity of a particular requestor. "As a general rule, if the information is subject to disclosure, it belongs to all." *Id.*

Yet NCBA has made a determined effort in various filings—and even more aggressively through public media—to attack OCM and portray itself as a victim. But this case has always been about ensuring transparency in a federal spending program funded by beef producers, including many of OCM's members.[2] NCBA is the primary contractor to the federal beef checkoff, receiving more than 90% of the government contracts to the tune of tens of millions of federal funds every year. NCBA's Federation division receives 98.6% of its revenues from beef checkoff dollars, which itself comprises 82% of NCBA's total funding. See

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[1] In the joint motion, Intervenor expresses an opinion that some records might be "non-responsive," and also purports to speak for the interests of non-parties. ECF No. 77, pp. 3-4. But these matters are well outside the scope of the Court's Intervention order, which was expressly limited in order to preserve the "fair, efficacious, and prompt resolution of this litigation."

[2] Ironically, NCBA cites with concern OCM's March 2017 publishing of records received from USDA in connection with its FOIA request. Of 12,341 pages of checkoff-related financial records, USDA withheld more than 12,200 in their entirety. OCM's posting consisted primarily of thousands of totally black pages "received" from USDA, offered to show a *lack* of any information about a federal program available through FOIA. If OCM's revelation of the lack of transparency in the federal checkoff program is Defendants' best example of OCM's improper purpose or NCBA's dire need for protection, they miss entirely the deep public interest in whether their government is spending public funds lawfully and effectively.

Agricultural Marketing Service Oversight of the Beef Promotion and Research Board's Activities, OIG Audit Report 01099-0001-21, January 2014, pp. 2-3. To say there has been public concern about the handling of these federal funds would be an understatement.[3]

Yet OIG's audit findings left largely unaddressed known concerns previously identified in the beef checkoff's activities and spending. So to learn how such surprising findings were possible, OCM submitted a FOIA request for records related to the audit and the underlying financial data for the federally funded beef checkoff program. Indeed, even the heavily redacted records produced in this case bear out the concerns about misuse of checkoff funds and the lack of program transparency.[4] There are indications that OIG had made a finding that beef checkoff funds are "vulnerable to misuse" and that producers lack assurance that the federal beef board could protect those funds. *See* Exh. 2. Two months before the OIG audit report was published, AMS complained to OIG that there was "a LOT of heartburn over the report as written, and I'm afraid it will reflect poorly on USDA (as a whole) if released as is." *See* Exh. 2. There are indications that by the following month, the audit findings had been "rebooted."

Whether AMS' heartburn or OIG's rebooted audit findings were improper or had legitimate explanations will be resolved by the records themselves. So too the expenditure records of the beef board and NCBA's handling of federal checkoff funds. OCM intends to have this case resolved on its merits in furtherance of its effort to bring very much needed transparency to the federal beef checkoff program. Indeed, even OIG recognized the importance

[3] *See, for example,* "Audit Finds Problems in Cattlemen's Spending" New York Times, August 2, 2010 (at http://www.nytimes.com/2010/08/03/business/03beef.html).

[4] *See, for example,* OIG inquiry into "questionable" trips that NCBA charged to the checkoff to bring 20 people to Washington, D.C., to meet with OIG auditors. When confronted by OIG auditors, NCBA twice changed its justifications for the charges before finally placing the costs in a general checkoff "overhead pool," where it presumably lies only in ledger entries for that checkoff expenditure account. Exh. 3. Other records indicate certain NCBA checkoff expenses were "questioned and corrected."

of strengthening transparency in the program:

> AMS' oversight plays a significant role in the beef checkoff program environment and provides assurance to the beef industry and the public regarding the use of assessed funds. AMS can take additional steps to enhance assurance in the program by strengthening transparency over the use of funds overall.
>
> OIG Audit Report 01099-0001-21, p. 8.

FOIA establishes an enforceable decision deadline and subsequent right of judicial review, neither of which may be extinguished or impaired by an agency's call for a determination do-over.

FOIA's framework establishes a finite window for an agency to make a determination whether to release records to a requestor, and an enforceable right to judicial review of that determination.[5] Such determination has already been made for the records at issue and any challenges to that determination should be pursuant to FOIA's judicial review provision.

1. Neither Executive Order 12,600 nor USDA rule creates an affirmative right to extra-judicial administrative review.

The basis for Intervenor's claim that records should be returned is a perceived right of review pursuant to Executive Order 12,600 and USDA regulation 7 C.F.R. 1.12. *See* Joint Motion, ECF No. 77, p.1; Motion to Reconsider, ECF No. 78, p.2. But E.O. 12,600 contains no such right. To the contrary, 12,600 specifically states that it *does not* "create any right or benefit, substantive or procedural, enforceable at law." Exec. Ord. 12,600, Sec. 10, 52 FR 23781, June 23, 1987.

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[5] For clarity, the July 24, 2013, letter represents a final determination as to the records covered, but not a complete determination for all records covered by OCM's FOIA request. The lack of a complete determination within the compliance window triggered FOIA's constructive exhaustion provision and right to seek judicial review. Section 552(a)(6)(C)(i). Years later, OCM still awaits USDA's final determination. See Order, ECF No. 76.

Nor does the USDA regulation even apply unless the agency "cannot readily determine whether the information obtained from a person is privileged or confidential business information." 7 C.F.R. 1.12. Certainly, expenditures of federal funds pursuant to the government's checkoff program is something the agency can and should readily recognize falls squarely within FOIA's "strong presumption" toward disclosure. *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002) (quotations omitted).

FOIA, on the other hand, does create an enforceable right and benefit, as well as timeline and forum for their exercise. 5 U.S.C. § 552(a)(4)(B), (6)(A)(i). Defendants ask this Court to put Plaintiff's statutory right of judicial review on hold so that it can revisit a 5-year old FOIA compliance determination that it only had 20 working days to make in the first place. Intervenor has been granted a right to challenge the agency's release of information it believes comprise confidential business information. Plaintiff has the right to argue for the release of information it believes should be disclosed. Defendants do not have a right, however, to delay FOIA's review provisions in order to invoke a non-enforceable executive order.

The Joint Motion makes a passing claim that USDA's release of these 7,544 pages "without further redaction was inadvertent." ECF No. 77, p.7. There is no evidence—or even an agency declaration—supporting this claim. In fact, the July 24, 2013, determination letter shows that all pages were reviewed and redactions were made to more than 600 pages, the vast majority of which were pursuant to Exemption 6 in order to protect personal privacy interests. In other words, USDA clearly reviewed the records at issue and made FOIA's required compliance determination, withholding information it believed to be covered by the statute's narrow exemptions and producing the rest. Certainly, Intervenor may challenge the determination to produce those records, but such challenge is made to this Court and without impairment to

Plaintiff's right to timely receive those records. There is no right of Intervenor to get the agency to start the whole process over at the administrative level five years after the determination was made.

2. The cases cited by Defendants do not support their requested relief.

Defendants cite no authority that supports their requested order to return records and engage in a new administrative review under E.O. 12,600. Nor do the three cases Defendants do invoke authorize impairment of the requestor's right to judicial review or a compliance determination do-over. ECF No. 77, pp. 6-7. To the contrary, the cited cases support Plaintiff's position that this case is currently in the proper statutorily authorized forum, in which all parties may fully argue their positions on disclosure, and which this Court will resolve de novo. 5 U.S.C. § 552(a)(4)(B).

Hersh & Hersh v. HHS, 2008 WL 901539 (N.D. Cal. Mar. 31, 2008), is an unpublished opinion that Defendants improperly cite as precedent for a court's authority to order a return of released FOIA documents. ECF No. 77, pp. 6-7. The facts of *Hersh* are far different than those of the instant case, and the case actually supports OCM's position that the current litigation should proceed. In that case, the Court ordered the return of records, but only at the end of the case after summary judgment motions were decided. *Hersh* at 9. Also, the return order was made only after the Court had determined that the agency had reprocessed the entire request and provided plaintiff a complete set of all responsive records, with only those redactions found appropriate by

the court. *Id.* Thus, plaintiff was not ordered to return any records *before* judicial review regarding disclosure and exemptions was finished.[6]

Defendants cite to *Pub. Citizen Health Research Group v. FDA.*, 953 F. Supp. 400 (D.D.C. 1996), for the proposition that the passage of time does not preclude an order "requiring return of inadvertently released records." ECF No. 77, p. 7. But the Court in Public Citizen *did not* order the return of the documents at issue. Nor did the Court order an extra-judicial administrative review under E.O. 12,600. Instead, the Court sought to "balance the scales" and protect the judicial proceedings:

> The court will control the information at issue until it determines whether it qualifies for non-disclosure pursuant to exemption four of FOIA. If the information is not subject to disclosure under exemption four, it should not be publicly available. If, however, the court determines that the information is not covered by exemption four, then the court will order it disclosed.
>
> *Pub. Citizen*, 953 F. Supp. at 404.

Defendants also cite *Martin Marietta Corp. v. Dalton*, 974 F. Supp. 37 (D.D.C. 1997), which again did not involve an order to return documents to the government for a processing do-over. But Defendants then pull a carefully dissected quote from the opinion relating to "competitive harm" and "commercial adversaries." ECF No. 77, p. 6. Clearly, the quote fits Defendants' effort to incorrectly portray this case as one between competitors. But even if that were the case—which it is not—Defendants do not read far enough into the opinion, for the very next page refutes their apparent theory that competitors may not make use of FOIA to scrutinize government contracts:

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[6] If Defendant's intent in citing *Hersh* was to analogize the actions of counsel in that case to their claims about OCM's counsel in this one, the effort should readily fail. Unlike the instant case, in *Hersh*, the defendants actually "informed plaintiff that they had become aware of the inadvertent productions" and made requests "on several occasions" for their return. *Hersh* at 9. Defendants in this case were not so forthright in their communications with Plaintiff's counsel or in their description of such communication to this Court.

> In perhaps no sphere of governmental activity would [FOIA's] purpose appear to be more important than in the matter of government contracting. The public, including competitors who lost the business to the winning bidder, is entitled to know just how and why a government agency decided to spend public funds as it did; to be assured that the competition was fair; and, indeed, even to learn how to be more effective competitors in the future.

Martin Marietta, 974 F. Supp. at 41.

Of the three cases cited by Defendants, none support the claim that OCM's statutory right of judicial review may be delayed or that records should be returned for an extra-judicial administrative review under E.O. 12,600. Of the one authority that actually speaks to and disclaims such a right exists—the executive order itself—Defendants are entirely silent.

Conclusion

This case is exactly where FOIA dictates it to be and this Court has ensured NCBA has full opportunity to object to production of records it contends contain confidential and proprietary business information. To the extent such a challenge may extend to records for which USDA has already made a compliance determination, NCBA's right to challenge those for confidential business information can be easily preserved with a narrowly tailored protective order until the Court rules on their disclosure.

But OCM has a statutorily protected right to timely FOIA determinations and timely judicial review of the agency's failure to produce records. The delays and disruptions to OCM's ability to fairly exercise that right have required extensive intervention from the Court and ultimately a show cause order directed to USDA's highest officials in order to finally get this case to decision on the merits. The Court should not permit Defendants to yet again impair the ability to get to briefing and resolution.

The confusion and false sense of urgency sown by Defendants are not difficult to resolve. OCM is perfectly willing to provide copies of the records at issue (now that it understands the true reason for the request), but would then ask that this Court require a more specific identification of the records Defendants contend should be subject to a protective order so that OCM is not burdened more than necessary to protect the judicial proceedings. Pursuant to typical FOIA cases, the Court should order NCBA to provide a sufficient *Vaughn* index for any information covered by the protective order that it believes should be withheld under Exemption 4. Such a resolution fully preserves the legal rights of all parties to challenge disclosure or withholding of records without further denying OCM's long overdue right to be heard on the merits of this case.

Dated: June 14, 2018

Respectfully submitted,

/s/ Matthew E. Penzer

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UNITED STATES DISTRICT COURT
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ORGANIZATION FOR COMPETITIVE MARKETS,

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OFFICE OF INSPECTOR GENERAL, USDA,

Defendant,

and

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INDEX OF EXHIBITS

Exhibit Number	Description
1	Email Correspondence
2	AMS Memo to OIG
3	AMS Email to OIG
4	OIG Memo

Exhibit 1

From: Matthew Penzer
To: "Campbell, Rhonda (USADC)"
Subject: RE: OCM v. OIG
Date: Monday, May 07, 2018 7:40:46 AM

Rhonda,

I think it was pretty clear from the last hearing and order that we're at a point in this case where USDA needs to finalize the review of the subset of remaining records for which it requested the stay, rather than to yet again change its mind and "again review" even more records that have already been processed. The suggestion that providing thousands of additional pages for USDA to re-review would save the agency time to focus on other case tasks is troubling given that even more time would be saved if the agency just focused on finishing the records it is now working on without adding more to them.

In any case, the agency request refers to records sent directly to OCM prior to the litigation, so I'll need to connect with them about this and get back to you afterward.

Matt

-----Original Message-----
From: Campbell, Rhonda (USADC) <Rhonda.Campbell@usdoj.gov>
Sent: Tuesday, May 01, 2018 2:02 PM
To: Matthew Penzer <mpenzer@humanesociety.org>
Cc: Campbell, Rhonda (USADC) <Rhonda.Campbell@usdoj.gov>
Subject: OCM v. OIG

Hi Matt. See below. Thanks Rhonda

Matt,

Personnel changes have created a situation wherein AMS is not able to readily get their hands on a copy of the records provided to OCM as enclosures of the attached July 24, 2013 response letter. Pursuant to the July 24, 2013 response letter, AMS provided OCM with 7544 pages, of which 621 pages contained redactions. The July 24, 2013 response letter states that the records were provided to OCM on a CD.

In the process of confirming OCM was provided with all responsive records, AMS would like to again review these records.

To save AMS time so it can focus on other tasks including other work in response to your case, as a courtesy, would you please provide AMS a copy of the records contained on the CD provided with the July 24, 2013, response letter. The records can be sent to:

Sara Lutton, FOIA Specialist
USDA, Agricultural Marketing Service
1400 Independence A venue, SW
2606-S, Stop 0249
Washington, DC 20250
Sara.Lutton@ams.usda.gov<mailto:Sara.Lutton@ams.usda.gov>

Thank you very much for your cooperation in this matter.

Sincerely,

Brooks Liswell

Brooks Liswell

Attorney-Advisor

General Law and Research Division

Office of the General Counsel

U.S. Department of Agriculture

1400 Independence Ave S.W., Room 3323D

Washington, DC 20250-1400

Exhibit 2

Compliance & Analysis unofficial views on the subject report:

I. We are concerned that unwarranted embarrassment could result for USDA (the Secretary, AMS, OIG etc.), and the Beef Checkoff program overall, because the report does not present sufficient evidence to justify the conclusions made. In our view, it is doubtful that it could withstand a critical challenge (from a lawsuit or otherwise) as to whether it meets the standards of a GAGAS audit. The report still contains numerous factual inaccuracies and distortions. *See detailed comments "tagged" in the report for specifics-to be provided.*

II. The central finding, that checkoff funds are "vulnerable to misuse"..., and that American Beef producers lack assurance that CBB can effectively protect ~ $12 Million (25%) of annual assessments is ***startling***. Readers of this report, whether supporters or detractors of the program, would be very concerned with this conclusion given the credibility and weight an opinion from the OIG carries. It will almost surely result in a further "fracturing" of the relationships within the beef industry and the government program(s) dedicated to its oversight. Is that an appropriate outcome for an engagement that lasted two years, involved extensive statistically valid audit testing and resulted in ***NO observed errors or exceptions?***

III. The report offers no compelling evidence that OIG discussed its observations and concerns with appropriate representatives of the program (i.e. the BPOC, CBB members particularly the Treasurer, Chairman, Audit Chair, etc.). This is especially puzzling with respect to the issue of Implementation A/R's, which OIG cites as a control failure in its design. The reader is left wondering why those viewpoints are not expressed in the report to support / confirm OIG's perspective (i.e. we brought this to the attention of the Treasurer and she told us...). With no observed errors / exceptions found during its testing, OIG seems to be relying entirely on its ***own*** intuition, with no unbiased evidence presented.

IV. The report asserts in lines 219-221 that AMS did not "require the beef board" to implement effective internal controls over its relationships with contractors and the CBB did not develop "sufficient internal controls over expenses". This is not accurate or supportable on several levels: A) We believe that CBB has sufficient internal controls over expenses, which at certain junctures in the report, OIG acknowledges (line 317) for example); B) The report seems to confuse the relationship between a project proposal (known as an Authorization Request presented to the Beef Promotion Operating Committee (BPOC)) with the reimbursement of expenditures once the associated work is performed. Approval of A/R's can precede expense reimbursement by 12-18 months in some cases. The expense reimbursement process has extensive controls and is very well documented at CBB; C) The Report asserts "the propriety of approximately 25 percent of annual beef program expenses cannot be verified by comparison to expense estimates." We question how the comparison (of actuals to estimates) could validate the ***propriety*** of an expense? D) OIG states the Beef Board's efforts to document and review contractor expenses are flawed because the review is "dependent upon contractor-developed documentation." This is a puzzling statement; where could *independently verifiable* documentation be generated, except from the contractor that incurred the costs?

V. At lines 31-32 on the first page, the report makes an allegation that a subcontractor "provided beef assessment funds to a contractor's policy/lobbying division in the form of a contribution;" implying that beef assessments were inappropriately transferred in violation

Exhibit 3

I can request that Steve Rickrode, Deputy Assistant Inspector General for Audit and Gil to attend. I'll let you know if they can make it.

Thanks,
Bill H.

From: Woods, Frank - AMS [mailto:Frank.Woods@ams.usda.gov]
Sent: Tuesday, January 08, 2013 9:41 AM
To: HENDERSON, WILLIAM
Subject: RE: AMS Milk Marketing Audit Guide

I'll check with them Bill. Do you anticipate any senior folks from your side being able to attend (i.e. Gil...)?

If we're talking with Don, (b)(5)
Frank

From: HENDERSON, WILLIAM [mailto:WILLIAM.HENDERSON@oig.usda.gov]
Sent: Tuesday, January 08, 2013 8:31 AM
To: Woods, Frank - AMS
Subject: RE: AMS Milk Marketing Audit Guide

Joe is back today, and he has time any time after 3pm. Does 3:15 work for your team?

Thanks,
Bill H.

From: Woods, Frank - AMS [mailto:Frank.Woods@ams.usda.gov]
Sent: Monday, January 07, 2013 1:05 PM
To: HENDERSON, WILLIAM
Subject: RE: AMS Milk Marketing Audit Guide

Thanks Bill!

On another note.....the Beef Board audit. Tomorrow is January 8th, which Joe had indicated was the date he'd expect a reply from AMS before the official draft is issued. There is still a LOT of heartburn over the report as written, and I'm afraid it will reflect poorly on USDA (as a whole) if released as is.

Let's talk about next steps....

Thanks,
Frank

Exhibit 4

MEMO OF CONVERSATION

___ Phone
___ Visit
____ Conference
_X_ Other

Date:
Time:
Audit File No.: 01099-0001-HY
Filename: NCBA DC Travel

Purpose: To document conversations with Cattlemen's Beef Board and National Cattleman's Beef Association officials concerning NCBA travel to meet with OIG in Washington D.C.

Participants: (b)(6) CBB (b)(6)
(b)(6) NCBA (b)(6)

Conclusion: NCBA decided to embark on two trips to Washington D.C. bringing with them on one trip 8 people and on another trip 12 people and charging the travel costs of the trip to check-off fund expenses in the overhead application pool without prior approval from the CBB for such a questionable trip. NCBA at first claimed OIG requested NCBA come to Washington, then they claimed it was part of ARs, then, when they could not point to a specific AR that the cost should belong to NCBA stated that they would place the costs in the overhead pool applied to all check-off projects.

(b)(5)

Details of Discussion: NCBA, requested time to meet with OIG and discuss issues with the Beef Check-off program on December 6th 2010 and March 8th, 2011. Neither of these meetings was initiated by OIG. We agreed to them if they were in Washington but conveyed to them that we would meet them at their location in Denver in the normal course of the audit.

When we did get to Denver we were confronted by the (b)(6) of the CBB who asked us if OIG had initiated contact and requested the NCBA travel to Washington to brief OIG on the state of the check-off program. We informed her that OIG did not request NCBA travel to meet with us as that is not how we do business. We were told that the NCBA (b)(6) (b)(6) justified the travel expenses to visit OIG as check-off related and necessary since OIG requested the meeting.

OIG then questioned the NCBA (b)(6) about this in a series of emails, when questioned about whether NCBA obtains approval to spend money on trips like these NCBA replied that they, and not the BPOC or CBB, decide what expenses are included as check-off

governance expenses and will be included in the overhead application and paid by the check-off funds.

Signature:

UNITED STATES DISTRICT COURT
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OFFICE OF INSPECTOR GENERAL, USDA,

Defendant,

and

NATIONAL CATTLEMEN'S BEEF ASSOCIATION,

Defendant-Intervenor.

Civil Action No. 14-1902 (EGS)

[Proposed] ORDER

Pursuant to Defendant's Joint Motion for a Protective Order and Return of Records (ECF No. 77), and Plaintiff's response:

It is hereby ORDERED that Plaintiff shall provide to Defendants a copy of the July 24, 2013, records;

It is FURTHER ORDERED that the protective order remain in place until further order of the Court;

It is FURTHER ORDERED that the parties shall review the records at issue and confer, and within 21 days of this Order the parties shall file a notice with the Court advising what changes should be made, if any, to the protective order that it may be narrowly tailored to include only those documents NCBA believes may contain its confidential business

information;

It is FURTHER ORDERED Defendants request to return all copies of the documents and permit a restart of FOIA's administrative determination process is denied;

It is FURTHER ORDERED that by August 31, 2018, NCBA shall produce a *Vaughn* index accounting for any information NCBA contends should not be released on the basis that the information is NCBA's confidential and proprietary business information;

It is FURTHER ORDERED that NCBA's confidential business information objections, if any, shall be considered and decided as part of the summary briefing schedule that will be entered on September 4, 2018.

IT IS SO ORDERED.

____
Emmet G. Sullivan
United States District Judge

Dated: June 14, 2018