

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

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

NOTICE TO THE COURT

Defendant, Office of Inspector General (“OIG”), United States Department of Agriculture (“USDA”), by and through undersigned counsel, reports as follows:

As the attached USDA OIG Declaration of Alison Decker (“Decker Decl.”) and USDA Agricultural Marketing Service (“AMS”) Declaration of David Trykowski (“Trykowski Decl.”) attest, USDA has fully complied in all respects with the Court’s April 12, 2018, Order, by:

1. Producing all non-exempt records to the Organization for Competitive Markets (“OCM”) by August 31, 2018. (Trykowski Decl. ¶ 3; Decker Decl. ¶ 10);
2. Producing a final *Vaughn* index to OCM accounting for any records withheld pursuant to a FOIA exemption by August 31, 2018. (Trykowski Decl. ¶ 3; Decker Decl. ¶ 11);
3. USDA, in compliance with 7 C.F.R. § 1.12, provided the National Cattlemen’s Beef Association and other private entities, as appropriate, the opportunity to review the responsive records for privileged or confidential business information. (Trykowski Decl. ¶ 3);

4. As part of its final production in this matter, AMS produced to OCM, the records that were the subject of Defendant's August 13, 2018, Notice. (ECF No. 84; *see also* (Trykowski Decl. ¶ 4).

Respectfully submitted,

JESSIE K. LIU
UNITED STATES ATTORNEY
D.C. BAR NUMBER 472845

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/s/

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

**ORGANIZATION FOR
COMPETITIVE MARKETS,**

Plaintiff,

v.

**DEPARTMENT OF AGRICULTURE,
OFFICE OF INSPECTOR GENERAL,**

Defendant,

and

**NATIONAL CATTLEMEN’S BEEF
ASSOCIATION,**

Defendant-Intervenor

Civil Action No. 14-1902 (EGS)

DECLARATION OF ALISON DECKER

I, ALISON DECKER, pursuant to 28 U.S.C. § 1746, state:

1. I am an Assistant Counsel to the Inspector General with the Office of Inspector General (“OIG”), U.S. Department of Agriculture (“USDA”), Washington, DC. In my capacity as an Assistant Counsel, I serve as OIG’s Freedom of Information Act and Privacy Act Attorney. Additionally, I serve as OIG’s FOIA Officer, and am responsible for coordinating the review of all requests for OIG records submitted pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and the Privacy Act of 1974 (“PA”), 5 U.S.C. § 552a. I have held this position since November 2009.

2. I have evaluated records responsive to FOIA requests and appeals for over 13 years. Prior to assuming the duties of my current position, I worked as an Attorney at the Office of Federal Housing Enterprise Oversight (“OFHEO”) where approximately 25% of my duties involved final reviewing the agency FOIA Officer’s responses to FOIA requests, including determining whether information should be withheld or released and final reviewing agency FOIA correspondence for legal sufficiency. In addition, I worked for approximately one year as a Contract Attorney at the Office of Naval Research where a portion of my duties involved providing responses to FOIA requests and drafting agency responses to FOIA appeals.
3. I am familiar with the organizational structure, operations, and responsibilities of OIG and its components. In addition, I am familiar with the procedures followed by USDA and OIG in responding to Plaintiff’s FOIA request. I am familiar with USDA regulations governing the Department’s FOIA program, 7 C.F.R. Part 1, Subpart A. I am also familiar with OIG’s FOIA program regulations, which are found at 7 C.F.R. Part 2620.¹
4. I make this declaration based upon: a) my personal knowledge of the official Government files and records concerning Plaintiff’s FOIA request; b) consultations with OIG personnel who are knowledgeable about Plaintiff’s FOIA request; and c) information acquired by me in the course of performing my official duties.
5. With two exceptions noted below in paragraphs 6 and 7, OIG completed its last production of records in this matter on June 28, 2016, and, as negotiated and agreed to by OIG and Plaintiff, timely submitted its final *Vaughn* Index to Plaintiff on August 26, 2016.


¹ The USDA has decentralized FOIA processing, and each agency within USDA processes its own records. *See* 7 C.F.R. § 1.5(a). Due to OIG’s statutory independence, OIG has its own FOIA Program within USDA. Accordingly, OIG handles initial requests and appeals independently of USDA. *See* 7 C.F.R. §§ 2620.3 and 2620.5. Additionally, pursuant to the Inspector General Act of 1978, as amended, the Inspector General for USDA has counsel separate from and independent of agency counsel (USDA’s Office of General Counsel). *See* 5 U.S.C. app., § 3(g).

6. In response to the law changing *after* OIG had completed its last production of records, on June 28, 2016, to Plaintiff,² OIG reprocessed 111 records containing some content withheld as non-responsive in accordance with *American Immigration Lawyers Association v. Executive Office for Immigration Review* (“*AILA*”), 830 F.3d 667, 667 (D.C. Cir. 2016). OIG reproduced these 111 records with a corresponding *Vaughn* index to Plaintiff on January 17, 2017. *See* Declaration of Alison Decker, January 17, 2017 (ECF No. 52).
7. In response to OIG learning that the Agricultural Marketing Service (AMS), USDA intended to release previously withheld email communications between Cattlemen’s Beef Promotion and Research Board (“Beef Board”) employees and OIG auditors, OIG reviewed the communications and clawed back nine pages from AMS. *See* Declaration of Alison Decker, February 23, 2018 (ECF No. 73-1). OIG processed the nine pages and produced them to Plaintiff with a *Vaughn* index on March 30, 2018.
8. Furthermore, although OIG was not aware of any problems with its productions when the Court entered its April 12, 2018 Order, out of an abundance of caution, OIG performed an accounting of all of its productions to Plaintiff. As a result, OIG confirmed the processing and production of all of its records as conveyed in the Declarations of Alison Decker, August 10, 2017 (ECF No. 62-3) and February 23, 2018 (ECF No. 73-1).
9. Additionally, OIG confirmed that it transmitted its final referral of records to AMS on August 25, 2016. *See* Declaration of Alison Decker, August 10, 2017 (ECF No. 62-3). Records referred to AMS in response to Plaintiff’s FOIA request included records of Defendant-Intervenor National Cattlemen’s

² OIG had processed these pages in accordance with the law at the time of processing and production to Plaintiff. *See* Declaration of Alison Decker, January 17, 2017 (ECF No. 52). OIG’s redaction practice at the time was consistent with longstanding Federal administrative practice and the practice of the D.C. District Court and other district courts in the years prior to the new law. *See, e.g., American Immigration Lawyers Association v. Executive Office for Immigration Review* (“*AILA*”), 110 F. Supp. 3d 230 (D.D.C. 2015), *aff’d in part, rev’d in part, and remanded by* 830 F.3d 667 (D.C. Cir. 2016).

Beef Association and other entities that conduct business with the Beef Board, which is overseen by AMS. *See id.* OIG has aided AMS, as appropriate, in responding to Plaintiff's FOIA request. For example, OIG re-provided referrals to AMS. *See, e.g.,* Notice to the Court, August 13, 2018 (ECF No. 84).

10. As set forth above, OIG produced all non-exempt OIG records to Plaintiff.
11. As set forth above, OIG produced final *Vaughn* indices accounting for OIG records withheld pursuant to FOIA exemptions.
12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.
13. Executed on this 31st day of August, 2018, in Washington, D.C.


ALISON DECKER
Assistant Counsel to the Inspector General
Office of Inspector General
U.S. Department of Agriculture

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

ORGANIZATION FOR COMPETITIVE
MARKETS,

Plaintiff,

v.

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

DECLARATION OF DAVID TRYKOWSKI

I, David Trykowski, make the following declaration pursuant to Section 1746 of Title 28 of the United States Code. I make this declaration based upon the knowledge I have acquired through the performance of my official duties. I am aware that this declaration will be filed with the United States District Court for the District of Columbia, and that it is the legal equivalent of a statement under oath.

1. In my current position, I am responsible for a broad range of administrative services for the Agricultural Marketing Service (“AMS”) of the United States Department of Agriculture (“USDA”), which include Agency Liaison with the USDA Office of Inspector General (“OIG”) (Audits & Investigations), overseeing AMS’ compliance with the Freedom of Information Act (“FOIA”) and supervision of the AMS FOIA Office which processes FOIA

requests and appeals submitted to AMS. I currently review FOIA request responses before they are sent to the requestor.

2. I am familiar with the organizational structure, operations, and responsibilities of AMS and its components. I make this declaration based upon: a) my personal knowledge; b) the official government files I reviewed, and that were reviewed at my direction, concerning the FOIA request at issue; and, c) consultations with AMS personnel who are knowledgeable about the FOIA request and responsive records at issue.

3. AMS has fully complied with the Court's April 12, 2018, Order, requiring that AMS:

- Produce all non-exempt records to the Organization for Competitive Markets ("Plaintiff") by no later than August 31, 2018;
- Provide Plaintiff a final Vaughn index accounting for any records withheld pursuant to a FOIA exemption by no later than August 31, 2018;
- Comply with 7 C.F.R. § 1.12 and provide the National Cattlemen's Beef Association ("NCBA") and other private entities, as appropriate, the opportunity to review the responsive records for privileged or confidential business information.

4. In addition, as set forth in the government's August 13, 2018, Notice (Dkt. No. 84), although the 7,544 pages of USDA records that AMS produced to OCM on July 24, 2013 (herein the "July 2013 Records") are no longer available, earlier, in May 2018, AMS obtained from OIG a replica of its May 2013 referral of the July 2013 Records. In order to remedy the loss of the returned copy of the July 2013 Records, AMS re-processed this replica of the July 2013 Records, including, where appropriate, complying with 7 C.F.R. § 1.12, and has produced the replica as part of its final production in this matter.

Under penalty of perjury, pursuant to 28 U.S.C. § 1746, I declare the foregoing to be true and correct to the best of my knowledge.

On this 31st day of August, 2018, in Washington, D.C.



David Trykowski
Director
Compliance, Safety & Security Division
Management & Analysis Program
Agricultural Marketing Service