



1400 Independence Avenue, SW.
Room 3071-S STOP 0201
Washington, DC 20250-0201

In reply, please refer to
FOIA Appeal 2013-AMS-00086-A

Lisette Garcia, J.D.
Judicial Watch
425 Third Street, S.W.
Suite 800
Washington, D.C. 20024

JUN 25 2013

lgarcia@judicialwatch.org

Dear Ms. Garcia:

This is in response to your letter of March 11, 2013, in which you appeal the Agricultural Marketing Service's (AMS) response to your Freedom of Information Act (FOIA) request dated May 18, 2012, sent to the U.S. Department of Agriculture's Chief FOIA Officer, Trina Poter. Your request was subsequently referred to various USDA agencies, including AMS, by e-mail on June 7, 2012. Your original request sought the following information:

1. All contracts and expense records related to training or services provided by Samuel Betances or his firm, Souder, Betances & Associates, of Chicago, Ill.;
2. All communications related to training and services provided by Samuel Betances or his firm, Souder, Betances & Associates, of Chicago, Ill.;
3. All records and email from the offices of Secretary Thomas Vilsack, Under Secretary Edward Avalos, Administrator Greg Parham, and Deputy Administrator Joanne Munno regarding the above-referenced training and services.

In response to your original request, 2012-AMS-02647-F, AMS provided 40 pages of records partially responsive to items 1 and 2 above on December 13, 2012, and an additional 92 pages responsive to items 1 and 2 on February 1, 2013. Both releases were made without redactions. In our February 1, 2013 response letter, we informed you that AMS had no records responsive to item 3 of your request, and that if such records existed, the appropriate point of contact to seek them was through Mr. Greg Bridges, Office of the Chief Information Officer's (OCIO) FOIA Service Center.

After reviewing your original request along with AMS's initial response and conducting another search of Agency records, I have determined that your appeal will be granted. The additional search of Agency records determined that Souder, Betances & Associates had provided Cultural Transformation training to employees of AMS's Cotton and Tobacco (C&T) Programs in Memphis, Tennessee, on August 30, 2011, in addition to the training that was provided to AMS Headquarters employees in Washington, D.C. on June 28, 2011. Additional responsive records were also identified pertaining to the June 28, 2011 training session.

Attached to this response is a compact disk (CD) which contains files in Adobe's Portable Document Format (PDF) which consists of the items listed in **Table A** as follows:

File number	Record description	Number of pages	Redactions
1	E-mail communication, including e-mail attachments, and contracting documents, pertaining to C&T Programs efforts to secure the services of Souder, Betances & Associates to provide Cultural Transformation training in Memphis, on August 30, 2011	77	76 pages released in their entirety; 1 page released in part pursuant to FOIA exemption (b)(6) ¹
2	A roster of attendees of the training held for C&T Programs on August 30, 2011. (Roster includes 2 C&T employees who attended training in Washington, DC on June 28, 2011, and 4 C&T employees who attended training at an APHIS facility in Raleigh, NC on June 22, 2011.)	1	Released in full
3	E-mail communication, including e-mail attachments, to C&T staff, registering attendees for the training in Memphis on August 30, 2011. (E-mails reflect that 4 C&T employees were registered for a training session provided at an APHIS facility in Raleigh, NC, on June 22, 2011, paid for under an APHIS contract.)	28	27 pages released in their entirety; 1 page released in part pursuant to FOIA exemption (b)(6) ²
4	E-mail correspondence between one C&T attendee of the August 30, 2011 training and Souder, Betances & Associates	1	Released in full
5	Original contract and modified contract for C&T training August 30, 2012	6	Released in full
6	Invoice from Souder, Betances & Associates for C&T training on August 30, 2011	1	Released in full
7	Printout of AMS' payment for the Souder, Betances training provided to C&T on August 30, 2011	2	Released in full
8	Additional contracting documents pertaining to Souder, Betances & Associates' training provided to AMS Headquarters employees in Washington, D.C. on June 28, 2011	3	Released in full

¹ One page in this file contains a mobile telephone number, redacted pursuant to FOIA exemption (b)(6). This exemption, at 5 U.S.C. §552(b)(6), protects information the release of which would constitute a clearly unwarranted violation of personal privacy.

² One page in this file contains a mobile telephone number, redacted pursuant to FOIA exemption (b)(6).

9	E-mail correspondence between attendees of the June 28, 2011 training and Souder, Betances & Associates	7	Four pages released in their entirety; 3 pages released in part pursuant to FOIA exemption (b)(6) ³
10	A printout listing 37 AMS employees who registered for the June 28, 2011 training and also created a record of their completion of the training in USDA's AgLearn tracking system	1	Released in full
11	E-mail enrollment confirmations, plus one copy of the e-mail attachment (identical for all e-mail confirmations) sent to all 109 AMS employees who enrolled in the June 28, 2011 training	195	Released in full
12	Printouts of the AgLearn records showing completion of the June 28, 2011 training for the 37 AMS employees who created such a record	42	Released in full
13	Printout of AMS' payment for the Souder, Betances training provided on June 28, 2011	1	Released in full
	Total pages:	365	360 pages released in their entirety; 5 pages released in part

Please note that file #11 contains certain contracting documents that were previously provided in our first records release in response to your request. These records are provided in this release as a way of preserving their integrity as e-mail attachments. Other e-mail attachments contain additional documents already produced, or produced elsewhere in this release, to preserve the integrity of the e-mail communications. Finally, an 83- page slide presentation which was provided previously in our second records release, is provided again here to preserve its integrity as an attachment to the registration confirmation e-mails.

Your appeal refers to additional records such as individual employee registration forms, taxi vouchers, etc., which you believe would be responsive to your initial FOIA request, to the extent they are in the possession of AMS. After conducting additional searches for this information, it was determined that certain records you listed do not exist. These additional items are listed in your appeal and are summarized in **Table B** as follows:

Appeal Page No.	Record sought	Search result
3	Registration forms for the training	Employees did not fill out individual registration forms for Souder, Betances & Associates. For the June 28, 2011 training, registration was accomplished via USDA's internal AgLearn

³ Three pages in this file contain mobile telephone numbers, redacted pursuant to FOIA exemption (b)(6).

		system, and by e-mail confirmations sent automatically to all 109 employees who were required to fulfill the training. For C&T employees, registration for the training was conducted via e-mail (<i>please see Table A, item 3</i>).
3	Taxi vouchers for Dr. Betances and/or staff	For the June 28, 2011 training, payment of all travel expenditures was handled by the Animal and Plant Health Inspection Service (APHIS). For the August 30, 2011 training, Souder, Betances & Associates provided AMS with an invoice (<i>please see Table A, item 6</i>).
3	Air, hotel and other invoices/receipts for Dr. Betances and/or staff	For the June 28, 2011 training, payment of all travel expenditures was handled by the Animal and Plant Health Inspection Service (APHIS). For the August 30, 2011 training, Souder, Betances & Associates provided AMS with an invoice (<i>please see Table A, item 6</i>).
3	E-mail notifying USDA security staff of the events	Searches produced no such records; it is believed USDA Security was notified by telephone.
5	Audio and video recordings	AMS did not create or request, and never possessed audio or video recordings of the trainings by Souder, Betances & Associates.

To ensure that a comprehensive search of all potentially responsive AMS communication was conducted, an additional search of internal agency e-mail archives was performed, using parameters designed to elicit records pertaining to the Souder, Betances & Associates trainings. This search failed to elicit any additional responsive records.

Further, we wish to address your concern about our use of Executive Order 12600 to refer certain documents for review by their submitter in advance of their release under the FOIA. Executive Order 12600, issued on June 23, 1987, appears at 52 FR 23781, 3 CFR, 1987 Comp., p. 235. This Executive Order requires pre-disclosure notification to business submitters for records which potentially contain confidential commercial information.⁴ This procedure is an important means of safeguarding trade secrets, proprietary information, and intellectual property. The records forwarded to Souder, Betances & Associates for pre-disclosure review consisted of a slide presentation and other copyrighted materials which we believe are not normally distributed to the general public or to persons other than paying participants in the firm’s training programs.

If you are dissatisfied with this decision you have the right to judicial review in an appropriate United States District Court in accordance with 5 U.S.C. §552(a)(4)(B). Prior to seeking judicial review, you may contact the Office of Government Information Services (OGIS). OGIS was created within the National Archives and Records Administration when the OPEN Government

⁴ (a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.
 (b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

Act of 2007 amended FOIA. OGIS provides mediation of FOIA disputes between appellants and federal agencies. Participation in mediation does not affect your right to judicial review. Contact information for OGIS can be found at: <http://www.archives.gov/ogis/>.

Sincerely,



Rex A. Barnes
Associate Administrator

Enclosure