

From: John@blue-spring.com
To: AMS FOIA (AMS)
Cc: Niedermaier-Betts, Kyla - MRP-AMS, Washington, DC; Higgs, Heather - AMS
Subject: [EXTERNAL: Suspicious Link]RE: FOIA 2022-AMS-00101-F Final Response Ap
Date: Monday, June 20, 2022 10:32:56 AM
Attachments: [image001.emz](#)
[image002.png](#)
[image003.emz](#)
[image004.png](#)
[oledata.msg](#)
[FIRST Data Request Response frm UW 1-25-22.pdf](#)
[FIRST Data Request-University of Minnesota 1-24-22.pdf](#)

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June 20, 2022

Mr. Bruce Summers
Administrator
Agricultural Marketing Service
1400 Independence Avenue, SW
Room 2055-S, Stop 0201
Washington, D.C. 20250-0201
Re: Freedom of Information Act Appeal Sent Via Email to ams.foia@usda.gov

Dear Mr. Summers:

This is an appeal under the Freedom of Information Act. On March 12, 2022, I requested documents under the Freedom of Information Act. The request was assigned identification number FOIA 2022-AMS-00101-F. On May 20, 2022, I received a response to my request in a letter signed by Mark R. Brook and emailed by Heather Higgs. I appeal the denial of my request. I believe the documents that were withheld must be disclosed under the FOIA because:

A. The request for a copy of the Farmers Independent Research of Seed Technologies (FIRST) Soybean Sample data for the 2021 growing season, as prepared by the University of Minnesota laboratory.

As noted in the response we received on May 20, 2022, aggregate FIRST data has been made public for years. However, the FIRST site does have the necessary variety-level test plot data to identify which varieties have superior nutrition or oil value. We simply request that the soybean sample data be released in a form that facilitates transparent research and educational reporting – namely the spreadsheets showing the protein, amino acid, and oil analysis, yields and locations at the sample level. Since this is a government-sponsored program (being Checkoff-sponsored) with no confidential information associated with soybean components, we do not agree that it should be protected under confidentiality nor that it represents “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.”

The variety-level data from FIRST have been made publicly available since 2018 on the soyvalue.com website by Checkoff-sponsored groups Illinois Soybean Association and since 2020 through today by the United Soybean Board. (see <https://soyvalue.com/variety-information.php>.) We own the soyvalue.com web domain which USB is using to display FIRST nutritional and feed value data, so the USB claiming that the data are confidential is without merit. Therefore, the tax-supported FIRST sample data from all years should be released, so we can display this data on a public website. In other words, this request will lead to display of the data that is in public today being available on an additional public resource, and updated for future harvests.

B. The request for a copy of the soybean grower sample data for the 2013 - 2021 growing season, as derived from grower sample submissions to United Soybean Board and prepared by the University of Minnesota laboratory, including all data such as the variety information, protein and oil content and plot location information.

This data request was for sample data with any grower-identifiable information removed. The grower information is the portion of the raw data that has been treated as confidential. We are not seeking disclosure of that confidential information. The University of Minnesota routinely removes this information when preparing the sample data for distribution to USB partners, as we have experienced in the past. Our research is focused on the protein, amino acid and oil analysis, not the owner of the sample, and thus the data we request should not represent “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential,” since we requested that the grower identifiable information is removed.

C. Multiple Parties Requested This Data for Research and Education Purposes

The soybean checkoff invested millions of farmer dollars over many years via Illinois Soybean Association, then USB, inviting seed companies and farmers to help increase soybean quality and value. Several companies accepted the invitation to help. After USB directors ended the program, those groups requested continued access to the data. This FOIA request happened because USB declined to share data with three seed

companies and National Pork Board, who had requested the data. Those email requests are attached. The firms referenced in the supporting documentation with this appeal are not parties to this FOIA request or appeal. The data are useful in helping individual farmers and others learn how to increase soybean protein and oil levels. The public benefits of releasing the information outweigh the USB interest in protecting the data from disclosure; again, this request does not seek confidential grower information, only the data necessary to complete the protein, amino acid, and oil analysis, and related reporting. Emails attached.

D. Data Release Supports Multiple Farm, Food, and Energy Sustainability Agendas

There are significant benefits from reversing soybean protein declines and maximizing oil value. Reversing soybean protein declines is especially important in the northern U.S., where soybean protein average has fallen to about 32 percent, which impacts export value to critically important Asian markets. Instead of reversing the protein decline, the soybean checkoff is currently advancing a "SEEA value score," which is only weakly correlated with feed value. Moreover, the 20-year 4-point slide in soybean protein has been mischaracterized as unimportant and affecting only "some purchasers" (even though most soybeans are fed to livestock), including as shown on this checkoff-funded site:

https://mnssoybean.org/wp-content/uploads/2021/12/2021-US-Soybean-Quality-Report_final.pdf.

Releasing the FIRST data will help the private sector clarify nutrition and oil value, help resolve confusion in this area, and help corn-soybean farmers reverse billions of dollars in sales losses to synthetic feed in global markets. The FIRST data are necessary to clarify variety-level value for researchers and farmers who want to produce the most yield, protein, and oil value per acre. Releasing the data will help USDA and industry fulfill the Act and Order mission faster than USB can by keeping the data confidential from the farmers who paid for that data.

Moreover, our Checkoff-funded research identified which soybean varieties deliver the most nutritional and oil value at the variety level. This process has been validated by peer review, and received several years of checkoff funding.

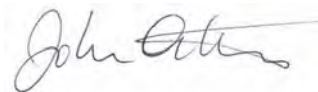
<https://experts.umn.edu/en/publications/characterizing-soybean-meal-value-variation-across-the-united-states>. The public sharing of FIRST data on soybeans is critically important to achieving farm, food, and biofuel system sustainability goals. There are many newly-discovered ecosystem benefits from increasing soybean protein and oil that the FIRST data will help industry achieve.

In addition, after checkoff funding for our work ended, a university, commercial agronomy and nutrition team found that increasing soybean protein automatically increases corn demand up to 14 percent, reduces GHG emissions intensity from pig and chicken feed by up to 62 million tons globally, and helps keep nitrogen out of water. Nitrates in water pose a public health risk in the upper Midwest, where intensive livestock production coincides with the soybean quality being among the lowest in the country. Improving soybean quality there will help improve farm economics and also reduce nitrogen losses. The FIRST component data being public will help industry validate emissions intensity deltas from using natural feed vs. synthetics. This finding can help farmers feed more people using the same number of acres. This discovery gives the AMS and the food system a workable pathway to increase farm value and city acceptance of agriculture practices, at a time when common ground is extremely valuable to USDA.

In light of the above, we believe that the request should be granted, if not in full, then in part, so that we can continue our soybean quality research and support industry in their mission to serve US soybean growers and their customers.

Thank you for your consideration of this appeal.

Sincerely,



John Osthus
Blue Spring Ecosystem Services
Proactivism.com
314-369-5015

From: Higgs, Heather - AMS <heather.higgs@usda.gov>

Sent: Friday, May 20, 2022 9:29 AM

To: john@blue-spring.com

Cc: AMS FOIA (AMS) <AMS.FOIA@usda.gov>; Niedermaier-Betts, Kyla - MRP-AMS, Washington, DC <Kyla.Niedermaier-Betts1@usda.gov>

Subject: FOIA 2022-AMS-00101-F Final Response



1400 Independence Avenue, SW
Room 2055-S, STOP 0201
Washington, D.C. 20250-0201

April 27, 2023

Delivered via Electronic Mail

John Osthus
Blue Spring Ecosystem Services

Sent via email: john@blue-spring.com

Re: Response to FOIA Appeal 2022-AMS-00002-A

Dear Mr. Osthus:

This letter responds to your June 20, 2022 appeal of the decision issued regarding your Freedom of Information Act (FOIA) Request No. 2022-AMS-00101-F which was submitted to the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS). Your appeal was received on June 20, 2022.

On March 14, 2022, you submitted a FOIA request to the AMS FOIA Office. Your request sought the following records:

1. A copy of the Farmers Independent Research of Seed Technologies (FIRST) Soybean Sample data for all years to date from the United Soybean Board, including the 2021 growing season, as prepared by the University of Minnesota laboratory operated by Dr. Seth Naeve, as soon as they are available. The request includes all data such as the variety information, protein and oil content and sample plot location information.
2. A copy of the soybean grower sample data for the 2013 - 2021 growing season, as derived from grower sample submissions to United Soybean Board and prepared by the University of Minnesota laboratory, including all data such as the variety information, protein and oil content and plot location information. This data could be anonymized as appropriate, if USDA considers that step necessary to protect the identities of the growers who submitted the samples.

On May 20, 2022, AMS provided a final response to you in which AMS withheld in full 54 Excel spreadsheets containing raw data responsive to your request. The records were withheld in full under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4).

On June 20, 2022, you submitted a timely appeal of AMS' response appealing the response in its entirety, with challenges to the withholdings made pursuant to FOIA Exemption 4. More specifically, you claimed that Exemption 4 was erroneously applied for the following reasons:

- FIRST Data: You argue that the data should be made public because it has been released in aggregate for years, but that you are seeking the protein, amino acid, oil analysis, yields and locations at the sample level to facilitate transparent research and educational

reporting. You also argue that it is a government sponsored program (Checkoff sponsored) and that there is no confidential information and should not be withheld under Exemption 4. Finally, you note that you own the soyvalue.com web domain and that you intend to display the data on a public website which will lead to display of data available “on an additional public resource and updated for future harvests.”

- Soybean Grower Sample Data: You stated that you are seeking the data prepared by University of Minnesota including variety information, protein and oil content, and plot location information, with any grower-identifiable information removed. You argue that the university routinely removes this information to distribute the data to USB partners and that, without this information, the data should not be withheld under Exemption 4.
- In addition, you argue that various groups have sought this data including the National Pork Board and three seed companies, and that these requests indicate that “the public benefits of releasing the information outweigh the USB interest in protecting the data from disclosure.”
- Finally, you argue that releasing the FIRST Data “will help the private sector clarify nutrition and oil value” and “help corn-soybean farmers reverse billions of dollars in sales losses to synthetic feed in global markets.” Also, you argue that release will help achieve farm, food, and biofuel system sustainability goals and that improving soybean quality will help farm economics and reduce nitrogen loss.

After careful consideration of your appeal, AMS is upholding its previous determination and is denying your appeal in full.

Exemption 4 of the FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). Information is protected as confidential under this exemption if it is not ordinarily released by the submitter. The withheld information is commercial or financial because it pertains to the business of the growers or farmers who participated in the sampling, and they have a commercial interest in the information. The information was obtained from a person within the meaning of Exemption 4. For both FIRST and Soybean Grower Sample Data, the soybean samples originate with growers, which are submitted for laboratory testing that yields protein and oil content data. The variety information and plot location information comes from either the labels that the growers complete when submitting their samples to the laboratory, or from FIRST which facilitates the FIRST sampling studies. In exchange for their participation, Soybean Grower Sample Data growers receive individualized test results for their samples. The Soybean Grower Sample Data participants also receive an assurance that individual farmer test results are kept confidential. Release of the information including protein and oil content data would cause harm to the commercial interests of the growers. In addition, release of the information would cause harm to the soybean industry, including the United Soybean Board and its farmers.

If you are dissatisfied with this information, 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 Act of 2007 amended the 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/>. In addition, you may contact our FOIA Public Liaison, Bill Allen, at (202) 631-6412 or via email at ams.foia@usda.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Summers". The signature is fluid and cursive, with a large loop at the end.

Bruce Summers
Administrator