

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

TELEMATCH, INC.,

Plaintiff,

v.

Case No. 1:19-cv-2372

UNITED STATES DEPARTMENT OF
AGRICULTURE,

Serve: Mr. William Barr, Esq.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Serve: Ms. Jessie K. Liu, Esq.
U.S. Attorney for the District of
Columbia
U.S. Attorney's Office
555 4th Street, N.W.
Washington, DC 20530

Serve: U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Defendant.

COMPLAINT

Plaintiff Telematch, Inc. (d/b/a Farm Market iD) ("FMID"), by counsel and pursuant to Rule 3 of the Federal Rules of Civil Procedure, files this complaint against the United States Department of Agriculture ("USDA" or "Agency") for declaratory and injunctive relief arising from the USDA's improper refusal to disclose Agency records requested under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), as well as for declaratory and injunctive relief challenging the validity and lawfulness of a USDA regulation (7 C.F.R. § 1.14(a)) under the

Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* (“APA”). For its complaint, FMID states as follows:

PARTIES

1. Plaintiff FMID is a corporation organized under the laws of the State of Delaware. It maintains its principal place of business at 170 Quail Ridge Drive, Westmont, Illinois 60559. FMID, among other things, collects, maintains, and analyzes agricultural data from a number of sources, including the federal government. As part of its core research, FMID has for over a decade regularly submitted requests for USDA records pursuant to the FOIA.

2. Defendant USDA is a department of the executive branch of the United States government, and is headquartered in Washington, D.C. The USDA is an “agency” of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USDA, including, not limited to its agency Farm Service Agency, has possession, custody, and control of the records requested by FMID at issue in this action.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the federal FOIA, 5 U.S.C. § 552, and the federal APA, 5 U.S.C. §§ 701 *et seq.* It also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1346(a)(2) because the United States is the defendant. Moreover, FMID seeks relief under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 2201-2202.

4. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

STATEMENT OF FACTS

The Public Information

5. This action pertains to three general categories of information contained in USDA records. The USDA uses each of these data points to administer, track, and audit its subsidy programs.

6. The three categories of information that the USDA improperly withheld from the subject FOIA requests are as follows:

(a) Customer Number: The USDA generates and assigns a unique identifier number for each individual or entity that has a record in one of its databases. Private individuals and entities do not generate or submit Customer Numbers to the USDA. A Customer Number remains associated with the particular individual or entity for as long as the record remains active in the database, regardless of the calendar year. Program participants can also have several Customers Numbers and the Customer Number is not a guaranteed permanent identifier. The USDA uses Customer Numbers as well to help provide and administer farm loans, crop insurance, and disaster assistance compensation.

(b) Farm Number: The USDA generates and assigns a particular number to all agricultural land units which are under the control of a particular owner and operator. Private individuals and entities do not generate or submit Farm Numbers to the USDA. A Farm Number is unique when linked to a given State Code and County Code. One Farm Number may have one or more than one Tract Numbers associated with it. Among other uses, the USDA uses Farm Numbers to help provide and administer farm loans, crop insurance, and disaster assistance

compensation.

(c) Tract Number: The USDA generates and assigns a particular number to a unit of contiguous land that is (a) under one ownership, and (2) operated as a farm or a part of a farm. Private individuals and entities do not generate or submit Tract Numbers to the USDA. A Tract Number is unique when linked to a given State Code and County Code. A Tract Number cannot be associated with more than one Farm Number. Like Farm Numbers, the USDA uses Tract Numbers to help provide and administer farm loans, crop insurance, and disaster assistance compensation.

7. These numbers are often linked together in USDA files. For example, several Tract Numbers may be tied to one Farm Number, and one Farm Number may be linked to one Customer Number.

8. These associations may change over time. One Tract Number could be transferred to a different Farm Number, and Farm Numbers could associate with a different Customer Number.

9. Until 2019, the USDA released each of these categories of data to FMID pursuant to FOIA requests as a matter of course. Indeed, the USDA has released these categories of data pursuant to some recent FOIA requests, but not others.

The FOIA Requests

10. In this case, FMID challenges the USDA's withholding of agency records and information sought through the following seven FOIA requests (collectively, the "FOIA Requests"):

A. Request 2019-FSA-01467-F

11. On or about December 17, 2018, FMID submitted a FOIA request seeking farm reconstitution data, including certain identified specific data elements, for the 2017 calendar year.

12. In response, the USDA identified two farm reconstitution data files that were responsive to the request: the Farm Partner Division file and the Farm Partner Combination file.

13. The USDA explained that both files contain at least eight (8) categories of data, including Parent Farm Number, Resulting Farm Number, Customer Number, and Resulting Customer Number.

14. On March 28, 2019, the USDA determined that it is “withholding in full” both files pursuant to 5 U.S.C. § 552(b)(3) (“Exemption 3”) and 5 U.S.C. § 552(b)(6) (“Exemption 6”) of the FOIA.

15. Specifically, the USDA concluded that Exemption 3 exempts from disclosure all Customer Numbers and Resulting Customer Numbers because 7 U.S.C. § 8791 specifically prohibits that data from being released.

16. The USDA concluded that Exemption 6 exempts the Parent Farm Number and Resulting Farm Number data from disclosure because it constituted “personnel, medical, and similar files, the disclosing which would constitute a clearly unwarranted invasion of personal privacy.”

B. Request 2019-FSA-01492-F

17. On or about December 19, 2018, FMID submitted a FOIA request seeking FSA grower data, including specific data elements, for the Conservation Reserve Program (“CRP”) Active Contract data for the entire United States, including the matching Name and Address.

18. In its March 8, 2019 response, the USDA identified and released one Contract Maintenance (CM) Contract *Statistical* File for active contracts for the CRP for the United States.

19. The USDA did not identify, expressly deny release, or otherwise address the actual data file requested, including Customer Numbers and Farm Numbers.

20. However, the USDA generally withheld in full the portion of the requested information seeking “Conservation Reserve Program (CRP) Active Contract Names and Addresses” pursuant to 5 U.S.C. § 552(b)(3) and (b)(6) of the FOIA.

21. By offering an alternative, limited statistical file, as opposed to the actual data requested, the USDA denied the request.

C. Request 2019-FSA-01497-F

22. On or about December 19, 2018, FMID submitted a FOIA request seeking the FSA’s Business Party Share file, including all data elements included in the file, for the 2018 calendar year.

23. In its March 1, 2019 response, the USDA identified and released a statistical file (Business Party Statistical Share file) which does not include all of the data elements sought by the FOIA Request. Specifically, the produced file lacked the Parent Customer Number and Member Customer Numbers sought in the request.

24. Thus, while USDA claimed it was releasing the Business Party Statistical Share file (which was not requested) in full, it effectively denied FMID’s request for the data elements in the Business Party Share file (which was requested) in full.

25. The USDA did not provide any reasoning for effectively denying this FOIA request.

D. Request 2019-FSA-01539-F

26. On or about December 20, 2018, FMID submitted a FOIA request seeking the DCP Tract Crop File, including all data elements, for the 2018 calendar year.

27. In response, the USDA identified the 2018 Farm Tract Crop *Statistical* File as the only file responsive to this request.

28. On April 15, 2019, the USDA released the 2018 Farm Tract Crop Statistical File. In so doing, the USDA conceded that the “statistical file contains more data fields, but does not include Farm Number and Tract Number.”

29. The USDA’s response cites 7 U.S.C. § 8791 (and therefore FOIA Exemption 3) as a general reason to withhold information, but it did not explain how Farm Numbers and Tract Numbers are information supplied by producers or owners of the properties. In fact, the USDA provided no reasoning specific to Farm Number and Tract Number for its denial of this FOIA Request.

30. As such, the USDA denied the request for the actual data requested, including Farm Number and Tract Number.

E. Request 2019-FSA-01562-F

31. On December 20, 2018, FMID submitted a FOIA request seeking the Agricultural Risk Coverage (ARC) and Price Loss Coverage (PLC) Program Election files, including all constituent data elements, for the 2018 calendar year.

32. In response, the USDA identified two responsive files: the Name and Address File and the Crop Election File.

33. The USDA explained that the Name and Address File contains several data fields of personal information (*e.g.*, names and addresses), as well as the Customer Number and other government-issued codes assigned to the individual.

34. The Crop Election File contains, *inter alia*, the Customer Number and Farm Number, but no individual privacy data.

35. On March 28, 2019, the USDA determined that it is withholding both files in full pursuant to Exemptions 3 and 6 of the FOIA.

36. Specifically, the USDA concluded that Exemption 3 exempts from disclosure all Customer Numbers in both files because, the USDA maintains, 7 U.S.C. § 8791 specifically prohibits that data from being released.

37. The USDA concluded that Exemption 6 exempts the Parent Farm Number and Resulting Farm Number data from disclosure because it constituted “personnel, medical, and similar files, the disclosing which would constitute a clearly unwarranted invasion of personal privacy.”

38. Strangely, neither of these two data points (Parent Farm Number and Resulting Farm Number) exist within the requested files (although, according to the USDA’s response “Farm Number” itself is included).

F. Request 2019-FPAC-BC-03020-F

39. On March 22, 2019, FMID submitted a FOIA request seeking, among other things, the 2018 Farm Producer file, which includes the State and County codes, Status code, FSA Customer Number, Farm Number, and the Reconstitution Pending Indicator for the 2018 calendar year.

40. Again, FMID did not ask for, nor does it seek, specific individual privacy information.

41. On March 28, 2019, the USDA responded and again declined to produce any of the Customer Numbers or Farm Numbers in the requested files on the grounds that Exemptions 3 and 6 exempted that data from public disclosure.

G. Request 2019-FPAC-BC-03064-F

42. On March 27, 2019, FMID submitted a FOIA request seeking, among other things, the 2018 Compliance Data file, including State and County codes, Status Code, Farm number,

Tract number, Field number, Subfield number, Planting Period Code, Crop Field Determined Quantity, Determined Acreage Indicator, Official Measurement Code, Certification Date, Plant Pattern Type Code, Concurrent Planting Code, Disapprove Acre Indicator, Perennial Crop Year Expired, NAP Unit number, Creation Date and Last Changed Date.

43. On April 30, 2019, the USDA responded and declined to produce any of the Farm Numbers or Tract Numbers pursuant to Exemption 6.

Exhaustion of Administrative Remedies

44. The FOIA imposes a strict 20-business day deadline on agencies to provide records requested in FOIA requests absent unusual circumstances. *See* 5 U.S.C. § 552(a)(6)(A)(iii).

45. As this Court's FOIA suit docket reflects, the USDA regularly shirks its obligation to produce or otherwise timely respond to FOIA requests such as this one as a matter of practice.

46. The USDA did not timely respond to all but one of the FOIA Requests in this case.

47. The USDA responded to the FOIA requests in March and April 2019.

48. The FOIA statute permits a party to appeal any adverse FOIA determinations within 90 days of the adverse determination. *See* 5 U.S.C. § 552(a)(6)(A)(iii).

49. USDA regulations implementing the FOIA, however, require that any agency appeal of any adverse determination must be properly submitted within only 45 days of the adverse determination. *See* 7 C.F.R. § 1.14(a).

50. FMID timely filed an administrative appeal of the denials of all seven (7) FOIA Requests *by e-mail* on May 9, 2019, and by overnight delivery on May 10, 2019.

51. FOIA imposes a strict 20-business day deadline on agencies to provide determinations of administrative appeals of denied FOIA requests absent unusual circumstances. *See* 5 U.S.C. § 552(a)(6)(A)(iii).

52. USDA claims it received the administrative appeals of the FOIA Requests only on *Sunday*, May 12, 2019.

53. Accordingly, USDA's determination of the administrative appeals of the FOIA Request denials was due to FMID at the latest on June 10, 2019, absent unusual circumstances.

54. On May 22, 2019, a USDA appeals team member informed FMID's counsel for that it was "backlogged and I will try and get to your cases as soon as I can."

55. USDA did not provide FMID with any determination of any appeal of the FOIA Requests denials by June 10, 2019.

56. On June 24, 2019, a USDA appeals team member informed FMID's counsel that "it may be sometime before I can review the appeals as we are backlogged," and that "I will try and get them started before the end of July."

57. In response to an FMID request to determine whether USDA would make a determination on the appeals by July 26, 2019, a USDA appeals team member stated on July 3 that USDA "processes requests on a first in and first out basis. Your appeals have been added to the list and will be processed accordingly."

58. From July 3 through July 24, FMID sent several requests to USDA asking whether the appeals determination would be complete by July 26, 2019.

59. USDA never responded to those requests, nor has it provided any final determination as of the date of filing of this complaint.

60. USDA did not provide any "unusual circumstance" justification at any time, including on or before June 10, 2019.

61. Despite FMID's repeated requests for a date certain for a determination of the administrative appeals, USDA refused to provide any such date certain.

62. FMID's administrative appeals of the denials of the FOIA Requests are deemed denied because USDA has not complied with (and brazenly ignored) the timing requirements of the FOIA. *See* 5 U.S.C. § 552(a)(6)(C)(i).

63. FMID now petitions this Court for, among other things, declaratory and injunctive relief from USDA's continued illegal withholding of public records and information. *See* 5 U.S.C. § 552(a)(4)(B).

COUNT I

(Violation of the Freedom of Information Act (5 U.S.C. § 552))
(Unlawful Withholding of Records and Information)

64. FMID incorporates the allegations contained in paragraphs 1 through 63 herein.

65. USDA is an agency within the meaning of the FOIA.

66. Pursuant to the FOIA, FMID properly submitted the FOIA Requests to the USDA for agency records and information within the possession, custody, and control of USDA.

67. USDA unlawfully withheld Customer Numbers, Farm Numbers, and Tract Numbers, and all associational data between those data figures.

68. USDA continues to unlawfully withhold from FMID all properly-requested Customer Numbers, Farm Numbers, and Tract Numbers, and all associational data between those data figures.

69. Pursuant to the FOIA and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, FMID is entitled to declaratory and injunctive relief requiring USDA to disclose the requested records containing Customer Numbers, Farm Numbers, and Tract Numbers, and all associational data between those data figures.

WHEREFORE, FMID respectfully prays for this Court (1) to enter judgment in its favor and against the USDA; (2) declare that Customer Numbers, Farm Numbers, and Tract Numbers,

and any associational data between those data figures, are not exempt and therefore must be disclosed to FMID; (3) order the USDA to immediately produce all requested records without redacting any Customer Numbers, Farm Number, and Tract Numbers, and any associational data between those data figures; and (4) award FMID all reasonable attorneys' fees and costs in litigating this FOIA dispute.

COUNT II

(Violation of the Freedom of Information Act (5 U.S.C. § 552))
(USDA's Systemic Failure to Adhere to FOIA Deadlines)

70. FMID incorporates the allegations contained in paragraphs 1 through 63 herein.

71. USDA is an agency within the meaning of the FOIA.

72. Pursuant to the FOIA, FMID properly submitted the FOIA Requests to the USDA for agency records and information within the possession, custody, and control of USDA.

73. In both responding to the initial FOIA Requests and the administrative appeals of the denied FOIA Requests, USDA has systemically and repeatedly failed – in this case and others – to make a good faith effort to comply with the Congressional deadlines mandated by the FOIA.

74. USDA continues its unlawful practice of ignoring FOIA's strict timeliness requirements with impunity.

75. Pursuant to the FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201, FMID respectfully requests that this Court declare USDA's practice of ignoring FOIA deadlines unlawful under the FOIA, and permanently and nationally enjoin the USDA to comply with the FOIA deadlines and processes for extending those deadlines in good faith.

WHEREFORE, FMID respectfully prays for this Court (1) to enter judgment in its favor and against the USDA; (2) declare USDA's practice of ignoring FOIA deadlines unlawful under the FOIA; (3) permanently and nationally enjoin the USDA to comply with the FOIA deadlines

and processes for extending those deadlines in good faith; and (4) award FMID all reasonable attorneys' fees and costs in litigating this FOIA dispute.

COUNT III

(Violation of the Administrative Procedure Act (5 U.S.C. §§ 701, *et seq.*)
(USDA Regulatory FOIA Appeals Deadline Contrary to FOIA))

76. FMID incorporates the allegations contained in paragraphs 1 through 63 herein.
77. USDA is an agency within the meaning of the APA.
78. 7 C.F.R. § 1.14(a) is a final agency action within the meaning of the APA.
79. The FOIA grants a party appellate rights if it files an appeal of any adverse FOIA determinations within 90 days of the agency's adverse determination. *See* 5 U.S.C. § 552(a)(6)(A)(iii).
80. The FOIA permits agencies to promulgate regulations in order to carry out the FOIA's statutory provisions. *See* 5 U.S.C. § 552(a)(4).
81. 7 C.F.R. § 1.14(a) requires that any agency appeal of any adverse determination must be properly submitted within *only* 45 days of the adverse determination. *See* 7 C.F.R. § 1.14(a).
82. Thus, the time in which to submit an administrative FOIA appeal under 7 C.F.R. § 1.14(a) is much more stringent than what the FOIA requires.
83. 7 C.F.R. § 1.14(a) is therefore a regulation promulgated contrary to law, or arbitrary and capricious.
84. Pursuant to the APA, FMID respectfully requests that this Court hold unlawful and set aside 7 C.F.R. § 1.14(a) because (1) it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law (specifically, the FOIA); (2) promulgated in excess of USDA's statutory jurisdiction, authority, or limitations, or short of statutory right; and (3)

promulgated without observance of procedure required by law.

WHEREFORE, FMID respectfully prays for this Court (1) to enter judgment in its favor and against the USDA; (2) declare 7 C.F.R. § 1.14(a) unlawful; (3) invalidate, set aside, and/or otherwise strike the effectiveness of 7 C.F.R. § 1.14(a) nationwide; and (4) award FMID all reasonable attorneys' fees and costs in litigating this APA dispute.

PRAYER FOR RELIEF

For the foregoing reasons, FMID respectfully request that this Court ENTER JUDGMENT in favor of FMID, and further ORDER the following relief:

1. DECLARE that Customer Numbers, Farm Numbers, and Tract Numbers, and any associational data between those data figures, are not exempt from the FOIA disclosure requirements, and therefore must be disclosed to FMID; and
2. ORDER the USDA to immediately produce all requested records without redacting any Customer Numbers, Farm Number, and Tract Numbers, and any associational data between those data figures; and
3. PERMANENTLY and NATIONALLY ENJOIN USDA to comply with the FOIA deadlines and processes for extending those deadlines in good faith; and
4. DECLARE 7 C.F.R. § 1.14(a) unlawful and USDA's promulgation of it exceeded its authority under the FOIA, and therefore setting that regulation aside and declaring its ineffectiveness nationally; and
5. PERMANENTLY and NATIONALLY ENJOIN the USDA from applying or enforcing 7 C.F.R. § 1.14(a), and, furthermore, invalidating and vacating that regulation; and
6. AWARD FMID its reasonable attorneys' fees; and
7. AWARD FMID any other relief this Court deems just and proper.

Dated: August 6, 2019

Respectfully Submitted,

TELEMATCH, INC. (d/b/a Farm Market iD)

By Counsel

VEDDER PRICE P.C.

A handwritten signature in cursive script, appearing to read "Aramana".

Anand V. Ramana (DC Bar No. 489478)

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