

January 9, 2024

Via email: eFOIA@doc.gov

U.S. Department of Commerce
Office of Privacy and Open Government
Departmental FOIA Office
14th and Constitution Avenue NW, Room H61025
Washington, DC 20230

RE: Freedom of Information Act Request; Fee Waiver and Expedited Treatment Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 15 C.F.R. § 4.1, the Chamber of Commerce of the United States of America (“Chamber”) hereby requests the following records relating to the Interagency Working Group for Bayh-Dole (“Working Group”) referenced in the Request for Information Regarding the Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights, 88 Fed. Reg. 85593 (Dec. 8, 2023):

1. The name, title, and organizational affiliation of each person who served as a member of the Working Group at any time between January 20, 2021, and the date of processing this request;
2. The resume or CV for each person who served as a member of the Working Group at any time between January 20, 2021, and the date of processing this request;
3. Minutes of every Working Group meeting that took place between January 20, 2021, and the date of processing this request;
4. The agenda of every Working Group meeting that took place between January 20, 2021, and the date of processing this request, and any other documents or records attached to that agenda or distributed with that agenda;
5. All communications since January 20, 2021, between (a) any person who served as a member of the Working Group at any time between January 20, 2021, and the date of processing this request, and (b) any staff member, employee, or representative of the Office of Senator Elizabeth Warren or the Office of Senator Bernie Sanders;
6. All communications since January 20, 2021, between (a) any person who served as a member of the Working Group at any time between January 20, 2021, and the date of processing this request, and (b) any staff member, employee, or representative of Knowledge Economy International (KEI), the Initiative for Medicines, Access, and Knowledge (I-MAK), the Center for American Progress, Patients for Affordable Drugs, or Public Citizen.

As used in this request, “communications” includes emails, email attachments, text messages, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger or other social media messaging services, text messages, voice messages, calendar invitations/entries, letters, memoranda, or other communication records.

I further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, I request that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government, and because this disclosure is not primarily in the commercial interest of the Chamber. 15 C.F.R. §§ 4.11(l)(1)(i)–(ii).

The requested records concern the operations and activities of the federal government, specifically the operations and activities of the Working Group that NIST has convened. 15 C.F.R. § 4.11(l)(2)(i). The disclosure is likely to contribute to the understanding of those operations and activities, because the requested information will provide additional information about the composition of the Working Group, the professional backgrounds of its members, the items discussed at meetings of the Working Group, and the Working Group’s communications with elected officials and outside groups. 15 C.F.R. § 4.11(l)(2)(ii). The requested information will increase the understanding of a reasonably broad audience of persons, and not just the Chamber as the requester, because the Secretary of Commerce recently stated that she wanted the Working Group’s draft guidance to spark “stakeholder input to ultimately provide greater clarity on march-in rights and maintain a balance between incentivizing companies to innovate and making sure those innovations serve the American people.” Press Release, NIST Releases for Public Comment Draft Guidance on March-In Rights, <https://www.nist.gov/news-events/news/2023/12/nist-releases-public-comment-draft-guidance-march-rights> (Dec. 7, 2023); *see also* 15 C.F.R. § 4.11(l)(2)(iii). The public understanding of the Working Group’s operations and activities will be “significant” because this request seeks core information about the Working Group and its operations and activities that has not been publicly disclosed. 15 C.F.R. § 4.11(l)(2)(iv).

The request is not in the Chamber’s commercial interest because the Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code and does not have “commercial, trade, or profit interests,” including any that would be served by this information. 15 C.F.R. § 4.11(l)(3)(i); 15 C.F.R. § 4.11(b)(1). For that reason, the public interest in this disclosure necessarily outweighs any commercial interest of the Chamber. 15 C.F.R. § 4.11(l)(3)(ii). If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

The Chamber also requests expedited treatment of this request because there is an urgency to inform the public about the federal government’s activities—namely, the composition, activities, and influences on the Working Group—and the Chamber’s mission involves disseminating information to both its membership and the public regarding economic issues in the United States, especially as they relate to the federal government. 15 C.F.R. § 4.6(f)(1)(iv). The Chamber must be able to provide information regarding the Working Group’s operations and activities to its members given their significant impact—so its members may comply with new regulations and policies, so they may protect

their rights, and so they may order their own affairs. The impact of these actions is far-reaching, requiring the urgent release of records in order to understand the Working Group's activities and their potential impact on the Chamber's members. Pursuant to 15 C.F.R. § 4.6(f)(3), I certify that this explanation of the basis for requesting expedited processing is true and correct to the best of my knowledge and belief.

Federal law requires that you produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. See 5 U.S.C. § 552(a)(6)(A)-(B); see also 15 C.F.R. §§ 4.6(b), (d)(1). If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Patrick Kilbride". The signature is written in a cursive, flowing style.

Patrick Kilbride
Senior Vice President
Global Innovation Policy Center
U.S. Chamber of Commerce