

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

ENVIRONMENTAL WORKING GROUP,)
1250 I St. NW, Suite 1000)
Washington, DC 20005)
)
Plaintiff,)
)
v.)
)
FOOD SAFETY AND INSPECTION SERVICE)
and UNITED STATES DEPARTMENT OF)
AGRICULTURE,)
1400 Independence Ave., SW.)
Washington, D.C. 20250)
)
Defendants.)
)

Civil Action No. 1:23-cv-03806

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Environmental Working Group (“EWG”) brings this lawsuit under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the immediate release of records from the Food Safety and Inspection Service (“FSIS”) concerning its decision to allow Tyson Foods, Inc. (“Tyson”), one of the largest beef producers in the United States, to market industrially produced beef as “climate friendly.” FSIS’s inadequately justified, near-total redaction of these records constitutes a clear violation of FOIA. And, as Tyson’s “climate friendly” beef hits supermarket shelves nationwide, FSIS’s failure to properly release these documents deprives consumers of information urgently needed to assess Tyson’s climate claims—and the government’s role in approving them.

2. This year will be the hottest on record—by a significant margin. As the consequences of human-caused greenhouse gas (“GHG”) emissions—from deadly heat waves to cataclysmic weather events—have increased in severity, individuals across the country have awakened to the growing climate crisis and recognized the need for swift action. In search of

ways to affect positive change on an individual level, many have critically assessed the climate impacts of their own consumption habits.

3. In particular, consumers have become increasingly aware that food production—especially beef production—substantially contributes to climate change. This growing awareness has inspired many conscientious consumers to adopt dietary changes that will reduce their own individual climate footprints. Recognizing this trend, many food companies have adopted marketing tactics meant to assuage consumers’ climate concerns.

4. Tyson is one such company. Under the auspices of its “Brazen Beef” brand, Tyson markets industrially produced beef as “climate friendly”—despite overwhelming scientific evidence that no food choice results in more GHG emissions than beef. Tyson claims that its purportedly “climate-friendly” beef is produced in ways that result in a 10 percent GHG emissions reduction across its supply chain. However, Tyson has yet to publish *any* information supporting this claim, including information about how it measures and calculates emissions reductions, or the baseline to which it is comparing its allegedly “climate-friendly” beef. Moreover, given beef production’s enormous climate footprint, a 10 percent reduction in GHG emissions, even if substantiated, would hardly make Brazen Beef “climate friendly.”

5. Notwithstanding Tyson’s complete lack of transparency—and even though consumers viewing a “climate-friendly” label are likely to mistakenly assume that consuming this type of beef will benefit the climate—FSIS approved Tyson’s application to use the term “climate friendly” on Brazen Beef labels.

6. To learn more about the extent to which Tyson engaged with the United States Department of Agriculture (“USDA”) concerning the labeling and claims of its Brazen Beef brand, EWG submitted a FOIA request to FSIS, an agency within the USDA, seeking

communications between Tyson and FSIS containing certain keywords, including “climate-friendly,” “GHG emissions,” and “10% reduction.”

7. After EWG agreed to narrow its FOIA request to label applications containing those keywords, FSIS produced four documents, including two heavily redacted reports that Tyson submitted to FSIS in support of its Brazen Beef label applications (“the Reports”). Its redactions withheld *all* information concerning GHG emissions in Tyson’s supply chain, *all* instances in which Tyson presented or applied its GHG emissions accounting methodology, and *all* explanations concerning Tyson’s purported ability to achieve GHG emissions reductions.

8. According to FSIS, it redacted “information revolving around Tyson’s Climate-Beef Plan and its accounting methodology” because it is shielded from disclosure by 5 U.S.C. § 552(b)(4) (“Exemption 4”), which protects “commercial or financial information obtained from a person that is privileged or confidential.” Ex. B.

9. EWG brings this action because FSIS improperly redacted records pursuant to Exemption 4, depriving the public of the basis for Tyson’s “climate-friendly” claims, and contributing to consumers’ likely confusion about the true climate impact of Tyson’s product. EWG seeks the injunctive relief necessary to ensure FSIS’s compliance with FOIA’s requirements.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question).

11. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

12. Plaintiff EWG is a public interest, nonprofit, non-partisan organization, based in Washington, D.C., that aims to empower people to live healthier lives in a healthier environment. For over three decades, EWG has worked to protect human health and the environment through breakthrough research and education, encouraging consumer choice and civic action. EWG also harnesses data it receives from the government to educate the broader public, including through the news media. In 2022 alone, EWG was mentioned over 38,000 times in print and online media, including 37 quotes or mentions in the *New York Times*, *Wall Street Journal*, and *Washington Post*. In keeping with its mission, EWG advocates for USDA to police misleading climate-related food marketing and labeling, such as “climate-friendly” claims on beef products.

13. Defendant FSIS is an agency of the USDA that oversees and approves label applications. *See* 9 CFR §§ 300.1 (describing FSIS as “an agency” of the USDA), 412.1 (describing FSIS’s authority to review and approve label applications). FSIS is an “agency” within the meaning of 5 U.S.C. § 552(f). FSIS has possession and control over the requested records.

14. Defendant USDA is a department of the executive branch of the U.S. government and is an “agency” within the meaning of 5 U.S.C. § 552(f). USDA and its component FSIS have possession and control over the requested records.

FACTUAL ALLEGATIONS

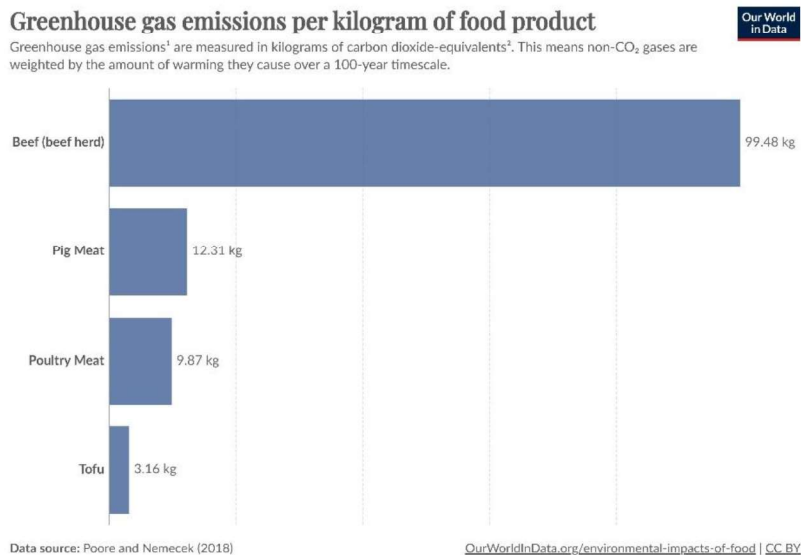
Beef’s Climate Impact Greatly Surpasses that of Any Other Food

15. According to the United Nations Environment Programme, “[h]ow we produce and consume food” plays a “key role” in “the climate emergency.” Agricultural production is responsible for approximately one-third of all human-caused GHG emissions. Within the agricultural sector, animal products—namely, meat and dairy—play an outsize role in fueling

climate change, accounting for between 14.5 and 20 percent of all human-caused GHG emissions.

16. Beef is, far and away, the biggest contributor to climate change. According to a 2021 *Nature Food* study—which ranked over 5,800 foods in terms of their climate impact—beef production contributes more to climate change than all other surveyed foods. In fact, according to the World Resources Institute, annual GHG emissions from beef production are comparable to total annual emissions in India, the world’s third largest GHG emitter.

17. Beef’s climate impact also far outstrips that of other foods. As demonstrated by a 2018 *Science* study, per kilogram of food, beef entails over 8 times more GHG emissions than pork, over 10 times more than poultry, and over 30 times more than tofu.



1. Greenhouse gas emissions: A greenhouse gas (GHG) is a gas that causes the atmosphere to warm by absorbing and emitting radiant energy. Greenhouse gases absorb radiation that is radiated by Earth, preventing this heat from escaping to space. Carbon dioxide (CO₂) is the most well-known greenhouse gas, but there are others including methane, nitrous oxide, and in fact, water vapor. Human-made emissions of greenhouse gases from fossil fuels, industry, and agriculture are the leading cause of global climate change. Greenhouse gas emissions measure the total amount of all greenhouse gases that are emitted. These are often quantified in carbon dioxide equivalents (CO₂eq) which take account of the amount of warming that each molecule of different gases creates.

2. Carbon dioxide equivalents (CO₂eq): Carbon dioxide is the most important greenhouse gas, but not the only one. To capture all greenhouse gas emissions, researchers express them in “carbon dioxide equivalents” (CO₂eq). This takes all greenhouse gases into account, not just CO₂. To express all greenhouse gases in carbon dioxide equivalents (CO₂eq), each one is weighted by its global warming potential (GWP) value. GWP measures the amount of warming a gas creates compared to CO₂. CO₂ is given a GWP value of one. If a gas had a GWP of 10 then one kilogram of that gas would generate ten times the warming effect as one kilogram of CO₂. Carbon dioxide equivalents are calculated for each gas by multiplying the mass of emissions of a specific greenhouse gas by its GWP factor. This warming can be stated over different timescales. To calculate CO₂eq over 100 years, we’d multiply each gas by its GWP over a 100-year timescale (GWP100). Total greenhouse gas emissions – measured in CO₂eq – are then calculated by summing each gas’ CO₂eq value.

18. Beef cattle, through their exhalations and manure, generate copious amounts of methane, a GHG with over 80 times the warming potential of carbon dioxide over a 20-year

period that is driving 25 percent of today’s global warming. Given the significant number of cattle in its beef supply chain, Tyson alone is responsible for annual methane emissions comparable to those of the *entire Russian Federation*, according to a 2022 Institute for Agriculture & Trade Policy study.

19. The production of corn, soy, and other grains for cattle feed, given its intensive use of fertilizers, emits vast quantities of nitrous oxide, a potent GHG with over 280 times the warming potential of carbon dioxide over a 20-year period.

20. Beef production also monopolizes *hundreds of millions* of acres of land that would otherwise sequester and store carbon. Indeed, according to USDA land use data, 41 percent of the contiguous United States—or approximately *800 million acres*—is devoted to cattle grazing or livestock feed production.

21. For these reasons, the five largest animal agriculture firms, including Tyson, have a combined annual climate impact that rivals that of major fossil fuel companies, such as Exxon, Shell, and BP.

Tyson’s “Climate-Friendly” Beef Claims

22. In March 2023, Tyson launched Brazen Beef as “a one-of-a-kind, first-of-its-kind” brand, claiming that its “greenhouse gas emissions are already down 10%” compared to “emissions for conventional beef.”

23. This claim—and Brazen Beef’s overall “brand identity”—was intended to “speak[] definitively” to “younger Millennial and Gen Z consumers” who have concerns about the climate impact of their dietary choices, according to Kent Harrison, Tyson’s Vice President of Fresh Meats Marketing and Premium Programs.

24. Central to Brazen Beef’s marketing is the appearance of scientific rigor. Brazen Beef claims to have “worked with researchers, technical experts and suppliers to track and

reduce emissions from pasture to production[.]” According to Brazen Beef, it relies on “innovative, reliable farmers who raise crops using agricultural practices that can help reduce GHG emissions,” such as “no till or reduced tillage,” “planting cover crops,” and better “[manure] management.” Brazen Beef also says that its ranchers must “undergo a qualification process” but may “customize the practices [they employ] based on individualized needs.” Further, Brazen Beef ranchers must meet the criteria of Tyson’s Climate-Smart Beef Program, which purportedly includes an auditing process and data sharing that is “used in a model that estimates GHG emissions.” In addition, Brazen Beef claims to have achieved “innovation at the feedyard”—a large, fenced area where cattle are confined and fed until they “grow to an optimal weight”—asserting that its feedlot operators “track GHG emissions data” from “each animal.”

25. Neither Brazen Beef nor Tyson has ever identified the farmers or ranchers who have adopted these practices, specified which practices have been adopted by which farmers or ranchers, or produced *any* data demonstrating that these practices have, in fact, reduced GHG emissions in the Brazen Beef supply chain. Nor have they explained how they measure GHG emissions or specified the baseline from which Brazen Beef is allegedly achieving a 10 percent reduction.

26. On its Climate-Smart Beef Program webpage, Tyson highlights its partnership with a Nebraska feedlot operator, Adams Land & Cattle, LLC, to “build[] a supply chain where you can more accurately estimate the actual GHG emissions from pasture to production.” But neither Tyson nor Adams Land & Cattle, LLC has published any information concerning Tyson’s GHG emissions model or made available information documenting the emissions reductions allegedly achieved by Tyson’s Climate-Smart Beef Program.

27. Indeed, while Brazen Beef claims to have “built a model that backs [] up” its 10 percent GHG emissions reductions claim, no such model has *ever* been made available to consumers.

28. Despite Tyson’s failure to publish *any* information substantiating Brazen Beef’s emissions reductions claims, FSIS approved Tyson’s application to make multiple climate-related claims on Brazen Beef labels, including “climate friendly” and “10% greenhouse gas reduction.” FSIS also approved Tyson’s use of a related tagline (“Say hi to the first (ever!) climate friendly beef”) and qualifier (indicating that “[c]attle used for Brazen Beef products are enrolled in Tyson Foods Climate e-Smart Beef Program for emission reduction from pasture to production”) on Brazen Beef labels.

EWG’s FOIA Request

29. Cognizant of beef’s tremendous climate impact and concerned that Tyson’s “climate-friendly” label will mislead consumers into believing that consuming Tyson’s beef will benefit the climate, on July 11, 2023, EWG submitted a FOIA request to FSIS, seeking “information to determine the extent to which Tyson Foods engaged with the USDA concerning the labeling and claims of its Brazen Beef brand.” Ex. A.

30. The FOIA request sought the following documents:

All communications between USDA and any employee or representatives of Tyson Foods, Inc. and Tyson Fresh Meats, Inc. (@tyson.com) containing any of the following search terms (whether in the body or subject):

- a. “Tyson Foods, Inc. Animal Welfare CARE Program”
- b. “Tyson Foods’ Climate-Smart Beef Program”
- c. “Brazen Beef”
- d. “Brazen Meats”
- e. “Adams Land and Cattle, LLC”
- f. “greenhouse gas emissions”
- g. “GHG emissions”
- h. “climate friendly”
- i. “carbon claims”
- j. “Partnership for Climate Smart Commodities”

- k. “Environmental stewardship claim”
- l. “Truthful and not misleading.”
- m. “10% reduction”
- n. “pasture to production”
- o. “third-party verification”

31. On July 18, 2023, EWG agreed to limit the scope of its FOIA request to label applications submitted to FSIS between January 1, 2022, and July 22, 2023, that included the abovementioned keywords.

FSIS’s Response and EWG’s Appeal

32. On September 15, 2023, FSIS issued a Final Response to EWG’s narrowed FOIA request, along with responsive records. *See* Ex. B.

33. FSIS produced four documents in response to EWG’s FOIA request: two completed Form 7234-1 label applications for Brazen Beef and two October 2022 reports—“Tyson Foods Climate-Smart Beef Production & Data Management Plan” and “Greenhouse Gas Accounting Methodology for Tyson Foods Climate-Smart Beef Program”—that Tyson submitted in support of its “climate-friendly” and “10% greenhouse gas reduction” claims. *See* Ex. C.

34. FSIS heavily redacted both released Reports. In its Final Response, FSIS stated that it was withholding “information revolving around Tyson’s Climate-Beef Plan and its accounting methodology” pursuant to Exemption 4. Ex. B. According to FSIS, it had “determined that these records contain commercial or financial information that is customarily treated as private by the business submitters.” *Id.* FSIS further explained that it had redacted information concerning “specific processing procedures [that] are considered commercial and confidential,” as well as “Tyson’s business plan as it relates to its new Climate-Beef program.” *Id.* FSIS also stated that it had “considered the foreseeable harm standard when reviewing the

records and applying the applicable exemptions,” but it provided no further explanation as to whether that standard had been met. *Id.*

35. FSIS’s Final Response did not satisfy its burden to demonstrate that Exemption 4 properly shields the redacted information. FSIS did not demonstrate that its redactions covered “commercial” information within the meaning of Exemption 4—that is, it did not show that the redacted information, if disclosed, would reveal basic commercial operations, such as sales statistics, profits and losses, and inventories, or that it has more than a tenuous or indirect relationship to the income-producing aspects of Tyson’s business. Nor did it provide any admissible evidence demonstrating that Tyson customarily treats the redacted information as private or closely held.

36. What few explanations the Final Response gave were cursory and vague. While the Final Response indicated that FSIS had withheld “proprietary information” contained in Tyson’s “accounting methodology,” *id.*, it provided no indication as to which redactions were justified by this rationale, nor any evidence that any redacted information is, in fact, proprietary. Additionally, FSIS did not explain which redactions covered purportedly “commercial and confidential” information concerning “specific processing procedures.” *Id.*

37. Available evidence—including the few passages of the Reports that were produced without redactions—also undermines FSIS’s invocations of Exemption 4. For instance, FSIS withheld *all* information concerning GHG emissions in Tyson’s supply chain, including all emissions calculations, even though this information appears to bear, at most, a tenuous relationship to the income-producing aspects of Tyson’s business, and plainly does not involve sales statistics, profits and losses, inventories, or other “commercial” information to which Exemption 4 paradigmatically applies. FSIS also withheld *all* instances in which Tyson presented or applied any aspect of its GHG emissions accounting methodology, despite clear

indication on the face of the Reports that various aspects of its accounting methodology have been widely distributed or previously published in publicly available sources. In addition, FSIS withheld *all* explanations concerning Tyson's purported ability to achieve GHG emissions reductions, notwithstanding Tyson's repeated commitment to "transparency of practices and impact" as it "address[es] cradle-to-gate GHG emissions."

38. On November 21, 2023, EWG filed an appeal with FSIS's FOIA Office challenging FSIS's redactions to the Reports. *See* Ex. D. EWG did so on three independent grounds: (1) FSIS's failure to demonstrate that the withheld information constitutes "commercial" information within the meaning of Exemption 4; (2) FSIS's failure to demonstrate that the withheld information constitutes "confidential" information within the meaning of Exemption 4; and (3) FSIS's failure to demonstrate that disclosure of the redacted information would result in foreseeable harm to an interest protected by Exemption 4. *Id.*

39. On November 22, 2023, FSIS informed EWG that its appeal had been received for processing. FSIS also acknowledged that it must "make a determination in response to [EWG's] FOIA appeal within 20 business days from its date of receipt." Ex. E. FSIS was therefore required to issue its determination by December 20, 2023.

40. To date, FSIS has neither communicated further with EWG nor produced the records that it improperly withheld pursuant to Exemption 4.

CLAIM FOR RELIEF

Violation of FOIA

41. FOIA requires Defendants to make non-exempt records available to the public upon request. *See* 5 U.S.C. § 552(a)(3).

42. The Reports, including information redacted by Defendants, are records in Defendants' possession.

43. Defendants bear the burden of justifying the redaction of any requested information.

44. Defendants have failed to carry their burden of establishing that information redacted by Defendants in the Reports is commercial, confidential, or would result in foreseeable harm to an interest protected by Exemption 4 if disclosed. It has therefore failed to establish that the redacted information may be withheld pursuant to Exemption 4.

45. Defendants' withholding of non-exempt information violates FOIA.

PRAYER FOR RELIEF

Plaintiff EWG respectfully requests that this Court:

1. Declare that Defendants' withholding of non-exempt records violates FOIA;
2. Order Defendants to produce all non-exempt, responsive records to Plaintiff EWG within 20 days of this Court's order;
3. Award Plaintiff EWG costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and
4. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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