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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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February 21, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

As you are aware, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the management, operation, and activities of the Department of Homeland Security's (DHS) Plum Island Animal Disease Center (PIADC), and the proposal by DHS to close the PIADC and relocate its operations to a new facility, to be called the National Bio and Agrodefense Facility (NBAF). In a letter to you dated September 20, 2007, we requested records and information to aid our investigation of these matters.

Your failure to make a complete response to our records request is troubling. Despite assurances of cooperation from Under Secretary Jay Cohen in a letter to this Committee dated October 25, 2007, we continue to discover the existence of records directly related to our request, but which were not included in your response. For example, it was in the course of a visit to Plum Island by committee investigators in November that we became aware that DHS possessed two studies performed by SAIC analyzing Plum Island and NBAF issues. Similarly, it was only as a result of Committee staff interviews of certain DHS officials that we became aware of a study on Plum Island performed by the Homeland Security Institute (HSI) in 2007. The SAIC studies have now been provided, but despite staff requests, the HSI study has yet to be produced.

It is unclear what has caused this failure to fully comply with our initial request. Whatever the cause may be, we are continuing our investigation of this matter. The recent discovery of additional records requires further exploration of these issues. Therefore, please provide the following information and records:

1. Section 11016 of the farm bill (H.R. 2419) as passed by the Senate, would *require* the Secretary of Agriculture to issue a permit to the Secretary of Homeland Security to move live virus of foot-and-mouth disease from Plum Island to the mainland United States. A similar provision is contained in H.R. 1717. Under 21 U.S.C. 113a, the Secretary of Agriculture already has the authority to issue such a permit. Do you believe it is

necessary to override the Secretary of Agriculture's statutory discretion in this matter by requiring that the Secretary issue a permit for transfer of live virus of foot-and-mouth disease to the proposed NBAF? If so, why?

2. Please provide copies of all records, including copies of all testimony, comments, memoranda, letters, notes, e-mails, talking points, or communications between DHS and any other party, including the U.S. Congress, pertaining to: (a) the authority of the Secretary of Agriculture to issue a permit under 21 U.S.C. 113a to transfer live virus of foot-and-mouth disease to the mainland United States; and (b) legislation pertaining to such authority.
3. Following initial interviews of DHS employees, Committee staff requested a copy of the original draft April 27, 2007 study prepared for DHS by the Homeland Security Institute titled, "DHS Agrosecurity Science and Technology – Plum Island and Beyond." In an attachment to his letter of November 30, 2007, Under Secretary Cohen stated that this study "is still in draft form and changes are being worked with HSI. A copy of this draft is not being supplied at this time." No reason was offered by Under Secretary Cohen for withholding a copy of this study and we are aware of no valid reason under which this study may be withheld from this Committee. Please provide a copy of the April 27 draft of this study and all subsequent drafts, whether final or not.
4. Please provide copies of all records DHS may have on the economic effects of an outbreak of foot-and-mouth disease in the United States.
5. Please provide copies of all records which model, demonstrate, and/or analyze the spread of foot-and-mouth disease in the United States.
6. Please provide copies of all reports and analyses of the Crimson Sky simulation.
7. As an attachment to his November 30, 2007, letter, Under Secretary Cohen provided copies of travel authorizations for himself for eight NBAF site visits. Please provide copies of all other travel records for Under Secretary Cohen from August 10, 2006, to December 31, 2007.
8. As an attachment to his November 30, 2007, letter, Under Secretary Cohen provided copies of travel authorizations for Dr. Tam Garland for six NBAF public scoping meetings. Please provide copies of all other travel records for Dr. Tam Garland from July 1, 2006, to December 31, 2007.
9. DHS received 29 expressions of interest for the NBAF. Please provide copies of all such expressions of interest.
10. Under the "Selection Plan" for the first round evaluation of the expressions of interest, the "Individual Committees" were required to generate reports for the "Steering Committee," evaluating each expression of interest. Please provide copies of all such reports.

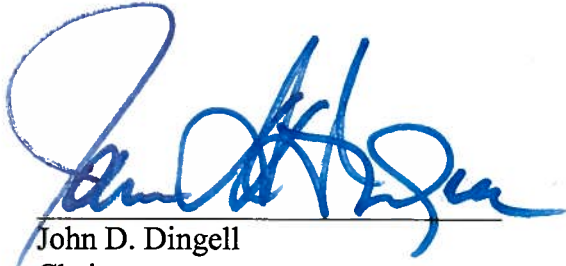
11. Under the "Selection Plan" for the first round evaluation of the expressions of interest, the Steering Committee was required to provide a "draft Selection Document" to the "Selection Authority," who was then required to "document the basis for his/her decision on final site(s) selection in a final Selection Document." Please provide a copy of the draft Selection Document and the final Selection Document, and all associated documents, including letters and memoranda of transmittal.
12. Under the "Selection Plan" for the first round evaluation of the expressions of interest, the Selection Authority was to make the first round selection. In the event, did any other DHS officials, including the Secretary of Homeland Security and the Deputy Secretary of Homeland Security, have any role in the first round selection? If so, please identify all such officials and provide copies of all records pertaining to such participation.
13. Please list all DHS personnel, including contractors, detailees, agents, representatives, or others, who participated in searching for and/or selecting the current director of the PIADC and identify their affiliations.
14. Please provide a list of the dates and attendees at all meetings that you, Deputy Secretary Jackson, and Under Secretary Cohen may have had with representatives or members of the consortia that filed expressions of interest in the NBAF process.
15. Please provide copies of all records pertaining to the development and submission of the DHS proposed budget for Plum Island and the NBAF for FY2006, FY2007, FY2008, and FY2009.
16. In the attachment to his November 30, 2007, letter, Under Secretary Cohen stated that a copy of the after action report on the 1978 accidental release of foot-and-mouth disease on Plum Island was marked "FOUO" and could not be distributed or duplicated without clearance from the U.S. Department of Agriculture. A mark of "FOUO" on a document is not a valid reason for withholding it from a Congressional committee, nor are restrictions placed on its duplication or distribution by another agency. Please provide a copy of the after action report.
17. Under Item 14 of the attachment to his November 30, 2007, letter, Under Secretary Cohen provided a list of members of the agricultural and livestock industries that had contacted DHS regarding the proposal to close Plum Island and transfer foot-and-mouth disease research to a new facility on the mainland United States. No supporting documentation of these contacts was provided, however. Please provide copies of all records pertaining to these contacts.
18. Please provide copies of all records pertaining to the internal S&T "tasker" coordinating the response to the Committee on Energy and Commerce September 20, 2007, letter.

Please deliver the requested information and records to the Subcommittee on Oversight and Investigations, room 316 Ford House Office Building, no later than the close of business on Tuesday, February 26, 2008. In responding to this request, please be advised that the terms "records" and "relating to" are defined in the attachment to this letter.

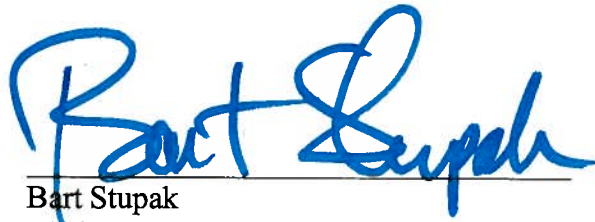
If you elect to assert a privilege or objection to the production of the foregoing records or information, please provide a privilege log fully identifying each record withheld and the legal basis asserted for withholding the record from a Congressional committee of competent jurisdiction.

If you have any questions regarding this request, please contact us or have your staff contact John Arlington with the Committee on Energy and Commerce staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Oversight and Investigations