



August 14, 2024

VIA E-MAIL

Tonya Mead

tonya@ishareknowledge.com

RE: FOIA Request No. DOC-OIG-2024-000144

Dear Ms. Mead:

This letter is regarding your Freedom of Information Act (FOIA) request, tracking number DOC-OIG-2024-000144, received by the Department of Commerce, Office of Inspector General (OIG) on July 26, 2024, in which you seek copies of the following:

“Can you please provide the following data in xls or cvs format from years 2019 to December 2023, the following information by agency and sub-agency and/or division categorized by SES and GS levels when possible:

- the total number of employees employed full time and part time
- the number of employees eligible to participate in telework (5 U.S.C.6502(a)(1)(B))
- the number of employees who are participating in telework (5 U.S.C. 6502(a)(1)(B))
- the number of employees who list their primary residence as their alternate worksite and report to the agency worksite on a regular and recurring basis
- the number of employees who are participating in a flexible work arrangement where their alternate worksite may be within or outside the local commuting area and they are not required to report to the agency worksite on a regular and recurring basis
- the number of eligible employees authorized to telework who have entered into a written telework agreement with their supervisor as a pre-condition to participation (5 U.S.C. 6502(b)(2))
- the number of eligible employee authorized to telework who have not entered into a written telework agreement with their supervisor as a pre-condition to participation (5 U.S.C. 6502(b)(2)) but are still allowed to telework
- the number of eligible employee authorized to telework who have maintained their acceptable levels of employee performance or agency operations, in accordance with OPM performance management guidelines (5 U.S.C. 6502(b)(1))
- the number of eligible employee authorized to telework who have not maintained their acceptable levels of employee performance or agency operation

- to list the appropriate steps management has taken if it has had to deny or revoke telework for employees who have been disciplined for specified misconduct (5 U.S.C. 6502(a)(2)) (5 U.S.C. 6502(b)(1), 6503(a)(4))
- the number of eligible employee authorized to telework who have been denied or revoked telework agreements when these employees have been disciplined for specified misconduct (5 U.S.C. 6502(a)(2))
- the number of employees who have been denied telework agreements because their jobs require the handling of secure materials inappropriate for telework or whose work requires on-site activity (except in an emergency as determined by the head of the agency) (5 U.S.C. 6502(b)(4))
- the number of newly staffed employees hired to manage teleworkers to maintain compliance with their telework agreements, as required by 5 U.S.C. 6502(b)(3)
- the number of re-assigned employees required to manage teleworkers to maintain compliance with their telework agreements, as required by 5 U.S.C. 6502(b)(3)
- the number of employees assigned new duties required to manage teleworkers to maintain compliance with their telework agreements, as required by 5 U.S.C. 6502(b)(3)
- the number of (a) employees and number of (b) incidents per employee where appropriate steps to terminate the arrangement if non-compliance is not promptly corrected.” (*sic*)

Under FOIA, agencies are not obligated to create new records, conduct research, analyze data, or answer questions that fall outside the scope of their existing records. Your request seeks detailed statistical data and specific information on telework and flexible work arrangements from 2019 to December 2023. Please note that the Office of Inspector General (OIG) is only required to provide access to records that are already in its possession and is not obligated to compile new data or conduct analyses based on the detailed bullet points provided.

This letter serves as a denial of your request for a fee waiver request.

After reviewing your request and the justification you provided to support your fee waiver request, we have determined the following:

- 1) Your request, while pertinent to government operations, does not sufficiently demonstrate that the disclosure would provide significant public benefit beyond your company’s commercial interests.
- 2) The potential contribution to understanding government operations must be demonstrated in a manner that significantly benefits the public and not just a particular sector or entity. The assertion that this data will aid in replicating best practices in the private sector primarily serves a commercial purpose rather than a broad public interest.
- 3) The focus on private sector implications suggests a narrower audience, primarily benefiting your company and associated sectors rather than the general public.
- 4) Although you assert that the data will be used for public service and education, the detailed analysis and dissemination plans primarily benefit your company’s business model. The substantial commercial advantage that may be gained from this data suggests a primary interest in financial gain rather than public enrichment.

Additionally, inability to pay does not entitle a requester to a fee waiver. As a result, your statement regarding inability to pay is not relevant to the fee waiver request.

Based on the above points, the financial interest of Shared Knowledge LLC in utilizing the data for commercial advantage outweighs the asserted public interest. The information does not sufficiently demonstrate how it will serve a broad public interest beyond the scope of your company's business activities. Therefore, we are denying your request for a fee waiver.

The OIG has the technological capability to generate reports for some of the data you requested for a specific snapshot in time. However, due to the way your request is phrased, capturing a full year's worth of data would require running separate reports for each two-week pay period. This process would result in fees for each year of data requested. Although your email from July 26, 2024, mentioned the possibility of reducing the number of years to minimize fees, please note that even with a reduced timeframe, the number of reports needed for each year would still incur fees.

In an effort to be responsive to your request, the OIG produced 15 reports for year-end data. In processing your request, we considered the foreseeable harm standard when reviewing the records and applying FOIA exemptions. It was determined that all of the reports may be released to you in full.

Copies of the reports are enclosed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification to all OIG requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the right to appeal the fee waiver denial and final determination. Any appeal must be received within ninety (90) calendar days of the date of this response letter. An appeal may be sent by e-mail to FOIA@oig.doc.gov. The DOC OIG FOIA staff is currently operating at a remote capacity only. Processing of paper copies of FOIA requests or appeals sent via mail or other carrier will be subject to delays.

An appeal may also be sent by mail to the following office:

Counsel to the Inspector General
U.S. Department of Commerce
Office of Inspector General, Office of Counsel
14th and Constitution Avenue, N.W.
Room 20047
Washington, D.C. 20230

The appeal should include a copy of the original request and this letter. In addition, the appeal should include a statement of the reasons why you believe that the determination was in error. The appeal letter, the envelope, and the e-mail subject line should be clearly marked "Freedom of Information Act Appeal." The e-mail and Office of Counsel mailbox are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box or the Office of Counsel mailbox after normal

business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. An appeal received after the 90-day limit will not be considered.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request, Laura Main, by telephone at (202) 794-8066 or by email at foia@oig.doc.gov. You may also contact me, the OIG FOIA Public Liaison at:

Jennifer Piel
U.S. Department of Commerce
Office of Inspector General, Office of Counsel
14th and Constitution Avenue, N.W.
Room 20047
Washington, D.C. 20230
Telephone at (202) 794-8066; email at foia@oig.doc.gov

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail at ogis@nara.gov
Telephone at (202) 741-5770; toll free at 1 (877) 684-6448; facsimile at (202) 741-5769

Sincerely,
**JENNIFER
PIEL**
Jennifer Piel
FOIA Officer

Digitally signed by
JENNIFER PIEL
Date: 2024.08.13
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Enclosures