

For: All FSA Employees

**Section 1619 of the Food, Conservation, and Energy Act of 2008 (Section 1619)
and Names and Addresses Under FOIA**

Approved by: Acting Administrator



1 Overview

A Background

Section 1619 of the Food, Conservation, and Energy Act of 2008 (Section 1619), codified at 7 U.S.C. 8791, prohibits FSA from disclosing USDA program participant information provided by an agricultural producer or owner of agricultural land about the agricultural operation, farming, conservation practices, or the land itself, except under limited circumstances. That prohibition applies to many types of disclosures, including releases of information under FOIA. One of the exemptions to this prohibition permits the disclosure of payment information and the names and addresses of payment recipients under any USDA program that is otherwise authorized by law.

B Purpose

This notice:

- provides guidance for determining when names and addresses of agricultural producers and owners of agricultural land are prohibited from release when responding to FOIA requests, according to Section 1619 and the decision made in *Mary-Louise Zanoni v. United States Department of Agriculture*, 605 F. Supp. 2d 230 (2009) (*Zanoni*)
- identifies and differentiates the types of FSA records that reflect or contain payment information from the types of FSA records that do not reflect or contain payment information
- provides FSA’s definitions of “payment information” and “names and addresses of payment recipients” under FOIA.

Disposal Date	Distribution
October 1, 2019	All FSA employees; State Offices relay to County Offices

1 Overview (Continued)

C Contact

For questions about this notice, contact:

- Amber Ross, Acting FOIA Officer (FOIA requests) by either:
 - e-mail to amber.ross@kcc.usda.gov
 - telephone at 816-926-6371
- Shelley Davis (FOIA appeals) by either:
 - e-mail to shelley.davis@wdc.usda.gov
 - telephone at 202-690-8034.

2 Types of FSA Records

A Impact of the *Zanoni* Decision

In March 2009, the U.S. District Court for the District of Columbia considered the applicability of Section 1619 to a FOIA request seeking information maintained by the Animal and Plant Health Inspection Service (APHIS) in a centralized registry system used to identify and notify producers about animal disease outbreaks.

The information at issue in *Zanoni* included names and addresses of producers, along with other information such as operation type. Importantly, payment data was not in the registry system; therefore, the names and addresses were not payment recipient information. This information was gathered by the Federal Government through federally regulated disease control and eradication programs, or by producers participating voluntarily.

The Court concluded that Section 1619 qualifies as an Exemption 3 statute. FOIA Exemption 3 permits agencies to withhold information if there is another Federal statute that specifically prohibits release. In considering whether the names and addresses (**not** payment recipient information) were prohibited from release, the Court noted that Congress had considered identity information and had specifically stated that it could be disclosed “in statistical or aggregate form without naming the individual owner, operator or producer.” Based on this, the Court concluded that Congress intended to include the names and addresses of agricultural producers (**not** payment recipient information) within the disclosure prohibition, and that the names and addresses were properly withheld under Section 1619 and Exemption 3 of FOIA.

2 Types of FSA Records (Continued)

B FSA Records That Do Not Include Payment Information

FSA's producer records include information about an agricultural operation, farming, conservation practices, or the land itself. These records will also include the name, address, or both, of the individual or entity who provided the information to participate in an FSA program.

These records include, but are not limited to:

- farm program applications/contracts
- acreage reports
- notices of loss
- production evidence/yield information
- lease agreements
- payment eligibility
- farm loan applications and supporting information
- executive session committee meeting minutes.

However, these records will not include payment information. Contracts, agreements, loans, other program applications, or related documents may include payment rates or anticipated payment amounts, but do not include information about actual payments issued. An example of this is the CRP contract, which shows the per acre rental rate, annual contract payment amount, and first year payment amount, but does not show information about actual payments issued.

C FSA Records That Include "Payment Information" and "Names and Addresses of Payment Recipients"

FSA program files may also include records that document payment information and the name, address, or both, of the individual or entity that received the payment(s).

2 Types of FSA Records (Continued)

C FSA Records That Include “Payment Information” and “Names and Addresses of Payment Recipients” (Continued)

“Payment information” are payment amounts, which include:

- dollar amount(s) of individual payments made under any program
- total amount(s) of payments made under a program or group of programs for a specific period
- dollar amount(s) of “repayments” made, or required to be made, to FSA when portions of payments made are required to be repaid.

Note: This does **not** include amounts of payments assigned by payment recipients to other parties.

“Payment information” received from FSA will contain:

- program year for which payments are made
- the State, county, or both, associated with payments
- **only** actual payments issued.

Note: Payments scheduled or contracted to be made at a future date, but not yet issued by FSA, do not qualify as “received from FSA”.

“Payment information” is received from FSA by an agricultural producer, owner of agricultural land, or other recipient of FSA farm program payments, when the individuals’ or entities’ participate in the following FSA farm programs:

- conservation programs
- ARC/PLC program
- disaster assistance programs
- dairy/livestock programs
- energy programs
- price support programs
- any other similar programs administered by FSA.

Note: Loan programs administered by DAFLP are **not** included. Direct and guaranteed loans are not considered to be “payments” with respect to Section 1619 and Exemption 3 of FOIA. Information about direct and guaranteed loans is protected by the Privacy Act System of Records USDA/FSA-14, Applicant/Borrower (see 3-INFO, Exhibit 4) and Exemption 6 of FOIA.

2 Types of FSA Records (Continued)

D Names and Addresses of Payment Recipients

“Names and addresses of payment recipients” means the names and addresses, for payment purposes, in FSA’s payment files. It does **not** mean or include the following:

- home address, if the respective home address is different from the address provided for payment purposes
- names of individuals or entities to whom payments may be assigned
- names of financial institutions where payments are direct deposited.

Note: The fact that the payment is direct deposited may be released, to disclose how FSA administers payments.

3 Analyzing the Name and Address under Section 1619

A When Section 1619 Prohibits the Release of Names and Addresses

Generally, Section 1619 prohibits the disclosure of information submitted by an agricultural producer or owner of agricultural land that concerns the agricultural operation, if the information is provided to participate in a USDA program. This information includes the name and address of the producer or landowner, if provided by the producer or landowner.

Even if the producer or landowner is participating in an FSA program and is receiving payments, the name and address included on records that do **not** include payment information is prohibited from release on these records.

B The Exception in Section 1619 that Allows the Release of Names and Addresses

The names, addresses, or both, of agricultural producers and owners of agricultural land who have received payments, can be released on records that include information about the payments received. See subparagraphs 2 C and D.

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4 Action

A State Office Action

State Offices will:

- communicate the contents of this notice to County Offices, and provide training, if required
- comply with this notice
- ensure that County Offices comply with this notice.

B County Office Action

County Offices will comply with this notice. Direct questions about this notice to the State Office FOIA Coordinator.