

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

U.S. RIGHT TO KNOW,
4096 Piedmont Ave. #963
Oakland, CA 94611

Plaintiff,

v.

UNIVERSITY OF MARYLAND, COLLEGE PARK,
Serve: Office of the Attorney General
Civil Litigation Division
200 St. Paul Place
Baltimore, MD 21202

Defendant.

Civil Action No.

CA22-16942

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

1. Plaintiff U.S. Right to Know (“U.S. Right to Know” or “USRTK”) brings this action to compel the University of Maryland, College Park (“UMD”) to correct its arbitrary and capricious denial of U.S. Right to Know’s request that UMD waive a nearly \$100,000 fee for processing documents related to a public records request by USRTK. UMD’s action violates the Maryland Public Information Act (“MPIA”), and it deprives USRTK and the public of information that could demonstrate the pesticide industry’s influence on research regarding the impact on honeybees of neonicotinoids—a widely used class of insecticides.

2. A robust body of scientific studies shows that neonicotinoids harm bees by impairing their ability to navigate and forage for food and making them more susceptible to disease. As a result, neonicotinoid use threatens entire bee colonies. Because bees pollinate crops that amount to about one-third of all of Americans’ food, threats to bees also erode our food security.

3. In light of the harm that neonicotinoids cause to bees, Congress and state legislatures—including in Maryland—have taken up bills restricting their use. When Maryland legislators were considering a bill banning commercial use of neonicotinoids, opponents of the bill, including representatives from the pesticide industry, relied on recent research by UMD Professor Dennis vanEngelsdorp to argue that neonicotinoids do not pose a threat to bees.

4. The research on which the bill opponents relied conflicts with Professor vanEngelsdorp's earlier work, which showed that neonicotinoids cause serious harm to bees.

5. As part of U.S. Right to Know's ongoing efforts to investigate the pesticide industry's potential influence on scientific research, in August 2021, USRTK submitted a records request to UMD for records showing the extent to which Professor vanEngelsdorp has communicated with, collaborated with, or accepted funding from major pesticide manufacturing companies. *See* Letter from Becky Morrison, Researcher, Abbe Hamilton, Researcher, and Gary Ruskin, Exec. Dir., U.S. Right to Know, to L. Wright, Office of the Gen. Couns., Univ. of Md., College Park (Aug. 18, 2021), attached as Exhibit 1. Because decision-makers have relied on Professor vanEngelsdorp's research to oppose legislation limiting the use of neonicotinoids, potential biases in his work pose a risk to honeybees and food security, as well as the legislative process.

6. UMD assessed a fee of \$96,575.99 to process the records responsive to U.S. Right to Know's request. *See* Letter from Rosetta D. Brown, Paralegal, Office of the Gen. Couns., Univ. of Md., College Park, to Becky Morrison, U.S. Right to Know, at 3 (Sept. 21, 2021), attached as Exhibit 2. USRTK, a nonprofit organization that promotes transparency for public health, requested a waiver of all fees, explaining that it qualified for a fee waiver under Maryland law because the requested records will allow the public to understand

the extent to which the pesticide industry is connected with researchers studying pesticides, along with the extent to which research used to form legislation on pesticide use is potentially biased. *See* Letter from Surbhi Sarang, Associate Att’y, Earthjustice, to Laura Anderson Wright, Office of Gen. Couns., Univ. of Md., College Park (Nov. 23, 2021), attached as Exhibit 3. USRTK further explained that the request concerns the operations or activities of the government (UMD), disclosure of the records is likely to contribute significantly to the public’s understanding of government operations or activities, and the records will educate the public about the pesticide industry and scientific integrity in governmental decision-making. *Id.*

7. UMD denied U.S. Right to Know’s request, providing only a conclusory explanation for its denial and failing to consider numerous relevant factors that qualify USRTK for the fee waiver under Maryland law. *See* Letter from Laura Anderson Wright, Associate Gen. Couns., Office of Gen. Couns., Univ. of Md., College Park, to Surbhi Sarang, Associate Att’y, Earthjustice (Dec. 22, 2021), attached as Exhibit 4. UMD’s denial of U.S. Right to Know’s fee waiver request is arbitrary and capricious, in violation of the MPIA.

JURISDICTION AND VENUE

8. This action arises under the MPIA, Md. Code Ann., Gen. Provis. § 4-101 et seq. This Court has jurisdiction pursuant to Md. Code Ann., Gen. Provis.

§ 4-362(a)(1), which provides that a person who is denied inspection of a public record may file a complaint with the circuit court.

9. This Court has the authority to grant the requested declaratory and injunctive relief pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 3-409 and 3-412, and Md. Code Ann., Gen. Provis. §§ 4-362(c)(3) and 4-362(f).

10. Venue is proper in this circuit court pursuant to Md. Code Ann., Gen. Provis. § 4-101(a)(3)(ii), because the records sought are held by the University of Maryland, College Park in College Park, Maryland.

PARTIES

11. Plaintiff U.S. Right to Know is a nonprofit investigative research group focused on promoting transparency for public health. USRTK works to expose corporate wrongdoing and government failures that threaten public health, our food system, and the environment. Increasing transparency around the harms that pesticides, including neonicotinoids, cause is a major focus of USRTK's work. To carry out this work, USRTK frequently uses public records requests to gather information on pesticide industry strategies, payments, and collaborations that undermine scientific, academic, political, and regulatory institutions. USRTK disseminates this information to the public through its website, social media, in-house reporting, and connections with journalists in the United States and throughout the world. USRTK's work on pesticides has been featured in

books, academic articles, and news stories published online, in print, and on radio and television.

12. Defendant UMD is a State-owned and operated institution of higher education and an independent unit of the State government.

FACTUAL BACKGROUND

Substantial Research—including by Professor vanEngelsdorp—Shows that Neonicotinoids Harm Bees and Erode Our Food Security.

13. A robust body of scientific studies shows that neonicotinoids—a class of insecticides used on hundreds of crops—harm bees and other wildlife. *See* J. P. van der Sluijs et al., *Conclusions of the Worldwide Integrated Assessment of Neonicotinoids and Fipronil to Biodiversity and Ecosystem Functioning*, 22 Env't Sci. & Pollution Rsch. 148, 149, 150 (2015) (noting that exposures to neonicotinoids have “been shown to adversely affect navigation, learning, food collection, longevity, resistance to disease and fecundity” in bees); *see also* Elise Hughes Berheim et al., *Effects of Neonicotinoid Insecticides on Physiology and Reproductive Characteristics of Captive Female and Fawn White-tailed Deer*, 9 Sci. Reps. 4534, 4541 (2019) (finding that exposure to neonicotinoids correlated to reduced activity in adult female deer and fawns and with decreased survival, size, and health in fawns); Yijia Li et al., *Neonicotinoids and Decline in Bird Biodiversity in the United States*, 3 Nature Sustainability 1027, 1027 (2020) (concluding that the increase in neonicotinoid use in the

United States led to statistically significant reductions in bird biodiversity between 2008 and 2014).

14. Neonicotinoid use also threatens entire bee colonies with population extinction. See Gemma L. Baron et al., *Pesticide Reduces Bumblebee Colony Initiation and Increases Probability of Population Extinction*, 9 *Nature Ecology & Evolution* 1308 (2017).

15. In a 2008 study that was published in 2012, Professor vanEngelsdorp concluded that even very low levels of neonicotinoids are harmful to bees. See Jeffery S. Pettis et al., *Pesticide Exposure in Honey Bees Results in Increased Levels of the Gut Pathogen Nosema*, 99 *Naturwissenschaften* 153 (2012).¹ Professor vanEngelsdorp also concluded that “interactions between pesticides and pathogens . . . could be a major contributor to increased mortality of honey bee colonies worldwide.” *Id.* at 157.

16. Bees play an essential role in our food system by providing pollination. Over 100 crops in the United States—including almonds, non-citrus fruit trees, berries, melons, and squash—require pollination to make fruit or seed. See U.S. Dep’t of Agric., *Pollinator Facts* (2020), <https://www.usda.gov/sites/default/files/documents/pollinator-week-factsheet-06.25.2020.pdf>. About one-third of Americans’ food comes from crops pollinated

¹ Professor vanEngelsdorp co-authored this article concluding that neonicotinoids harm bees.

by honey bees. *See Helping Agriculture's Helpful Honey Bees*, U.S. Food & Drug Admin (last updated July 30, 2018), <https://www.fda.gov/animal-veterinary/animal-health-literacy/helping-agricultures-helpful-honey-bees>.

17. Because bees play a crucial role in our food system, threats to bees erode our food security. *See* U.S. Dep't of Agric., *Report on the National Stakeholders Conference on Honey Bee Health* 5 (2012), <https://www.usda.gov/sites/default/files/documents/ReportHoneyBeeHealth.pdf> (explaining that it is “imperative that we increase honey bee survival . . . to meet the demands of U.S. agriculture for pollination and thus ensure [our] food security”).

Professor vanEngelsdorp's Revised Conclusions on Neonicotinoids Coincide with His Increasing Ties to the Pesticide Industry.

18. As part of U.S. Right to Know's research to explore and understand the pesticide industry's potential influence on research regarding neonicotinoids, in 2016, U.S. Right to Know submitted a public records request to UMD for records on Professor vanEngelsdorp's grants and funding, along with his correspondence with pesticide industry representatives. *See* Letter from Gary Ruskin, Co-Director, U.S. Right to Know, to L. Wright, Office of Gen. Couns., Univ. of Md., College Park (May 31, 2016), attached as Exhibit 5.

19. To increase transparency and educate the public about the pesticide industry's potential influence on Professor vanEngelsdorp's research, U.S. Right

to Know shared the records it received with outside journalists, which led to an in-depth article in the *Intercept* about neonicotinoids and the pesticide industry's extensive attempts to discredit research showing that neonicotinoids harm bees. See Lee Fang, *The Playbook for Poisoning the Earth*, The Intercept (Jan. 18, 2020), <https://theintercept.com/2020/01/18/bees-insecticides-pesticides-neonicotinoids-bayer-monsanto-syngenta/> [hereinafter Fang, *The Playbook for Poisoning the Earth*]. An environmental reporter with *Le Monde* also used the records in a book about the pesticide industry's efforts to obscure the harm that neonicotinoids cause to insects. See Andre Sanchez, "La Confrérie des Insectes," *ces Scientifiques Indépendants qui Enquêtent sur la Disparition des Abeilles*, Le Monde (Aug. 29, 2019), https://www.lemonde.fr/planete/article/2019/08/29/la-confrerie-des-insectes-ces-scientifiques-independants-qui-enquetent-sur-la-disparition-des-abeilles_5504190_3244.html.

20. The responsive records revealed that, starting in at least 2013, pesticide industry representatives have developed ties to Professor vanEngelsdorp. See Fang, *The Playbook for Poisoning the Earth*.

21. For example, in or around 2013, Professor vanEngelsdorp joined an advisory board to a pesticide company, and in or around 2014, he joined a coalition organized by the pesticide industry that researched non-pesticide-related causes of bee decline. *Id.* In addition, during this time, his nonprofit has received

at least \$700,000 in donations from a foundation that is heavily funded by a pesticide company. *Id.*

22. As the pesticide industry has developed ties to Professor vanEngelsdorp, his position on the harm neonicotinoids cause to bees has changed. While his work in 2008 concluded that even very low levels of neonicotinoids are harmful to bees and that could be a major contributor to bee colony mortality, his more recent work has questioned the impact of neonicotinoids on bees. For example, in 2016—shortly after he joined the pesticide company’s board and pesticide industry coalition—Professor vanEngelsdorp backtracked from his prior work and stated at a UMD summit focused on bee die-offs that mites, rather than neonicotinoids, are the cause of bee losses. *Id.* And in a statement to the Associated Press, he said that he is “not convinced that [neonicotinoids] are a major driver of [bee] colony loss.” Seth Borenstein, *EPA Says Pesticide Harms Bees in Some Cases*, AP News (Jan. 6, 2016), <https://apnews.com/article/insects-environment-bees-archive-0a90958c813946bd928443f07479255b>.

23. Professor vanEngelsdorp’s more recent position conflicts not only with his earlier findings, but also with the vast majority of peer-reviewed papers on the impact of neonicotinoids on bees, which demonstrate that neonicotinoids cause serious adverse health effects. See Chensheng Lu et al., *A Review of Sub-lethal Neonicotinoid Insecticides Exposure and Effects on Pollinators*, 6 Current

Pollution Reps. 137 (2020) (“More than 90% of literature published after 2009 directly or indirectly demonstrated the adverse health effects associated with sub-lethal exposure to neonicotinoids, including abnormal foraging activities, impaired brood development, neurological or cognitive effects, and colony collapse disorder.”).

Decision-Makers Have Relied on Professor vanEngelsdorp’s Work to Oppose Legislation Limiting Neonicotinoid Use.

24. Shortly after Professor vanEngelsdorp presented at the 2016 UMD summit and stated his view that neonicotinoids are not responsible for bee die-offs, the Maryland legislature took up a bill to ban consumer use of neonicotinoids. Bill opponents, including representatives from the pesticide industry and governor’s administration, cited a report from the summit and to Professor vanEngelsdorp’s work specifically as evidence that researchers did not believe that neonicotinoids posed a threat to bees. *See Fang, The Playbook for Poisoning the Earth.*

25. The Maryland legislature nevertheless passed the bill, and the governor signed it into law. *Id.* Across the country, additional state legislatures are considering similar bills to ban or reduce the use of neonicotinoids. *See, e.g.,* S.B. S699B (N.Y. 2021) (New York bill considering bans on neonicotinoid-treated seeds); A.B. 2070 219th Legis. (N.J. 2020) (New Jersey bill considering restricting use of neonicotinoid pesticides); H.B. 763 191st Legis. (Mass. 2019)

(Massachusetts bill considering restricting use of neonicotinoid pesticides).

Pesticide industry representatives and other opponents may again attempt to undermine these legislative efforts by relying on Professor vanEngelsdorp's recent statements questioning the harm neonicotinoids cause to bees.

LEGAL BACKGROUND

26. The MPIA provides that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code Ann., Gen. Provis. § 4-103(a). Accordingly, the MPIA requires custodians of records to “allow a person or governmental unit to inspect any public record at any reasonable time,” subject to certain exceptions. *Id.* § 4-201(a)(1). The MPIA “shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.” *Id.* § 4-103(b).

27. A records requester may ask the custodian to waive any fee that the custodian has assessed for searching for, preparing, and reproducing the records. *Id.* § 4-206(e). The custodian may waive the fee if “after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” *Id.* § 4-206(e)(2)(ii).

“The ‘relevant factors’ to be assessed will vary with the context of each request.” *Balt. Action Legal Team v. Office of State’s Att’y of Balt. City*, 265

A.3d 1187, 1208 (Md. Ct. Spec. App. 2021). Relevant factors “certainly . . . include the health hazard created” by the subject matter of the records and “the importance of public exposure” of the subject matter. *Mayor & City Council of Balt. v. Burke*, 506 A.2d 683, 688 (Md. Ct. Spec. App. 1986). Other relevant factors may include whether “disclosure of records will shed light on a ‘public controversy about official actions’” and whether “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Balt. Action Legal Team*, 265 A.3d at 1207–1208 (first quoting *Action Comm. for Transit, Inc. v. Town of Chevy Chase*, 145 A.3d 640, 650 (Md. Ct. Spec. App. 2016); then quoting 5 U.S.C. § 552(a)(4)(A)(iii)).

28. A custodian may not arbitrarily and capriciously deny a fee waiver. *See id.* at 1206. A custodian’s denial of a fee waiver is arbitrary and capricious if the custodian considers only some factors, to the exclusion of other relevant factors. *See Mayor & City Council of Balt.*, 506 A.2d at 688; *see also Action Comm. for Transit, Inc.*, 145 A.3d at 653 (explaining that a custodian must give “appropriate consideration to ‘other relevant factors’”). A denial of a fee waiver is also arbitrary and capricious if the custodian fails to provide “insight . . . as to the actual considerations that motivated [it] to deny the request.” *Action*

Comm. for Transit, Inc., 145 A.3d at 653. A “bald and conclusory statement” is insufficient. *Id.*

29. An arbitrary and capricious denial of a fee waiver is, in effect, a denial of access to the records sought. *Id.* at 650.

30. A requester who is denied access to a public record may file a complaint with the circuit court. *See* Md. Code Ann., Gen. Provis. § 4-362(a)(1). The requester need not exhaust the administrative remedy provided in the MPIA before filing suit. *Id.* at § 4-1A-10(a).

31. When a court determines that a custodian has arbitrarily and capriciously denied a fee waiver, the court may order the custodian to produce the records to the requester without charge. *See* 145 A.3d at 654 (ordering the circuit court to enter a judgment requiring the custodian to respond to the records request without charge).

USRTK’S RECORDS REQUEST AND UMD’S DENIAL OF A FEE WAIVER

32. To gather additional information on the methods, extent, and duration of the pesticide industry’s potential influence on Professor vanEngelsdorp, as well as on scientific research on pollinators generally, in August 2021, U.S. Right to Know submitted a public records request pursuant to the MPIA to UMD for records showing the extent to which Professor vanEngelsdorp has communicated with, collaborated with, or accepted funding

from major pesticide manufacturing companies, beginning January 1, 2018. *See*

Exhibit 1. As relevant here, U.S. Right to Know sought:

All e-mail correspondence to or from Dr. vanEngelsdorp, including CC, BCC, and attachments that include the domains, keywords, key phrases or e-mail addresses listed below . . .

- @Bayer.com OR Bayer
- @Beehealth.bayer.com OR Bayer Bee Care Center
- @Cropscience.bayer.com OR Bayer CropScience
- @Monsanto.com OR Monsanto
- @Syngenta.com OR Syngenta
- @Croplifeamerica.org OR CropLife America
- @Croplife.org OR CropLife International
- @DowDupont OR @DowDuPont.com OR Dow OR Dupont
- @Corteva.com OR Corteva
- @BASF.com OR BASF
- @Porternovelli.com OR Porter Novelli
- @Paradigmcommunications.co.uk OR Paradigm Communications
- @Keystone.org OR Keystone Policy Center
- @Projectapism.org OR Project Apis m.
- @Honeybeehealthcoalition.org OR Honey Bee Health Coalition
- @ACSH.org OR American Council on Science and Health
- @Americanchemistry.com OR American Chemistry Council
- @Geneticliteracyproject.org OR Genetic Literacy Project
- @Ketchum.com or Ketchum
- @Almonds.com OR Almond Board of California
- @Pollinator.org OR Pollinator Partnership OR Corn Dust Research Consortium
- Healthy Hives 2020
- North American Bee Care Program
- Jon Entine OR Jon@jonentine.com
- Jerry Hayes OR Jerry@beeculture.com
- Randy Oliver OR Randy@randyoliver.com

Id.

33. In September 2021, UMD informed U.S. Right to Know that UMD would charge an estimated fee of \$96,575.99 to search for and review, prepare,

and reproduce the requested records. *See* Exhibit 2, at 3. UMD stated that it would not begin processing USRTK's request until it received payment for the fee. *Id.*

34. In November 2021, U.S. Right to Know submitted a request for a waiver of all fees pursuant to Md. Code Ann., Gen. Provis. § 4-206(e). *See* Exhibit 3. USRTK explained that the fee should be waived for two reasons: *first*, because USRTK is a nonprofit organization, the nearly \$100,000 fee is prohibitively expensive, *id.* at 1; and *second*, USRTK identified numerous relevant factors that show that a waiver is in the public interest, *id.* at 4–7.

35. U.S. Right to Know explained that a waiver is in the public interest because disclosure of the records will shed light on a public controversy about official actions. *Id.* at 4. Specifically, disclosure will shed light on potential controversial links between pesticide manufacturers and a State researcher studying the impact of neonicotinoids on honeybees. *Id.*

36. U.S. Right to Know also explained that a waiver is in the public interest because disclosure is likely to contribute significantly to public understanding of the operations or activities of the government. *Id.* USRTK noted two ways in which disclosure concerns the operations or activities of the government. *First*, because UMD receives funding from the State government, disclosure will help the public understand how government funds are being used and whether they are being used to advance the pesticide industry's interests. *Id.*

Second, disclosure will shed light on potential biases in research on which decision-makers have relied, and may currently rely, to oppose legislation aimed at limiting the use of neonicotinoids. *Id.* at 4–5.

37. U.S. Right to Know explained that disclosure is likely to contribute significantly to public understanding of these issues because information on connections between the pesticide industry and researchers is not otherwise readily available. *Id.* at 5.

38. In addition, U.S. Right to Know detailed how disclosure will contribute to the understanding of a broad audience of people interested in pesticides, bee health, and scientific integrity. *Id.* at 5–7. Given USRTK’s expertise on neonicotinoids, including its understanding of research on the harm neonicotinoids cause to bees, laws and regulations on neonicotinoid use, and the pesticide industry’s efforts to influence research on neonicotinoids, USRTK is well-positioned to review and interpret the requested records. *Id.* at 5. USRTK also intends to share the information in the records with the public, and it has a variety of channels through which it can do so, including its website, social media, in-house reporting, and connections with journalists across the world. *Id.* at 6. USRTK staff have written investigative stories on pesticides that are published in books and in major media outlets such as the *Guardian* and *Time* magazine. *Id.* And USRTK has a long history of sharing information from public records requests with journalists, which has led to articles featuring this

information in the *New York Times*, the *Wall Street Journal*, *Science*, *BMJ*, *The Washington Post*, *Vanity Fair*, *Fox News*, the *Guardian*, *Le Monde*, *Der Spiegel*, *Time* magazine, *Boston Globe*, *CBC*, *Politico*, *STAT*, the *Daily Mail*, *Sky News Australia*, and many others. *Id.* at 6–7. Indeed, USRTK’s 2016 records request revealed information that led to an in-depth article in the *Intercept* about neonicotinoids and the ties between Professor vanEngelsdorp and the pesticide industry. *Id.* at 5–6.

39. U.S. Right to Know also explained that a waiver is in the public interest because USRTK has no commercial interest in the requested records. *Id.* at 7. Rather, USRTK’s sole interest in the records is to uncover potential biases in research on the impact of neonicotinoids on honeybees, which decision-makers have used to oppose legislation on neonicotinoid use, and to share this information with the public. *Id.*

40. In December 2021, UMD denied U.S. Right to Know’s request for a fee waiver. *See* Exhibit 4. UMD’s explanation for the denial states:

The records you seek do not relate to a matter of general public concern which might justify a waiver of fees. Rather, your request focuses upon a narrow interest which does not justify the significant expenditure of public funds contemplated without charge. The potential disclosure contemplated by your request serves no meaningful public benefit. In addition, the disclosure does not shed light on the operations of government or the University’s performance of its public duties. Finally, the disclosure is not likely to significantly contribute to an understanding of government operations or activities.

In sum, there is no significant connection between the material sought and a matter of broad, genuine public concern which sheds light on governmental operations or activities. The Act is a legal mechanism for revealing matters of *governance*, not information targeting one researcher's communications – unrelated to governance—which happen to be in records held by a government agency. Finally, it must be pointed out that the review of 39,110 pages would be unduly burdensome given the speculative nature and scope of records requested.

Id. at 3.

41. UMD failed to consider multiple relevant factors showing that a waiver is in the public interest. In particular, UMD failed to consider the hazard that potentially biased research poses to honeybees and our food system; the importance of public exposure of potentially biased research; the importance of public exposure of connections between the pesticide industry and researchers studying the impact of neonicotinoids; how disclosure will contribute to public understanding of the use of State funding; how disclosure will contribute to public understanding of the soundness of research that has influenced legislation on neonicotinoids; and U.S. Right to Know's ability to interpret and share information in the records with the public.

42. Not only did UMD fail to consider multiple relevant factors, but it also failed to provide insight as to the actual considerations that motivated it to deny U.S. Right to Know's request. UMD's explanation for the denial contains only bald and conclusory assertions that do not address facts or set out any reasoning for its conclusions.

CLAIM FOR RELIEF

43. Under the MPIA, a records custodian may not arbitrarily and capriciously deny a request for a fee waiver.

44. In UMD's denial of U.S. Right to Know's request for a fee waiver, UMD failed to consider relevant factors showing that a waiver is in the public interest, in violation of the MPIA.

45. In UMD's denial of U.S. Right to Know's request for a fee waiver, UMD offered only bald and conclusory assertions in support of its decision and failed to provide insight as to the actual considerations that motivated it to deny U.S. Right to Know's request, in violation of the MPIA.

46. Given the exorbitant fee assessed by UMD and U.S. Right to Know's nonprofit status, UMD's denial of the fee waiver effectively denies U.S. Right to Know's records request.

REQUEST FOR RELIEF

U.S. Right to Know respectfully requests that this Court enter an Order:

1. Declaring that UMD violated the MPIA by arbitrarily and capriciously denying U.S. Right to Know's request for a fee waiver;
2. Ordering UMD to release all non-exempt, responsive records to U.S. Right to Know without charge;
3. Retaining jurisdiction over this case to rule on any assertion by UMD that certain responsive records are exempt from disclosure;

4. Awarding U.S. Right to Know its reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and
5. Granting U.S. Right to Know such further and additional relief as the Court deems necessary and proper.

Respectfully submitted this 3rd day of June, 2022.



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Counsel for Plaintiff

Exhibit 1



August 18, 2021

Ms. L. Wright
Office of the General Counsel
University of Maryland College Park
2117 Seneca Building
College Park, MD 20742

VIA E-MAIL: publicinformationact@umd.edu

RE: Public Records Request regarding Professor Dennis vanEngelsdorp

Dear Public Records Officer:

This is a request under the Maryland Public Information Act seeking the production of electronic communications and other records. We request a complete and thorough search of records maintained by the University of Maryland pertaining to Dr. Dennis vanEngelsdorp, Associate Professor in the Department of Entomology, including those found on any of the third-party software platforms listed below that Dr. vanEngelsdorp uses.

We are seeking the following types of electronic communications and records:

1. All research and/or consulting contracts between and/or contributions to Dr. vanEngelsdorp, the vanEngelsdorp Bee Lab or the Bee Informed Partnership from any of the following corporations:
 - Bayer OR Bayer Bee Care Center OR Bayer CropScience
 - Monsanto
 - Syngenta
 - CropLife OR CropLife America OR CropLife International
 - Dow OR DuPont OR DowDupont
 - Corteva
 - BASF
 - Pollinator Partnership OR Corn Dust Research Consortium
2. All e-mail correspondence to or from Dr. vanEngelsdorp, including CC, BCC, and attachments that include the domains, keywords, key phrases or e-mail addresses listed below;

Pursuing truth and transparency in public health

USRTK.ORG • 4096 PIEDMONT AVE. #963 • OAKLAND, CA 94611-5221 • (415) 944-7350

3. All *non-e-mail* electronic correspondence, documents, records and attachments held by Dr. vanEngelsdorp, including but not limited to collaborative software platforms such as Google Docs, Google Sheets, Microsoft 365, Slack, and Basecamp, and that include any of the domains, keywords, key phrases or e-mail addresses listed below:

- @Bayer.com OR Bayer
- @Beehealth.bayer.com OR Bayer Bee Care Center
- @Cropscience.bayer.com OR Bayer CropScience
- @Monsanto.com OR Monsanto
- @Syngenta.com OR Syngenta
- @Croplifeamerica.org OR CropLife America
- @Croplife.org OR CropLife International
- @DowDupont OR @DowDuPont.com OR Dow OR Dupont
- @Corteva.com OR Corteva
- @BASF.com OR BASF
- @Porternovelli.com OR Porter Novelli
- @Paradigmcommunications.co.uk OR Paradigm Communications
- @Keystone.org OR Keystone Policy Center
- @Projectapism.org OR Project Apis m.
- @Honeybeehealthcoalition.org OR Honey Bee Health Coalition
- @ACSH.org OR American Council on Science and Health
- @Americanchemistry.com OR American Chemistry Council
- @Geneticliteracyproject.org OR Genetic Literacy Project
- @Ketchum.com or Ketchum
- @Almonds.com OR Almond Board of California
- @Pollinator.org OR Pollinator Partnership OR Corn Dust Research Consortium
- Healthy Hives 2020
- North American Bee Care Program
- Jon Entine OR Jon@jonentine.com
- Jerry Hayes OR Jerry@beeculture.com
- Randy Oliver OR Randy@randyoliver.com

The time period covered by this request is January 1, 2018 to the present.

Please narrow the search results to exclude publications, published papers, magazine, newspaper and academic articles, organizational newsletters, or other widely available materials.

If documents are denied in whole or in part, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld. I request that excised material be "blackened out" rather than "whited out" or cut out and that the remaining non-exempt portions of documents be released as provided under the Maryland Public Information Act. Please send a memo (with a copy or

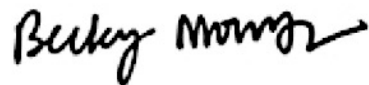
copies to becky@usrtk.org) to the appropriate unit(s) in your office to assure that no records related to this request are destroyed.

Please advise of any destruction of records and include the date of and authority for such destruction. As we expect to appeal any denials, please specify the office and address to which an appeal should be directed.

We are making this request on behalf of U.S. Right to Know, a U.S.-based 501(c)(3) nonprofit public interest research organization. The records disclosed pursuant to this request will be used in the preparation of articles for dissemination to the public. We have no commercial interest in any of the documents we are requesting. Accordingly, we request that you waive all fees in the public interest because furnishing of the information sought by this request will primarily benefit the public. Please send the documents to Becky Morrison in PDF format at becky@usrtk.org. If there are any questions or if you need additional information, please call, rather than write, Becky Morrison at (929) 357-4056.

Thank you so much for your help in filling this request.

Sincerely,



Becky Morrison
Researcher



Abbe Hamilton
Researcher



Gary Ruskin
Executive Director

Exhibit 2



UNIVERSITY OF MARYLAND

OFFICE OF GENERAL COUNSEL

4716 Pontiac Street
Seneca Bldg., Suite 2117
College Park, MD 20742

September 21, 2021

Sent via electronic mail to: becky@usrtk.org

Becky Morrison
US Right to Know
4096 Piedmont Ave., #963
Oakland, CA 94611

Re: Maryland Public Information Act Request No.: 334-2021

Dear Ms. Morrison,

The University of Maryland, College Park (the “University”) continues to process your request received August 18, 2021 under the Public Information Act, Md. Code Ann., General Provisions Article (“GP”) §§4-101 to 4-601 (the “Act”). Specifically, you requested:

We are seeking the following types of electronic communications and records:

1. All research and/or consulting contracts between and/or contributions to Dr. vanEngelsdorp, the vanEngelsdorp Bee Lab or the Bee Informed Partnership from any of the following corporations:

- *Bayer OR Bayer Bee Care Center OR Bayer CropScience*
- *Monsanto*
- *Syngenta*
- *CropLife OR CropLife America OR CropLife International*
- *Dow OR DuPont OR DowDupont*
- *Corteva*
- *BASF*
- *Pollinator Partnership OR Corn Dust Research Consortium*

2. All e-mail correspondence to or from Dr. vanEngelsdorp, including CC, BCC, and attachments that include the domains, keywords, key phrases or e-mail addresses listed below;

3. All non-e-mail electronic correspondence, documents, records and attachments held by Dr. vanEngelsdorp, including but not limited to collaborative software platforms such as Google Docs, Google Sheets, Microsoft 365, Slack, and Basecamp, and that include any of the domains, keywords, key phrases or e-mail addresses listed below:

- *@Bayer.com OR Bayer*
- *@Beehealth.bayer.com OR Bayer Bee Care Center*
- *@Cropscience.bayer.com OR Bayer CropScience*
- *@Monsanto.com OR Monsanto*
- *@Syngenta.com OR Syngenta*
- *@Croplifeamerica.org OR CropLife America*
- *@Croplife.org OR CropLife International*
- *@DowDupont OR @DowDuPont.com OR Dow OR Dupont*
- *@Corteva.com OR Corteva*
- *@BASF.com OR BASF*
- *@Porternovelli.com OR Porter Novelli*
- *@Paradigmcommunications.co.uk OR Paradigm Communications*
- *@Keystone.org OR Keystone Policy Center*
- *@Projectapism.org OR Project Apis m.*
- *@Honeybeehealthcoalition.org OR Honey Bee Health Coalition*
- *@ACSH.org OR American Council on Science and Health*
- *@Americanchemistry.com OR American Chemistry Council*
- *@Geneticliteracyproject.org OR Genetic Literacy Project*
- *@Ketchum.com or Ketchum*
- *@Almonds.com OR Almond Board of California*

- *@Pollinator.org OR Pollinator Partnership OR Corn Dust Research Consortium*

- *Healthy Hives 2020*

- *North American Bee Care Program*

- *Jon Entine OR Jon@jonentine.com*

- *Jerry Hayes OR Jerry@beeculture.com*

- *Randy Oliver OR Randy@randyoliver.com*

The time period covered by this request is January 1, 2018 to the present [August 18, 2021, the date of receipt].

Parts 1 and 3 of your request remain in queue for processing.

Regarding Part 2 of your request, the Act, at Section 4-206, permits the University to charge for the search, review, preparation and reproduction of a public record, excluding the first two (2) hours. Based upon a preliminary review, and after granting you two (2) hours gratis we estimate it will take 1,302.7 hours to gather, review and prepare the records sought (39,110 pages total). Therefore, upon receipt of the total estimated fee of \$96,575.99 we will begin the collection, review, and preparation process. If the actual fee differs from the estimate, the fee will be adjusted accordingly and you will receive an additional bill or refund, as appropriate. Please make your check payable to the "University of Maryland" and forward it to me at the address on this letterhead. **The University shall await payment before it resumes processing your request.**

Please note, the Act and the Maryland Public Information Act Manual allow the University to charge a reasonable fee for the search and preparation of the records. Please see Chapter 7 of the Manual "*Preparation fees are the costs to an agency to prepare a record for inspection or copying, including the time needed to assess whether any provision of law permits or requires material to be withheld.*" As stated above, the potentially responsive records total 39,110 pages and will need to be reviewed by an attorney¹ in this office to determine whether or not any part/portion of the records is not subject to release due to exemptions under the Act.² If interested, the University is happy to receive a narrowed request (e.g., shorter time period, fewer custodians, adding key terms) as doing so often reduces the hours needed to prepare the records sought, which in turn reduces the cost.

Should you disagree with this finding, you have remedial options available. First, you may seek judicial review of this decision in accordance with GP Section 4-362. Second, you may seek assistance from the Public Access Ombudsperson under GP Section 4-1B-01 *et seq.* Finally, if you feel that the University has imposed an unreasonable fee (more than \$350) to produce the responsive documents, you

¹ Attorney time has been calculated using a discounted 2018 rate.

² An initial review has revealed FERPA-protected information that is exempt from release.

may seek assistance from the State Public Information Act Compliance Board (GP Section 4-1A-01 *et seq.*).

Sincerely,
Rosetta D. Brown
Rosetta D. Brown
Paralegal

Exhibit 3



November 23, 2021

Submitted via e-mail

Laura Anderson Wright
Office of General Counsel
University of Maryland, College Park
2117 Seneca Bldg.
College Park, MD 20742
PublicInformationAct@umd.edu

Dear Ms. Anderson Wright:

U.S. Right to Know respectfully requests a waiver of all fees associated with its August 18, 2021, public records request concerning Professor Dennis vanEngelsdorp, Associate Professor in the Department of Entomology (No. 334-2021) (“the Request.”) The University of Maryland, College Park (“the University”) assessed an estimated fee of \$96,575.99 to fulfill Part 2 of the Request.¹ This fee is prohibitively expensive for U.S. Right to Know, a nonprofit organization that promotes transparency for public health. U.S. Right to Know seeks these records to educate the public about critical public health issues and to strengthen public health protections. The organization has no commercial interest in the information sought. Thus, a fee waiver is in the public interest and should be granted pursuant to the Maryland Public Information Act (MPIA), Md. Code Ann., General Provisions Article (“GP”) § 4-206(e).

Factual Background

1. Bees play an essential role in our food system by providing pollination. Over 100 key U.S. food crops—including apples, cherries, blueberries, watermelons, pumpkins, tomatoes, and almonds—require pollinators.² In total, about *one-third* of the food we eat, and an even greater proportion of our overall nutrition, comes from crops that require pollination to make fruit or seed.³
2. We are currently in the midst of a bee crisis. The U.S. Department of Agriculture (USDA) has explained: “Today, pollinators—especially Western honey bee populations—are at a critical crossroads.”⁴ The decline of bee populations was first noted

¹ See Letter from Rosetta D. Brown, Paralegal, University of Maryland Office of General Counsel, to Becky Morrison, Researcher, U.S. Right to Know (Sept. 21, 2021).

² See *Pollinators*, U.S. Dep’t of Agric., <https://www.usda.gov/pollinators> (last visited June 21, 2020).

³ Elisabeth J. Eilers et al., Contribution of Pollinator-Mediated Crops to Nutrients in the Human Food Supply 6 PLoS ONE e21363 (2011) (globally, animal-pollinated crops contain the majority of available dietary lipid, vitamin A, C, and E, and much of the minerals calcium, fluoride, and iron).

⁴ Robert M. Nowierski, *Pollinators at a Crossroads*, U.S. Dep’t of Agric. (July 29, 2021), <https://www.usda.gov/media/blog/2020/06/24/pollinators-crossroads>.

around 2006 and was attributed to Colony Collapse Disorder, “an abnormal condition that occurs when the majority of worker bees in a honey bee colony disappears, leaving behind a queen, an abundant supply of food, and a few nurse bees to care for remaining immature bees.”⁵ Dropping numbers of bees could have huge public health and nutrition consequences. A 2012 USDA report deemed it “imperative that we increase honey bee survival . . . to meet the demands of U.S. agriculture for pollination and thus ensure [our] food security.”⁶

3. A large body of research has concluded that neonicotinoid pesticides are a significant threat to pollinators and are contributing to an “insect apocalypse.”⁷ Studies have shown that neonicotinoid pesticides harm bees at even very low levels of exposures, and that they adversely affect “individual navigation, learning, food collection, longevity, resistance to disease and fecundity.”⁸
4. Dennis vanEngelsdorp is an associate professor at the University whose work focuses on pollinator and honeybee health.⁹
5. While Professor vanEngelsdorp previously concluded—and shared widely—that neonicotinoid pesticides were incredibly harmful to bees, more recently he has minimized the impact of these pesticides on bee deaths and this change in position coincides with his increasing ties to the pesticide manufacturing industry.¹⁰
6. In 2013, he became a member of Monsanto’s Honey Bee Advisory Council and attended the company’s Honey Bee Health Summit as a spokesperson.¹¹ Soon after, the Bayer-funded Project Apis m. donated to the Bee Informed Partnership, Professor vanEngelsdorp’s nonprofit organization.¹² That same year, a research paper that Professor vanEngelsdorp edited was published and claimed the neonicotinoid pesticide thiamethoxam presented “a low risk to honey bees.”¹³
7. In 2020, the *Intercept* published an article explaining the ways in which the industry has worked to discredit science linking neonicotinoid pesticides to bee die-offs. It stated: “Bayer and Syngenta, the largest manufacturers of neonics, and Monsanto, one of the

⁵ *Id.*

⁶ U.S. Dep’t of Agric., Report on the National Stakeholders Conference on Honey Bee Health at 5 (2012), <https://www.usda.gov/sites/default/files/documents/ReportHoneyBeeHealth.pdf>.

⁷ See, e.g., Lisa Held, Beyond Bees, Neonics Damage Ecosystems—and a Push for Policy Change is Coming (Feb. 2, 2021), <https://civileats.com/2021/02/02/beyond-bees-neonics-damage-ecosystems-and-a-push-for-policy-change-is-coming/>.

⁸ J. P. van der Sluijs, et. al., Conclusions of the Worldwide Integrated Assessment on the risks of neonicotinoid and fipronil to diversity and ecosystem functioning 22 Environ Sci Pollut Res 148, 150 (2015).

⁹ See Dennis vanEngelsdorp, Univ. of Maryland, <https://agnr.umd.edu/about/directory/dennis-vanengelsdorp> (last visited Nov. 19, 2021).

¹⁰ Lee Fang, The Playbook for Poisoning the Earth, *The Intercept* (Jan. 18, 2021), <https://theintercept.com/2020/01/18/bees-insecticides-pesticides-neonicotinoids-bayer-monsanto-syngenta/>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

leading producers of seeds pretreated with neonics, cultivated ties with prominent academics, including vanEngelsdorp, and other scientists who had once called for a greater focus on the threat posed by pesticides.”¹⁴

8. In January 2016, the University hosted a summit for corporate representatives and researchers to discuss the bee crisis.¹⁵ At the summit, Professor vanEngelsdorp gave an address blaming mites, rather than pesticides, for bee losses.¹⁶
9. That same year, the Maryland legislature considered a bill banning consumer neonicotinoids.¹⁷ Bill opponents cited to a report from the University’s January 2016 summit and to Professor vanEngelsdorp’s presentation as evidence that researchers did not believe neonicotinoid pesticides posed a threat to bees.¹⁸
10. Maryland nevertheless passed the bill, the Pollinator Protection Act, later that year and other states have followed suit.¹⁹ Across the country, state legislatures are considering similar bills to ban or reduce the use of neonicotinoid pesticides to preserve bee health.²⁰
11. On August 18, 2021, U.S. Right to Know submitted a public records request to the University asking for records that would show the extent to which Professor vanEngelsdorp communicated with, collaborated with, or accepted funding from major pesticide manufacturing companies including Bayer, Monsanto, Syngenta, CropLife, Dow, DuPont, Corteva, and BASF.

Request for Fee Waiver

U.S. Right to Know qualifies for a fee waiver and should be granted a total waiver of fees for the Request. Maryland’s Public Information Act allows custodians to waive fees if “the applicant asks for a waiver” and “after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” GP § 4-206(e). The Maryland Public Information Act Manual, published by the Office of the Attorney General, explains:

Although “the broad term ‘public interest’ does not permit a precise listing of relevant factors,” examples include “whether disclosure of records will shed light on ‘a public controversy about official actions,’ or on ‘an agency’s performance of its public duties.’” In considering what factors are relevant when deciding whether to waive a fee, an official custodian may also find it helpful to look at case law

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See, e.g.*, S.B. S699B (N.Y. 2021) (New York bill considering bans on neonicotinoid-treated seeds); A.B. 2070 219th Legis. (N.J. 2020) (New Jersey bill considering restricting use of neonicotinoid pesticides); H.B. 763 191st Legis. (Mass. 2019) (Massachusetts bill considering restricting use of neonicotinoid pesticides).

interpreting the comparable [Freedom of Information Act (FOIA)] provision, 5 U.S.C. § 552(a)(4)(A).²¹

The manual then points to factors that are important under FOIA as relevant considerations for whether a fee waiver should be granted under MPIA.²² Specifically, FOIA requires fees to be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”²³ Maryland courts have approvingly cited to the manual’s discussion of the FOIA factors and case law and noted the relevance of the FOIA factors to the MPIA. *See Action Comm. for Transit, Inc. v. Town of Chevy Chase*, 229 Md.App. 540, 556-557 (2016); *see, also, City of Baltimore v. Burke*, 67 Md. App. 147, 156 (1986) (“Moreover, the federal Freedom of Information Act contains a similar fee waiver provision at 5 U.S.C. § 552(a)(4) which has been liberally construed in favor of the media or other requesters who will provide broad public dissemination of the information sought. These interpretations are persuasive in our interpretation of the MPIA.”).

Granting a total fee waiver is in the public interest because U.S. Right to Know seeks these records to understand and report on the pesticide manufacturing industry’s potential influence on scientific research that decision-makers are using to inform pesticide regulations. These records will shed light on the controversial links between pesticide manufactures and scientific researchers. In addition, these records will allow the public to determine whether scientific research and conclusions relied on to form public policy on pesticide protections are compromised or biased. The relevant FOIA factors, cited in the Maryland Public Information Act Manual, also weigh in favor of granting a total fee waiver.²⁴ As explained below, U.S. Right to Know meets the conditions for a fee waiver with regards to the Request.

1. The subject of the Request concerns “the operations or activities of the government.”

The subject of the Request—Professor vanEngelsdorp’s relationship and communications with large pesticide-manufacturing corporations—concerns operations or activities of the government in at least two ways. First, the Request concerns the work, research, industry correspondence, and industry ties of a professor at the University of Maryland, College Park, a public land-grant university that receives funding from the Maryland legislature. The disclosed records will help the public understand how taxpayer money allocated by the Maryland government is being used and whether the University’s work is being captured by industry interests. Second, the Request will shed light on whether science relied upon by governmental bodies charged with protecting public health and the environment is biased or improperly influenced. State and federal legislatures and regulators are currently considering bans on neonicotinoid pesticides and may be relying on Professor vanEngelsdorp’s research and statements downplaying the connection between neonicotinoid pesticides and large-scale bee

²¹ Maryland Attorney General, Maryland Public Information Act Manual (16th Ed.) at 7-6 (Sept. 2021) (internal citations omitted).

²² *Id.* at 7-7.

²³ *Id.* (citing 5 U.S.C. § 552(a)(4)(A)(iv)).

²⁴ *See id.* (listing four sub-factors courts consider when determining whether the FOIA criteria for a fee waiver is met).

die-offs. The Request will allow the public to understand whether the integrity of the science underlying these government decisions has been compromised.

2. The disclosure is “likely to contribute” to public understanding of government operations or activities.

Disclosure of the requested records is likely to contribute to an understanding of government operations or activities because it will make more transparent the influence large pesticide manufacturers may have on government-funded researchers, in particular those whose research may be used to inform policy decisions. This information is not readily available and the public largely does not know about the connections between researchers and industry. The records requested will shine a light on how the pesticide manufacturing industry may be influencing government-funded researchers to further its own anti-regulatory agenda. In addition, the requested records will help the public understand whether their government is relying on accurate and robust scientific information as it deals with the bee crisis or whether this information may be biased.

3. Disclosure of the requested information will contribute to the understanding of a broad audience of persons interested in pesticide issues and scientific integrity in government decisionmaking.

Disclosure of the requested information will contribute to the understanding of a broad audience of people interested in pesticides, bee health, and scientific integrity because U.S. Right to Know intends to share the information with the public. Given its extensive expertise on pesticides and public health, it is well positioned to review the requested records to identify pertinent information and to synthesize and explain the significance of that information to the public. It has a variety of channels through which to disseminate that information to the public.

A major focus of U.S. Right to Know’s work is reporting risks related to pesticides in general and neonicotinoids in particular and increasing transparency on these issues. U.S. Right to Know provides an extensive collection of information concerning pesticides on its website, including information on adverse health impacts associated with pesticide exposures, information on court cases related to pesticide regulations, and documents and information revealing the pesticide industry’s deceptive and manipulative practices to keep toxic chemicals on the market.²⁵ As part of this work, U.S. Right to Know has led multiple investigations concerning pesticides and has shared the results of these investigations with the public.²⁶

Indeed, in 2016, U.S. Right to Know obtained documents through a Maryland Public Information Act request that revealed information about the ties between Professor

²⁵ See, e.g., Paraquat Papers – Updates to U.S. litigation, U.S. Right to Know, <https://usrtk.org/pesticides/paraquat-papers/>; The Dicamba Papers: Key Documents and Analysis, U.S. Right to Know, <https://usrtk.org/pesticides/dicamba-papers/>; Roundup (Glyphosate) Cancer Cases: Key Documents & Analysis, U.S. Right to Know, <https://usrtk.org/monsanto-papers/>; Paraquat Trial Tracker, U.S. Right to Know (Oct. 29, 2021), <https://usrtk.org/paraquat-trial-tracker-index/>; Monsanto Roundup & Dicamba Trial Tracker, U.S. Right to Know (Nov. 18, 2021), <https://usrtk.org/monsanto-roundup-trial-tracker-index/>.

²⁶ See Our Investigations, U.S. Right to Know, <https://usrtk.org/our-investigations/>.

vanEngelsdorp and the pesticide industry, and this disclosure led to an in-depth article in the *Intercept* about neonicotinoids.²⁷ U.S. Right to Know is viewed as an expert on pesticide issues and is well-positioned to translate information obtained from this Request to maximize public understanding and benefit.

Furthermore, U.S. Right to Know has many widely-viewed channels in which to disseminate the information it gains from the Request. Since 2015, U.S. Right to Know has frequently obtained information through public records requests and has disseminated it to the public through channels including its website, social media, in-house reporting, and connections with outside journalists. In 2020, more than 700,000 people visited U.S. Right to Know's website and viewed pages a total of 1.6 million times. U.S. Right to Know also has a significant social media presence and following. Specifically, the organization has over 9,000 followers on Facebook and the organization and its staff have a combined following of over 44,000 on Twitter. Through these channels, U.S. Right to Know frequently posts information regarding government regulation and the chemical industry.

In addition, U.S. Right to Know staff frequently write investigative stories that are published in major outlets such as the *Guardian* and *Time* magazine.²⁸ U.S. Right to Know's Research Director, Carey Gillam, is an expert on pesticides and the agrichemical industry. She frequently writes articles for the *Guardian* covering a range of pesticide issues.²⁹ She has also published two books about the misrepresentation of science by large chemical and pesticide manufacturing companies: *Whitewash*, which discusses the harms of Monsanto's Roundup pesticide product, and *The Monsanto Paper*, which tells the story of Lee Johnson's lawsuit against Monsanto after he developed cancer following exposure to herbicides.

Finally, U.S. Right to Know has a long history of sharing information obtained from public records requests with journalists to form the basis for news stories online and in print, radio, and tv. This work has contributed to two front-page New York Times investigations; many articles in The BMJ (one of the world's leading medical journals), and many stories in top outlets such as the *Wall Street Journal*, *Science*, *The Washington Post*, *Vanity Fair*, *Fox News*,

²⁷ Lee Fang, *The Playbook for Poisoning the Earth*, *The Intercept* (Jan. 18, 2021), <https://theintercept.com/2020/01/18/bees-insecticides-pesticides-neonicotinoids-bayer-monsanto-syngenta/>.

²⁸ See, e.g., Stacy Malkan, *Johnson & Johnson Is Just the tip of the Toxic Iceberg*, *Time* (Mar. 2, 2016), <https://time.com/4239561/johnson-and-johnson-toxic-ingredients/>; Carey Gillam, *Corporate studies asserting herbicide safety show many flaws, new analysis finds*, *The Guardian* (July 2, 2021), <https://www.theguardian.com/business/2021/jul/02/glyphosate-herbicide-roundup-corporate-safety-studies>; Cary Gillam, *Serious scrutiny needed as the EPA seeks input on cancer ties to Monsanto herbicide*, *The Hill* (Dec. 12, 2016), <https://thehill.com/blogs/pundits-blog/healthcare/309971-serious-scrutiny-needed-as-epa-seeks-input-on-cancer-ties-to>.

²⁹ See Carey Gillam, *The Guardian*, <https://www.theguardian.com/profile/carey-gillam>.

the *Guardian*, *Le Monde*, *Der Spiegel*, *Time* magazine, *Boston Globe*, *CBC*, *Politico*, *STAT*, the *Daily Mail*, Sky News Australia and many others.³⁰

U.S. Right to Know intends to use any or all of these dissemination channels to share with the public information obtained from the Request.

4. Disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

Disclosure of the requested records will “significantly” increase the public understanding of government operations or activities. As explained above, the links between pesticide manufacturing companies and scientific research about the effect of neonicotinoid exposure on bee health is not widely understood, given the lack of transparency related to research funding. U.S. Right to Know intends to review the requested records to extract information on these links, specifically the link between manufacturers of neonicotinoid pesticides and Professor vanEngelsdorp’s research on bees and the conclusions he has drawn, and then to share this information with the public. Because of U.S. Right to Know’s expertise on these issues, and experience explaining corruption of science by the chemical manufacturing industry to the public, disclosure of this information will significantly enhance the public’s understanding of these issues.

5. U.S. Right to Know has no commercial interest in the requested records.

U.S. Right to Know’s sole interest in the requested records is to uncover potential biases and influences on pesticide research and to share this information with the public. As a non-profit organization, U.S. Right to Know has no commercial interests in these records.

Conclusion

For the reasons explained above, U.S. Right to Know qualifies for and should be granted a waiver of all fees associated with its August 18, 2021, public records request concerning Professor Dennis vanEngelsdorp. If you have any questions about this request, please do not hesitate to reach me at ssarang@earthjustice.org or (212) 284-8032.

Thank you for your assistance in this matter.

Sincerely,

³⁰ See, e.g., Eric Lipton, *Food Industry Enlisted Academics in G.M.O. Lobbying War, Emails Show*, N.Y. Times (Sept. 5, 2015), <https://www.nytimes.com/2015/09/06/us/food-industry-enlisted-academics-in-gmo-lobbying-war-emails-show.html>; Sheila Kaplan, *New C.D.C. Chief Saw Coca-Cola as Ally in Obesity Fight*, N.Y. Times (July 22, 2017), https://www.nytimes.com/2017/07/22/health/brenda-fitzgerald-cdc-coke.html?_r=2; Mari A. Schaefer, *Coca-Cola’s research contracts allowed for quashing negative health findings, study finds*, The Philadelphia Inquirer, (May 8, 2019), <https://www.inquirer.com/health/coke-coca-cola-research-terminate-sugary-beverage-health--20190508.html>.

/s/ Surbhi Sarang

Surbhi Sarang
Associate Attorney
Sustainable Food & Farming
Earthjustice
633 17th St. Ste 1600
Denver, CO 80202
ssarang@earthjustice.org

Counsel for U.S. Right to Know

Exhibit 4



Office of General Counsel
4716 Pontiac Street
Seneca Bldg., Suite 2117
College Park, MD 20742

December 22, 2021

Sent via electronic mail to: ssarang@earthjustice.org

Ms. Surbhi Sarang, Associate Attorney
Earthjustice
Counsel for U.S. Right to Know
633 17t Street, Suite 1600
Denver, CO 80202

Re: Maryland Public Information Act Request No.: 334-2021

Dear Ms. Sarang,

This office serves as counsel to the University of Maryland, College Park. In response to a three-part public records request your client, the U.S Right to Know, filed, the University sent a series of written responses. With respect to Part 1, records were disclosed September 28, 2021.¹ With respect to Part 3, a response was sent November 30, 2021.² No fees were assessed to process these two segments of your inquiry.

¹ Part 1: All research and/or consulting contracts between and/or contributions to Dr. vanEngelsdorp, the vanEngelsdorp Bee Lab or the Bee Informed Partnership from any of the following corporations:

- Bayer OR Bayer Bee Care Center OR Bayer CropScience
- Monsanto
- Syngenta
- CropLife OR CropLife America OR CropLife International
- Dow OR DuPont OR DowDupont
- Corteva
- BASF
- Pollinator Partnership OR Corn Dust Research Consortium

NOTE: The time period covered by this request is January 1, 2018 to the present [August 18, 2021, the date of receipt], over 3.5 years.

² Part 3: All non-e-mail electronic correspondence, documents, records and attachments held by Dr. vanEngelsdorp, including but not limited to collaborative software platforms such as Google Docs, Google Sheets, Microsoft 365, Slack, and Basecamp, and that include any of the domains, keywords, key phrases or e-mail addresses listed below:

- @Bayer.com OR Bayer

With respect to Part 2, on September 21, 2021, you were sent an invoice reflecting the actual costs associated with processing the segment your request related to email messages.³

-
- @Beehealth.bayer.com OR Bayer Bee Care Center
 - @Cropscience.bayer.com OR Bayer CropScience
 - @Monsanto.com OR Monsanto
 - @Syngenta.com OR Syngenta
 - @Croplifeamerica.org OR CropLife America
 - @Croplife.org OR CropLife International
 - @DowDupont OR @DowDuPont.com OR Dow OR Dupont
 - @Corteva.com OR Corteva
 - @BASF.com OR BASF
 - @Porternovelli.com OR Porter Novelli
 - @Paradigmcommunications.co.uk OR Paradigm Communications
 - @Keystone.org OR Keystone Policy Center
 - @Projectapism.org OR Project Apis m.
 - @Honeybeehealthcoalition.org OR Honey Bee Health Coalition
 - @ACSH.org OR American Council on Science and Health
 - @Americanchemistry.com OR American Chemistry Council
 - @Geneticliteracyproject.org OR Genetic Literacy Project
 - @Ketchum.com or Ketchum
 - @Almonds.com OR Almond Board of California
 - @Pollinator.org OR Pollinator Partnership OR Corn Dust Research Consortium
 - Healthy Hives 2020
 - North American Bee Care Program
 - Jon Entine OR Jon@jonentine.com
 - Jerry Hayes OR Jerry@beeculture.com
 - Randy Oliver OR Randy@randyoliver.com

NOTE: The time period covered by this request is January 1, 2018 to the present [August 18, 2021, the date of receipt], over 3.5 years.

³ Part 2: All e-mail correspondence to or from Dr. vanEngelsdorp, including CC, BCC, and attachments that include the domains, keywords, key phrases or e-mail addresses listed below;

- @Bayer.com OR Bayer
- @Beehealth.bayer.com OR Bayer Bee Care Center
- @Cropscience.bayer.com OR Bayer CropScience
- @Monsanto.com OR Monsanto
- @Syngenta.com OR Syngenta
- @Croplifeamerica.org OR CropLife America
- @Croplife.org OR CropLife International
- @DowDupont OR @DowDuPont.com OR Dow OR Dupont
- @Corteva.com OR Corteva
- @BASF.com OR BASF
- @Porternovelli.com OR Porter Novelli
- @Paradigmcommunications.co.uk OR Paradigm Communications
- @Keystone.org OR Keystone Policy Center
- @Projectapism.org OR Project Apis m.
- @Honeybeehealthcoalition.org OR Honey Bee Health Coalition
- @ACSH.org OR American Council on Science and Health
- @Americanchemistry.com OR American Chemistry Council
- @Geneticliteracyproject.org OR Genetic Literacy Project
- @Ketchum.com or Ketchum
- @Almonds.com OR Almond Board of California
- @Pollinator.org OR Pollinator Partnership OR Corn Dust Research Consortium

Specifically, you were informed that it would take 1302.7 hours --- beyond the two (2) hours granted at no charge to you -- to gather, review and prepare the records sought (39,110 pages). Thus, upon receipt of the total estimated fee of \$96,575.99, we would begin the fulfillment process. However, on November 23, 2021, you asked the University to waive all fees associated with the processing the request.

The records you seek do not relate to a matter of general public concern which might justify a waiver of fees. Rather, your request focuses upon a narrow interest which does not justify the significant expenditure of public funds contemplated without charge. The potential disclosure contemplated by your request serves no meaningful public benefit. In addition, the disclosure does not shed light on the operations of government or the University's performance of its public duties. Finally, the disclosure is not likely to significantly contribute to an understanding of government operations or activities.

In sum, there is no significant connection between the material sought and a matter of broad, genuine public concern which sheds light on governmental operations or activities. The Act is a legal mechanism for revealing matters of *governance*, not information targeting one researcher's communications -- unrelated to governance -- which happen to be in records held by a government agency. Finally, it must be pointed out that the review of 39,110 pages would be unduly burdensome given the speculative nature and scope of records requested.

For these reasons, the University declines to grant a *complete* waiver in the public interest. To be clear, you have already been afforded partial fee discounts within the costs quoted on the invoice. For example, two hours of time spent on the Part 2 effort have been credited; this time was deducted from the actual time attributed to the employee possessing the highest hourly rate to mitigate costs. In addition, attorney fees have been calculated using 2018 (not 2021) salary rates. Thus, partial fee discounts have already been embedded in the fees you were assessed. Beyond this, no fees were assessed for Parts 1 or 3 of your inquiry, and the time spent processing these components was not counted against the 2 hours credited.

Should you disagree with this finding, you have remedial options available. First, you may seek judicial review of this decision in accordance with GP Section 4-362. Second, you may seek assistance from the Public Access Ombudsperson under GP Section 4-1B-01 *et seq.*

Sincerely,
Laura Anderson Wright
Laura Anderson Wright
Associate General Counsel

-
- Healthy Hives 2020
 - North American Bee Care Program
 - Jon Entine OR Jon@jonentine.com
 - Jerry Hayes OR Jerry@beeculture.com
 - Randy Oliver OR Randy@randyoliver.com

NOTE: The time period covered by this request is January 1, 2018 to the present [August 18, 2021, the date of receipt], over 3.5 years.

Exhibit 5



May 31, 2016

Ms. L. Wright
Office of General Counsel
University of Maryland, College Park
2117 Seneca Bldg.
College Park, MD 20742

RE: Public Records Request Regarding Funding for Dennis VanEngelsdorp

Dear Ms. Wright:

Pursuant to Maryland's Public Information Act, I request that you send electronic copies of the following documents, which are in possession of or generated by the University of Maryland:

1. Information on all grants, contributions or funding for University of Maryland Assistant Professor of Entomology Dennis VanEngelsdorp.
2. All email correspondence – including attachments – to or from Professor VanEngelsdorp to, from, CC or BCC any staff or employees of the following corporations: Bayer, Syngenta, Sumitomo, Nippon Soda, Mitsui Chemicals, Aventis and Novartis.

The time period covered by this request is from January 1, 2013 to the present.

I request that you disclose these documents and materials as they become available to you, without waiting until all the documents have been assembled.

If documents are denied in whole or in part, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Give the number of pages in each document and the total number of pages pertaining to this request and the dates of documents withheld. I request that excised material be "blackened out" rather than "whited out" or cut out and that the remaining non-exempt portions of documents be released as provided under Maryland's Public Information Act. Please send a memo (with a copy or copies to me) to the appropriate unit(s) in your office to assure that no records related to this request are destroyed.

Please advise of any destruction of records and include the date of and authority for such destruction. As I expect to appeal any denials, please specify the office and address to which an appeal should be directed.

I am making this request on behalf of U.S. Right to Know, a 501(c)(3) nonprofit food research organization. The records disclosed pursuant to this request will be used in the preparation of articles for dissemination to the public. Accordingly, I request that you waive all fees in the public interest because furnishing of the information sought by this request will primarily benefit the

Exposing what the food industry *doesn't* want us to know

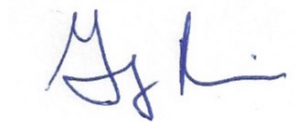
USRTK.ORG • 6026A HARWOOD AVE. • OAKLAND, CA 94618 • (415) 944-7350

public. Please send the documents to me at Gary Ruskin; U.S. Right to Know; 6026A Harwood Ave; Oakland, CA 94618.

I can be reached at (415) 944-7350. Please call rather than write if there are any questions or if you need additional information from me.

Thank you so much for your help in filling this request.

Sincerely,

A handwritten signature in blue ink, appearing to be 'GR' followed by a horizontal line.

Gary Ruskin
Co-director