

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

April 23, 2019

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

The Committee is investigating your compliance with the Ethics in Government Act, your decision to withhold documents requested by the Committee several months ago regarding your potential conflicts of interest, and new documents obtained by the Committee that appear to show that you omitted a former lobbying client from your public financial disclosure report.

The Ethics in Government Act requires federal officials to disclose the source of any compensation greater than \$5,000 in any of the two calendar years prior to the reporting year and to provide “a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.”¹ Under this statute, a federal official who has “worked on a matter involving a client” must disclose the name of that client “if the value of the services rendered by the nominee exceeded \$5,000.”² Guidance by the Office of Government Ethics instructs officials to take the following actions:

Report any source that paid more than \$5,000 for your personal services in any calendar year during the reporting period, which covers the preceding two calendar years and the current calendar year up to the date of filing.

Report such payments both from employers and from any clients to whom you personally provided services. You must report a source even if the source made its payment to your employer and not to you.³

¹ 5 U.S.C. app. § 102(a)(6).

² 5 C.F.R. § 2634.308 (2006).

³ Office of Government Ethics, *Public Financial Disclosure Guide* (online at [www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20\\$5,000%20in%20a%20Year%20\(Nominee%20and%20New%20Entrant%20Reports%20Only\)?opendocument](http://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20$5,000%20in%20a%20Year%20(Nominee%20and%20New%20Entrant%20Reports%20Only)?opendocument)).

On August 12, 2017, you submitted your financial disclosure report to the Office of Government Ethics for the period between January 1, 2015, to August 12, 2017.⁴ You did not report Darling Ingredients as a source of compensation.

Your financial disclosure report was inconsistent with lobbying disclosure reports filed by your former employer, Faegre Baker Daniels Consulting (Faegre). According to quarterly disclosure reports filed by Faegre, you engaged in lobbying activities on behalf of Darling from April 1, 2015, to May 31, 2016.⁵ These reports, filed throughout 2015 and 2016, indicate that Darling paid \$270,000 to Faegre for the lobbying services provided by you and two other employees at the firm during this period.⁶

To investigate this discrepancy, on February 13, 2019, the Committee requested that you produce documents showing your total compensation for lobbying activities conducted on behalf of Darling from January 1, 2015, to August 12, 2017.⁷

On March 6, 2019, Troy Lyons, an Associate Administrator at the Environmental Protection Agency (EPA), responded to the Committee by claiming that your participation in a meeting with Darling on June 26, 2018, “did not violate Executive Order 13770.” However, his response did not address whether you complied with the Ethics in Government Act. To date, you have failed to comply with the Committee’s requests for documents, including documents relating to your compensation from Darling.⁸

New documents obtained by the Committee from Darling show that the company paid at least \$5,327 for your services over many months throughout the course of 2015, including \$3,052.50 in February for 5.5 hours of services, \$888 in March for 1.6 hours of services, and \$1,387.50 for 2.5 hours of services in May. The documents show that you also provided 3.5 hours of services to Darling in August of 2015. If your services in August were provided at the same hourly rate as the services provided in the prior months of 2015, the total value of the services you provided to Darling in 2015 would have been at least \$7,270.

⁴ Andrew Wheeler, *Executive Branch Personnel Public Financial Disclosure Report* (Aug. 12, 2017) (online at www.documentcloud.org/documents/4387529-Andrew-Wheeler-Financial-Disclosure.html).

⁵ FaegreBD Consulting, *Second Quarter 2015 to Second Quarter 2016 Lobbying Disclosure Reports on Behalf of Darling International* (online at <https://bit.ly/2TKV8j4>) (accessed Feb. 12, 2019).

⁶ *Id.*

⁷ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Harley Rouda, Subcommittee on Environment, Committee on Oversight and Reform, to Acting Administrator Andrew Wheeler, Environmental Protection Agency (Feb. 13, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-13.EEC%20Rouda%20to%20Wheeler.pdf>).

⁸ Letter from Associate Administrator Troy M. Lyons, Environmental Protection Agency, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/EPA.03062019%20Response%20to%20EEC%20Rouda%20re%20Wheeler%20Lobbying.pdf>).

These documents indicate that you may have improperly omitted Darling from your financial disclosure, and they raise concerns that you may have failed to identify other clients who paid for your services as a lobbyist during the period covered by your disclosure report.

For these reasons, the Committee requests that you produce all of the documents previously requested by the Committee on February 13, 2019. Please inform the Committee by April 30, 2019, whether you intend to comply with this request voluntarily or whether compulsory means will be necessary.

In addition, the Committee requests a staff briefing by May 3, 2019, to answer the following questions:

1. Why did you exclude Darling Ingredients from the list of your sources of compensation in your public financial disclosure report filed on August 12, 2017?
2. What process did you use to identify the sources of your compensation as a lobbyist at Faegre?
3. Have you provided a full list of your former clients to the designated agency ethics official for EPA?
4. Did the designated agency ethics official for EPA approve of your decision not to include Darling in your financial disclosure report?
5. From which matters have you recused yourself in your role as Deputy Administrator of EPA?
6. Which matters have you recused yourself from in your role as Administrator of EPA?

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

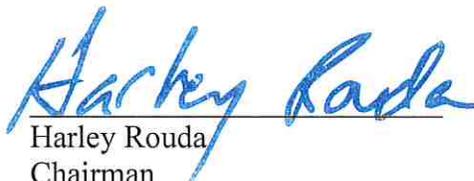
The Honorable Andrew R. Wheeler
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An attachment to this letter provides additional instructions for responding to this request. If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings
Chairman



Harley Rouda
Chairman
Subcommittee on Environment

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable James Comer, Ranking Member
Subcommittee on Environment

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.