



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

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National Institutes of Health  
National Institute of  
Environmental Health Sciences  
P.O. Box 12233, MD K3-16  
Research Triangle Park, NC 27709-  
2233

August 18, 2016

David W. Schnare  
The Free Market Environmental Law Clinic  
722 12<sup>th</sup> St. N.W., Suite 400  
Washington, D.C. 20005

Re: FOI Case No. 45376

Dear Mr. Schnare:

This is a final response to your August 8, 2016, Freedom of Information Act (FOIA) request addressed to Freedom of Information Office, NIEHS, which was received in this office on August 8, 2016. You requested a copy of, Correspondence of Gloria Jahnke on Glyphosate, specifically:

- (1) All email correspondence (including attachments) sent to or from any account used for NIEHS-related correspondence (whether using a government or private email address) of Gloria D. Jahnke, over the period April 1, 2014 through March 30, 2016, inclusive, which either includes any of the following in either the To:, From:, cc:, bcc:, Subject fields or body of the email:

Glyphosate  
Cancer Assessment review Committee (CARC)  
Monograph 112  
Factor GMO  
Peter Egeghy  
Aaron Blair  
Catherine Eiden  
Matthew Martin  
Ivan Rusyn  
Tom Burke  
Kurt Staif  
Christopher J. Portier  
Vincent Cogliano  
Kathryn Guyton  
Elena Sharoykina  
Dennis Dean Weisenburger  
KP Cantor  
Martyn Smith  
Linda Birnbaum  
John Bucher  
Fiorella Belpoggi

Or,

- (2) Any records related to the appointment of Ms. Jahnke as a member or contributor to the IARC Monographs on Evaluation of Carcinogenic Risks to Humans Volume 112 and/or the IARC meeting in Lyon, France held on March 3 – 10, 2015.

The NIEHS, National Toxicology Program, NTP searched its files and no records responsive to your request were located. NTP returned the following explanation as to why NIEHS has no records responsive to your request: "Dr. Jahnke's involvement was as a scientist with expertise in the field, not as an NTP representative. Records from Dr. Jahnke are not NIEHS records based on the four factors to consider for evaluating agency "control" of a record, as described in Department of Justice Procedural Requirements: <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf>, page 9.

The four factors NTP considered are as follows:

- (1) The intent of IARC was to not relinquish control of their records. IARC provided the following information regarding ownership of the records in question: "... it is the position of IARC that all draft documents and materials prepared by the Working Group in advance of or during the in-person Monograph meeting are to be considered draft and deliberative. Working Group members prepare these materials on behalf of IARC, and not as part of their official employment duties for a state or federal institution, and **IARC is the sole owner of all such materials**. IARC does not encourage participants to retain working drafts of documents after the related Monograph has been published."

IARC maintained ownership and control of records in advance of and during the meeting. IARC used the Health Assessment Workspace Collaborative (HAWC, [hawcproject.org](http://hawcproject.org)) to maintain working documents and a password secured FTP site for additional working documents. During the meeting, IARC made a confidentiality statement: all material was confidential and there was to be no discussion of the subject matter of the meeting at any time outside of the official meeting time, including no discussions at breaks.

During the meeting, a rapporteur prepared revisions and kept new versions of documents. Only relevant sections of the documents were provided in hard copy for review during the meeting. Dr. Jahnke did not retain any hard copies of documents from this meeting.

In general, IARC emails also contain a note that defines ownership: "This message and its attachments are strictly confidential. ... Any misuse, any disclosure or publication of its content, either whole or partial, is prohibited."

- (2) As IARC maintains ownership of all documents related to the monograph, NTP does not have the ability to use and dispose of Dr. Jahnke's records related to IARC. NTP cannot use any information from these records; NTP can only use information from the published monograph. According to IARC, all documents and discussions among the monograph working group were considered draft and deliberative; the final decisions were taken at the in-person meeting and published in the *Lancet Oncology* summary and the final monograph.

- (3) Only the agency member in question, Dr. Jahnke, has read or reviewed the content of IARC documents, or has been involved in the communications with IARC and members of the working group.

NTP has not read and will not rely on any of the documents Dr. Jahnke received from IARC, nor on any of the other records she may possess such as emails.

- (4) Finally, Dr. Jahnke's records related to IARC have not been incorporated into NTP records and have not been added to NTP files.

While we believe that an adequate search of appropriate files was conducted for the records you requested, you have the right to appeal this determination that no records exist which would be responsive to your request. Should you wish to do so, your appeal must be sent within ninety (90) days of the date of this letter, following the procedures outlined in Subpart C of the HHS FOIA Regulations <http://www.nih.gov/icd/od/foia/cfr45.htm> to:

Deputy Agency Chief FOIA Officer  
United States Department of Health and Human Services  
5600 Fishers Lane, Room 19-01  
Rockville, MD 20857  
[foiarequest@psc.hhs.gov](mailto:foiarequest@psc.hhs.gov)  
fax (301) 480-5862

Clearly mark both the envelope and your letter "Freedom of Information Act Appeal."

If you are not satisfied with the processing and handling of this request you may contact the NIEHS FOIA Public Liaison and/or the Office of Government Information Services (OGIS):

NIEHS FOIA Public Liaison

Christine Flowers  
NIEHS, Rall Bldg  
111 TW Alexander Drive  
RTP, NC 27709  
(919) 541-3665 (phone)  
[bruskec@niehs.nih.gov](mailto:bruskec@niehs.nih.gov) (email)

OGIS

National Archives and Records Admin.  
8601 Adelphi Rd - OGIS  
College Park, MD 20740-6001  
202-741-5770 (phone)  
1-877-684-6448 (toll-free)  
202-741-5769 (fax)  
[ogis@nara.gov](mailto:ogis@nara.gov) (email)

In certain circumstances provisions of the FOIA and Department of Health and Human Services FOIA Regulations allow us to recover part of the cost of responding to your request. Enclosed is an invoice for \$46.00 to cover the costs associated with responding to your request. Please note that NIH accepts electronic payments. Instructions are included with the invoice.

Sincerely,



Patricia Stockton  
Government Information Specialist  
NIEHS/OD Office

Enclosures: Invoice- 2 copies  
Payment Instructions

National Institutes of Health Invoice of Fee for Freedom of Information Act (FOIA) Services					FOIA Case #:	Date of Invoice:
					45376	08-18-16
<b>Instructions:</b>  <b>Electronic Payments:</b> Automated Clearing House (ACH) electronic debit via Pay.gov: For additional information, see <a href="https://www.pay.gov">https://www.pay.gov</a> . If you need assistance using this site, please contact Pay.gov Customer Service at 1-800-624-1373.  <b>Check or money order payments:</b> 1. Please write the case number, shown at the top of this form on your check or money order. 2. Make your check or money order payable to DHHS/NIH. 3. Return one copy of this invoice with your check or money order payable to DHHS/NIH.  <div style="text-align: center;">             Mail to: <b>NIH FOIA</b>  <b>Building 31, Room 5B35</b>  <b>31 Center Drive, MSC 2107</b>  <b>Bethesda, MD 20892-2107</b> </div>  Payment is due within 30 days from the date of this invoice. Interest will be charged after the due date.					<b>Requestor's Name, Organization, and Address:</b>  David W. Schnare The Free Market Environmental Law Clinic 722 12th St. N.W., Suite 400 Washington, D.C. 20005	
					<b>Fee Category:</b> <input checked="checked" type="checkbox"/> Commercial Use <input type="checkbox"/> Education/Media <input type="checkbox"/> Other	
FOIA Services		# of Items or Hours	Price per Item or Hour	Subtotal	Allow. (if app.)	Total
Reproduction	Standard Pages					
	CD/DVD					
Search Costs	Rate 1					
	Rate 2	1	\$46.00			\$46.00
	Rate 3					
Review Costs	Rate 1					
	Rate 2					
	Rate 3					
Computer Costs (Operators time & search time)	Rate 1					
	Rate 2					
	Rate 3					
Certification Record						
Pay total of <span style="font-size: 1.5em;">→</span>						\$46.00
Invoice prepared by: Patricia Stockton			Phone number: 919-541-3411		IC: NIEHS	
<b>Notes:</b> No records response, appeal rights given; this case was processed within 20 days of receipt.						

NIH 2927 (11/13)

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## FOIA Invoice Payment Options:

Option 1: Electronic Payment -- Go to <https://www.pay.gov>.

- Click on "Agency List" to locate the NIH page.  
" N" for NIH or "H" for Health and Human Services.
- Select "NIH FOIA Payments."  
Please fill in the form completely.  
Make sure you use the current case number from the invoice.  
Click "Submit Data."
- Enter Payment Information  
Select "Continue with ACH Payment."
- Review "Authorize Payment" and "Summary," check the box for the authorization and disclosure statement, and then press the "Submit Payment" button only once. Print a copy for your records.

Option 2: Personal check or money order via U.S. Mail, send to:

NIH FOIA

Building 31, Room 5B35

31 Center Drive, MSC 2107

Bethesda, MD 20892

Please include a copy of the invoice with your payment.