August 18, 2016

David W. Schnare
The Free Market Environmental Law Clinic
722 12th 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) 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  
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 (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 (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,

[Signature]

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*

**Instructions:**

**Electronic Payments:**  
For additional information, see https://www.pay.gov. If you need assistance using this site, please contact Pay.gov Customer Service at 1-800-624-1373.

**Check or money order payments:**

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.

   Mail to: NIH FOIA  
   Building 31, Room 5B35  
   31 Center Drive, MSC 2107  
   Bethesda, MD 20892-2107

Payment is due within 30 days from the date of this invoice. Interest will be charged after the due date.

**FOIA Case #:** 45376  
**Date of Invoice:** 08-18-16

**Requestor's Name, Organization, and Address:**

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

**Fee Category:**

- [x] Commercial Use  
- [ ] Education/Media  
- [ ] Other

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### FOIA Services

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**Certification Record**

- Pay total of $46.00

**Invoice prepared by:** Patricia Stockton  
**Phone number:** 919-541-3411  
**IC:** NIEHS

**Notes:**  
No records response, appeal rights given; this case was processed within 20 days of receipt.

**NIH 2927 (11/13)**
# National Institutes of Health

## Invoice of Fee for Freedom of Information Act (FOIA) Services

## Instructions:

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Automated Clearing House (ACH) electronic debit via Pay.gov:
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NIH 2927 (11/13)
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Option 1: Electronic Payment -- Go to [https://www.pay.gov](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.