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PHS Appeal No.: 14-0068-AA
FDA Case No.: 2013-7493

John H. Hnatio, EdD, PhD
FoodQuestTQ, LLC
7420 Hayward Drive, Suite 102
Frederick, MD 21702

JUN 02 2014

Dear Dr. Hnatio:

This letter is in response to your Freedom of Information Act (FOIA) appeal submitted on November 20, 2013, regarding your September 18, 2013, FOIA request, respectively, to the U.S. Department of Health and Human Services (HHS), the Food and Drug Administration (FDA) on behalf of FoodQuestTQ, LLC ("FoodQuestTQ"). In your appeal, you challenge FDA's search for records regarding your request for 351 emails from Ms. Leanne Jackson of the Food Defense Team, where she allegedly forwarded and/or commented on a May 18, 2013, email from FoodQuestTQ regarding an "Information Memorandum to the Food Industry" entitled "Use of Projectioneering LLC and FoodQuestTQ LLC Intellectual Property by the Food and Drug Administration without Permission." You also specified dates that Ms. Jackson allegedly opened and/or forwarded the subject emails: May 20-24 and 28-30, 2013; June 4-5, 6, 10, 13-14, 24, 27 and 28; July 5, 8 and 18, 2013; and August 13 and 21, 2013.

When a requester challenges the adequacy of an agency's search, the agency must then show that it has put forth a search reasonably calculated to locate all relevant records. The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover all relevant records.

Additionally, the fact that you used an email tracking service to monitor Ms. Jackson's receipt and subsequent actions related to a particular email has no bearing on FDA's search for records. You have provided no evidence from which to conclude that the MailChimp service is reliable or accurate. Moreover, it is not clear what is indicated by the records you submitted from the MailChimp service. It is not clear that those records suggest that Ms. Jackson necessarily forwarded the identified FoodQuestTQ email 351 times.

Upon receipt of your appeal, I asked FDA about the fact that it did not locate responsive records as to all the dates you specified and asked for a description of its search for responsive records. FDA explained that Center for Food Safety and Applied Nutrition's (CFSAN) initial search

involved Ms. Jackson manually searching her FDA Microsoft Outlook email inbox and outbox for responsive emails. Ms. Jackson located 3 emails dated May 20, 2013, which were provided to you on November 15, 2013.

On December 11, 2013, after receipt of your appeal, FDA requested that the Chief Information Officer (CIO) conduct an electronic search of Ms. Jackson's FDA Microsoft Outlook email account. The CIO conducted a search of Ms. Jackson's email account on December 11, 2013. The search criteria used was the following: "FoodQuestTQ AND Hnatio"; FoodQuestTQ and Hnatio; "John Hnatio"; John Hnatio; "FoodQuestTQ"; FoodQuestTQ; "Hnatio"; and Hnatio. The date range for the search was: 5/20/2013 12:00:00 AM to 8/21/2013 11:59:59 PM. This search located no additional responsive emails beyond those already provided to you on November 15, 2013. This search located one email in which Ms. Jackson forwarded and commented upon a different email message from FoodQuestTQ. While this email is not responsive to your FOIA request because it is not an email in which Ms. Jackson forwards or comments upon FoodQuestTQ's "Information Memorandum to the Food Industry" entitled "Use of Projectioneering LLC and FoodQuestTQ LLC Intellectual Property by the Food and Drug Administration without Permission," we are enclosing it with this letter as a courtesy.

FOIA guidelines indicate that an agency must be careful not to read a request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester.¹ Courts have, nevertheless, upheld agency decisions to limit the scope of a request when the agency acted reasonably in interpreting what the request sought.

Here, FDA read the plain language of your request and concluded that you did not seek emails that were merely opened by Ms. Jackson. Rather, you sought emails that Ms. Jackson forwarded and/or commented on. In your appeal letter, it appears that you question whether emails were searched related to Ms. Jackson merely opening the email. These records were not requested in your initial request letter. To the extent that you are now seeking those records, I recommend that you submit a request for that information.

Based on the above searches, I am satisfied that FDA conducted a diligent search that was reasonably calculated to uncover all relevant records, if they exist.

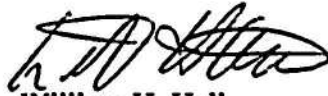
The Office of Government Information Services (OGIS), National Archives and Records Administration were created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You can learn about OGIS at <http://www.archives.gov/ogis/>.²

¹ *Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D. D.C. 1985).

² The contact information for OGIS is: Office of Government Information Services, Room 510, 8601 Adelphi Road, College Park, MD 20740-6001; E-mail: ogis@nara.gov; Telephone: 301-837-1996; Facsimile: 301-837-0348.

This letter constitutes the final decision of the Department in the matters raised specifically in this appeal. If you wish, you may seek judicial review in the district court of the United States in the district in which you reside, or your principal place of business, or in which the agency records are located, or the District of Columbia.

Sincerely,



William H. Hall
Director, News Division
Office of the Assistant Secretary
for Public Affairs

Enclosure

Kotler, Sarah

From: Jackson, LeeAnne
Sent: Monday, May 20, 2013 10:39 AM
To: Jody Menikheim (Jody.Menikheim@fda.hhs.gov); Guenther, Julia (Julia.Guenther@fda.hhs.gov)
Subject: RE: Food Fraud

They are charging \$1,250 for a "technical paper." What company is going to spend that sum of money?

From: Latest Salesforce [mailto:bbecker=foodquesttq.com@mail26.wdc03.rsgsv.net] **On Behalf Of** Latest Salesforce
Sent: Friday, May 17, 2013 12:56 PM
To: Jackson, LeeAnne
Subject: Food Fraud

Is this email not displaying correctly?
View it in [our browser](#).



FoodQuestTQ

The Answer to Food Fraud

FoodQuestTQ has noticed that most information dealing with food fraud, and in this case the horse meat scandal, seems to be short on the solution side of the equation. Solutions presented by white papers and other sources of information, i.e. webinars, seem to focus on more Auditing and more DNA testing. The FoodQuestTQ philosophy has always been you can't inspect and test enough to prevent issues, like 'Horsegate' from happening. Although auditing and testing are two aspects of our 57 recommendations to prevent food fraud cases from occurring, they are not the whole of our recommendations. FoodQuestTQ believes to achieve an overarching solution, the food industry must change from a compliance driven mentality to a true pursuit of excellence.

Technical paper # 7, HORSEGATE: PREVENTING FOOD FRAUD IN EUROPE describes the problem through the eyes of a criminal investigator and then provides the solution through the eyes of a food risk manager. This paper balances information about the history behind the 'horsegate' incident and solutions to prevent other food fraud incidences from occurring in the future.

Without looking at the financial records of the companies affected by the horse meat scandal, I can imagine that it cost these companies millions of Euros not only in recall fees but in negative publicity to its brand. FoodQuestTQ is looking to form a coalition of companies that want to prevent food fraud from occurring again. Basically what FoodQuestTQ wants to do is take the 57 recommendation, which we

pared down into 5 steps, in the technical paper and bring the solution to fruition. A small company like FoodQuestTQ could never afford to perform this momentous task by itself and is looking for other food companies, retailers and insurers to help finance this endeavor. If your company is interested in bringing about solutions to a very serious problem, food fraud, please reach out to Bruce Becker (bbecker@foodquesttq.com) who will show you the solution and ask for your help. Copies of the Technical Paper is available for \$1,250.

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Friends of Bruce Becker
Our mailing address is:
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Stafford, Va 22556