



May 28, 2014

Ms. Miriam Nisbet
Director
Office of Government Information Services
The U.S. National Archives and Records Administration
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Dear Ms. Nisbet:

We are writing this letter to seek your help in obtaining numerous documents requested under the Freedom of Information Act (FOIA) from the Department of Health and Human Services and their subordinate organization the Food and Drug Administration.

In 2012, our small business fell victim to the misappropriation of our patented ideas, copyrights and trade secrets by members of the Food Defense Team of the Food and Drug Administration (FDA). Employees of the FDA Food Defense Team used our intellectual property to duplicate a number of our computer software tools. This resulted in the complete loss of our sales and we are now being forced out of business.

Since January of 2014, we have filed numerous requests for documents regarding our case pursuant to the FOIA. But our requests for the timely release of documents have been denied and we are being charged thousands of dollars in processing fees that we cannot afford to pay in order to obtain documents that are critical to our case.

Even more bothersome, we have been told by the FDA on several occasions that no documents responsive to our FOIA requests exist only to find out later that they do, in fact, exist. One example involves computer based sign in sheets used by the industry to access the software tools duplicated by the FDA based on the misappropriation of our intellectual property. Another example involves nearly 1000 e-mails sent by FDA employees within the government and the food industry that we believe may have "blacklisted" our small business.

Because our case involves such serious allegations of misconduct, we now conclude that the actions of the Department of Health and Human Services and the FDA are intentional and may have risen to the level of intentional obstruction of justice in our case. This is why we desperately need your help.

The Department of Health and Human Services and the FDA have repeatedly denied our requests for expedited processing. We have been told that there is no "compelling need" to release the documents we have requested in a timely fashion. In our case, there is an urgent need for us to obtain and disseminate the documents we have requested in order to quickly stop the Department of Health and Human Services and the FDA from forcing us out of business.

Moreover, the Department of Health and Human Services and the FDA have refused to waive processing fees in our case even though they are fully aware that we have no money to pay them because of the very actions they themselves have taken to force us out of business. So far, the Department of Health and Human Services has sent us bills for over \$8,545.46 before they will release the documents we must have to defend ourselves. The irony of the situation is extreme. Based on the very actions taken against us by the Department of Health and Human Services and the FDA to force us out of business we simply do not have the money we must have if we are to defend ourselves.

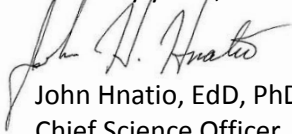
In The Law Bastiat writes,

“And when [law] has exceeded its proper functions, it has not done so merely in some inconsequential and debatable matters. The law has gone further than this; it has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right, in order to protect plunder. And it has converted lawful defense into a crime, in order to punish lawful defense.”

Attached is a matrix of the documents that we must have to defend ourselves from the actions that the Department of Health and Human Services and the FDA are taking to force our company out of business. We request your help in quickly obtaining these documents through the proper exercise of the FOIA so that they can be quickly disseminated to the appropriate Congressional authorities in time to stop the Department of Health and Human Services and the FDA before they completely destroy our lives. We are also concerned that relevant documents may be destroyed since there may be obstruction of justice involved in this matter.

Thank-you for considering this request and if you have any questions please call us and we will try to answer them.

Sincerely yours,



John Hnatio, EdD, PhD
Chief Science Officer

cc: Distribution

Area of Concern	Documents Requested for Release under the FOIA
FDA plagiarism of Dr. Hnatio's doctoral dissertation research	Documents that demonstrate that the FDA failed to conduct due diligence before copying Dr. Hnatio's dissertation for use in the FDA National Food Protection Plan
FDA's infringement of FoodQuestTQ copyrighted materials	Documents that demonstrate that the FDA failed to conduct due diligence before copying FoodQuestTQ's written copyrighted expressions of their patented ideas, food protection software and trade secrets
FDA's infringement of FoodQuestTQ patents	Documents that demonstrate that the FDA failed to conduct due diligence before copying FoodQuestTQ's written copyrighted expressions of their patented ideas and infringing on the patent to duplicate FoodQuestTQ's suite of food protection software tools
FDA theft of FoodQuestTQ trade secrets	Documents that demonstrate numerous meetings with FDA officials in which FoodQuestTQ trade secrets were shared as proprietary information
FDA violations of Federal procurement law	Documents that will demonstrate that FDA actions to duplicate FoodQuestTQ violated the Federal Activities Inventory Reform Act (FAIR), P.L. 105-270
	Documents that demonstrate that the FDA violated the Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253)
	Documents that demonstrate that the FDA violated the Federal Acquisition Streamlining Act (FASA) of 1994
	Documents that demonstrate that Battelle Memorial Institute colluded with FDA officials to violate subcontracting requirements to avoid competition with the private sector
	Documents that demonstrate that FDA employees violated U.S. Office of Government Ethics laws, rules and procedures when they publicly endorsed the brand name and products of Tyco Integrated Security, a direct competitor of FoodQuestTQ
FDA engagement in predatory and anti-competitive conduct	Documents that demonstrate that the FDA engaged in anti-competitive conduct within the meaning of the Sherman Anti-trust, Clayton and Federal Trade Commission Acts

<p>FDA and Department of Health and Human Services employee actions to obstruct justice</p>	<p>Documents that demonstrate that employees of the FDA and the Department of Health and Human Services intentionally attempted to obstruct justice</p>
	<p>Documents that demonstrate that FDA employees intentionally acted to exclude FoodQuestTQ from an industry meeting that revealed the U.S. Government's unlawful misappropriation of FoodQuestTQ patented and copyrighted ideas including the company's trade secrets</p>
	<p>Documents that demonstrate that DHHS-OGC lawyer, Mr. Dale Berkley, intentionally entered into an actual conflict of interest to conduct an unlawful investigation to prevent the revelation of criminal conduct of U.S. Government employees</p>
	<p>Documents that demonstrate DHHS-OGC lawyer Mr. Dale Berkley made unlawful use of the lawyer-client privilege and other methods of deceit and deception to stop the identification of documents and other information revealing the criminal acts and civil liability of certain U.S. Government employees</p>
	<p>Documents that demonstrate the intentional failure to identify documents releasable in response to FoodQuestTQ requests pursuant to Title 5 U.S.C. (Freedom of Information Act)</p>
	<p>Documents that demonstrate that DHHS-OGC lawyer, Mr. Dale Berkley, did not inform FoodQuestTQ officials that the DHHS-OGC abandoned their duty of good faith and fair dealing to mediate the dispute in favor of a legal defense of the U.S. Government actions against FoodQuestTQ to avoid the disclosure of information that would have shown that employees of the Food and Drug Administration did, in fact, engage in criminal conduct</p>
	<p>Documents that demonstrate that the FDA in collusion with DHHS violated a well-established body of Federal statute and law as it specifically pertains to the fair and open acquisition and procurement of commercial goods and services by the U.S. Government in the matter of FoodQuestTQ. This includes the execution of so-called by-pass contracts to avoid fair and open competition that would have disclosed illegal conduct on the part of U.S. government employees.</p>
<p>FDA. Department of Health and Human Services and Small business Administration (SBA) breach of express and/or implied contract</p>	<p>Documents that demonstrate U.S. Government officials were specifically advised in the presence of good and reputable witnesses that the FoodQuestTQ patented and unpatented ideas and trade secrets and written and visual expressions thereof were being shared with them pursuant to confidentiality guarantees conferred under Title 18 U.S.C. which preclude the sharing of information identified by industry as being proprietary.</p>

<p>FDA, Department of Health and Human Services and Small Business Administration (SBA) breach of express and/or implied contract (continued)</p>	<p>Documents that demonstrate that when specifically asked in the presence of good and reputable witnesses the U.S. Government officials in attendance at meetings with FoodQuestTQ expressed their agreement to comply with the confidentiality guarantees conferred under Title 18 U.S.C.</p>
	<p>Documents that demonstrate that FDA employees by sharing and using the patented and unpatented ideas, trade secrets and copyrighted written expressions of these patented and unpatented ideas and trade secrets owned by FoodQuestTQ LLC that U.S Government officials breached an express contract in order to defraud FoodQuestTQ</p>
	<p>Documents that demonstrate FDA failed to inform FoodQuestTQ of ongoing U.S Government actions to produce computer automated tools to accomplish the same or similar purpose as FoodQuestTQ commercial products in order to defraud FoodQuestTQ.</p>
	<p>Documents that demonstrate that U.S. Government officials from the FDA and DHHS breached their implied contract with FoodQuestTQ by failing to meet their duty of good faith and fair dealing in order to defraud FoodQuestTQ.</p>
	<p>Documents demonstrating that in December 2012, the U.S. Government breached their implied contract of good faith and fair dealing with FoodQuestTQ by excluding FoodQuestTQ from a meeting with the food industry in order to defraud FoodQuestTQ</p>
	<p>Documents demonstrating that Mr. Dale Berkley, a DHHS-OGC lawyer did not inform FoodQuestTQ officials that they had abandoned their duty of good faith and fair dealing to mediate the dispute in favor of a legal defense of the U.S. Government actions against FoodQuestTQ and in so doing breached an implied contract with FoodQuestTQ to mediate a resolution to the dispute; this was intentionally done to defraud FoodQuestTQ</p>
	<p>Documents demonstrating that the Office of the National Ombudsman for Small Business of the Small Business Administration, as a matter of national policy and the distribution of public broadcast of written statements to the effect, assures small businesses that they will not be retaliated against in any way for filing complaints filing complaints against federal agencies</p>
<p>Misprision of felony by U.S. Government officials</p>	<p>Documents that demonstrate U.S. government officials received written allegations of the commission of felonious crimes by various employees of the Food and Drug Administration but failed to act within their legal authority and obligation to investigate the matter</p>

Distribution:

Mr. Brian Castro, NOSB, SBA
Ms. Sylvia Mathews-Burwell, Director, OMB
Representative John Delaney, MD
Senator Chuck Grassley, IA
Representative Sam Graves, MO
Ms. Margaret Hamburg, Commissioner, FDA
Senator Mary Landrieu, LA
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