

June 16, 2014



Ms. Miriam Nisbet  
Director  
Office of Government Information Services  
The U.S. National Archives and Records Administration  
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SUBJECT: PHS Appeal No.: 14-0068-AA; FDA Case No.: 2013-7493

Dear Ms. Nisbet:

We recently received the attached letter from Mr. William Hall of the Department of Health and Human Services (DHHS) denying our appeal for the release of records demonstrating that the Food and Drug Administration (FDA) is engaging in a program of retaliation against us for filing a complaint with the Small Business Administration (SBA). Our complaint to the SBA shows that the FDA is unfairly competing with us by duplicating our commercial line of food safety and food defense computer software tools, and by so doing, forcing our small company of business.

In our Freedom of Information Act (FOIA) request we asked for all e-mails initiated by Food and Drug Administration (FDA) employee Ms. Leanne Jackson relating to the matter of FoodQuestTQ and any **e-mail strings** between and among government employees and private industry that resulted from Ms. Jackson's e-mail communications. In response to our FOIA request, the FDA provided three e-mails and informed us that these three e-mails represented the full body of the e-mail traffic initiated by Ms. Jackson relating to the matter of FoodQuestTQ.

Mr. Hall in his denial letter states that Ms. Jackson was allowed to search her own e-mail account in response to our original request. Because the serious allegations made in this case may directly involve Ms. Jackson and by virtue of the manner in which the search was allowed to be conducted by the Center for Food Safety and Nutrition of the FDA, the opportunity to delete the e-mail traffic requested in our original request becomes a major concern.

In our appeal we provided electronic records confirming that Ms. Jackson opened and/or distributed documents directly related to the FoodQuestTQ matter over 300 times. In his denial letter, Mr. Hall asserts among other things that the FDA considers electronic records as "unreliable" and, based on this, no further actions will be taken by the FDA to provide us with the hundreds of remaining e-mails that were initiated by Ms. Jackson and any of the resulting **e-mail strings**. Attached is a more detailed analysis of the FDA's denial of our appeal for your review.

The FDA denial of our appeal is very significant based on prior evidence independently provided to us by the National Ombudsman for Small Business (NOSB) of the SBA showing that the FDA is actively engaged in "blacklisting" our company with the food industry. In this particular instance, the SBA provided us with an internally generated FDA memorandum indicating that FDA and Department of Health and Human Services (DHHS) employees conducted a special interview of one of our business partners. Immediately after the special interview by the FDA this business partner terminated all business relationships with our company.

This matter is of even greater concern because electronic records show that the number of times Ms. Jackson opened and/or distributed e-mails directly related to the FoodQuestTQ matter has increased twofold to over 600 openings since the time of our original FOIA request indicating the possibility of a very widespread FDA program of “blacklisting” of FoodQuestTQ by DHHS and the FDA.

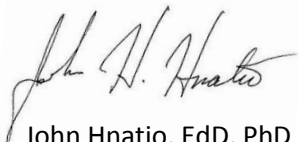
Thus, one of the principal reasons we filed our original FOIA request for the e-mails initiated by Ms. Jackson and any resulting **e-mail strings** is to determine the extent to which we are being “blacklisted” by the FDA. We would like to obtain and provide copies of these **e-mail strings** and any other evidence arising from our FOIA requests to appropriate authorities within the Executive and the Legislative Branches in order prevent the FDA and DHHS from continuing their efforts to “blacklist” us and force our company out of business.

In our previous letters to you we expressed our concerns that the actions of the FDA and DHHS now appear to have risen to the level of intentional obstruction of justice. The current situation may serve as yet another example of the intentional violation of Title 5 U.S.C. § 552 by the FDA and DHHS to prevent the release of documents that would implicate both agencies in fraud, waste and abuse. In this regard, we remain wary of the distinct possibility that FDA and DHHS employees are destroying key evidence in this case making your timely intervention extremely important.

We wish to thank-you very much for considering our request for your assistance in obtaining these and the other documents relating to the FoodQuestTQ matter that are being improperly withheld from release under the FOIA by the FDA and DHHS.

If you or your staff has any questions, please do not hesitate to call us. My contact information appears below.

Sincerely yours,



John Hnatio, EdD, PhD  
Chief Science Officer

(2) Attachments: June 2, 2014, DHHS appeal denial letter; June 15, 2014, FQTQ analysis

Distribution:

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Ms. Leanne Jackson, FDA