

Ms. Miriam Nisbet  
Director  
Office of Government Information Services  
The U.S. National Archives and Records Administration  
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June 19, 2014

SUBJECT: POSSIBLE ABUSE OF P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 (FOIA) TO OBSTRUCT JUSTICE

Dear Ms. Nisbet:

We have written to you on several occasions as the designated Ombudsman within the Executive Branch to assist us with the FOIA process and the possible abuse of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 (FOIA) to obstruct justice by the Food and Drug Administration (FDA) and the Department of Health and Human Services (DHHS).

Please be advised that we are not requesting that you advocate on behalf of FoodQuestTQ LLC or the FDA or DHHS in this matter, but rather for the proper implementation of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 (FOIA) with honesty and integrity as intended by law.

We seek the mediation services of the Office of Government Information Services (OGIS) to help us resolve a serious dispute between our company and the FDA and DHHS within the existing FOIA request and appeal process. Under the statutory authority granted by Congress you are authorized to involve OGIS at any point in the FOIA administrative process.

We also recognize that OGIS does not exercise the power of compelling the release of improperly withheld documents by specific Federal agencies or enforce the criminal provisions relating to the intentional abuse of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552, the provisions of Title 18 U.S.C. or other criminal statutes.

Thus, the assistance we seek from OGIS is strictly limited to the honesty and integrity of the implementation of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 (FOIA) as intended by law. We do not expect OGIS to exercise the power of making or dictating any final resolutions, taking any disciplinary actions in this matter or pursuing a criminal investigation. These responsibilities fall to other agencies within the Executive Branch at the appropriate time.

In the above context, we come to OGIS to report a very serious matter that drives at the very heart of the intention of FOIA-to provide reasonable transparency into the operations of the U.S. Government by the American citizens who they are intended to serve. Attempts by Federal agencies to intentionally avoid the identification or existence, withhold or destroy requested documents that are properly releasable under the FOIA contravenes the very intent of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552.

This dispute with FDA and DHHS involves the possible abuse of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 as a mechanism to obstruct justice. All we seek is the help of the OGIS to oversee that P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 is implemented with honesty and integrity by FDA and DHHS as intended by law.

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).

Mr. Hall in his denial letter states that FDA employees directly implicated in potential fraud, waste and abuse and other crimes against FoodQuestTQ LLC are being allowed to conduct their own searches for electronic records that may implicate them in alleged crimes.

On at least five occasions FoodQuestTQ LLC has expressed concerns to DHHS and the FDA that their employees may be involved in intentional obstruction of justice by failing to identify, illegally withhold and destroy documents requested under the FOIA that may implicate them in serious crimes.

In the June 16, 2014, brief we sent to you (copy attached), we provided five examples of alleged intentional violations of P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552 that we now believe may rise to the level of intentional obstruction of justice to include the attempted destruction of evidence by FDA in the matter of FoodQuestTQ LLC.

Because of the DHHS and FDA intentional failure to properly calculate their approach to the collection of records requested by FoodQuestTQ LLC under P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552, it is now possible that damning evidence of DHHS and FDA fraud, waste and abuse and other criminal activities was intentionally deleted from the electronic record by the same DHHS and FDA employees alleged to be implicated in the wrongdoing in the first place.

Because of the seriousness of the DHHS and FDA miscalculation of a proper approach to collect records in the matter of FoodQuestTQ LLC pursuant to P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552, we are requesting the assistance of the OGIS to work with FDA and DHHS to henceforth oversee the proper collection of all records requested under the FOIA that pertain in any way to the matter of FoodQuestTQ LLC.

Please find attached a copy of our most recent FOIA request to the FDA and DHHS in the matter of FoodQuestTQ LLC (copy attached). In our FOIA request we ask for an independent forensic "deep dive" into the current and archival FDA and DHHS computer databases to determine if Mr. Jody Menikheim, Mr. Jason Bashura, Ms. Leanne Jackson, Mr. Colin Barthel, Ms. Ariel Seeley and Mr. Dale Berkley have deleted any electronic records including e-mail and email strings that relate in any way to the matter of FoodQuestTQ LLC. As part of the attached FOIA request we seek copies of all e-mail records initiated, received, distributed and/or deleted by each of the above current or former employees of the U.S. Government that relate in any way to the matter of FoodQuestTQ LLC.

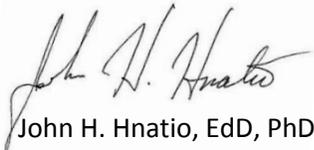
We are requesting expedited processing by the FDA and DHHS since the results of this request may indicate the existence of ongoing criminal activities within DHHS and FDA. The existence of possible criminal conduct involving employees responsible for the safety and security of the U.S. food supply represents a real and imminent threat to the safety of the U.S. public. We are also requesting that fees for providing the above information be waived based on the seriousness of the criminal allegations being made in this case.

We are in receipt of your e-mail of this morning requesting copies of our prior letters we sent to you regarding this matter. We will provide the requested information directly to you via return e-mail.

We wish to express our appreciation to you and your staff for their efforts to maintain the honesty and integrity of the FOIA process on behalf of the American people.

If you or your staff have any questions please contact me.

Sincerely,



John H. Hnatio, EdD, PhD  
Chief Science Officer

cc:

Mr. Brian Castro, NOSB, SBA  
Ms. Sylvia Mathews-Secretary, DHHS  
Representative John Delaney, MD  
Senator Chuck Grassley, IA  
Representative Sam Graves, MO  
Ms. Margaret Hamburg, Commissioner, FDA  
Senator Mary Landrieu, LA  
President Barack Obama, The White House  
Senator Pat Leahy, VT  
Mr. Daniel Levinson, OIG-DHHS  
Representative John Mica, FL  
Senator Barbara Mikulski, MD  
Senator Paul Rand, KY  
Mr. Brian Deese, Director, OMB  
Senator Mark Warner, VA  
Representative Rob Wittman, VA  
Mr. William Hall, DHHS  
Dr. Dale Berkley, OGC-DHHS  
Ms. Ariel Seeley, OCC, FDA

Mr. Jody Menikheim, FDA  
Ms. Leanne Jackson, FDA  
Mr. Colin Barthel, FDA  
Mr. Jason Bashura, PEPSICO