

111 134

001

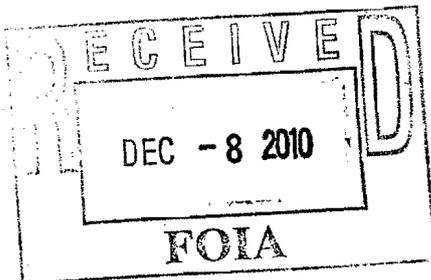
CTA INTERNATIONAL CENTER FOR TECHNOLOGY ASSESSMENT

Debbie
BRS.
EC

FAX TRANSMISSION

To: Tonya Woods
Of: USDA - FOIA Director
Fax Number (301) 734-5941
From: Int'l Ctr. for Technology Assessment
Date: 12/8/10
Number of Pages (including cover): 5

NOTES:



JAN 10 2011

JAN 10 2011

660 Pennsylvania Ave, SE, Suite 302, Washington D.C. 20003

phone: 202-547-9359 ? fax: 202-547-9429
email: info@icta.org ? www.icta.org



THE CENTER FOR FOOD SAFETY

December 8, 2010

SENT VIA FAX

United States Department of Agriculture
Director, Freedom of Information and Privacy Act Staff
4700 River Road, Unit 50
Riverdale, MD 20737

RE: Freedom of Information Act Request

To USDA's FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 7 C.F.R. § 370.1 and the Freedom of Information Act, 5 U.S.C. § 552, I, Andrew Deeringer, on behalf of CFS, respectfully request the following information:

- **Any and all correspondence, contracts, research reports and communications of any kind between USDA and Dr. Ralph Brinster, or referring to Dr. Ralph Brinster, from January 1, 1980, to the present.**

CFS requests this information in light of the President's "Memorandum for the Heads of Executive Departments and Agencies" dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails...In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the United States Department of Agriculture's

Animal and Plant Health Inspection Service FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

EXPEDITED PROCESSING IS NECESSARY

CFS, as an organization whose primary goal is dissemination of information and advocacy on behalf of the public (see below), has an urgent need to inform the public about government activity concerning the development of genetically engineered farm animals.

REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), USDA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds USDA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. See 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”) Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. The present disclosure is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

USDA is responsible for protecting and promoting U.S. agricultural health, regulating genetically engineered organisms, and administering the Plant Protection Act. The USDA’s programs and policies protecting public health through ensuring the safety of genetically engineered crops are “operations and activities of government.” USDA has invested considerable regulatory energies toward facilitating the development of genetically engineered livestock in the United States. The factors that USDA has considered, as well as the source and

content of the science forming the basis of its decision making, are relevant public information about protecting the integrity of U.S. agriculture and ensuring public health and safety.

B. The disclosure is "likely to contribute significantly to public understanding" of government operations or activities.

CFS is a non-profit organization that informs, educates and counsels the public —via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, *Food Safety Now!*— on the harm done to human health, plant and animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on the impact of genetically engineered livestock on organic farming, as well as such livestock's potential impact on the environment and human health.

Simultaneously, this FOIA will help CFS fulfill its well established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands.

II. Obtaining the information is of no commercial interest to the Center.

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the USDA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from USDA.

Based upon the foregoing, the CFS requests that this FOIA be classified within the USDA fee waiver category and that USDA send the requested information as required by law.

In light of USDA's two-week timetable, we look forward to expedited processing of this request, with USDA's reply compliant with FOIA. 5 U.S.C. § 552(a)(6)(A)(i). 5 U.S.C. § 552(a)(6)(A)(i). A reply within twenty working days, as required by FOIA (5 U.S.C. § 552(a)(6)(A)(i)), is insufficient in light of CFS's need to immediately and timely ascertain USDA's compliance with the August 13, 2010 court order referenced above. If the responsive records are voluminous please contact me to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of

black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to the Washington, D.C. address on the letterhead. Call me at if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

Andrew Deeringer
Legal Fellow, Center for Food Safety
660 Pennsylvania Ave., S.E.
Suite 302
Washington, D.C. 20003

Main Office: 660 Pennsylvania Ave., S.E., Suite 302, Washington, D.C. • Phone: 202-547-9359 • Fax: 202-547-9429
California Office: 2601 Mission Street, Suite 803, San Francisco, CA 94110 • Phone: 415-826-2770 • Fax: 415-826-0507
Email: info@centerforfoodsafety.org • www.centerforfoodsafety.org • www.foodsafctynow.org