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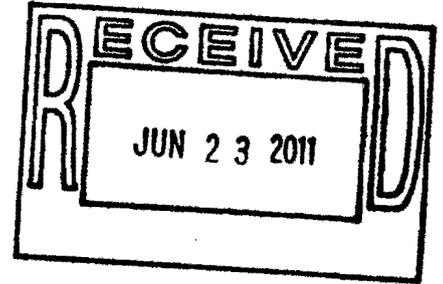
CREW | citizens for responsibility
and ethics in washington

FOIA
Syndia
Individual

June 23, 2011

By First-Class Mail and E-mail (foia.officer@aphis.usda.gov)

Tonya Woods
FOIA/PA Officer
Animal & Plant Health Inspection Service
4700 River Road, Unit 50
Riverdale, MD 20737-1232



Re: Freedom of Information Act Request

JUL 25 2011

Dear Ms. Woods:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552, *et seq.*, and U.S. Department of Agriculture ("USDA") regulation 7 C.F.R. Pt. 1, Subpt. a.

Specifically, CREW seeks copies of all FOIA logs or other compilations of FOIA requests made to the Animal & Plant Health Inspection Service from January 2010 to the present, including but not limited to the identity of the requester, and the date and subject of the request.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs. Our request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to these records.

If it is your position that any portion of the requested records is exempt from

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disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224 (citing *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 7 C.F.R. Pt. 1, Subpt. A, App. A § 6, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Specifically, the requested records will assist CREW in its attempts to ascertain the extent to which outside entities with a financial interest in the subject of the USDA's regulations and statutory authority have attempted to influence the USDA's exercise of that authority. As the recent arrest of FDA chemist Cheng Yi Liang for insider trading (attached as Exhibit A) illustrates, access to agency information may be very lucrative for those seeking to profit in the financial markets. CREW seeks this information as part of a broader effort to ascertain the

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extent to which Wall Street investors have attempted to influence agency policies and regulations for their own financial gain. CREW already has uncovered evidence of such influence at the Department of Education through FOIA requests.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. CREW will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org, which also includes links to thousands of pages of documents CREW acquired through its multiple FOIA requests as well as documents related to CREW's litigation and agency complaints, and through www.scribd.com.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA and USDA regulation 7 C.F.R. Pt. 1, Subpt. A, App. A § 5(c). In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

CREW routinely and systematically disseminates information to the public in several ways. First, CREW maintains a frequently visited website, www.citizensforethics.org, that received 36,383 page views in May 2011. In addition, CREW posts all of the documents it receives under the FOIA on www.scribd.com, and that site has received 930,800 visits to CREW's documents since April 14, 2010.

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Second, since May 2007 CREW has published an online newsletter, *CREWCuts*, that currently has 15,632 subscribers. *CREWCuts* provides subscribers with regular updates regarding CREW's activities and information the organization has received from government entities. A complete archive of past *CREWCuts* is available at <http://www.citizensforethics.org/newsletter>.

Third, CREW publishes a blog, *Citizens blogging for responsibility and ethics in Washington*, that reports on and analyzes newsworthy developments regarding government ethics and corruption. The blog, located at <http://www.citizensforethics.org/blog>, also provides links that direct readers to other news articles and commentary on these issues. CREW's blog had 5,951 page views in May 2011.

Finally, CREW has published numerous reports to educate the public about government ethics and corruption. Examples include: *CREW's Most Corrupt 2010: Unfinished Business*; *Top 10 Ethics Scandals of 2010*; and *FOIA at the Mid-term: Obstacles to Transparency Remain*. These and all other CREW reports are available at www.citizensforethics.org/reports.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

Conclusion

If you have any questions about this request or foresee any problems in releasing fully the requested records please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please send the requested records to Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,

Anne L. Weismann
Chief Counsel

EXHIBIT A

1.00% APY

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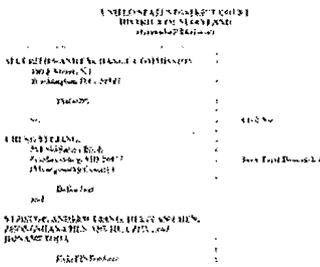
BUSINESS | MARCH 30, 2011

'Insider' Is Charged at FDA

By ALICIA MUNDY And BRENT KENDALL

WASHINGTON—A longtime chemist at the Food and Drug Administration was charged Tuesday with insider trading by federal authorities, who alleged he made as much as \$3.6 million trading drug company stocks based on confidential drug-approval information.

Charges Against Cheng Yi Liang



The Securities and Exchange Commission filed civil charges against Cheng Yi Liang, 57, an FDA employee since 1996, alleging he illegally traded in advance of at least 27 different FDA announcements involving 19 publicly traded companies.

The Justice Department filed related criminal charges and also charged Mr. Liang's son, Andrew Liang, in the case. Both are residents of Gaithersburg, Md.

The charges stunned the FDA. Mr. Liang works in the division in charge of approving new drugs, the agency's most visible and sensitive role. The pharmaceutical industry has long worried about security in this area, given how much secret corporate information is shared with employees at the agency.

"This is the kind of stuff I lost sleep over," said former FDA commissioner David Kessler, because pharmaceutical companies and Wall Street depend on FDA officials never using their proprietary knowledge "to play the market."

The SEC and the Justice Department said the men traded shares dating back to 2006 of companies whose drugs were used for colon cancer, schizophrenia, insomnia, severe constipation, osteoarthritis and heart disease.

Some of the FDA announcements at issue involved delays in the approval process due to the drugs' safety or efficacy tests. Mr. Liang allegedly bought stock for profit before positive announcements, bet on shares falling after negatives ones and sold shares to avoid losses.

Mr. Liang traded stocks of smaller companies developing new drugs, rather than major corporations, to take advantage of the relatively larger swings in these firms' stocks, the SEC said. The SEC said he went to great lengths to conceal his trading—which was financed in part with a home-equity line of credit—using seven brokerage accounts that weren't in his name. One belonged to Mr. Liang's 84-year-old mother in China, the SEC alleged.

In the most profitable transaction, the Liangs allegedly traded ahead of a May 2009 announcement by Vanda Pharmaceuticals Inc. that its schizophrenia drug Fanapt had received FDA approval. They netted more than \$1 million on the trades, government lawyers alleged.

Another of the companies whose stock he allegedly traded was Momenta Pharmaceuticals Inc., a small biotechnology company from Cambridge, Mass., which was vying with two other companies to make a generic version of the blockbuster blood thinner Lovenox.

The FDA unexpectedly told the companies in November 2007 that they needed to do further testing, holding up the approval process. The SEC claimed Mr. Liang made \$130,000 by trading shares a day before the news was made public, cutting Momenta's stock nearly in half.

When the drug was finally approved, in July 2010, Mr. Liang made another \$85,000 buying shares three days ahead of the announcement, the SEC alleged.

Momenta's chief executive, Craig Wheeler, said the company had no comment, and hoped to soon review the SEC complaint.

SEC investigators don't believe Mr. Liang is part of a wider insider-trading ring, said a person familiar with the matter. But agency officials are checking to see if other FDA employees have been abusing market-moving information.

The FDA said Tuesday it is aware of the insider-trading charges. "The agency is cooperating fully with the authorities, and will review the situation and take any appropriate action," its written statement read.

Neither the Liangs nor their attorneys could be reached for comment.

The Justice Department said Mr. Liang's position at the FDA gave him access to the agency's password-protected tracking system used to manage drug applications and drug-safety issues. That allowed Mr. Liang to review documents as they passed through the FDA approval process.

Mr. Liang's last completed transaction in the alleged insider-trading scheme involved Clinical Data Inc., which received FDA approval in January for the antidepressant Viibryd.

According to court documents, officials with the Department of Health and Human Services' inspector general's office installed software on Mr. Liang's work computer that collected screen shots showing how he accessed the tracking system to follow Viibryd matters, including a document recommending approval of the drug.

Over several days, Mr. Liang bought more than 46,000 shares that he sold for a \$380,000 profit after the drug was approved, the government alleged.

—Jean Eaglesham contributed to this article.

Write to Brent Kendall at brent.kendall@dowjones.com and Alicia Mundy at alicia.mundy@wsj.com

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06/23/2011 02:01 PM

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