February 3, 2022

Via Electronic Submission

Division of Dockets Management
Food and Drug Administration
Department of Health and Human Services
5630 Fishers Lane, Room 1061 (HFA-305) Rockville, MD 20852

Re: Citizen Petition- Asking FDA-CVM To Hire 2 More FOIA Employees in 2022, Bringing FDA-CVM Closer Into Compliance with The Freedom Of Information Act, 5 U.S.C. § 552.

To whom it may concern:

The undersigned submits this petition under 5 U.S.C. § 552, and in accordance with 21 C.F.R. § 10.30(b), to request the FDA-CVM to hire 2 more FOIA employees and bring FDA-CVM into compliance with The Freedom Of Information Act, 5 U.S.C. § 552.

A. Action Requested

Petition requests FDA-CVM to take action on this issue, and this issue is submitted under 5 U.S.C. § 552, and in accordance with 21 C.F.R. § 10.30(b). Petition requests FDA-CVM to hire 2 more FOIA employees, bringing FDA-CVM into compliance with the freedom of information act, 5 U.S.C. § 552.

B. Statement of Grounds

FDA-CVM is in violation of almost all of my FOIA requests submitted to FDA-CVM, because the *agency refuses to properly staff its FOIA division.*

The most troubling aspect re: FDA-CVM's continued violation of law regarding FOIA requests, is how FDA-CVM refused to engage in communication with citizens concerning several simple and important issues, and FDA-CVM instead instructed citizens over the years to file FOIA requests for information they wish to receive.

One example of FDA-CVM refusing to engage in the public is FDA-CVM's ongoing privatized regulatory process via the private corporation umbrella AAFCO. FDA-CVM engages in rulemaking with their state partners, and then turns around and accepts at the federal regulations all the regulations they helped create in private. This violated the administrative procedures act.

As a citizen, I am not able to attend and view FDA-CVM's rulemaking engagement at this private meeting, unless I pay a large sum of money. I am almost not allowed to make a public comment on these regulations prior to FDA recognizing the ingredients at the federal level. The administrative procedures act requires I be allowed to make a public comment on regulations, and FDA-CVM is committed to continue cutting citizens out of this process. FDA-CVM employees engage in rulemaking via email as well, and my only opportunity to try and understand these decisions made via this private corporation is to file FOIA requests.

Even when I exercise my rights under FOIA law, FDA-CVM continues to violate FOIA law, and provide records in 2, 3, or even 4 or more years after I request the records. This places a massive burden on me as

a citizen, who is trying to be involved in the democratic process that FDA-CVM wishes to continue to make as private as possible.

FOIA law states:

- (6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—
    - determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person, making such a request of –
        - **(I) such determination and the reasons therefor;**
        - **(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and**
        - **(III) in the case of an adverse determination –**
        - ***(aa) the right of such person to appeal to the head of the agency,* within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and**
        - **(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and**

    - (ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

    - The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

        - that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or
        - (II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

FDA-CVM states their "limited staff" is the primary reason why they are unable to comply with FOIA law. How long with FDA-CVM use this same and outdated excuse? In official court communication, FDA has stated, "FDA takes its obligations under FOIA seriously and is committed to providing information to…members of the public." Additionally, FDA has stated that "CVM" has "limited FOIA staff, which comprises only nine reviewers."

9 reviewers? Is it going to be 9 reviewers for the rest of time? FDA-CVM has made no statement in court documents saying they only have 9 reviewers now, and plan to hire more in the future.

How many FOIA employees does FDA-CVM plan to hire in the future to attempt to rectify this serious legal issue? Or, does FDA-CVM wish to proceed forever with limited FOIA staff, further burdening members of the public like myself, for the rest of time. And if so, is that legal under FOIA law?

FDA-CVM seems intent on burdening citizens for the foreseeable future, as FDA-CVM has no commitment to hiring any more FOIA staff that would grow the staff beyond the current "limited FOIA staff".

This petition requests FDA-CVM to take action on this issue, and this issue is submitted under 5 U.S.C. § 552, and in accordance with 21 C.F.R. § 10.30(b). Petition requests FDA-CVM to hire 2 more FOIA employees, bringing FDA-CVM closer into compliance with the freedom of information act, 5 U.S.C. § 552.

C. Environmental Impact A claim for categorical exclusion of the requirement for submission of an environmental assessment or environmental impact statement is made pursuant to 21 C.F.R. §§ 25.30 and 25.34.

D. Economic Impact In accordance with 21 C.F.R. § 10.30(b), economic impact information is to be submitted only when requested by FDA following review of the petition. The undersigned will promptly provide this information if requested.

E. Certification

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

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