

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Center for Science in the Public Interest)
5646 Milton Street, Suite 211)
Dallas, TX 75206)

Plaintiff,)

v.)

C.A. No. _____

United States Department of Agriculture)
1400 Independence Avenue SW)
Washington, DC 20250-0273)

Defendant.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the production of records in the possession or control of the United States Department of Agriculture (USDA) concerning Aurora Dairy Corporation (Aurora) and its failure to comply with the Organic Foods Production Act and associated regulations.

JURISDICTION

2. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Center for Science in the Public Interest (CSPI) is a national non-profit organization founded in 1971. With approximately 756,000 U.S. members, and 900,000 U.S. and Canadian subscribers to its *Nutrition Action Healthletter*, CSPI serves

as an organized voice on nutrition and health, food safety, alcohol policy, and sound science.

4. Defendant United States Department of Agriculture (USDA) is an agency of the United States government and has possession of and control over the records Plaintiff seeks. The Agricultural Marketing Service is an agency within USDA and the National Organic Program is a program within USDA.

FACTS

5. On March 12, 2008, Plaintiff submitted a FOIA request (Request) to USDA for the following records:

1. Any investigation of Aurora Dairy Corporation (Aurora), from January 1, 2005 through the present including, but not limited to, any investigation related to the Cornucopia Institute's November 9, 2005 Complaint to the National Organic Program's (NOP) Office of Compliance, including, but not limited to, all documents and correspondence that relate to summaries of information in a case file.
2. The April 16, 2007 Notice of Proposed Revocation sent to Aurora by the USDA regarding Aurora's willful violations of the Organic Foods Production Act of 1990 including, but not limited to, all documents and correspondence that relate to summaries of information in the case file.
3. The August 23, 2007 Consent Agreement between the USDA and Aurora related to violations of organic standards (Consent Agreement) including, but not limited to, all documents and correspondence that relate to summaries of information in the case file.
4. Communications relating to the Consent Agreement between officials of the USDA and members or representatives of dairy producers, wholesalers, retailers, advertising agencies, lobby and trade associations, or Aurora.
5. Any other investigative or regulatory action taken by the USDA relating to any retailer that packaged, labeled, and/or sold milk from Aurora to consumers.

6. Any other investigative or regulatory action taken by the USDA relating to any organic operation that violated, or was alleged to have violated, organic standards.
7. Communications relating to organic standards for dairy between USDA and members or representatives of dairy producers, wholesalers, retailers, advertising agencies, lobby and trade associations, or any other person.
8. All USDA or NOP organic certifications of Aurora.
9. All documents concerning Aurora from all certifying agents of Aurora.
10. All investigative records and documents relating to Aurora's production practices including, but not limited to, those at the Platteville, Colorado and Dublin, Texas operations.
11. Aurora's organic system plans (OSP) for all its operations including, but not limited to, its OSPs for its Platteville, Colorado and Dublin, Texas operations.

6. On March 17, 2008, USDA sent Plaintiff a letter stating that it had referred Plaintiff's request to its Agricultural Marketing Service.

7. On March 21, 2008, USDA's Agricultural Marketing Service confirmed that it had received Plaintiff's requests 1, 2, 3, 4, 5, and 6. The letter did not mention Plaintiff's requests 7, 8, 9, 10, and 11.

8. On June 27, 2008, USDA responded in part to Plaintiff's Request. USDA fully denied Plaintiff's requests 1 and 5 under FOIA exemption 7(A); partially denied Plaintiff's request 6 under FOIA exemptions 4, 6, and 7(C); directed Plaintiff to its Agricultural Marketing Service website for two specific documents responsive to requests 2 and 3; and stated that the National Organic Program within USDA's Agricultural Marketing Service would respond to Plaintiff's requests 2, 3, and 4. USDA

neither mentioned Plaintiff's requests 7, 8, 9, 10, and 11, nor produced any records in response to these requests.

9. On August 11, 2008, Plaintiff timely appealed USDA's response to Plaintiff's Request. Plaintiff appealed USDA's denial of requests 1, 5, and 6; and USDA's failure to issue a determination on requests 2, 3, 4, 7, 8, 9, 10, and 11 within the statutory 20-day time limit.

10. On August 20, 2008, the National Organic Program responded to Plaintiff's requests 7 and 9, partially granting and partially denying Plaintiff's request 7 and stating that it found no records responsive to request 9.

11. On November 10, 2008, Plaintiff withdrew its appeal with respect to USDA's failure to respond to requests 7 and 9.

12. Under 5 U.S.C. § 552(a)(6)(A)(i), USDA had 20 working days to respond to Plaintiff's March 17, 2008 request. More than 20 working days have passed since Plaintiff's Request, and USDA has not responded to Plaintiff's requests 2, 3, 4, 8, 10, and 11.

13. Under 5 U.S.C. § 552(a)(6)(A)(ii), USDA had 20 working days to respond to Plaintiff's August 11, 2008 appeal. More than 20 working days have passed since Plaintiff's appeal, and USDA has not responded to Plaintiff's appeal of the denials of requests 1, 5, and 6.

14. Plaintiff has exhausted all administrative remedies with respect to its FOIA requests to USDA.

15. Plaintiff has the statutory right to the records it seeks, and USDA has no legal basis for failure to disclose them.

CLAIMS FOR RELIEF

THEREFORE, Plaintiff requests that the Court:

- 1) Declare that USDA's failure to disclose records requested by Plaintiff is unlawful;
- 2) Order USDA to make all the requested records with regard to Plaintiff's FOIA requests 1, 2, 3, 4, 5, 6, 8, 10, and 11 available to Plaintiff;
- 3) Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 4) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

February 2, 2011

/s/ Adina H. Rosenbaum
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