



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Via E-mail

Joshua James  
Bryan Cave LLP  
1155 F Street, NW  
Washington, DC 20004

APR 27 2017

Re: FOIA-2017-00266  
Herbalife redress

Dear Mr. James:

This is our final response to your request dated December 13, 2016 under the Freedom of Information Act seeking access to documents pertaining to the distribution of money pertaining to the Herbalife redress matter, specifically:

- Documents reflecting the date that funds were received by the FTC (Category 1);
- Documents discussing the distribution of funds, including any correspondence to/from the Commission discussing the distribution of funds (Category 2);
- Documents discussing the timing of any distribution of funds (Category 3);
- Documents discussing alternate potential uses of the funds (e.g., rather than consumer refunds using the money for consumer education) (Category 4); and
- Any other documents related to the use of the funds obtained from the Herbalife entities (Category 5).

As you may recall, we issued a first response on February 8, 2017 granting you full access to one document responsive to Category 1. In that letter, we also advised you that we did not locate any records responsive to Category 4. We issued a second response on April 13, 2017 granting you partial access to eight pages responsive to Category 2.

We located approximately 746 additional pages of records responsive to Category 2. I am granting partial access to the records, or to ten (10) pages. Portions of these pages fall within one or more of the exemptions to the FOIA's disclosure requirements, as explained below.

Some records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), because they are exempt from disclosure by another statute. Specifically, Section 21(f) of the FTC Act provides that information obtained by the Commission in a law enforcement investigation, whether through compulsory process, or voluntarily in lieu of such process, is exempt from disclosure under the FOIA. 15 U.S.C. § 57b-2(f), *see Kathleen McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63964 (D.D.C. April 13, 1981).

Some responsive records contain staff opinions and recommendations. Those portions are deliberative and pre-decisional and are an integral part of the agency's decision-making process. They are exempt from disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975).

I am denying access to any personal information related to individual consumers. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because an individual's right to privacy outweighs the general public's interest in disclosure of personally identifying information. See *The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

Finally, we did not locate any responsive documents to Category 3. Also, documents responsive to Category 5 have been released to you. These documents fall within the scope of Category 2.

Based on the fee provisions of the FOIA, 5 U.S.C. § 552(a)(4)(A), and the Commission's Rules of Practice, 16 CFR § 4.8 et seq., as amended, I am also enclosing an invoice for the charges we incurred for this response to your request. Failure to pay this bill promptly will result in our refusal to provide copies of accessible documents in response to future requests. If not paid within 30 days, this bill will accrue interest penalties as provided by Federal Claims Collection Standards, 31 C.F.R. § 900-904, as amended. Please make checks payable to U.S. Treasury and send payment to:

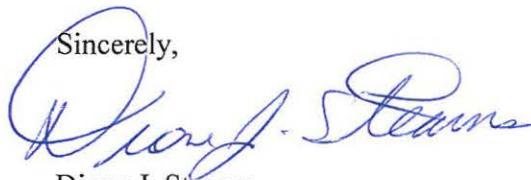
Financial Management Office, H-790  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at (202) 326-3355 or via e-mail at [rgold@ftc.gov](mailto:rgold@ftc.gov); or from the Office of Government Information Services via e-mail at [ogis@nara.gov](mailto:ogis@nara.gov), via fax at (202) 741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740.

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Shelley M. O'Hara at 202-326-2072.

Sincerely,



Dione J. Stearns  
Assistant General Counsel

Attachments  
PDF document (10 pages)  
Invoice