

From: [Fink, Lee - OSEC](#)
To: [Starmer, Elanor - AMS](#)
Subject: (b) (5) Deliberative Process
Start: Wednesday, August 24, 2016 9:00:00 AM
End: Wednesday, August 24, 2016 9:30:00 AM
Location: 107-W; Dana Coale will call into 202-690-3033

From: [Fink, Lee - OSEC](#)
To: [Purcell, Liza](#); [Brown, Tomasina - OSEC](#)
Subject: Accepted: Meeting on American Egg Board and Hampton Creek

From: [Ricci, Carrie - OGC](#)
To: [Dinh, Mai - OGC](#)
Subject: FW: MRFSPD Weekly Report for the Week Ending 9/4/2015
Date: Tuesday, September 08, 2015 8:52:43 AM

Non-Responsive

Carrie F. Ricci

Associate General Counsel,
Marketing, Regulatory, and Food Safety Programs
Office of the General Counsel
United States Department of Agriculture
Room 2014, South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250

carrie.ricci@ogc.usda.gov
202.720.3155

From: BUMBARY-LANGSTON, INGA - OGC
Sent: Monday, September 07, 2015 4:26 PM
To: Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>
Subject: Fwd: MRFSPD Weekly Report for the Week Ending 9/4/2015

Carrie

Hope you are enjoying Labor Day weekend. Several things we need to discuss soon.

Non-Responsive

Let's talk tomorrow. Thanks

Sent from my iPad

Begin forwarded message:

From: "Dinh, Mai - OGC" <mai.dinh@ogc.usda.gov>
Date: September 4, 2015 at 10:56:54 AM EDT
To: "Prieto, Jeffrey - OGC" <Jeffrey.Prieto@ogc.usda.gov>, "BUMBARY-LANGSTON, INGA - OGC" <INGA.BUMBARY-LANGSTON@OGC.USDA.GOV>, "Fink, Lee - OSEC" <Lee.Fink@osec.usda.gov>
Cc: "Smith, Connie - OSEC" <Connie.Smith@osec.usda.gov>, "STEPHENS,

JEAN - OGC" <JEAN.STEPHENS@OGC.USDA.GOV>, "Booth, James - OGC"
<JAMES.BOOTH@OGC.USDA.GOV>, "Harps, Patrice - OGC"
<PATRICE.HARPS@OGC.USDA.GOV>, "NOVAK, SHEILA - OGC"
<SHEILA.NOVAK@OGC.USDA.GOV>, "Wagner, Carla - OGC"
<CARLA.WAGNER@OGC.USDA.GOV>, "Ricci, Carrie - OGC"
<Carrie.Ricci@ogc.usda.gov>

Subject: MRFSPD Weekly Report for the Week Ending 9/4/2015

Non-Responsive



Non-Responsive

EGG Board On September 3, 2015, the Guardian newspaper published an article alleging that the Egg Board and USDA violated several laws, regulations, and guideline in efforts to limit competition from a company that produces mayonnaise without eggs. These laws, regulations, and guidelines prohibit the Egg Board from using funds for lobbying or disparaging other commodities. Several news outlets have picked up this story. The FDA has determined that the company cannot label its product as mayonnaise or mayo because it does not include eggs. **(b)(5) Attorney Work-Product/Attorney-Client Privilege**

Thank you and have a wonderful and safe holiday weekend.

Mai T. Dinh
Assistant General Counsel
Marketing, Regulatory, and Food Safety Programs Division
Office of the General Counsel
U.S. Department of Agriculture
Room 2343
1400 Independence Ave. SW
Washington, DC 20250
202-720-5935

From: [Ricci, Carrie - OGC](#)
To: [MARTIN, FRANK - OGC](#)
Cc: [Dinh, Mai - OGC](#); [Wagner, Carla - OGC](#)
Subject: FW: Weekly report for 9/11
Date: Friday, September 11, 2015 8:50:38 AM
Attachments: [FW Resolute Ruling on MTD More Good Than Bad.msg.msg](#)

Non-Responsive

Carrie F. Ricci

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carrie.ricci@ogc.usda.gov
202.720.3155

From: Dinh, Mai - OGC
Sent: Thursday, September 10, 2015 4:47 PM
To: Booth, James - OGC <JAMES.BOOTH@OGC.USDA.GOV>; Wagner, Carla - OGC <CARLA.WAGNER@OGC.USDA.GOV>; Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>
Cc: NOVAK, SHEILA - OGC <SHEILA.NOVAK@OGC.USDA.GOV>; Harps, Patrice - OGC <PATRICE.HARPS@OGC.USDA.GOV>; Quick, Ada - OGC <ADA.QUICK@OGC.USDA.GOV>
Subject: RE: Weekly report for 9/11

We have the following items for the weekly report:

Non-Responsive

American Egg Board (“Just Mayo”)

(b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process, (b) (5) Attorney Client Privilege

(b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process, (b) (5) Attorney Client Privilege

Non Responsive

Mai T. Dinh
Assistant General Counsel
Marketing, Regulatory, and Food Safety Programs Division
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1400 Independence Ave. SW
Washington, DC 20250
202-720-5935

From: Booth, James - OGC

Sent: Thursday, September 10, 2015 3:46 PM

To: Wagner, Carla - OGC <CARLA.WAGNER@OGC.USDA.GOV>; Dinh, Mai - OGC <mai.dinh@ogc.usda.gov>; Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>

Cc: NOVAK, SHEILA - OGC <SHEILA.NOVAK@OGC.USDA.GOV>; Harps, Patrice - OGC <PATRICE.HARPS@OGC.USDA.GOV>; Quick, Ada - OGC <ADA.QUICK@OGC.USDA.GOV>

Subject: RE: Weekly report for 9/11

Importance: High

Carla: We have one item for this week’s report:

Non-Responsive

Non-Responsive



James A Booth
Assistant General Counsel
Marketing, Regulatory, and Food Safety Programs Division
Office of the General Counsel, USDA

From: [BUMBARY-LANGSTON, INGA - OGC](#)
To: [Fink, Lee - OSEC](#)
Subject: Egg Board
Date: Friday, September 11, 2015 10:41:28 AM

(b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process

A large black rectangular redaction box covering the main body of the email content.

American Egg Board (“Just Mayo”)

(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process

(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process

A large black rectangular redaction box covering the main body of the email content.

From: [Dinh, Mai - OGC](#)
To: [Prieto, Jeffrey - OGC](#); [BUMBARY-LANGSTON, INGA - OGC](#); [Fink, Lee - OSEC](#)
Cc: [Smith, Connie - OSEC](#); [Ricci, Carrie - OGC](#); [STEPHENS, JEAN - OGC](#); [Booth, James - OGC](#); [Harps, Patrice - OGC](#); [NOVAK, SHEILA - OGC](#); [Wagner, Carla - OGC](#)
Subject: MRFSPD Weekly Report for the Week Ending 9/25/2015
Date: Friday, September 25, 2015 11:02:34 AM
Attachments: [Federal Court Litigation Report 9-25-15.xlsx](#)
[Federal Litigation Case Summary List Revised.docx](#)

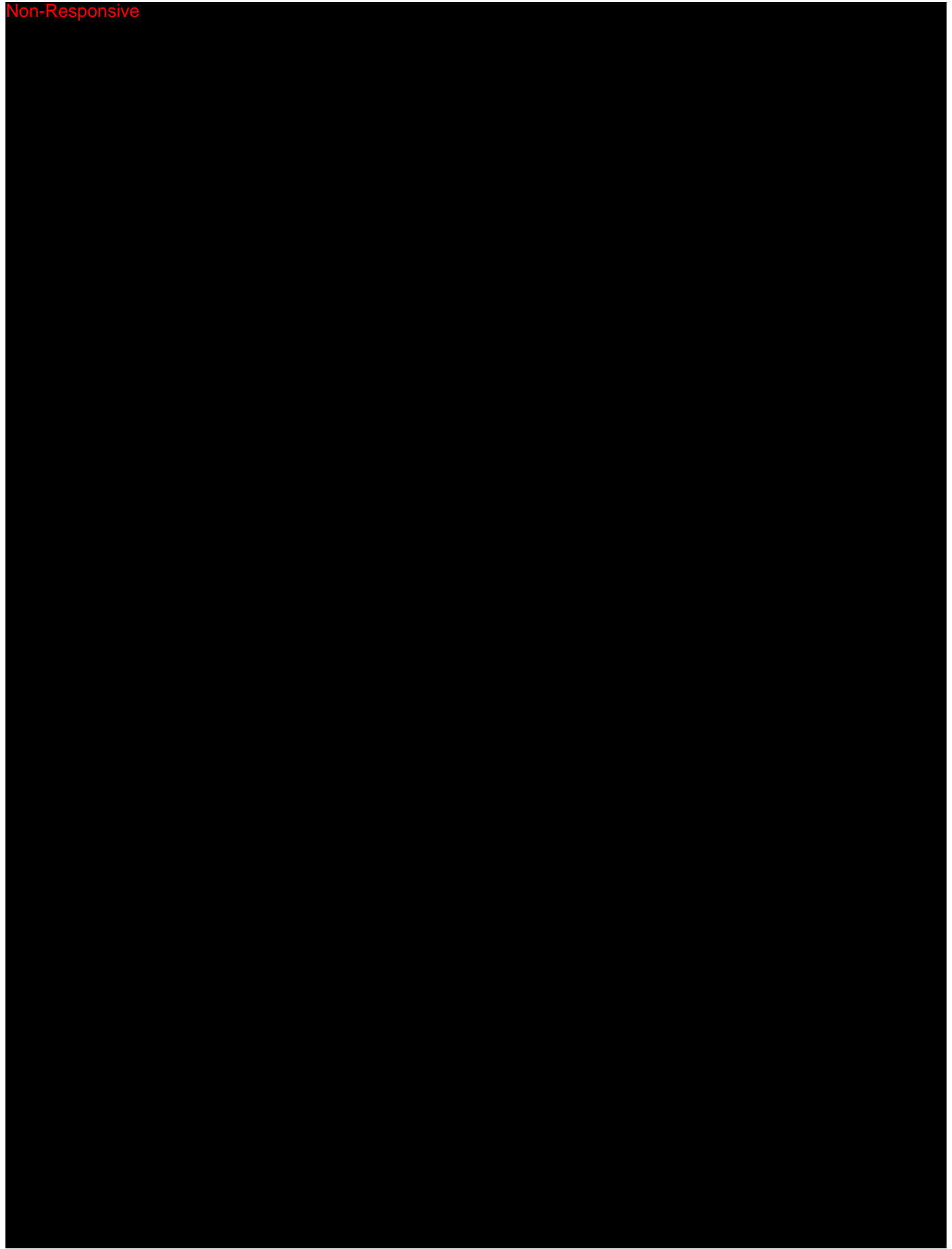
Good morning.

MRFSPD Weekly Update – September 25, 2015

Non-Responsive



Non-Responsive



Non Responsive

American Egg Board (AEB) -

(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process
(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process

Have a wonderful weekend.

Mai

Mai T. Dinh
Assistant General Counsel
Marketing, Regulatory, and Food Safety Programs Division
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1400 Independence Ave. SW
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202-720-5935

From: [Dinh, Mai - OGC](#)
To: [Prieto, Jeffrey - OGC](#); [Fink, Lee - OSEC](#); [BUMBARY-LANGSTON, INGA - OGC](#); [Then, Corey - OGC](#); [Adesina, Kellie - OGC](#)
Cc: [Ricci, Carrie - OGC](#); [NOVAK, SHEILA - OGC](#); [Harps, Patrice - OGC](#); [Bolinger, Darlene - OGC](#); [Wagner, Carla - OGC](#); [Smith, Connie - OSEC](#); [STEPHENS, JEAN - OGC](#)
Subject: MRFSPD Weekly Report for Week Ending 9/30/2016
Date: Friday, September 30, 2016 5:01:52 PM
Attachments: [Federal Court Litigation Report 9-16-16.xlsx](#)
[Federal Litigation Case Summary List Revised.docx](#)

Weekly report for September 30, 2016:

Non-Responsive



American Egg Board (AEB) Investigation – On September 27th, we reviewed letters that AMS drafted for the Secretary’s signature regarding the results of its investigation into the AEB’s activities regarding Hampton Creek and its egg substitute product, Just Mayo. The letters were addressed to the CEO of Hampton Creek, the CEO of the AEB, and the AMS employees who work on research and promotion programs. The letters addressed the finding of the investigation, namely inappropriate activities by AEB staff and board members, and the corrective actions that will be undertaken.

Thanks,
Mai
Mai T. Dinh
Assistant General Counsel
Marketing, Regulatory, and Food Safety Programs Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Ave. SW
Room 2343-S
Washington, DC 20250
202-720-5935

From: [Ricci, Carrie - OGC](#)
To: [BUMBARY-LANGSTON, INGA - OGC](#)
Cc: [Fink, Lee - OSEC](#); [Dinh, Mai - OGC](#)
Subject: RE: Just Mayo
Date: Saturday, September 12, 2015 10:38:14 AM

Past emails were captured as part of a FOIA request. We will continue to monitor.

Carrie F. Ricci

Associate General Counsel,
Marketing, Regulatory, and Food Safety Programs
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United States Department of Agriculture
Room 2014, South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250

carrie.ricci@ogc.usda.gov
202.720.3155

From: BUMBARY-LANGSTON, INGA - OGC
Sent: Friday, September 11, 2015 11:13 PM
To: Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>
Cc: Fink, Lee - OSEC <Lee.Fink@osec.usda.gov>
Subject: Re: Just Mayo

(b) (5) Attorney Work Product Privilege

Sent from my iPhone

On Sep 11, 2015, at 9:06 PM, "Ricci, Carrie - OGC" <Carrie.Ricci@ogc.usda.gov> wrote:

Inga/Lee - I reached out to Craig to get the complete story regarding the Egg Board.
Wayne Watkinson is their outside counsel. See info below.

Sent from my iPad

Begin forwarded message:

From: "Morris, Craig - AMS" <Craig.Morris@ams.usda.gov>
Date: September 11, 2015 at 5:36:24 PM EDT

To: "Ricci, Carrie - OGC" <Carrie.Ricci@ogc.usda.gov>
Cc: "Payne, Kenneth - AMS" <Kenneth.Payne@ams.usda.gov>, "Dinh, Mai - OGC" <mai.dinh@ogc.usda.gov>, "Barnes, Rex - AMS" <Rex.Barnes@ams.usda.gov>, "Eckhouse, Sara - AMS" <Sara.Eckhouse@ams.usda.gov>, "Snyder, Angie - AMS" <Angie.Snyder@ams.usda.gov>, "Jimenez, Sonia - AMS" <Sonia.Jimenez@ams.usda.gov>
Subject: Re: Just Mayo

Hi Carrie:

I'm looping in a couple of others who are involved. We had a conference call yesterday with the Board's Executive Committee to inform them that

(b) (5) Attorney Client Privilege
(b) (5) Attorney Client Privilege We kept notes of the meeting.

Separately, **(b) (5) Attorney Client Privilege**
(b) (5) Attorney Client Privilege

Early yesterday before the call, **(b) (5) Attorney Client Privilege, (b) (6)**
(b) (5) Attorney Client Privilege, (b) (6)

(b) (5) Attorney Client Privilege, (b) (6)

(b) (5) Attorney Client Privilege, (b) (6)

Anyway, that is the status.

Craig

Sent from my iPhone

On Sep 11, 2015, at 5:06 PM, Ricci, Carrie - OGC
<Carrie.Ricci@ogc.usda.gov> wrote:

Craig,

Sorry to bother you late on a Friday. (b) (6)

(b) (6) but sent the report below yesterday, which I shared
with the OGC leadership. (b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege

(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege

(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege
Feel free to call me on my cell if it's

easier to talk – (b) (6)

(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege

Carrie F. Ricci

Associate General Counsel,
Marketing, Regulatory, and Food Safety Programs

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United States Department of Agriculture
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Washington, D.C. 20250

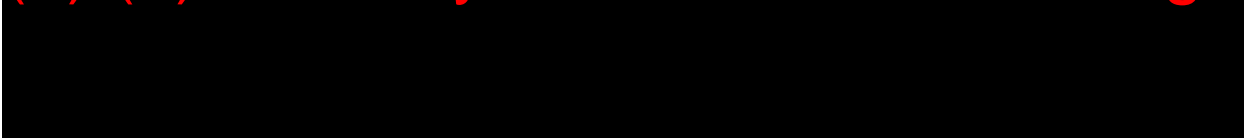
carrie.ricci@ogc.usda.gov

202.720.3155

From: [Dinh, Mai - OGC](#)
To: [Wagner, Carla - OGC](#); [NOVAK, SHEILA - OGC](#); [Harps, Patrice - OGC](#)
Cc: [Ricci, Carrie - OGC](#); [Quick, Ada - OGC](#)
Subject: RE: Weekly report
Date: Friday, August 12, 2016 12:40:41 PM

One more item for the weekly report:

American Egg Board (AEB) Investigation – (b) (5) Attorney Work Product Privilege
(b) (5) Attorney Work Product Privilege

A large black rectangular redaction box covers the majority of the page content below the subject line. The text "(b) (5) Attorney Work Product Privilege" is written in red across the top of this redacted area.

Mai T. Dinh
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U.S. Department of Agriculture
1400 Independence Ave. SW
Room 2343-S
Washington, DC 20250
202-720-5935

From: Wagner, Carla - OGC
Sent: Friday, August 12, 2016 7:43 AM
To: NOVAK, SHEILA - OGC <SHEILA.NOVAK@OGC.USDA.GOV>; Harps, Patrice - OGC <PATRICE.HARPS@OGC.USDA.GOV>
Cc: Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>; Quick, Ada - OGC <ADA.QUICK@OGC.USDA.GOV>; Dinh, Mai - OGC <mai.dinh@ogc.usda.gov>
Subject: Weekly report

Good morning,

Sheila and Patrice, do either of you have anything to report? I have already received Mai's report and thank her for being so prompt! 😊

From: [BUMBARY-LANGSTON, INGA - OGC](#)
To: [Prieto, Jeffrey - OGC](#); [Fink, Lee - OSEC](#)
Subject: Request to meet with Secretary re: Egg Board
Date: Wednesday, September 23, 2015 5:42:03 PM

FYI.

-----Original Message-----

From: Ricci, Carrie - OGC
Sent: Wednesday, September 23, 2015 3:22 PM
To: Dinh, Mai - OGC <mai.dinh@ogc.usda.gov>
Cc: BUMBARY-LANGSTON, INGA - OGC <INGA.BUMBARY-LANGSTON@OGC.USDA.GOV>
Subject: RE: Egg Board

Thanks Mai - I am copy Inga for her awareness.

Carrie F. Ricci
Associate General Counsel,
Marketing, Regulatory, and Food Safety Programs Office of the General Counsel United States Department of
Agriculture Room 2014, South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250

carrie.ricci@ogc.usda.gov
202.720.3155

FYI.

-----Original Message-----

From: Dinh, Mai - OGC
Sent: Wednesday, September 23, 2015 3:15 PM
To: Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>
Subject: Egg Board

Gregory Craig, counsel for Hampton Creek, (b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege
(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege As a FYI, Mr. Craig is
from Skadden Arps and a former White House Counsel in the current administration.

Thanks,
Mai

Mai T. Dinh
Assistant General Counsel
Marketing, Regulatory, and Food Safety Programs Division Office of the General Counsel United States
Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250
202-720-5935

From: Dinh, Mai - OGC </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DINH, MAI - OCB42CEA4-2F5E-4355-8F1E-5878BF72003578A>
Sent: Friday, September 04, 2015 12:29 PM
To: Morris, Craig - AMS; Payne, Kenneth - AMS
Subject: FW: AP: From Eggs to Trees, USDA Promotional Programs Controversial

Follow Up Flag: Follow up
Flag Status: Flagged

FYI –

Thanks,
Mai

Mai T. Dinh
Assistant General Counsel
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Room 2343
1400 Independence Ave. SW
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202-720-5935

From: Dinh, Mai - OGC
Sent: Friday, September 04, 2015 12:28 PM
To: Fink, Lee - OSEC <Lee.Fink@osec.usda.gov>; BUMBARY-LANGSTON, INGA - OGC <INGA.BUMBARY-LANGSTON@OGC.USDA.GOV>; Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>
Cc: Prieto, Jeffrey - OGC <Jeffrey.Prieto@ogc.usda.gov>
Subject: RE: AP: From Eggs to Trees, USDA Promotional Programs Controversial

(b) (5) Attorney Client Privilege

Thanks,
Mai

Mai T. Dinh
Assistant General Counsel

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GFI - OGC Only

From: Fink, Lee - OSEC
Sent: Friday, September 04, 2015 11:12 AM
To: BUMBARY-LANGSTON, INGA - OGC <INGA.BUMBARY-LANGSTON@OGC.USDA.GOV>; Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>; Dinh, Mai - OGC <mai.dinh@ogc.usda.gov>
Cc: Prieto, Jeffrey - OGC <Jeffrey.Prieto@ogc.usda.gov>
Subject: FW: AP: From Eggs to Trees, USDA Promotional Programs Controversial

FYI—AP Story on Research and Promotion Boards, prompted by the Egg Board issues.

One question OC is trying to better understand—**(b) (5) Attorney Client Privilege**
(b) (5) Attorney Client Privilege

Lee Fink
Senior Counselor
Office of the General Counsel | Department of Agriculture
Lee.Fink@usda.gov
(202) 205-4725 (office)
(b) (6) (mobile)

From: Cochran, Catherine - OC
Sent: Friday, September 04, 2015 10:49 AM
To: Fink, Lee - OSEC
Subject: FW: AP: From Eggs to Trees, USDA Promotional Programs Controversial

From: Addie, Yewande - OC
Sent: Friday, September 04, 2015 10:36 AM
To: Herrick, Matthew - OC; Peters, Joanne - OC; Cochran, Catherine - OC; Kiel, Alyn - OC
Cc: Dubinsky, Rachael -OC; Brown, Adriane - OC; Frank, Rebecca - OC; Mabry, Brian - OSEC; Maloney, Wayne - AMS
Subject: AP: From Eggs to Trees, USDA Promotional Programs Controversial

[From Eggs to Trees, USDA Promotional Programs Controversial](#)

The slogans are familiar: "The Incredible Edible Egg," "Pork: The Other White Meat," and "Got Milk?"

They've all been part of promotional campaigns overseen by the Agriculture Department and paid for by the industries that vote to organize them. While the idea is simple — an industry-wide promotional campaign at no cost to the government — they've often generated controversy, been misunderstood and at times have operated with little oversight.

The egg industry is the latest to draw scrutiny for its promotional board after it appears to have waged a campaign to hurt sales of an eggless imitation mayonnaise. According to email documents provided to The Associated Press, the American Egg Board tried to prevent Whole Foods grocery stores from selling Hampton Creek's Just Mayo spread and engaged in other efforts to counter the brand.

According to the documents, American Egg Board CEO Joanne Ivy emailed a consultant in 2013 saying she would accept his offer "to make that phone call to keep Just Mayo off Whole Foods shelves." The effort was apparently unsuccessful as Whole Foods still sells the product. In a statement Thursday, USDA spokesman Sam Jones-Ellard said the department is looking into the documents and "does not condone any efforts to limit competing products in commerce." But he didn't say if USDA would take any action, and it's unclear if the egg board's communications would violate legal requirements for research and promotion programs.

According to the law, USDA is tasked with making sure that the quasi-government boards stay away from disparaging other commodities and from campaigning for legislation or regulation. The idea is that the campaigns stay promotional, not negative.

In addition to the egg board, there are about 20 other programs — also known as "checkoffs" — from the Mushroom Council to the National Honey Board to the National Christmas Tree Promotion Board. USDA is responsible for overseeing all of them, including ensuring fiscal responsibility, program efficiency and fair treatment for all sectors of the industries that decide to form boards.

In 2012, USDA's inspector general issued a report saying the Agricultural Marketing Service, the department agency that oversees the boards, needed to improve its oversight. Specifically, the audit said the agency should be able to better detect the misuse of board checkoff funds and gather more information from the boards to assess their activities. The report cited examples of employee bonuses and travel expenses that did not fall under department guidelines. The agency said it would make improvements.

Some of the programs have been challenged in court. In 2008, a judge barred the egg board

from spending money to campaign on a proposition in [California](#). And the USDA is currently defending itself in a federal lawsuit that alleges the National Pork Board cut a deal to help fund a non-governmental pork association that lobbies lawmakers.

In addition, the groups' association with the government has made them vulnerable to political attacks. In 2011, the [White House](#) delayed a decision to approve a Christmas tree promotion program after conservatives accused the Agriculture Department of spoiling Christmas with a new tree tax — even though the program would have been paid for by industry and the National Christmas Tree Association said it wouldn't have an impact on the price consumers pay for their trees. The program eventually went into effect after congressional action in 2014.

The organic industry has also faced political criticism as it is in the process of setting up its own promotion program with USDA. Some farm-state members of Congress have opposed organics getting their own program, arguing that you can't promote organic agriculture without somehow disparaging conventional agriculture.

Laura Batcha, head of the Organic Trade Association, says the group has been mindful of previous problems in the program as it worked over the last several years to create a checkoff program. "We set out with the objective of learning from folks," Batcha says.

The organic industry has said it wants to form a board to help consumers understand what organics are. The industry has been concerned about confusion in the marketplace. Other industries have hoped to boost consumer perception of their products. The National Pork Board says its goals are to build consumer demand and trust in modern pork production. The United States Potato Board says it is "dedicated to positioning potatoes as a nutrition powerhouse." Hampton Creek CEO Josh Tetrick, meanwhile, has called for a congressional investigation into USDA oversight of the promotional programs. In the emails, one egg board executive appeared to joke about having Tetrick killed.

Tetrick's company, which markets itself as promoting healthier eating, provided the documents to the AP after they were obtained on a public records request by Ryan Noah Shapiro, a Freedom of Information Act expert at the [Massachusetts](#) Institute of Technology. "There needs to be a lot more oversight in how these programs are run, because they have a real impact on how people eat," Tetrick said.

GFI - OGC Only

From: Prieto, Jeffrey - OGC </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=PRIETO, JEFFR9C4E9458-6471-41D0-8337-F8395C3F8258AD8>
Sent: Monday, May 02, 2016 2:39 PM
To: Fink, Lee - OSEC; BUMBARY-LANGSTON, INGA - OGC; Adesina, Kellie - OGC
Subject: FW: NPR on checkoff language

Follow Up Flag: Follow up
Flag Status: Flagged

FYI. I'll check with Karla at the 4:30 but we should review the OC TPs.

JP

From: Thieman, Karla - OSEC
Sent: Monday, May 02, 2016 2:27 PM
To: Batta, Todd - OSEC <Todd.Batta@osec.usda.gov>; Prieto, Jeffrey - OGC <Jeffrey.Prieto@ogc.usda.gov>; Johnson, Ashlee - OSEC <Ashlee.Johnson@osec.usda.gov>; Cep, Melinda - OSEC <Melinda.Cep@osec.usda.gov>; Herrick, Matthew - OC <Matthew.Herrick@oc.usda.gov>; Cochran, Catherine - OC <Catherine.Cochran.1@oc.usda.gov>
Subject: NPR on checkoff language

Under Attack, Commodity Promotion Programs Try To Hide Their Emails

[Twitter](#)



i

The American Egg Board brought you this photo, but does that mean it came from private industry or the government?
Courtesy of The American Egg Board hide caption

The American Egg Board brought you this photo, but does that mean it came from private industry or the government?

Courtesy of The American Egg Board

An increasing number of people are discovering, to their embarrassment, that their emails are subject to the Freedom of Information Act. Scientists at state-funded universities have been forced to disclose [emails](#) that revealed cozy ties with the public relations arms of biotech and organic food companies. And last year, a FOIA request compelled the American Egg Board to turn over [documents](#) showing that its president tried to organize a public relations campaign against a vegan competitor called Just Mayo.

If the House Appropriations Committee has its way, though, the Egg Board's private emails will remain private in the future. This past week, the committee passed its version of the U.S. Department of Agriculture's 2017 budget. And in an accompanying report, the panel [urged](#) the USDA to make sure that FOIA does not apply to the American Egg Board and all similar "Research and Promotion boards that the USDA oversees."

This language refers to a dozen or so "checkoff programs" that promote beef, pork, soybeans and other commodities. They are the source of advertising campaigns like "Pork: The Other White Meat" and "Beef - It's What's For Dinner."

These programs have long been [controversial](#) because they use government authority to collect money for private commercial

goals, such as advertising campaigns and research on the nutritional quality of particular foods. Farmers themselves vote to set up such programs, but Congress then establishes them and at that point, every farmer is required, by law, to contribute to them.

So do these operations belong to industry or the government? The industry groups "very much want to have it both ways," says [Parke Wilde](#), a specialist on food policy at Tufts University and a long-time critic of the checkoff programs.

In 2005, Wilde points out, industry groups argued before the Supreme Court that the checkoff programs were, in fact, "government speech." At that time, the groups were facing a challenge from farmers who didn't want to pay for those programs. If the programs were part of the government, though, the farmers could be forced to pay up, just as they are forced to pay taxes. The Supreme Court [agreed](#).

Now that they wish to escape from the FOIA, however, the checkoff programs are emphasizing their private nature. In early April, a dozen agricultural industry groups — but not the checkoff programs themselves, because they aren't allowed to lobby Congress — asked Congress to declare the checkoff programs exempt from the FOIA because they "are funded solely with producer dollars, and therefore are not agencies of the federal government." The House Appropriations Committee has now adopted that view. Even if it became law, the language could face a challenge in the courts.

Graves, Alexis - OCIO

From: Wilon, Jim - OGC </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0080DEEA80124D1080E36C3CBE5C8C49-WILON, JIM - 8D92226>
Sent: Wednesday, October 12, 2016 7:15 AM
To: Dinh, Mai - OGC
Subject: Hampton Creek follow-up

Follow Up Flag: Follow up
Flag Status: Flagged

Mai, (b) (5) Attorney Work Product Privilege
(b) (5) Attorney Work Product Privilege Many thanks, Jim

Jim Wilon, Attorney Advisor for AMS Livestock, Poultry and Seed Program
Office of the General Counsel
United States Department of Agriculture
1400 Independence Ave., S.W., Room 2604
Washington, DC 20250
Office (202) 720-1050, Mobile (202) 710-3922, Fax (202) 720-3499

From: Dinh, Mai - OGC </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DINH, MAI - OCB42CEA4-2F5E-4355-8F1E-5878BF72003578A>

Sent: Friday, August 19, 2016 1:58 PM

To: Prieto, Jeffrey - OGC; Fink, Lee - OSEC; BUMBARY-LANGSTON, INGA - OGC; Then, Corey - OGC; Adesina, Kellie - OGC

Cc: Smith, Connie - OSEC; STEPHENS, JEAN - OGC; Ricci, Carrie - OGC; NOVAK, SHEILA - OGC; Harps, Patrice - OGC; Wagner, Carla - OGC; Bolinger, Darlene - OGC

Subject: MRFSPD Weekly Report for Week Ending 8/19/16

Attachments: Federal Court Litigation Report 8-19-16.xlsx; Federal Litigation Case Summary List Revised.docx

Follow Up Flag: Follow up

Flag Status: Flagged

Weekly report for 8/19/16.

Non Responsive

- American Egg Board (AEB) Investigation - (b) (5) Attorney Work Product Privilege

(b) (5) Attorney Work Product Privilege

Non Responsive

- Have a wonderful weekend!
Mai

Mai T. Dinh
 Assistant General Counsel
 Marketing, Regulatory, and Food Safety Programs Division
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 U.S. Department of Agriculture
 1400 Independence Ave. SW
 Room 2343-S
 Washington, DC 20250
 202-720-5935

From: Prieto, Jeffrey - OGC </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=PRIETO, JEFFR9C4E9458-6471-41D0-8337-F8395C3F8258AD8>
Sent: Wednesday, September 23, 2015 3:30 PM
To: BUMBARY-LANGSTON, INGA - OGC; Fink, Lee - OSEC
Subject: RE: Updates as Requested-Egg Board, White Meat case and Horne

Follow Up Flag: Follow up
Flag Status: Flagged

Karla asked for an update on the AEB. I will send her the attached regarding this issue.

JP

From: BUMBARY-LANGSTON, INGA - OGC
Sent: Wednesday, September 23, 2015 1:30 PM
To: Prieto, Jeffrey - OGC <Jeffrey.Prieto@ogc.usda.gov>; Fink, Lee - OSEC <Lee.Fink@osec.usda.gov>
Subject: FW: Updates as Requested-Egg Board, White Meat case and Horne

FYI

From: Ricci, Carrie - OGC
Sent: Wednesday, September 23, 2015 10:37 AM
To: BUMBARY-LANGSTON, INGA - OGC <INGA.BUMBARY-LANGSTON@OGC.USDA.GOV>
Cc: Dinh, Mai - OGC <mai.dinh@ogc.usda.gov>; Harps, Patrice - OGC <PATRICE.HARPS@OGC.USDA.GOV>
Subject: Updates as Requested

Inga, please see the updates below for the Egg Board. **Non Responsive** My thanks to Mai for the comprehensive summaries.

American Egg Board (AEB) - (b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege
(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege

Non Responsive

Non Responsive

Carrie F. Ricci

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Washington, D.C. 20250

carrie.ricci@ogc.usda.gov

202.720.3155

From: Dinh, Mai - OGC </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DINH, MAI - OCB42CEA4-2F5E-4355-8F1E-5878BF72003578A>
Sent: Wednesday, September 23, 2015 10:10 AM
To: Ricci, Carrie - OGC
Subject: Re: Updates Requested

Follow Up Flag: Follow up
Flag Status: Flagged

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On Sep 23, 2015, at 10:06 AM, "Ricci, Carrie - OGC" <Carrie.Ricci@ogc.usda.gov> wrote:

Non Responsive

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carrie.ricci@ogc.usda.gov
202.720.3155

From: Dinh, Mai - OGC
Sent: Wednesday, September 23, 2015 9:24 AM
To: Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>
Cc: Booth, James - OGC <JAMES.BOOTH@OGC.USDA.GOV>; NOVAK, SHEILA - OGC <SHEILA.NOVAK@OGC.USDA.GOV>; Harps,

Patrice - OGC <PATRICE.HARPS@OGC.USDA.GOV>

Subject: Re: Updates Requested

(b) (5) Attorney Work Product Privilege

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On Sep 23, 2015, at 9:08 AM, "Dinh, Mai - OGC" <mai.dinh@ogc.usda.gov> wrote:

Carrie -

Below are the updates for Egg Board, **Non Responsive** For the Egg Board, (b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege

American Egg Board (AEB) - (b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process
(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege, (b) (5) Deliberative Process

Non Responsive

Non Responsive

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On Sep 22, 2015, at 2:54 PM, "Ricci, Carrie - OGC" <Carrie.Ricci@ogc.usda.gov> wrote:

In my meeting with Inga yesterday she requested a status update on the following:

Non Responsive

2. The Egg board issue

Non Responsive

Non Responsive

Thanks.

Carrie F. Ricci
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carrie.ricci@ogc.usda.gov

202.720.3155

From: [Bolinger, Darlene - OGC](#)
To: [Dinh, Mai - OGC](#); [Ricci, Carrie - OGC](#)
Subject: RE: MRFSPD Weekly Report for Week Ending on 10/6/16
Date: Wednesday, October 12, 2016 12:59:57 PM

Good Afternoon,

Non Responsive

From: Dinh, Mai - OGC
Sent: Friday, October 07, 2016 2:41 PM
To: Prieto, Jeffrey - OGC <Jeffrey.Prieto@ogc.usda.gov>; Fink, Lee - OSEC <Lee.Fink@osec.usda.gov>; BUMBARY-LANGSTON, INGA - OGC <INGA.BUMBARY-LANGSTON@OGC.USDA.GOV>; Then, Corey - OGC <Corey.Then@ogc.usda.gov>; Adesina, Kellie - OGC <Kellie.Adesina@ogc.usda.gov>
Cc: Ricci, Carrie - OGC <Carrie.Ricci@ogc.usda.gov>; NOVAK, SHEILA - OGC <SHEILA.NOVAK@OGC.USDA.GOV>; Harps, Patrice - OGC <PATRICE.HARPS@OGC.USDA.GOV>; Bolinger, Darlene - OGC <DARLENE.BOLINGER@OGC.USDA.GOV>; Wagner, Carla - OGC <CARLA.WAGNER@OGC.USDA.GOV>; Smith, Connie - OSEC <Connie.Smith@osec.usda.gov>; STEPHENS, JEAN - OGC <JEAN.STEPHENS@OGC.USDA.GOV>
Subject: MRFSPD Weekly Report for Week Ending on 10/6/16

MRFSPD weekly report for October 6, 2016:

Non Responsive

Non Responsive

American Egg Board (AEB) Review – (b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege
(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege
(b) (5) Attorney Client Privilege, (b) (5) Attorney Work Product Privilege
AMS posted the documents relating to the review and corrective actions on its online FOIA Reading Room on October 6th.

Non Responsive

Have a wonderful holiday weekend!

Mai

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