

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FARM LABOR ORGANIZING COMMITTEE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-645
)	
U.S. DEPARTMENT OF LABOR,)	
)	
Defendant.)	
)	

PLAINTIFF’S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Farm Labor Organizing Committee (FLOC) notifies the Court of a recent decision addressing issues raised in the parties’ pending cross-motions for summary judgment (ECF 22 & 23). The cross-motions for summary judgment have been fully briefed since June 21, 2021.

In *Animal Legal Defense Fund v. FDA*, No. 12-cv-04376-KAW, 2021 WL 3270666 (N.D. Cal. July 30, 2021), the FDA invoked FOIA exemption 4 to justify its redaction of information about hen houses (Hen Housing Information) from the FDA’s narrative reports of egg-production establishment inspections. Ordering disclosure, the court held that the disputed information was not within the scope of exemption 4 because the agency “ha[d] not satisfied its burden of showing that the Hen Housing Information was customarily and *actually* treated as private by the egg producers.” *Id.* at *5. The court explained that there was “no evidence in the record as to the specific steps taken by [the company] to keep the Hen Housing Information confidential,” *id.*, and that “the evidence in the record show[ed] that the egg producers did not actually prevent workers from disclosing” the information, *id.* at *6. *See also id.* at *7 (noting that the disputed information “could be viewed by every employee and supplier who visited the facilities” and that that “there

was nothing legally preventing employees from disclosing” the disputed information). Further, the court rejected the FDA’s attempt to argue that the information was “confidential” under exemption 4 because of confidentiality agreements on which the agency relied, because the agreements did not appear to cover the information at issue. *Id.* Because the FDA failed to satisfy its burden under FOIA, the court ordered it to disclose the information.

Here, FLOC has similarly shown that there is no evidence that agricultural employers (tobacco growers) customarily and actually kept private the names of tobacco-company buyers. Indeed, the record shows that the redacted information was *not* closely guarded and that it was available to workers, without restrictions on their ability to disseminate the information. Moreover, the purported confidentiality agreements on which the companies rely in this case do not bar disclosure of the information at issue. Thus, the names of tobacco buyers are not “confidential” within the scope of FOIA exemption 4.

Dated: August 27, 2021

Respectfully submitted,

/s/ Wendy Liu
Wendy Liu (D.C. Bar No. 1600942)
Michael T. Kirkpatrick (D.C. Bar No. 486293)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
wliu@citizen.org

Counsel for Plaintiff