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WLF Urges Federal Trial Court to Reject FDA's Privilege Claim in FOIA Dispute

(Vanda Pharmaceuticals v. FDA)

“FDA’s secrecy thwarts government accountability at a time when public confidence in FDA’s decision-making is more important than ever.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. District Court for the District of Columbia Circuit to reject the Food and Drug Administration’s claim of privilege in denying a Freedom of Information Act request.

The case arises from Vanda Pharmaceuticals’ supplemental new drug application for Hetlioz®, a drug that has been shown great promise as a jetlag therapy. When FDA did not approve that application, Vanda filed a FOIA request for the scientific reviews informing the agency’s Complete Response Letter. Asserting FOIA’s deliberative-process privilege, FDA denied the request.

In an *amicus* brief urging the court to grant summary judgment on Vanda’s FOIA request, WLF argued that disclosing the reviews will not chill frank discussion within FDA because agency staff have no reason to expect that these documents will be withheld in the first place. FDA routinely discloses medical and statistical reviews when applications are ultimately approved, and the reviews become part of the administrative record when a drug sponsor appeals an application’s denial to federal court.

WLF’s brief also explained that the deliberative-process privilege is the most widely abused FOIA exemption. Having skyrocketed in use, the deliberative-process privilege has become the go-to exemption of choice for federal agencies. The privilege is so abused that, among government watchdogs, it has been nicknamed the “withhold-it-because-you-want-to” exemption.

Celebrating its 45th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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