Stop 9612   October 8, 2014

B7A- CONFIRMED

P.O. Box 47331
Plymouth, MN 55447

    Re: Appeal, Freedom of Information Act (FOIA) Request No. ____
           designated on appeal as No. ____

Dear ____

    I am responding to your October 3, 2014, Freedom of Information Act appeal of the decision of the Securities and Exchange Commission FOIA Officer denying your request for investigative records concerning Nu Skin Enterprises, Inc. On September 24, 2014, the FOIA Officer denied your request pursuant to FOIA Exemption 7(A). I have considered your appeal and it is denied.

    I am satisfied that the FOIA Officer correctly asserted Exemption 7(A).[1] We have confirmed with staff that the responsive matter remains open and that releasing the withheld information could reasonably be expected to interfere with the on-going enforcement proceedings. *See OKC Corp. v. Williams*, 489 F. Supp. 576 (N.D. Tex. 1980) (SEC is not required to disclose requested materials directly tied to a pending investigation); *National Public Radio v. Bell*, 431 F. Supp. 509, 514-15 (D.D.C. 1977) (Congress intended that Exemption 7(A) would apply where disclosure may impede any necessary investigation prior to court proceedings); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978) (Congress intended that Exemption 7(A) would apply "whenever the Government's case in court * * * would be harmed by the premature release of evidence or information."); *Accuracy in Media, Inc. v. U.S. Secret Service*, C.A. No. 97-2108, 1998 U.S. Dist. Lexis 5798 at 11 (D.D.C. April 16, 1998) (affirmation that there is an active and on-going investigation is enough).

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[1] Exemption 7(A) authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. 552(b)(7)(A), 17 CFR 200.80(b)(7)(i).

Further, under Exemption 7(A), an agency may withhold records if they come within categories of records whose disclosure would generally interfere with enforcement proceedings. *Robbins Tire*, 437 U.S. at 236; *see also Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1038 (7th Cir. 1998) ("the Government may justify its withholdings by reference to generic categories of documents"). The documents you seek come within categories whose disclosure would generally interfere with enforcement proceedings.

Should you have a continuing interest in this information, you may contact the FOIA Office within six months of the date of this letter to determine if the status of the on-going law enforcement proceeding has changed. As Exemption 7(A) precludes the release of the information at this time, no determination has been made concerning the applicability of any other FOIA Exemptions. The Commission reserves the right to review the information to assert any other exemption when Exemption 7(A) is no longer applicable. *See LeForce & McCombs, P.C. v. Dept. of Health and Human Services*, Case No. Civ-04-176-SH (E.D. Okla. Feb. 3, 2005) (an agency does not waive the right to invoke exemptions by not invoking such exemption during the administrative processing of a FOIA request).

You have the right to seek judicial review of my determination with respect to Exemption 7(A) by filing a complaint in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business. *See* 5 U.S.C. 552(a)(4)(B). Voluntary mediation services as a non-exclusive alternative to litigation are also available through the Office of Government Information Services (OGIS). For more information, please contact OGIS at ogis@nara.gov, www.archives.gov/ogis. or 1-877-684-6448. If you have any questions concerning my determination, please call Kevin Solonsky, Senior Counsel, at 202-551-5014.

For the Commission
by delegated authority,

Richard M. Humes
Associate General Counsel