

EXHIBIT 5

Jason A. Forge
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May 22, 2013

VIA OVERNIGHT DELIVERY

Office of FOIA Services of the
Securities and Exchange Commission
Station Place
100 F Street, NE
Mail Stop 2736
Washington D.C. 20549
Attn: Anne K. Small, General Counsel

Re: *Freedom of Information Act Appeal*
Request No. 13-06044-FOIA

Dear Ms. Small:

This letter serves as my appeal of the SEC's May 8, 2013 decision to withhold records under 5 U.S.C. §552(b)(7)(A). The request sought only documents provided **by** Wal-Mart Stores, Inc. **to** the SEC (relating to (i) possible FCAP violations or (ii) Wal-Mart's public disclosures concerning possible FCPA violations). Yet, the SEC's May 8th letter asserts an exemption that requires a showing that the records were "compiled for law enforcement purposes" **and** "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. §552(b)(7)(A). In light of the fact that the **subject** of the investigation (Wal-Mart) compiled these records, it seems apparent that they were **not** compiled for law enforcement purposes. Likewise, in view of the subject's continued retention of these documents, it appears clear that the release of these documents could **not** "reasonably be expected to interfere with enforcement proceedings." *Lion Raisins v. U.S. Dep't of Agric.*, 354 F.3d 1072, 1085 (9th Cir. 2004) (because subject of investigation already has copies of documents it seeks from USDA, USDA cannot argue that revealing the information would allow premature access to evidence upon which it intends to rely at trial); *Dow Jones Co. v. FERC*, 219 F.R.D. 167, 173-74 (C.D. Cal. 2003) (rejecting exemption 7(A) argument because "it does not appear that disclosure to a third party would undermine either investigation, especially in light of the fact that each target company has a copy of the appendix and is therefore on notice as to the government's possible litigation strategy and potential witnesses").

The Commission's May 8th letter offers no justification for its reliance upon exemption 7(A) and I respectfully submit that the reason for this failure is because no justification exists. If

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Congress had wanted to exempt from FOIA any records related to an ongoing investigation, it could have done so. It did not, and I urge you to reconsider the Commission's reliance on what would amount to such a blanket exemption.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAF', with a stylized flourish at the end.

JASON A. FORGE

JAF:th