

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ANIMAL LEGAL DEFENSE FUND,
Plaintiff-Appellant,

v.

U.S. FOOD & DRUG
ADMINISTRATION,
Defendant-Appellee.

No. 13-17131

D.C. No.
3:12-cv-04376-EDL

OPINION

On Remand from the En Banc Court

Filed September 30, 2016

Before: Susan P. Graber, Kim McLane Wardlaw,
and Mary H. Murguia, Circuit Judges.

Per Curiam Opinion

SUMMARY*

Freedom of Information Act

On remand from the en banc court, the panel reviewed de novo the district court's summary judgment in a Freedom of Information Act case, concluded that there was a genuine issue of material fact, and reversed and remanded to the district court for further proceedings.

COUNSEL

Monte M.F. Cooper, Derek F. Knerr, and Scott Lindlaw, Orrick, Herrington & Sutcliffe LLP, Menlo Park, California, for Plaintiff-Appellant.

Lindsey Powell and Michael S. Raab, Attorneys, Appellate Staff, Civil Division, Department of Justice, Washington, D.C.; for Defendant-Appellee.

Caitlin Zittkowski and Cristina R. Stella, San Francisco, California, as and for Amicus Curiae Center for Food Safety.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

OPINION**PER CURIAM:**

In *Animal Legal Defense Fund v. FDA*, No. 13-17131, 2016 WL 4578362 (9th Cir. Sept. 2, 2016) (en banc) (per curiam), the en banc court overruled our earlier precedents on the applicable standard of review in Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, cases decided on summary judgment. The court held that the usual summary judgment standard applies, so we must review the district court’s decision de novo. Accordingly, on summary judgment, “if there are genuine issues of material fact in a FOIA case, the district court should proceed to a bench trial or adversary hearing.” *Animal Legal Def. Fund*, 2016 WL 4578362, at *2.

As we noted in our earlier opinion, *Animal Legal Defense Fund v. FDA*, 819 F.3d 1102, 1108–09 (9th Cir. 2016), the parties submitted competing declarations concerning the potential competitive effect of releasing egg-production information. In a per curiam concurrence, we also observed that, “if ordinary principles applied, summary judgment would not be appropriate because the record contains a disputed issue of material fact.” *Id.* at 1112. Following the en banc court’s decision, those ordinary principles now control this case. Applying the usual summary judgment standard, we conclude that there is a genuine issue of material fact in this case and, therefore, we must reverse and remand to the district court for further proceedings.

REVERSED and REMANDED.