

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED POLICYHOLDERS,)	
381 Bush Street, 8th Floor)	
San Francisco, CA 94104)	
)	
Plaintiff,)	CIV. ACTION NO.
)	
vs.)	
)	
FEDERAL EMERGENCY MANAGEMENT)	
AGENCY,)	
500 C Street S.W.)	
Washington, D.C. 20472)	
)	
Defendant.)	

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff United Policyholders (“UP” or “Plaintiff”) brings this action against Defendant Federal Emergency Management Agency (“FEMA” or “Defendant”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to order the production of agency records improperly withheld from UP by Defendant and to require Defendant to publish and index final opinions and other records pertaining to adjudication of disputes or claims under the National Flood Insurance Program (“NFIP”).

JURISDICTION AND VENUE

2. This court has jurisdiction over this action and venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. UP is a non-profit 501(c)(3) organization founded in 1991 that serves as a voice and an information resource for insurance consumers in all 50 states. UP assists and educates disaster victims and individual and commercial policyholders with regard to numerous insurance

products, including property policies that address water and flood damage. UP has in-person, telephone and email communications with NFIP policyholders and field experience with NFIP claims and appeals following natural disasters in communities throughout the United States. Through an Advocacy and Action program, UP advances policyholders' interests and legal rights by filing *amicus curiae* briefs in courts across the U.S. and by working with elected officials in legislative and regulatory proceedings. UP does not sell insurance or accept funding from insurance companies.

4. Defendant is an agency of the United States Department of Homeland Security, a cabinet department of the United States Government. Defendant is charged with administering the National Flood Insurance Program ("NFIP"), which offers flood insurance that can be purchased through private property and casualty insurance agents. UP seeks access to records pertaining to the NFIP, of which Defendant has possession, custody, and control.

STATEMENT OF FACTS

5. The NFIP was designed by Congress to provide an insurance alternative to disaster recovery assistance by providing access to federally backed flood insurance protection for property owners.

6. Pursuant to the National Flood Insurance Act, 42 U.S.C. § 4011 *et seq.*, and the Flood Insurance Reform Act of 2004, Pub. L. 108-264, Congress mandated that FEMA implement and administer a formal, consistent, and fair appeals process for policyholders who are dissatisfied with a decision about their insurance coverage or claims under the NFIP.

7. On or about October 29, 2012, a meteorological event known as "Superstorm Sandy" (hereinafter "Sandy") devastated communities along the Eastern seaboard with concentrated damage in coastal areas in New York and New Jersey. Many thousands of

impacted property owners filed claims under home and flood insurance policies, and sought assistance from UP in connection with those claims. The vast majority of Sandy victims carrying insurance for the peril of flood are NFIP policyholders.

8. From October 29, 2013 through the present, UP has been providing information and self-help tools to Sandy victims through its “Roadmap to Recovery” program and workshops and publications. This program provides guidance on best practices for loss evaluation, securing timely flood claim settlements, pursuing appeals and resolving disputes.

9. By letter dated September 18, 2014, UP requested access to records maintained by FEMA regarding the appeal process for NFIP claims, the total number of appeals received or processed by the NFIP since October 2012, and internal guidance on claims pertaining to the NFIP (“FOIA Request”). A copy of this letter is attached as Exhibit 1.

10. In its September 18, 2014 letter, UP noted that FEMA had identified “2,647 properly filed appeals since October 2012” in response to a prior, related FOIA request by UP. However, FEMA did not produce any records pertaining to those appeals. UP’s September 18, 2014 letter specifically states that the 2,647 appeal records are responsive to the requests made in that letter and seeks, *inter alia*, disclosure of those records.

11. By letter dated October 16, 2014, Defendant acknowledged receipt of UP’s FOIA Request. Defendant also stated that it “invoke[s] a 10-day extension for [UP’s] request, as allowed by Title 5 U.S.C. § 552(a)(6)(B).” A copy of this letter is attached as Exhibit 2.

12. After receiving no follow up from Defendant on its October 16, 2014 letter, UP requested an update on the status of the FOIA Request by email dated December 16, 2014. A copy of this correspondence is attached as Exhibit 3.

13. On December 18, 2014, FEMA informed UP that its FOIA Request “has been tasked to the appropriate agency component to begin a search for responsive documents.” FEMA also relayed an inquiry from its agency component to UP: “What specific information as it relates to the August testimony indicated in the request does the requestor want and/or need? Can they be more specific in order to provide a further response.”

14. UP responded, by email, to FEMA’s inquiry on the same day and provided the requested “clarification.” A copy of this correspondence is attached as Exhibit 4.

15. As of the date of this action, UP has not received any further correspondence or determination on its FOIA Request from Defendant, despite the expiration of the statutory deadline months ago.

16. Moreover, FOIA requires agencies to make electronically available all “final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.” 5 U.S.C. § 552(a)(2).

17. Defendant does not make electronically available final opinions and orders pertaining to adjudication of disputes or claims under the NFIP.

18. As a result of the withholding of these documents, UP has been denied the ability to make use of these records. For example, UP cannot analyze the records to determine how appeals of decisions pertaining to NFIP claims are handled.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552(a)(3))

19. Plaintiff re-alleges, adopts, and incorporates by reference paragraphs 1 through 18 above as though fully set forth herein.

20. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), an agency is required to make a determination on a FOIA request within 20 days after the receipt of such request and “shall

immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination.” Under § 552(a)(6)(B)(i), an agency may extend the deadline by 10 working days in “unusual circumstances.”

21. Under § 552(a)(6)(A)(ii)(I), an “agency may make one request to the requestor for information and toll the 20-day period while it is awaiting such information that it has reasonably requested.” But pursuant to § 552(a)(6)(A)(ii)(II), “the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.” Therefore, even assuming that Defendant’s request for “clarification” on December 18, 2014 tolled the 20-day period, the tolling period ended when UP responded on the same day.

22. As such, Defendant has failed to make a determination on UP’s FOIA Request, dated September 18, 2014, within 30 days after the receipt of the request, as required under § 552(a)(6)(A)(i) and § 552(a)(6)(B), and 44 C.F.R. § 5.56. Accordingly, pursuant to § 552(a)(6)(C)(i), UP is “deemed to have exhausted [its] administrative remedies with respect to [its] request.”

23. UP has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for Defendant’s failure to comply with § 552(a)(6)(A)(i) and § 552(a)(6)(B), and 44 C.F.R. § 5.56.

COUNT II
(Violation of FOIA, 5 U.S.C. § 552(a)(2))

24. Plaintiff re-alleges, adopts, and incorporates by reference paragraphs 1 through 18 above as though fully set forth herein.

25. Section 552(a)(2)(A) of FOIA requires federal agencies to “make available for public inspection and copying” several categories of records, including “final opinions” or

“orders, made in the adjudication of cases.” This section applies to the types of agency records that, while not required to be published in the Federal Register, should routinely be available to the public.

26. UP has a right under 5 U.S.C. § 552(a)(2)(A) to inspect by electronic means those requested records that constitute final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of disputes or claims under the NFIP.

27. UP also has a right under 5 U.S.C. § 552(a)(2)(D) to inspect “copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same record.” Furthermore, 5 U.S.C. § 552(a)(2)(E) requires agencies to make available “a general index of the records referred to under subparagraph (D).”

28. Defendant has a practice of failing to make these records available to the public by electronic means. Defendant’s failure to make such final opinions and other records available by electronic means, and to index such records, violates 5 U.S.C. § 552(a)(2).

29. UP has been, and will continue to be, injured by Defendant’s failure to make the aforementioned information publicly available by electronic means.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enjoin Defendant from withholding the documents requested by UP on September 18, 2014, and order the production of those documents pursuant to 5 U.S.C. § 552(a)(4)(B);

B. Order Defendant to promptly comply with 5 U.S.C. § 552(a)(2) by making electronically available to the public all current and future final opinions and orders made in the

adjudication of disputes or claims under the NFIP, as well as any records that have or will be released to any person under 5 U.S.C. § 552(a)(3), along with a general index of those records;

C. Award UP reasonable attorneys' fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and

D. Award any other relief as the Court may deem just and proper.

Dated: February 25, 2015

Respectfully submitted,

/s/ Mark H. Lynch

OF COUNSEL:

Amy Bach, Esq.
Daniel Wade, Esq.
UNITED POLICYHOLDERS
381 Bush Street, 8th Floor
San Francisco, CA 94104
Tel: (415) 393-9990

Mark H. Lynch
Teresa T. Lewi*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001
Tel: (202) 662-6000

Attorneys for Plaintiff United Policyholders

* Member of the Bar of New York, but not admitted in the District of Columbia; supervised by principals of the Firm.

EXHIBIT 1



United Policyholders
381 Bush Street, 8th Floor
San Francisco, CA 94104
415.393.9990
www.uphelp.org

September 18, 2014

DHS FEMA - FOIA Office
Records Management/Disclosure Branch
1800 S. Bell St., Fourth Floor, Mail Stop 3005
Arlington, VA 22202

VIA EMAIL: FEMA-FOIA@dhs.gov

Re: FOIA Request and Fee Waiver

Dear FOIA Officer:

Please accept this Freedom of Information Act (FOIA) request on behalf of United Policyholders (UP). *5 U.S.C. §552*. The instant FOIA request is a new request. It supplements a FOIA request submitted by our organization on March 12, 2014; FEMA 2014-FEFO-00537 (Exhibit A, "Request #1"). The instant request seeks additional information on the NFIP's process for accepting, evaluating and reaching determinations on claim-related appeals by policyholders.

Scope of Request

UP hereby requests that DHS FEMA release all relevant, available, non-exempted, and non-privileged information pertaining to the National Flood Insurance Program (NFIP) appeals process responsive to the questions below. *44 C.F.R. §62.20*. Neither Request #1 nor the instant request relate to appeals by policyholders on rate classification or zoning of their properties.

In the National Flood Insurance Act and its 2004 Amendments, Congress mandated that the DHS FEMA implement and administer a consistent and fair appeal process. *Pub. L. 108-264, 42 U.S.C. 4011*. Basic principles of administrative law and due process require that DHS FEMA track appeals and outcomes to ensure consistency and fairness. According to the Privacy Impact Assessment for the NFIP Appeals Procedure (February 9, 2006) has DHS FEMA has, in fact, "implemented an electronic system to main *all records* concerning these appeals." (emphasis added) (See https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_fema_nfipappeals.pdf).

In DHS FEMA's August 7, 2014 response to Request #1; FEMA 2014-FEFO-00537 (Exhibit B, "Response #1"), certain questions were left unanswered. In response to questions 2, 5, 7, 8, 9, and 10, DHS FEMA stated "we do not have this information." However, subsequent to Request #1 and DHS FEMA's response, DHS FEMA officials publicly stated that, according to "FEMA Examiners" "10-13%" of NFIP denials had been overturned by appeals process" See transcript of U.S. Senate hearing convened by Senator Robert Menendez of New Jersey (THE FLOOD INSURANCE CLAIMS PROCESS IN COMMUNITIES AFTER SANDY: LESSONS LEARNED AND POTENTIAL IMPROVEMENT, before the Housing, Transportation, and Community Development Committee, July 30, 2014) Moreover, Response #1, specifically responses to questions 1, 3, 4, and 6 from Request #1 suggest that the requested information is indeed available.

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Programs

Advocacy in Action

Roadmap to Preparedness™

Roadmap to Recovery™

September 18, 2014

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For example, in response to question 4, DHS FEMA identifies 2,647 properly filed appeals since October 2012. By way of background, Request #1 asked for "any and all" information including existing records sufficient to show the information requested in questions 2, 5, 7, 8, 9, and 10. Questions 7-10 requested, generally speaking, information about the success rate of NFIP appeals. These 2,647 appeal records are responsive and/or contain responsive information. Accordingly, we seek responsive information relating to, and/or the disclosure of, these records. The above facts suggest that DHS FEMA *does* indeed have the documentation and/or data relevant and responsive to requests made in our March 12 2014 FOIA and the requests below.

Specifically, UP requests the following data and documentation:

- (1) The total number of instances since the appeal process was established in 2006 where FEMA and/or the Federal Insurance Administrator (FIA) reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to an appeal and where FEMA/FIA's action resulted in a re-adjustment or payment on the claim at issue;
- (2) The total number of appeals received by the NFIP since October 2012 that resulted in the issuance by the Federal Insurance Administrator of a letter to a policyholder requesting more information;
- (3) The total number of appeals processed since October 2012 of claims administered by WYO carriers in which the FIA reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to the appeal;
- (4) The total number of appeals received since October 2012 of claims administered by NFIP Direct that resulted in a decision by the FIA that reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to the appeal;
- (5) The total number of appeals processed by the NFIP since October 2012 of claims processed by a WYO carrier where the FIA agreed with or otherwise upheld the determination(s) that gave rise to the appeal;
- (6) The total number of appeals processed by the NFIP since October 2012 of claims processed by NFIP direct where the FIA agreed with or otherwise upheld the determination(s) that gave rise to the appeal; and
- (7) Any FEMA/FIA internal guidance, memoranda, or white paper interpretation of the procedures set forth in 44 C.F.R. §62.20 that are not already publically available and relevant specifically to claims handing directives from DHS FEMA to NFIP Direct Servicing Agents or WYOs.

Purpose of Request

UP educates the public on insurance issues and policyholders' rights and duties. For purposes of providing long-term recovery support after natural disasters, UP is seeking data on the NFIP claim and appeal processes. After communicating with numerous NFIP personnel and federal elected officials intimate with the NFIP, we have reason to believe that the data we are requesting (or similar thereto) is available for release.

Fee Waiver

Under the FOIA, a fee waiver is proper when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

September 18, 2014

Page 3 of 3

For the reasons set forth above and below, UP meets the requirements for a fee waiver as outlined by the U.S. Justice Department and affirmed by the federal courts. See U.S. Department of Justice, FOIA Guide 2009 – Fees and Fee Waivers (available at http://www.justice.gov/oip/foia_guide09/fee-waivers.pdf); See also, e.g., *Project on Military Procurement v. Department of the Navy*, 710 F. Supp. 362 (D.C.D. 1989).

UP is a non-profit 501(c)3 organization founded in 1991 that is a voice and an information resource for insurance consumers in all 50 states. Through an Advocacy and Action program, UP advocates for policyholders legal rights by filing amicus curiae briefs in courts across the U.S. and working with elected officials in legislative and regulatory proceedings. Through the Roadmap to Recovery program, UP gives individuals and businesses free tools and resources to help solve insurance problems that can arise after a disaster, accident, loss, illness, or other adverse event. Through the Roadmap to Preparedness program, UP promotes disaster preparedness and insurance literacy through outreach and education in partnership with civic, faith based, business and other non-profit associations. UP does not sell insurance or accept funding from insurance companies.

UP regularly publishes information for use by insurance consumers on its website (www.uphelp.org), through mail and email, including claims handling tips and legal analysis of trends in insurance litigation. UP has over 9,000 subscribers to its monthly newsletter and maintains an online forum where subject-matter expert volunteers answer consumer questions. The requested information will help UP's consumer audience better understand the NFIP appeal process through relevant statistical data.

Although the burden of proving the necessity of the fee waiver is on the requesting party, Congress, in passing the FOIA, understood that "a requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government." *132 Cong. Rec. H9464*.

The federal courts have also recognized that "the waiver provision was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, *nonprofit public interest groups*." *Better Gov. Ass'n v. Dep't of State*, 780 F.2d 86, 93 (D.C. Cir. 1986) (emphasis added).

Accordingly, UP respectfully requests that the fee waiver for this FOIA request be granted.

Exemption

Should FEMA decide to exempt any records or information in whole or part, we ask that you identify any specific records or groups of records withheld or redacted, including: (1) the request number(s) to which the record is responsive, name and subject, author(s) and recipient(s), and dates was made or revised; and (2) a description and explanation for the withholding or redaction and the exemption invoked.

Thank for you in advance for your prompt attention on this matter.

Sincerely,



Amy Bach, Esq.
Executive Director

Dan Wade, Esq.
Staff Attorney

EXHIBIT 2

U.S. Department of Homeland Security
500 C Street, SW, Mail Stop 3172
Washington, DC 20472-3172



FEMA

October 16, 2014

SENT VIA EMAIL TO: DAN.WADE@UPHELP.ORG

Dan Wade, Esq.
Staff Attorney
United Policyholders
381 Bush Street, 8th Floor
San Francisco, California 94104

Re: **FEMA 2015-FEFO-00040**

Dear Mr. Wade:

This letter pertains to your October 16, 2014, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA). You are seeking records regarding the National Flood Insurance Program (NFIP) appeals process; specifically, the following:

1. The total number of instances since the appeal process was established in 2006 where FEMA and/or the Federal Insurance Administrator (FIA) reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to an appeal and where FEMA/FIA's action resulted in a re -adjustment or payment on the claim at issue;
2. The total number of appeals received by the NFIP since October 2012 that resulted in the issuance by the Federal Insurance Administrator of a letter to a policyholder requesting more information;
3. The total number of appeals processed since October 2012 of claims administered by WYO carriers in which the FIA reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to the appeal;
4. The total number of appeals received since October 2012 of claims administered by NFIP Direct that resulted in a decision by the FIA that reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to the appeal;
5. The total number of appeals processed by the NFIP since October 2012 of claims processed by a WYO carrier where the FIA agreed with or otherwise upheld the determination(s) that gave rise to the appeal;
6. The total number of appeals processed by the NFIP since October 2012 of claims processed by NFIP direct where the FIA agreed with or otherwise upheld the determination(s) that gave rise to the appeal;

Dan Wade, Esq.

FEMA 2015-FEFO-00040

7. Any FEMA/FIA internal guidance, memoranda, or white paper interpretation of the procedures set forth in 44 C.F.R. §62.20 that are not already publically available and relevant specifically to claims handling directives from OHS FEMA to NFIP Direct Servicing Agents or WYOs.

Your request was received in this office on October 16, 2014.

Please note that due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although FEMA's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS/FEMA will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 836 open requests ahead of yours.

Regarding your request for a fee waiver: The DHS FOIA Regulations at 6 CFR § 5.11(k)(2), set forth six factors FEMA is required to evaluate in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, FEMA has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various FEMA program offices as a result of the searches conducted in response to your FOIA request. You will be contacted before any fees are accrued. If upon review of these documents, FEMA determines that the disclosure of the information contained in those documents does not meet the factors permitting FEMA to waive the fees, then FEMA will at that time either deny your request for a fee waiver entirely or allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, FEMA will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by DHS regulations.

In the event that your fee waiver is denied, and you determine that you still want the records, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to media requestors. As a media requestor you will be charged 10-cents a page for duplication,

Dan Wade, Esq.

FEMA 2015-FEFO-00040

although the first 100 pages are free in accordance with the DHS Interim FOIA regulations as they apply to the media requester category. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. More information concerning the FOIA and implementing DHS regulations is available on-line at: www.dhs.gov/xfoia/editorial_0318.shtm.

Your request has been assigned reference number **FEMA 2015-FEFO-00040**. Please refer to this identifier in any future correspondence. If you need to contact our office concerning this request, please call (202) 646-3323 or electronically at FEMA-FOIA@dhs.gov.

Federal Emergency Management Agency
Disclosure Branch
Records Management Division
Mission Support Bureau

EXHIBIT 3



Dan Wade <dan.wade@uphelp.org>

2015-FEFO-00040

Dan Wade <dan.wade@uphelp.org>

Tue, Dec 16, 2014 at 1:12 PM

To: "Blackwell, Tonya" <Tonya.Blackwell@fema.dhs.gov>

Cc: "Booker-Kasper, Monique" <Monique.Booker-Kasper@fema.dhs.gov>, FEMA-FOIA <FEMA-FOIA@fema.dhs.gov>

Dear FOIA Officer:

Please advise on status of the FOIA request FEMA 15-00040 from United Policyholders,

Sincerely,

On Thu, Oct 16, 2014 at 1:59 PM, Blackwell, Tonya <Tonya.Blackwell@fema.dhs.gov> wrote:

Dear Mr. Wade:

Attached is the acknowledgement of receipt of your Freedom of Information Act (FOIA) Request, FEMA 15-00040. If you need to contact our office concerning this request, please call (202) 646-3323 or electronically at FEMA-FOIA@dhs.gov and refer to FEMA 15-00040.

Thank you,

The FEMA Disclosure Branch

--
Dan Wade, Esq., Staff Attorney
United Policyholders
381 Bush Street, 8th Floor
San Francisco, CA 94104
email: dan.wade@uphelp.org
Tel. 415-393-9990, Fax: 415-677-4170, Website: www.uphelp.org

United Policyholders ("UP") is a non-profit information resource and a voice for insurance consumers in all 50 states. We give you the straight scoop on insurance matters. We don't accept financial support from insurance companies. We don't give legal advice or endorse or warrant any of our sponsors. "Like" us on Facebook at [facebook.com/UPHELP](https://www.facebook.com/UPHELP).

EXHIBIT 4



Dan Wade <dan.wade@uphelp.org>

FEMA FOIA 2015-FEFO-00040 Dan Wade - Need of Clarification 12.18.14

Presley, Paula <paula.presley@fema.dhs.gov>
To: "dan.wade@uphelp.org" <dan.wade@uphelp.org>
Cc: "Booker-Kasper, Monique" <Monique.Booker-Kasper@fema.dhs.gov>, "Presley, Paula" <paula.presley@fema.dhs.gov>

Thu, Dec 18, 2014 at 5:28 AM

Good Morning Mr. Wade,

Your Freedom of Information Act request to the Federal Emergency Management Agency (2015-FEFO-00040) has been tasked to the appropriate agency component to begin a search for responsive documents. The component has contacted us within the Disclosure Branch seeking further clarification of your request in order to proceed with their intended search. Please review the language of that component as given below and respond as soon as possible in order that the component may streamline your request. The component has stated the following:

“What specific information as it relates to the August testimony indicated in the request does the requestor want and/or need? Can they be more specific in order to provide a further response.”

Please inform us of your response to the assigned component's inquiry within 30 Days from the date of this letter. If we do not hear from you within 30 days, we will assume you are no longer interested in this FOIA request and the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Thank you for your understanding and We look forward to hearing from you,

Paula Presley

Program Specialist

Disclosure Branch (FOIA)

Records Management Division

Federal Emergency Management Agency (FEMA)

Mobile - 202-320-0187

Paula.presley@fema.dhs.gov



Dan Wade <dan.wade@uphelp.org>

FEMA FOIA 2015-FEFO-00040 Dan Wade - Need of Clarification 12.18.14

Dan Wade <dan.wade@uphelp.org>

Thu, Dec 18, 2014 at 4:53 PM

To: "Presley, Paula" <paula.presley@fema.dhs.gov>

Cc: "Booker-Kasper, Monique" <Monique.Booker-Kasper@fema.dhs.gov>, Amy Bach <amy.bach@uphelp.org>

Bcc: Benjamin Rajotte <BRajotte@toulolaw.edu>, Emily Cabral <emily@uphelp.org>

Ms. Presley:

Thank you for the response regarding our FOIA request.

Your inquiry was: "What specific information as it relates to the August testimony indicated in the request does the requestor want and/or need? Can they be more specific in order to provide a further response."

In our FOIA request we state that: " According to...FEMA Examiners"... "10-13%" of NFIP denials had been overturned by appeals process." See transcript of U.S. Senate hearing convened by Senator Robert Menendez of New Jersey (THE FLOOD INSURANCE CLAIMS PROCESS IN COMMUNITIES AFTER SANDY: LESSONS LEARNED AND POTENTIAL IMPROVEMENT, before the Housing, Transportation, and Community Development SUBCOMMITTEE, July 30, 2014)." We are interested in any information or documentation that confirms, denies, or in some way substantiates that, in fact, 10-13% of NFIP denials have been overturned by the appeals process.

In FEMA's August 7, 2014 response to our previous FOIA request (FEMA 2014-FEFO-00537) we were informed that FEMA does not track this data (i.e., how many claims were overturned by appeal). Both the testimony of "FEMA examiners" and FEMA's response to our previous FOIA request cannot be true. If FEMA does not track this data as stated in response to our previous FOIA then the 10-13% statistic is incorrect or speculative at best.

We included our previous FOIA request (FEMA 2014-FEFO-00537) and responsive documents with the instant FOIA request. Please advise if you need additional copies and we will be happy to provide them to you.

To clarify, some of our FOIA requests are designed to better understand the nature and percentage of appeals that resulted in a decision by the insurer (or its vendor, such as National Flood Services) being overturned or otherwise changed or questioned by FEMA (such as where FEMA either found coverage, increased the award amount, or ordered another inspection or review of the property or claim at issue - the later was disclosed to us by FEMA).

Specifically, FEMA previously provided us with a FOIA response on August 7, 2014, which identified a pool of 2,647 appeals heard by FEMA since October 2012. We therefore wish to be provided documents and any related information that substantiates the percentage of appeals where FEMA changed or questioned the insurer's decision, in addition to documents sufficient to show the reasons underlying these appeal results. For instance, assuming that FEMA overturned 13% of 2,647 NFIP claim decisions on appeal, we are seeking disclosure of approximately 344 decision letters or documentation relating thereto. Assuming that these decision letters substantiate the number of appeals overturned and explain the reasons for the decision, disclosing them would be responsive.

Please let us know if you have any further questions.

Sincerely,

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On Thu, Dec 18, 2014 at 5:28 AM, Presley, Paula <paula.presley@fema.dhs.gov> wrote:
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