



United Policyholders
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www.uphelp.org

March 12, 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

Board of Directors

Amy Bach
Executive Director

Alice J. Wolfson
Chair, Board of Directors

David Baria
Mississippi State Senator

Hon. Stanley G. Feldman
Chief Justice (RET)
Arizona Supreme Court

Larry P. Ginsburg, CFP®
Ginsburg Financial Advisors, Inc.

William H. Hedden
Consolidated Adjusting, Inc.

Jim Jones
Industry Ventures

Brian S. Kabateck
Kabateck Brown Kellner LLP

E. Gerard Mannion
Mannion & Lowe

Shirley Roberson
Non-Profit Consultant

Deborah Senn
Insurance Commissioner (1993-2001)
Washington State

William M. Shernoff
Shernoff Bidart Echeverria LLP
Ex Officio

Dear FOIA Officer:

Please accept this FOIA request on behalf of United Policyholders (UP). 5 U.S.C. §552.

Scope of Request

UP respectfully requests that the DHS FEMA release any and all relevant, available, and non-privileged information pertaining to the National Flood Insurance Program (NFIP) appeals process and responsive to the following questions. 44 C.F.R. §62.20.

Specifically, UP requests the following data and documentation:

- (1) The total number of appeal requests the NFIP, FEMA and/or the Federal Insurance Administrator (FIA) have received since the appeals process was established in 2006;
- (2) The total number of instances since the appeal process was established in 2006 where FEMA and/or the 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;
- (3) The total number of appeal requests the NFIP, FEMA and/or the FIA received prior to October 2012;
- (4) The total number of appeal requests the NFIP, FEMA and/or the FIA have received since October 2012;
- (5) 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;
- (6) The total number of appeals received since October 2012 that resulted in the FIA requesting a re-inspection of the subject property;

Programs

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- (7) 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;
- (8) 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;
- (9) 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;
- (10) 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
- (11) Any FEMA/FIA internal guidance, memoranda, or white paper interpretation of the procedures set forth in 44 C.F.R. §62.20.

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, 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).

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.

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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 Government Association v. Department 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.

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

Sincerely,

A handwritten signature in black ink that reads "Amy Bach". The signature is written in a cursive, flowing style.

Amy Bach, Esq.
Executive Director

Dan Wade, Esq.
Staff Attorney