



United Policyholders
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www.uphelp.org

February 23, 2015

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

Programs

Advocacy in Action

Roadmap to Preparedness™

Roadmap to Recovery™

Dear FOIA Officer:

We respectfully submit the below Freedom of Information Act (FOIA) request on behalf of United Policyholders (UP), a non-profit insurance consumer advocacy organization. *5 U.S.C. § 552*. UP requests the following from DHS FEMA:

- (1) Any and all relevant, available, and non-exempt documents pertaining to the relationship between the National Flood Insurance Program (NFIP) and Write-Your-Own Insurers (WYOs), and the NFIP and Independent adjusters (IAs). This request includes, but is not limited to, the contracts between the NFIP, WYOs, and IAs; how claim decisions are to be made; how claim payments are to be issued, how commissions/fees are to be determined.
- (2) Any and all relevant, available, and non-exempt documents that specify how the WYO Financial Control Plan (FCP) is to be administered, including the financial audit system and penalties. *44 C.F.R. Part 62, App. B*.
- (3) Any and all contracts and supporting documents executed or prepared by or for the NFIP and each of the 82 WYO insurers that set forth the authority, obligations, terms and compensation associated with selling NFIP policies. *44 C.F.R. § 62.23*; *see also*: https://www.fema.gov/wyo_company (for list of participating WYOs);
- (4) Any and all contracts and supporting documents executed or prepared by or for the NFIP and each of the 82 WYO insurers that set forth the authority, obligations, terms and compensation associated with and processing and administering claims under NFIP policies;
- (5) Any and all documents, including guidance memoranda, training materials, Power Point slides, or other publications or media related to the FCP between the NFIP and WYOs; and
- (6) Any and all documents, including guidance memoranda, training materials, Power Point slides, or other publications or media related to penalties assessed against IAs and WYOs for breach of payment protocols, including but not limited to penalties for overpayment.

Purpose of Request

UP educates the public on insurance issues and policyholders' rights and duties. UP is seeking the data specified above in order to provide informed guidance to NFIP insureds. UP seeks this data to more effectively monitor the financial arrangements between the NFIP, WYOs and IAs and ensure that appropriate financial controls are in place. 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 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 hosts a library of buying and claim tips at www.uphelp.org. 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 process and implications for purchase and claims handling. Because the NFIP is a unique quasi-public-private partnership that varies greatly from a typical private insurer regulated by state law and subject to certain disclosures, UP is interested in serving as an NFIP information conduit.

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).

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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,

A handwritten signature in black ink, appearing to read "Amy Bach". The signature is fluid and cursive, with the first name "Amy" and last name "Bach" clearly distinguishable.

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