

JUDGE SWEET

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

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PRO PUBLICA, INC.,
:

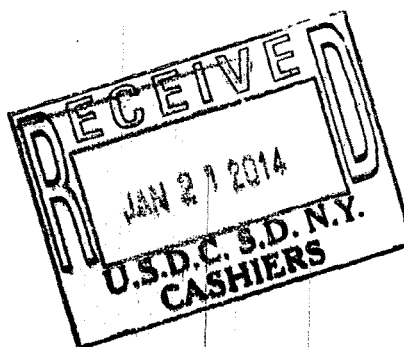
Plaintiff,
:

- against -
:

FEDERAL EMERGENCY MANAGEMENT
AGENCY, a component of the UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY,
:

Defendant.
----- x

14 CV 0377
Case No.



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Pro Publica, Inc. ("ProPublica"), as and for its Complaint against the Federal Emergency Management Agency ("FEMA"), a component of the United States Department of Homeland Security ("DHS"), alleges as follows:

INTRODUCTION

1. This action is brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel the disclosure of records concerning the distribution of federal aid to those affected by Hurricane Sandy, which battered the East Coast, particularly the densely-populated New York and New Jersey coasts, with heavy rain, strong winds, and record storm surges on the evening of October 29, 2012.

2. According to FEMA, more than \$1.4 billion in Individual Assistance has been provided to more than 182,000 survivors, and an additional \$2.4 billion in low-interest disaster loans have been approved by the U.S. Small Business Administration. In addition, more than \$7.9 billion in National Flood Insurance Program payments have been made to policy holders, and FEMA has approved more than \$3.2 billion to fund emergency work, debris removal, and repair and replacement of infrastructure.

3. The information requested by ProPublica is subject to public disclosure under FOIA. The public has an urgent need for information about Hurricane Sandy relief and mitigation funds provided by FEMA because disaster spending often outpaces transparency. As individuals and businesses consider where and how to rebuild after Sandy, it is crucial that they understand where and how federal money is being disbursed for the recovery.

4. Given the substantial interest and urgency to inform the public concerning FEMA's handling of hurricane relief aid, ProPublica seeks expeditious treatment of this Complaint pursuant to 28 U.S.C. § 1657.

PARTIES

5. ProPublica is a Delaware non-profit corporation with headquarters in New York, New York. ProPublica is an independent, non-profit newsroom that produces investigative journalism in the public interest. Specifically, its stated mission is to “expose abuses of power and betrayals of the public trust by government, business, and other institutions, using the moral force of investigative journalism to spur reform through the sustained spotlighting of wrongdoing.” It was founded by Paul Steiger, the former managing editor of The Wall Street Journal. It is now led by Stephen Engelberg, a former managing editor of The Oregonian, Portland, Oregon and former investigative editor of The New York Times, and Richard Tofel, the former assistant publisher of The Wall Street Journal. ProPublica began publishing in 2008, and has already won two Pulitzer Prizes—the first ever awarded to an online news organization (in 2010), and the first ever awarded for material not published in print (in 2011).

6. Defendant FEMA is a component unit of DHS, and is responsible for, among other things, administering and coordinating the federal government response to presidentially-declared disasters. FEMA has possession and control of the records requested by ProPublica.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction of this action and personal jurisdiction over FEMA pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346.

8. The Court has jurisdiction to grant declaratory, injunctive, and further necessary and proper relief pursuant to 28 U.S.C. §§ 2201-2202 and Federal Rules of Civil Procedure 57 and 65.

9. Venue is premised on ProPublica's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

GENERAL ALLEGATIONS

10. On October 29, 2012, Hurricane Sandy made landfall in southern New Jersey, with impacts felt across more than a dozen states. The storm battered the East Coast, particularly the densely-populated New York and New Jersey coasts, with heavy rain, strong winds, and record storm surges. During Sandy's immediate aftermath, more than 23,000 people sought refuge in temporary shelters, and more than 8.5 million customers lost power. The storm flooded numerous roads and tunnels, blocked transportation corridors, and deposited extensive debris along the coastline.

11. The next day, President Obama declared major disasters for Connecticut, New Jersey and New York, making disaster assistance available to those in the heaviest hit areas affected by the storm. Individuals and business owners who sustained losses in the designated counties in Connecticut, New York and New Jersey could then begin applying to FEMA for assistance.

12. Although FEMA has administered the distribution of billions of dollars in aid, thousands of individuals who applied for aid from FEMA have been rejected.

13. In pursuit of its journalistic mission and in order to shed light on FEMA's handling of claims for aid, ProPublica requested documents related to the distribution of emergency aid following Hurricane Sandy. Specifically, by e-mail dated February 6, 2013, ProPublica sought "an electronic copy from the NEMIS database of FEMA's individual claims records for Hurricane Sandy disasters" (the "Request"). A copy of the Request is attached as Exhibit A. The request was intentionally and closely modelled on that made to FEMA in *News-Press v. U.S. Dept. of Homeland Security*, 489 F.3d 1173 (11th Cir. 2007), wherein newspapers sought information concerning FEMA's distribution of aid following the unprecedented storm season in which four hurricanes – Charley, Frances, Ivan, and Jeanne – hit Florida within one six-week period during 2004.

14. By letter dated August 21, 2013, FEMA responded to the Request (the "Response"). The Response stated that FEMA had "determined that columns of personally identifiable information, such as names and addresses are withheld in their entirety pursuant to Title 5 U.S.C. § 552(b)(6)." A copy of the Response is attached as Exhibit B.

15. In September 2013, Richard Tofel, President of ProPublica, had a series of communications with Paula Rich, an attorney for FEMA. During the communications, Mr. Tofel asked whether FEMA would be willing to release address information (and *not* claimant names), on the condition that ProPublica agree in writing to publish that information only in aggregated, census block form. Ms. Rich declined Mr. Tofel's offer.

16. By letter dated October 16, 2013, ProPublica appealed the Response (the "Appeal"). In the Appeal, ProPublica urged FEMA to reconsider its position, and offered to allow names and addresses to be withheld, so long as FEMA identified the census block where an applicant (or applicant) resides. A copy of the Appeal is attached as Exhibit C.

17. By letter received on November 22, 2013, FEMA acknowledged receipt of the Appeal on October 21, 2013 (the “Acknowledgement”). A copy of the Acknowledgement is attached as Exhibit D.

18. Other than the Acknowledgment, FEMA has not responded to the Appeal. FEMA has therefore failed to comply with the applicable time limit set forth in 5 U.S.C. § 552(a)(6)(A)(ii). Accordingly, ProPublica has exhausted its administrative remedies as to the Appeal. *See id.* § 552(a)(6)(C).

COUNT I

(Violation of FOIA for failure to timely respond to ProPublica’s Appeal)

19. ProPublica realleges and incorporates by reference Paragraphs 1 through 17 as though fully set forth herein.

20. FEMA’s failure to respond to ProPublica’s Appeal within the applicable time limit set forth in 5 U.S.C. § 552(a)(6)(A)(ii) is a violation of FOIA.

COUNT II

(Violation of FOIA for failure to make records promptly available)

21. ProPublica realleges and incorporates by reference Paragraphs 1 through 19 as though fully set forth herein.

22. FEMA has failed to provide the address and/or census block information responsive to ProPublica’s Request.

23. Exemption 6 does not bar the release of the requested address and/or census block information because release of that information will not constitute a clearly unwarranted invasion of privacy, and any privacy rights are outweighed by the public interest in disclosure.

24. Indeed, FEMA’s position not only affects the ability of ProPublica and the rest of the public to obtain the information necessary to ensure transparency as to FEMA’s

administration of aid following Hurricane Sandy, but threatens the ability of the public to effectively monitor FEMA's administration of aid following future disasters around the country.

25. FEMA's failure to provide the requested address and/or census block information violates FOIA, 5 U.S.C. § 552(a)(3)(A).

26. Injunctive relief is authorized under 5 U.S.C. §552(a)(4)(B) because FEMA continues to improperly withhold the requested address and/or census block information, and does so as a matter of policy or practice, in violation of the FOIA. ProPublica will suffer irreparable injury from, and have no adequate legal remedy for, FEMA's illegal withholding of the address and/or census block information related to Hurricane Sandy Relief.

27. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual controversy exists regarding FEMA's improper withholding of the address and/or census block information in violation of FOIA. An actual controversy exists because ProPublica contends that FEMA's continuing failure to release the address and/or census block information is in violation of law and FEMA contends otherwise.

REQUEST FOR RELIEF

WHEREFORE, ProPublica respectfully requests that this Court:

- (A) expedite consideration of this Complaint pursuant to 28 U.S.C. § 1657;
- (B) declare that FEMA's failure to disclose responsive address and/or census block information violates FOIA;
- (C) declare unlawful and enjoin FEMA's policy and practice of withholding address and/or census block information that is responsive to a properly submitted request under the FOIA and not otherwise exempt;
- (D) enjoin FEMA and any of FEMA's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of FEMA from withholding address and/or census block information responsive to ProPublica's FOIA requests and order them to promptly produce the same;
- (E) enjoin FEMA and any of FEMA's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of FEMA from withholding address and/or census block information in response to future properly submitted FOIA requests and order them to promptly produce the same;
- (F) order FEMA and any of FEMA's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of FEMA to conduct a prompt, reasonable search for the address and/or census block information responsive to ProPublica's FOIA requests;
- (G) order FEMA and any of FEMA's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of FEMA to produce the requested census block information to ProPublica, or produce in the alternative, the requested

address information to ProPublica on the condition that ProPublica publish that information in census block form;

(H) award ProPublica its costs and reasonable attorney's fees in this action, as provided by 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and

(I) grant such other and further relief as this Court may deem just and proper.

Dated: January 21, 2014

By:  _____

Collin J. Peng-Sue
DAVIS WRIGHT TREMAINE LLP
1633 Broadway – 27th Floor
New York, New York 10019
Tel.: (212) 489-8230
Fax: (212) 489-8340

Thomas R. Burke (*Pro Hac Vice Admission Pending*)
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, California 94111
Tel.: (415) 276-6500
Fax: (415) 276-6599

Attorneys for Pro Publica, Inc.

EXHIBIT A

From: Al Shaw <Al.Shaw@propublica.org>
Subject: FEMA 13-223 FOIA Resubmission
Date: February 6, 2013 11:50:21 AM EST
To: "fema-foia@dhs.gov" <fema-foia@dhs.gov>

Al Shaw
c/o ProPublica
1 Exchange Plaza
55 Broadway
New York, NY 10006
(917) 512 0208

Feb. 6, 2013

Federal Emergency Management Agency (FEMA)
Monique R. Booker-Kasper
500 C Street, S.W., Room 840
Washington, D.C. 20472

Dear Ms. Booker-Kasper or FOIA officer,

I'm following up on FOIA request FEMA-223, which was determined to be too broad in scope. This email clarifies and resubmits the request.

Under the Freedom of Information Act, we are seeking an electronic copy from the NEMIS database of FEMA's individual claims records for Hurricane Sandy disasters:

- * 4097
- * 4096
- * 4095
- * 4093
- * 4092
- * 4091
- * 4090
- * 4089
- * 4087
- * 4086
- * 4085

for the Individual and Household programs for the following states:

- * Massachusetts
- * New Hampshire
- * West Virginia,
- * Virginia

- * Maryland
- * Delaware
- * Rhode Island
- * Connecticut
- * New Jersey,
- * New York
- * District of Columbia

Please include data fields for the following, by individual: Disaster number, Address, Zip Code, County, Registration ID, Category of Assistance, Assistance Status, Assistance Type, Assistance Status Detail, Eligibility Date, Approved Date, Eligible Amount, Determination Type, and Ownership Status.

Also include the Line Item Description, Quantity Recorded, SBA Status, Water Level, Cause of Damage, Insurance Status for Line Item, Personal Property Item Description, Clothing, Miscellaneous Item Description, Generic Room Description, Essential Tool Description, Real Property Damage Item Description, Damage Level, Item Amount and Damage Type.

Please also include a field that indicates whether a person was reimbursed for each item (TV, washer, dryer, etc.) that was verified by inspectors as a loss.

Please include the name of the applicant, age, address, gender, date of claim, name and ID number of the inspector, inspector comment field, and all other fields not specifically requested.

I understand FEMA has in the past considered recipient information such as addresses to be confidential and has instead only provided the zip code portion of the address. However, in a case before the Eleventh Circuit Court of Appeals, the court concluded that FEMA was required to release more detailed information.

In order that we receive the most current data available, please provide the records through the date that you gather the information to fulfill this request.

I am requesting that you provide the information electronically in ASCII, .csv, .dbf or any other file that can be opened using a standard database program. If none of these formats is practical or feasible, please contact me to arrange an alternative. Please include a record layout for the database tables and a key to any coding used.

I am asking that you email the information to me at al.shaw@propublica.org. If that is not possible, I request that you put the files onto a disk or disks and send them via FedEx. You may charge the shipping to our FedEx account: #4083-8596-2.

If you need any clarification on this request, please contact me.

Please confirm that you have received this letter.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

This information is being sought on behalf of ProPublica for dissemination to the general public.

Please provide expedited processing of this request which concerns a matter of urgency. As a journalist, I am primarily engaged in disseminating information. The public has an urgent need for information about Hurricane Sandy relief and mitigation funds provided by FEMA because disaster spending often outpaces transparency. As individuals and businesses consider where and how to rebuild after Sandy, it is crucial that they understand where and how federal money is being disbursed for the recovery. This information will best serve them not months or years from now, but as soon as possible. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

Thank you,

Al Shaw
ProPublica
(917) 512 0208

EXHIBIT B

U.S. Department of Homeland Security
500 C Street, SW, Mail Stop 3005
Washington, DC 20472



FEMA

Al Shaw
c/o ProPublica
1 Exchange Plaza
55 Broadway
New York, New York 10006

AUG 21 2013

Re: **FEMA (13-223) 2013-FEFO-00369**

Dear Mr. Shaw:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), dated January 7, 2013 and received by this office on January 8, 2013 for "copies of itemized records of approved applications for Hurricane Sandy assistance." By e-mail dated and received on February 6, 2013 you narrowed the scope of your request. In that e-mail, you requested an electronic copy from the NEMIS database of FEMA's individual claims records for Hurricane Sandy -- DR-4085 to 4087, 4089 to 4093, and 4095 to 4097 -- for the Individual and Household programs for the following states:

- Massachusetts
- New Hampshire
- West Virginia
- Virginia
- Maryland
- Delaware
- Rhode Island
- Connecticut
- New Jersey
- New York
- District of Columbia

Specifically to include data fields for the following, by individual: Disaster number, Zip Code, County, Registration ID, Category of Assistance, Assistance Status, Assistance Type, Assistance Status Detail, Eligibility Date, Approved Date, Eligible Amount, Determination Type, and Ownership Status. Also include the Line Item Description, Quantity Recorded, SBA Status, Water Level, Cause of Damage, and Insurance Status for Line Item, Personal Property Item Description, Clothing, Miscellaneous Item Description, Generic Room Description, Essential

Al Shaw

2

FEMA (13-223) 2013-FEFO-00369

Tool Description, Real Property Damage Item Description, Damage Level, Item Amount and Damage Type. Also to include a field that indicates whether a person was reimbursed for each item (TV, washer, dryer, etc.) that was verified by inspectors as a loss. Additional to include the name of the applicant, age, address, gender, date of claim, name and ID number of the inspector, inspector comment field, and all other fields not specifically requested.

Please be advised that the FOIA does not require federal agencies to answer inquiries or create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975); Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985). To the extent that we have records that respond to your inquiry, we will provide any segregable nonexempt portions. FEMA does not maintain list for individual disaster assistance to include the applicant's age and gender.

We conducted a comprehensive search of FEMA's Response and Recovery Directorate, Individual Assistance Division (IA) for responsive documents. The search produced various data dumps for New York, New Jersey, Connecticut, Rhode Island and Maryland. However, IA was not declared for Massachusetts, New Hampshire, West Virginia, Virginia, Delaware and District of Columbia; therefore, there are no responsive records for these states. As a courtesy, we have enclosed several Legends to assist with identifying the data elements. Furthermore, after carefully reviewing the responsive documents, we have determined that columns of personally identifiable information, such as names and addresses are withheld in their entirety pursuant to Title 5 U.S.C. § 552(b)(6).

FOIA Exemption 6 exempts from disclosure of personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to the subsequent address: Records Management Division (FOIA Appeals), FEMA, 1800 South Bell Street, Fourth Floor, Mail Stop 3005, Arlington, Virginia 20598-3005. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because of the delay in responding to your request, we are waiving any fees associated with the processing of it.

Al Shaw
FEMA (13-223) 2013-FEFO-00369

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We are providing you with this password to access your responsive documents.

Password: FOIA_13223

If you need to contact our office again about this matter, please refer to **FEMA (13-223) 2013-FEFO-00369**. You may contact FOIA Team Lead, Wylene Small at (202) 646-3564 or electronically at Disclosure-Unit-TeamD@fema.dhs.gov.

Sincerely,



Terry Cochran
Chief, Disclosure Branch
Records Management Division
Mission Support Bureau

Enclosure: Responsive Documents on CD

EXHIBIT C



Suite 800
505 Montgomery Street
San Francisco, CA 94111-6533

Thomas R. Burke
(415) 276-6552 tel
(415) 276-6599 fax

thomasburke@dwt.com

Via Federal Express Overnight Mail

October 16, 2013

FOIA Appeal

Records Management Division (FOIA Appeals)
FEMA
1800 South Bell Street, 4th Floor
Mail Stop 3005
Arlington, Virginia 20598-3005

Re: FEMA (13-223) 2013 FEFO-00369

Dear Sir/Madam:

On behalf of our client, ProPublica, we write to appeal the “final response” by the Department of Homeland Security (DHS/Federal Emergency Management Agency (FEMA)) to ProPublica’s January 7, 2013, Freedom of Information Act request concerning records of approved applications for Hurricane Sandy assistance. ProPublica received the agency’s “final response” on August 21, 2013. (A copy of this denial letter is enclosed, for your convenience.)

ProPublica has serious concerns about FEMA’s decision to withhold, in their entirety, columns of personally identifiable information from the data that was released.

ProPublica’s FOIA request was modeled on the FOIA request made to FEMA in *News-Press v. U.S. Dept. of Homeland Security*, 489 F.3d 1173, 1179 (11th Cir. 2007), after four hurricanes struck the Atlantic Coast. As you are aware, in that case, the Court of Appeals for the Eleventh Circuit decided that the addresses of damaged structures that were federally insured were *not* exempt from disclosure under FOIA Exemption 6. The same analysis should apply to the information sought by ProPublica.

We strongly encourage DHS/FEMA to reconsider its position as the data being withheld is essential to provide transparency into, among many things,

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FOIA Appeal

October 16, 2013
Page 2

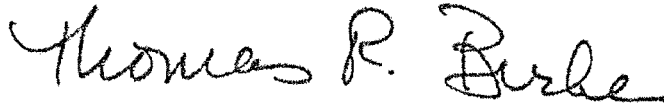
the efficacy of DHS/FEMA's response after Hurricane Sandy. There can be no dispute that this is an issue of vital public concern.

For the purposes of this appeal, with respect to this FOIA request, ProPublica is willing to allow the specific names of those who received approved applications for Hurricane Sandy assistance to be withheld, and is also willing to allow the withholding of specific addresses provided that DHS/FEMA identifies the census block where an applicant (or applicants) resides. Census blocks, unlike zip codes, correspond with legal entities, and with available demographic data, thus making analysis of the data possible.

We look forward to the agency's prompt review of this matter and its written decision. Should you have any questions about this matter, please contact me at (415) 276-6552. We appreciate your attention to this important matter.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in black ink that reads "Thomas R. Burke". The signature is written in a cursive, slightly slanted style.

Thomas R. Burke

Enclosure [FEMA's August 21, 2013, denial letter]

cc: Al Shaw, ProPublica
Richard Tofel, Esq., ProPublica

U.S. Department of Homeland Security
500 C Street, SW, Mail Stop 3005
Washington, DC 20472



FEMA

Al Shaw
c/o ProPublica
1 Exchange Plaza
55 Broadway
New York, New York 10006

AUG 21 2013

Re: **FEMA (13-223) 2013-FEFO-00369**

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Specifically to include data fields for the following, by individual: Disaster number, Zip Code, County, Registration ID, Category of Assistance, Assistance Status, Assistance Type, Assistance Status Detail, Eligibility Date, Approved Date, Eligible Amount, Determination Type, and Ownership Status. Also include the Line Item Description, Quantity Recorded, SBA Status, Water Level, Cause of Damage, and Insurance Status for Line Item, Personal Property Item Description, Clothing, Miscellaneous Item Description, Generic Room Description, Essential

Al Shaw
FEMA (13-223) 2013-FEFO-00369

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Tool Description, Real Property Damage Item Description, Damage Level, Item Amount and Damage Type. Also to include a field that indicates whether a person was reimbursed for each item (TV, washer, dryer, etc.) that was verified by inspectors as a loss. Additional to include the name of the applicant, age, address, gender, date of claim, name and ID number of the inspector, inspector comment field, and all other fields not specifically requested.

Please be advised that the FOIA does not require federal agencies to answer inquiries or create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975); Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985). To the extent that we have records that respond to your inquiry, we will provide any segregable nonexempt portions. FEMA does not maintain list for individual disaster assistance to include the applicant's age and gender.

We conducted a comprehensive search of FEMA's Response and Recovery Directorate, Individual Assistance Division (IA) for responsive documents. The search produced various data dumps for New York, New Jersey, Connecticut, Rhode Island and Maryland. However, IA was not declared for Massachusetts, New Hampshire, West Virginia, Virginia, Delaware and District of Columbia; therefore, there are no responsive records for these states. As a courtesy, we have enclosed several Legends to assist with identifying the data elements. Furthermore, after carefully reviewing the responsive documents, we have determined that columns of personally identifiable information, such as names and addresses are withheld in their entirety pursuant to Title 5 U.S.C. § 552(b)(6).

FOIA Exemption 6 exempts from disclosure of personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

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Al Shaw
FEMA (13-223) 2013-FEFO-00369

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We are providing you with this password to access your responsive documents.

Password: FOIA_13223

If you need to contact our office again about this matter, please refer to **FEMA (13-223) 2013-FEFO-00369**. You may contact FOIA Team Lead, Wylene Small at (202) 646-3564 or electronically at Disclosure-Unit-TeamD@fema.dhs.gov.

Sincerely,



Terry Cochran
Chief, Disclosure Branch
Records Management Division
Mission Support Bureau

Enclosure: Responsive Documents on CD

From: (415) 276-6546
Nataasha Majorko
Davis Wright Tremaine LLP
505 Montgomery Street
Suite 800
San Francisco, CA 94111

Origin ID: APCA



J13201306280328

Ship Date: 18OCT13
ActWgt: 1.0 LB
CAD: 101156114/INET3430

Delivery Address Bar Code



SHIP TO: (415) 276-6546 **BILL SENDER**
FOIA Appeals
FEMA Records Management Division
1800 S. Bell Street, 4th Floor
Mail Stop 3005
ARLINGTON, VA 20598

Ref # 50033-45
Invoice #
PO #
Dept #

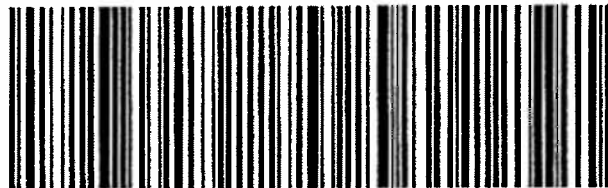
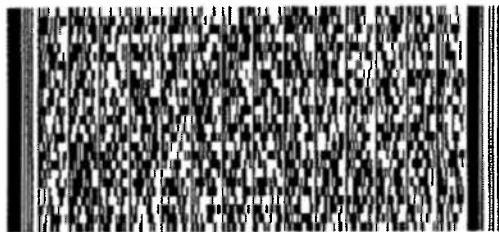
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TRK# 7969 3115 3050

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2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

Majorko, Natasha

From: trackingupdates@fedex.com
Sent: Friday, October 18, 2013 6:50 AM
To: Majorko, Natasha
Subject: FedEx Shipment 796931153050 Delivered

This tracking update has been requested by:

Company Name: Davis Wright Tremaine LLP
Name: Natasha Majorko
E-mail: natashamajorko@dwt.com

Our records indicate that the following shipment has been delivered:

Reference: 50033-45
Ship (P/U) date: Oct 16, 2013
Delivery date: Oct 18, 2013 9:22 AM
Sign for by: R.GILL
Delivery location: ARLINGTON, VA
Delivered to: Receptionist/Front Desk
Service type: FedEx Standard Overnight
Packaging type: FedEx Envelope
Number of pieces: 1
Weight: 0.50 lb.
Special handling/Services: Deliver Weekday
Tracking number: [796931153050](https://www.fedex.com/track/796931153050)

Shipper Information	Recipient Information
Natasha Majorko	FOIA Appeals
Davis Wright Tremaine LLP	FEMA Records Management Division
505 Montgomery Street	1800 S. Bell Street, 4th Floor
Suite 800	Mail Stop 3005
San Francisco	ARLINGTON
CA	VA
US	US
94111	20598

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EXHIBIT D

U.S. Department of Homeland Security
1800 South Bell Street, Mail Stop 3005
Arlington, VA 20598-3005



FEMA

Sent via First Class Mail

NOV 22 2013

Thomas Burke
Davis Wright Tremaine LLP
Suite 800
505 Montgomery Street
San Francisco, California 94111-6533

Re: **FEMA Appeal 2014-FEAP-00003**

Dear Mr. Burke:

The Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), Records Management Division has received your appeal of Freedom of Information Act (FOIA) FEMA 2013-FEFO-00369 (13-233) on behalf of Mr. Al Shaw. Mr. Shaw sought records regarding approved applications for Hurricane Sandy assistance. We acknowledge receipt of your October 16, 2013, appeal and assigned reference number **FEMA 2014-FEAP-00003** for tracking purposes. Please reference this number in any future communications regarding your appeal. Your appeal was received in this office on October 21, 2013.

A high number of FOIA requests to FEMA have resulted in an appeal backlog. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis. While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. If you have questions concerning the processing of your appeal, please contact Monique Booker-Kasper by phone at (202) 212-2302 or electronically at Monique.Booker-Kasper@fema.dhs.gov.

Sincerely,

A handwritten signature in cursive script that reads "Charlene Myrthil".

Charlene Myrthil, Director
FEMA Records Management Division
Mission Support Bureau