

EXHIBIT D



December 9, 2022

DIRECT DIAL 216.696.5456 | Manju.Gupta@tuckerellis.com

VIA EMAIL

foia@sba.gov

Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third St. SW, Eighth Floor
Washington, DC 20416

Re: Freedom of Information Act Appeal
SBA-2022-007775

Dear Chief, Freedom of Information/Privacy Acts Office:

Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) and 13 C.F.R. § 102.9, the undersigned is filing a Freedom of Information Act (“FOIA”) Appeal. A copy of the initial FOIA request submitted to the U.S. Small Business Administration (“SBA”) on September 16, 2022, is attached as Exhibit A. On October 14, 2022, the Office of Capital Access provided notice that it estimated responding to the FOIA request would take longer than the 20 days provided under 5 U.S.C. § 552(a)(6)(A)(i) and anticipated a response date of October 31, 2022. Notice attached as Exhibit B. After that date passed, on November 11 and 22, 2022, the undersigned requested an update as to when she would receive a response. Correspondence attached as Exhibit C. As of today’s date, no response has been received. Likewise, pursuant to the governing statute and regulation set forth above, as the SBA has failed to respond within governing the time limits, the undersigned files this administrative appeal requesting a response to the FOIA request dated September 16, 2022.

If you have any questions regarding my request, including scope, please contact me at manju.gupta@tuckerellis.com. Please invoice me for charges incurred.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Manju Gupta", written over a light blue horizontal line.

Manju Gupta

MG:kab
Attachments



Manju Gupta
Counsel

DIRECT 216.583.7066
DIRECT FAX 216.583.7067
EMAIL mgupta@ulmer.com

September 16, 2022

VIA ELECTRONIC MAIL: FOIA@sba.gov

Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third St. SW, Eighth Floor
Washington, DC 20416

Re: FOIA Request for Restaurant Revitalization Fund Data

Dear Information Officer:

Please consider this letter as a formal request to the U.S. Small Business Administration (“SBA”) for public records under the Freedom of Information Act (“FOIA”). This is an ongoing request. Likewise, if the SBA generates and/or discovers additional responsive documents after its initial production, please supplement. The time period covered by this request is May 3, 2021 to the present, and includes all electronic and/or hard copy records. I hereby request the following:

1. Documents or data showing SBA’s distribution criteria for grants awarded pursuant to the American Rescue Plan Act, specifically the Restaurant Revitalization Fund (the “RRF”), from May 3, 2021 to the present.
2. Documents or data showing the SBA’s distribution criteria for any future grant awards under the RRF.
3. Documents addressing the SBA’s eradication of distributing RRF grants on the basis of race and sex that has been held to be unconstitutional by the Sixth Circuit Court of Appeals in *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021).
4. Updated individual award data for all loans or other financial awards made pursuant to RRF, including but not limited to, grant applicants who were approved for funding but have not received funding to date.¹ The data should include: (i) the name of the recipient; (ii) application date; (iii) date of grant approval; (iv) award amount; (v) grant purpose; (vi) whether the grant applicant identified as being women owned, socially/economically disadvantaged, or veteran owned; and (vii) any other information reported to USAspending.gov for federal awards.

CLEVELAND

COLUMBUS

CINCINNATI

CHICAGO

NEW YORK

WASHINGTON DC

BOCA RATON

ULMER.COM

¹ Pursuant to the SBA’s website, data.sba.gov, information on RFF grants was last updated on August 18, 2021.



Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
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September 16, 2022

5. Documents addressing the SBA's efforts or plans to recover RRF grants awarded to ineligible applicants, or grants that should be otherwise returned because of fraud or other reasons. For example, the Government Accountability Office released a report titled *Restaurant Revitalization Fund: Opportunities Exist to Improve Oversight* that stated the SBA does not require recipients to report their operating status, despite the statute requiring that businesses that permanently close return the unused funds to the SBA.²
6. Documents and communications addressing the timing of future RRF distributions.
7. All policies related to the administration of the RRF, including but not limited to, the updated distribution criteria for RRF grants.
8. Documents and communications between the SBA and any other governmental entity regarding: (i) updated distribution criteria for RRF grants; (ii) efforts to recover RRF grants awarded to ineligible applicants or grants that should otherwise be returned; and (iii) timing of future RRF grant distributions.

If you regard these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As required under 5 U.S.C. § 552(a)(8), please release all segregable, non-exempt portions of documents. To permit me to reach an intelligent and informed decision whether to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

To expedite the release of the requested documents, please disclose them on an interim basis in **electronic format** as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding my request, including scope, please contact me at mgupta@ulmer.com. Please invoice me for charges incurred. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Manju Gupta". The signature is fluid and cursive.

Manju Gupta

² GAO-22-105442: <https://www.gao.gov/assets/gao-22-105442.pdf>

Ballash, Kimberley

From: OCA FOIA <OCAFOIA@sba.gov>
Sent: Friday, October 14, 2022 2:51 PM
To: Gupta, Manju
Subject: U.S. Small Business Administration (SBA) Response to Freedom of Information Act (FOIA) Request re: SBA-2022-007775

Dear Mr. Gupta,

This is to inform you that due to the COVID-19 pandemic and the need to consult, with all practicable speed, among two or more components of the Administration having a substantial interest in the determination of the request we are taking a 10-workday extension under 13 C.F.R. §102.5. We estimate providing a final response to you on October 31, 2022; however, please note this date may be subject to change. We will notify you of any changes to this date.

Sincerely,

Office of Capital Access

**EXHIBIT
B**

From: Gupta, Manju
Sent: Friday, November 11, 2022 2:42 PM
To: OCA FOIA
Subject: RE: U.S. Small Business Administration (SBA) Response to Freedom of Information Act (FOIA) Request re: SBA-2022-007775

Dear Information Officer,

I am following up concerning my FOIA request, which is addressed below. Please note, I have a new email address.

In your message below, you state that you expected the response to be forthcoming on Monday, October 31. I have not received a response to my FOIA request or any other correspondence from you regarding another extension of time to respond. Please let me know when I expect to receive a response to the FOIA request dated September 16, 2022.

Thank you,
Manju

Manju Gupta | Attorney | Tucker Ellis LLP
950 Main Avenue Suite 1100 | Cleveland, OH 44113-7213
Direct: 216-696-5456x | Fax: 216-592-5009 | Mobile: 216-973-4453
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tuckerellis.com

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you are not the intended recipient, please delete the e-mail and notify us immediately by re turn email.

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Sincerely,

EXHIBIT
C

Office of Capital Access

From: Gupta, Manju
Sent: Tuesday, November 22, 2022 3:52 PM
To: OCA FOIA; Gupta, Manju
Subject: RE: U.S. Small Business Administration (SBA) Response to Freedom of Information Act (FOIA) Request re: SBA-2022-007775

Importance: High

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Manju

Manju Gupta | Attorney | Tucker Ellis LLP
950 Main Avenue Suite 1100 | Cleveland, OH 44113-7213
Direct: 216-696-5456 | Fax: 216-592-5009 | Mobile: 216-973-4453
Manju.Gupta@tuckerellis.com [Online biography](#)
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Office of Capital Access