

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF IOWA WESTERN DIVISION**

WILLIAM J. BUSH
945 530th ST
Cleghorn, IA 51014

Plaintiff,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE
RISK MANAGEMENT AGENCY
USDA-RMA
1400 Independence Avenue, SW
Room 6092-S, Stop 0801
Washington, DC 20250-0201

Defendant.

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CIVIL ACTION NO. **C16-4128LTS**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to enjoin Defendant from the withholding of agency records relating to the aggregation by section of total production, acres harvested and yield for corn and for soybeans for four townships in Cherokee County, Iowa for four years. The records are being improperly withheld from Plaintiff by the Risk Management Agency (RMA) of the United States Department of Agriculture (USDA). Plaintiff asks the Court to order RMA to provide the records in the aggregate form by section as requested and to provide other relief.

JURISDICTION

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the Defendant pursuant to 5 U.S.C. § 552(a)(4)(B), as well as 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Defendant), and 28 U.S.C. § 1361 (mandamus). The relief requested is specifically authorized pursuant to 28 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief).

VENUE

3. Venue is appropriate under 5 U.S.C § 552(a)(4)(B) and 28 U.S.C. § 1391.

PARTIES

4. Plaintiff William J. Bush is a resident of the Northern District of Iowa Western Division.

5. Defendant RMA is an agency within the meaning of 5 U.S.C. § 552(e) and is in control/possession of the records sought by Plaintiff that are the subject of this action.

FACTUAL BACKGROUND

6. On February 29, 2016, Plaintiff requested records under FOIA. Plaintiff requested total production, acres harvested and yield for corn and for soybeans aggregated by section for Amherst, Rock, Sheridan and Tilden townships in Cherokee County, Iowa for 2015, 2014, 2013 and 2012.

The request was received on March 1, 2016 and assigned identification number 2016-RMA-02545-F. On March 10, 2016 Plaintiff received a response to request in a letter signed by RMA FOIA Officer Kimberly Morris. The response stated:

"RMA does not have this information available by section for townships within a county because the individual unit tract of land reported by producers have not been aggregated to the section level for townships within any county. FOIA does not require agencies to create new reports/records or to conduct research, analyze data, or answer questions when responding to requests. The Federal Crop Insurance Act does not allow the disclosure of information to the public that is furnished by a producer unless in aggregate form." Appendix (App.) P. 1.

7. The denial of the request was appealed. App. P. 2-3. The appeal was assigned identification number 2016-RMA-00145-A. Plaintiff received a response to the appeal in a letter dated June 15, 2016 from RMA Administrator Brandon Willis. App. P. 4-5. The response stated:

"In fact, RMA does not collect yield by section but yield histories are provided by unit as defined by the crop policy, applicable procedures, and Appendix III to the Standard Reinsurance Agreement. In those cases where the section is not the sole basis of the unit (e.g. enterprise unit, optional unit by Farm Serial Number, etc.), the yields cannot be attributed to a specific section. Furthermore, even if RMA collected information by section, RMA would not be able to release this information pursuant to Exemption 3 at 5 U.S.C. § 552(b)(3) of the FOIA. We are prohibited by statute from publishing the requested data at the farm field level encoded by Common Land Unit. This data is protected by 1502 (c) of the Federal Crop Insurance Act (enclosed). In addition, Section 1619 of the Food, Conservation and Energy Act of 2008 (enclosed) prohibits USDA from disclosing certain categories of information, including geospatial information on agricultural land or operations. RMA can only release crop insurance data aggregated to the county level. Considering producer privacy and protection, the available aggregate levels of crop insurance data can be found online in RMA's Summary of Business application. Therefore, I affirm the previous decision of the RMA FOIA Officer as proper because RMA does not collect information by section. I hereby deny your appeal." App. P. 4-5.

5 U.S.C. § 552(a)(3)(B)

8. 5 U.S.C. § 552(a)(3)(B) states:

"In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section."

YIELD INFORMATION BY SECTION

9. Administrator Willis states, "RMA does not collect yield by section." App. P. 4. However, RMA collects yield information by legal description which is section, township and range. This was confirmed in an email dated February 9, 2016 from FOIA Officer Morris which stated, "The Data Folks, said 'RMA does not collect legal descriptions for every actual yield that a producer reports.'" App. P. 12. In an email dated February 10, 2016 FOIA Officer Morris stated, "The response I received to your question below is: 'Legal descriptions are section/township/range, which is what he asked for with average yields. I cannot aggregate average yields by section/township/range because section/township/range is not reported to us for producers' actual yields.'" App. P. 12. RMA is acknowledging legal description allows the yield information to be aggregated by section and that some yield information is collected by legal description by RMA. One of the required elements of a production report from the 2015 Crop Insurance Handbook is legal description. (1008 Required Elements of Production Report page 233; http://www.rma.usda.gov/handbooks/18000/2015/15_18010.pdf (last accessed on November 14, 2016)). RMA is mistakenly contending that if all yield information is not reported by legal description, then RMA is under no obligation under FOIA to aggregate the yield information by section for the yield information that is reported by legal description, as long as there are two or more producers per crop per section reporting yield information by legal description. RMA is proposing the rather preposterous assertion RMA is providing reinsurance under the Federal Crop Insurance Act and RMA has no idea more specific than county as to the actual location of the corresponding yield.

1502(c) OF THE FEDERAL CROP INSURANCE ACT

10. Administrator Willis states:

“Furthermore, even if RMA collected information by section, RMA would not be able to release this information pursuant to Exemption 3 at 5 U.S.C. § 552(b)(3) of the FOIA. We are prohibited by statute from publishing the requested data at the farm field level encoded by Common Land Unit. This data is protected by 1502(c) of the Federal Crop Insurance Act (enclosed).” App. P. 5.

11. Administrator Willis misstates 7 U.S.C. § 1502(c) which states:

“(c) **Protection of confidential information**

(1) General prohibition against disclosure

Except as provided in paragraph (2), the Secretary, any other officer or employee of the Department or an agency thereof, an approved insurance provider and its employees and contractors, and any other person may not disclose to the public information furnished by a producer under this subchapter.

(2) Authorized disclosure

(A) Disclosure in statistical or aggregate form

Information described in paragraph (1) may be disclosed to the public if the information has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

12. If it were not for the provisions of the Federal Crop Insurance Act, these records would be available for release individually and there would be no need to aggregate the records. 2016-RMA-02545-F is not requesting information furnished by a producer that would allow the identification of the person who supplied particular information. 2016-RMA-02545-F is requesting information furnished by producers in “aggregate form” which is wholly consistent with the stipulations of the Federal Crop Insurance Act. “When terms used in a statute are undefined, we give them their ordinary meaning.” *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995); *see also FDIC v. Meyer*, 510 U.S. 471, 476 (1994). Since “form” is used in both FOIA and the Federal Crop Insurance Act, form must have the same “ordinary meaning,” *ibid.*, in both statutes as form is not defined otherwise in either statute. Therefore, “aggregate” is the only word of contention. The definition of aggregate is: “formed by adding together two or more amounts.” <http://www.merriam-webster.com/dictionary/aggregate> (last accessed on November 14, 2016). In an email dated December 1, 2015 FOIA Officer Morris stated that yield information was required to be aggregated to the county level due to requirements of the Federal Crop Insurance Act. App. P. 8. FOIA Officer Morris was asked in an email dated December 18, 2015 if FOIA

Officer Morris agreed the common meaning of the word aggregate is the combination of two or more items. App. P. 11. FOIA Officer Morris did not respond to this email. When confronted in an email dated January 8, 2016, App. P. 11, with the aforementioned citation from the Supreme Court regarding using the ordinary meaning of terms undefined in a statute, FOIA Officer Morris ceased asserting that 1502(c) of the Federal Crop Insurance Act requires aggregation to the county level. FOIA Officer Morris makes no mention of the Federal Crop Insurance Act requiring aggregation to the county level in denying 2016-RMA-02545-F. App. P. 1. Administrator Willis erroneously attempts to resurrect the argument that 1502(c) of the Federal Crop Insurance Act requires aggregation to the county level as a defense against disclosure under FOIA; however, Administrator Willis cites no authority where the ordinary meaning of “aggregate” is ever defined as meaning to the county level. If Congress had intended “aggregate to mean to the county level in the Federal Crop Insurance Act, Congress would have defined “aggregate” as such in the Federal Crop Insurance Act.

SECTION 1619 OF THE FOOD, CONSERVATION AND ENERGY ACT OF 2008

13. Administrator Willis also states, “In addition, Section 1619 of the Food, Conservation and Energy Act of 2008 (enclosed) prohibits USDA from disclosing certain categories of information, including geospatial information on agricultural land or operations.” App. P. 2. Plaintiff contends Section 1619 of the Food, Conservation and Energy Act of 2008 (hereinafter Section 1619)(7 U.S.C. § 8791; Pub. L. 110-246, § 1619, 122 Stat. 1651 (2008)) does not apply as 2016-RMA-02545-F requests information in aggregate form without naming any specific data gathering site. Furthermore, even if Section 1619 were found to be applicable, the authority of Section 1619 ceased with the expiration of the extension of the Food, Conservation and Energy Act of 2008 in Section 701 of the American Taxpayer Relief Act of 2012 (Pub. L. 112-240, § 701, 126 Stat. 2313 (2013)) which states:

“ SEC. 701. 1-YEAR EXTENSION OF AGRICULTURAL PROGRAMS.

(a) EXTENSION.—Except as otherwise provided in this section and amendments made by this section and notwithstanding any other provision of law, the authorities provided by each provision of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1651) and each amendment made by that Act (and for mandatory programs at such funding levels), as in effect

on September 30, 2012, shall continue, and the Secretary of Agriculture shall carry out the authorities, until the later of—

(1) September 30, 2013; or

(2) the date specified in the provision of that Act or amendment made by that Act.”

14. Since no date later than September 30, 2013 is specified in Section 1619 and since Section 1619 was not reauthorized in the Agricultural Act of 2014 (Pub. L. 113-79; 128 Stat. 649 (2014)), the authority of Section 1619 ended on September 30, 2013 and does not extend to any subsequent period. If Congress had intended the authority Section 1619 to extend beyond September 30, 2013, Congress would have so stated in Section 1619 or in the American Taxpayer Relief Act of 2012. Furthermore, Congress could have reauthorized Section 1619 in the Agricultural Act of 2014 or anytime since.

AGGREGATION TO THE COUNTY LEVEL

15. Administrator Willis’s states, “RMA can only release crop insurance data aggregated to the county level.” App. P. 5. This statement is not supported by the evidence. FOIA Officer Morris was specifically asked in an email dated February 5, 2016, App. P. 12, which of the following was true:

“1). The RMA does not have average yields available by section for townships within a county because the individual unit tract of land yields reported by producers have not been aggregated to the section level for townships within any county, or

2). The RMA does not have average yields available by section for townships within a county because it is impossible for the RMA to aggregate individual unit tract of land yields reported by producers to the section level for townships within a county.”

16. While FOIA Officer Morris would not directly answer the question, FOIA Officer Morris conceded the answer in the response to 2016-RMA-02545-F which states, “RMA does not have this information available by section for townships within a county because the individual unit tract of land reported by producers have not been aggregated to the section level for townships within any county.” App. P. 1. If it were impossible for RMA to aggregate yield information by section, FOIA Officer Morris would have so stated.

CREATION OF NEW RECORDS

17. In denying 2016-RMA-02545-F, FOIA Officer Morris stated, “FOIA does not require agencies to create new reports/records or to conduct research, analyze data, or answer questions when responding

to requests.” App. P. 1. 2016-RMA-02545-F is not asking RMA to create new records. 2016-RMA-02545-F is merely asking RMA to provide the records in an aggregate form other than the county level aggregate form RMA has already made these records publicly available. The aggregation of the records is a function of the search requirements mandated by 5 U.S.C § 552(a)(3)(D). RMA is not mandated by the Federal Crop Insurance Act to make these records available even in the county level aggregate form; RMA has chosen to do so. RMA is contending if these records were not provided by RMA in the county level aggregate form, none of these records would be publicly available in any aggregate form at all. RMA is asserting the incongruous position that the word "aggregate" which provides no FOIA defense to being specifically exempted from disclosure by the Federal Crop Insurance Act somehow becomes a shield against disclosure under FOIA. This is a complete misreading of the intent and mandate of FOIA. FOIA empowers the individual in obtaining records from the government and the government can only withhold the records under narrow FOIA exemptions, none of which apply in this case. “A federal agency must disclose agency records unless they may be withheld pursuant to one of the nine enumerated exemptions listed in § 552(b).” *Department of Justice v. Julian*, 486 U.S. 1, 8 (1988).

TECHNICAL FEASIBILITY AND REPRODUCIBILITY

18. A computer program that can aggregate records by county can just as easily aggregate records by section for townships in a county. An aggregation computer program is among the simplest to perform and one of the reasons computers were invented in the first place. The records requested are digitalized computer records; therefore, there is no question regarding technical feasibility or reproducibility. Computer programs can be run at any time, day or night, and granting this FOIA request would not significantly interfere with the operation of RMA's automated information system. If RMA's automated information system is not prepared to fulfill this FOIA request, this would only be due to willful neglect of compliance with FOIA by RMA. “As used here, the term ‘willful neglect’ may be read as meaning a conscious, intentional failure or reckless indifference.” *United States v. Boyle*, 469 U.S. 241, 245 (1985).

RMA HAS ACTED ARBITRARILY AND CAPRICIOUSLY

19. Plaintiff contends RMA has acted arbitrarily and capriciously with respect to the withholding of the records as RMA has no reasonable basis in law to justify withholding the records. Plaintiff requests the Court issue a written finding in accordance with 5 U.S.C. § 552(a)(4)(F)(i). Plaintiff contends RMA had no intention under any circumstance of ever honoring this request short of Plaintiff filing a lawsuit and, perhaps, a court order to do so. Evidence of RMA's policy of forcing a requester to file a lawsuit is reflected in FOIA Officer Morris's response to FOIA request in which no exemption is cited and merely, and inaccurately, states the request is asking RMA to create new records. FOIA Officer Morris's legally indefensible response is surpassed in unsoundness by Administrator Willis's appeal response which is riddled with inaccuracies and misstatements of law. Administrator Willis's response is the more disturbing of the two as Administrator Willis's response was required to be approved by the Assistant General Counsel. 7 CFR Part 1 USDA FOIA Regulations 1.14(d) states, "The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel." 65 Fed. Reg. 46340 (July 28, 2000). When RMA has no reasonable basis in law to justify the withholding of records, RMA's policy of forcing requesters to file lawsuits is arbitrary and capricious. RMA's use of federal district court as a deterrent to fulfilling legitimate FOIA requests is arbitrary and capricious. Many requesters have neither the resources to retain independent counsel nor the ability to assert their rights *pro se*. The Court should not provide agency to any such scheme of injustice in RMA's "willful neglect," *Boyle, supra*, at 245, of compliance with FOIA. RMA has acted as if FOIA was a suggestion and not the law.

20. The first FOIA request made, 2016-RMA-01538-F, asked for the average yield per section for the same townships, county and years. In RMA's final response, FOIA Officer Morris stated, "The Risk Management Agency (RMA) does not have records for average yields available by township within a county." App. P. 6. In subsequent email exchanges, App. P. 13, RMA refused to clarify the reason for the request denial and would not even answer if 2016-RMA-01538-F was denied because an average of the yields as opposed to an aggregate of the yields was requested. An appeal of 2016-RMA-01538-F

was abandoned due to the suspicion that the reason for the denial was in asking for an average of the yields as opposed to an aggregate of the yields; this suspicion was confirmed in RMA's response to 2016-RMA-02545-F. A reasonable person could conclude RMA would have allowed 2016-RMA-01538-F to proceed to a lawsuit before acknowledging this fact. 7 CFR Part 1 USDA FOIA Regulations 1.5(c) states:

"If an agency determines that a request does not reasonably describe the records, the agency shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking." 65 Fed. Reg., *supra*, at 46338.

This clearly did not happen for 2016-RMA-01538-F and appears to be a clear violation of USDA FOIA Regulations 1.5(c). RMA's refusal to clarify the reason 2016-RMA-01538-F was denied and RMA's violation of USDA FOIA Regulations 1.5(c) by not "extending the requester an opportunity ... to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking" is evidence that RMA has acted arbitrarily and capriciously.

VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
DUE TO UNEQUAL PROTECTION OF *PRO SE* LITIGANTS

21. Plaintiff contends it is unconstitutional under the Due Process Clause of the Fifth Amendment to couple the judicial holding that *pro se* litigants are not awarded attorney fees with the judicial interpretation that requires the awarding of reasonable attorney fees and other litigation costs as prerequisites to the issuance of written findings under 5 U.S.C. § 552(a)(4)(F)(i). *Norwood v. FAA*, No. 83-2315, slip op. at 20 (W.D. Tenn. Dec. 11, 1991) (finding that when a court denies fees on the ground that the plaintiff is proceeding *pro se*, "the issuance of written findings pursuant to 5 U.S.C. § 552(a)(4)(F) would be inappropriate since both prerequisites have not been met"), *aff'd in part, rev'd in part on other grounds*, 993 F.2d 570 (6th Cir. 1993). This double standard of justice provides unequal protection to litigants who have been treated arbitrarily and capriciously depending on whether litigants are *pro se* or represented by independent counsel. Only a litigant represented by independent counsel can have attorney fees awarded and, therefore, meet the condition required to have the Court issue a written finding pursuant to 5 U.S.C. § 552 (a)(4)(F)(i). This holding that *pro se* litigants can be treated

arbitrarily and capriciously with FOIA providing no recourse is a violation of the Due Process Clause of the Fifth Amendment. "[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'" *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975); *Schneider v. Rusk*, 377 U. S. 163, 168 (1964); *see also Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

22. "In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that, 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of . . . counsel. . . .' The right is currently codified in 28 U.S.C. § 1654." *Faretta v. California*, 422 U.S. 806, 812-813 (1975). "The right of self-representation was guaranteed in many colonial charters and declarations of rights. These early documents establish that the 'right to counsel' meant to the colonists a right to choose between pleading through a lawyer and representing oneself." *Id.* at 828. "[T]here is no evidence that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel." *Id.* at 832.

23. Counsel is a synonym for attorney. <http://www.merriam-webster.com/thesaurus/counsel> (last accessed on November 14, 2016). "[T]he Concessions and Agreements of West New Jersey, in 1677, provided, for all cases, civil and criminal, 'that no person or persons shall be compelled to fee any attorney or councillor to plead his cause, but that all persons have free liberty to plead his own cause, if he please.'" *Faretta, supra*, at 828 n. 37. Counsel and attorney would have been known to be synonymous to the colonists and the Framers, the same as now. Therefore, the right to an attorney would have been understood by the colonists and the Framers exactly as "the 'right to counsel' meant to the colonists a right to choose between pleading through a lawyer and representing oneself," *Faretta, supra*, at 828.

24. The holding that only litigants represented by independent counsel can have the Court issue written findings if the agency has acted arbitrarily and capriciously means that FOIA requests initiated by persons represented by independent counsel will be given preferential treatment to those initiated by other individuals as agency personnel know there are no repercussions for arbitrarily and capriciously treating FOIA requests received by individuals who proceed *pro se*. It is unconstitutional under the Due Process Clause of the Fifth Amendment for the Court to subjugate the “right of self-representation,” *Faretta, supra*, at 828, to the right of assistance by independent counsel. “And whatever else may be said of those who wrote the Bill of Rights, surely there can be no doubt that they understood the inestimable worth of free choice.” *Faretta, supra*, at 833-834. The “inestimable worth of free choice,” *Faretta, supra*, at 833-834, including the “right of counsel” meaning “a right to choose between pleading through a lawyer and representing oneself,” *Faretta, supra*, at 828, is the bedrock foundation upon which this nation was built and flows through the spirit of the Constitution.

25. “The Circuits are in agreement, however, on the proposition that a *pro se* litigant who is not a lawyer is not entitled to attorney's fees.” *Kay v. Erlher*, 499 U.S. 432, 435 (1991). “Petitioners do not disagree with these cases ... and we are also satisfied that they were correctly decided.” *Ibid*.

26. Plaintiff contends this holding in *Kay*, when applied to FOIA cases, violates the Due Process Clause of the Fifth Amendment as the awarding of attorney fees is a prerequisite for the Court to issue written findings under FOIA due to arbitrary and capricious treatment. Furthermore, the Court cannot uphold *Kay*, in application to FOIA cases, without undermining the spirit and findings of *Faretta*. The United States District Court Eastern District of Michigan has defined *pro se* as, “[s]erving as one's own lawyer.” <https://www.mied.uscourts.gov/PDFFiles/howToFileYourLawsuithandbook.pdf>, P.3 (last accessed on November 14, 2016). This reflects the common knowledge that a person who represents oneself in court, be they an attorney-at-law or not, is acting as one's own attorney as evidenced by the common understanding of “right to counsel,” *Faretta, supra*, at 828, by the colonists and the Framers. “The adage that ‘a lawyer who represents himself has a fool for a client’ is the product of years of

experience by seasoned litigators." *Kay, supra*, at 437-438. While there is certainly wisdom in the aforementioned adage, it is not absolute and should never supersede "the inestimable worth of free choice," *Faretta, supra*, at 834.

27. A hard-earned right that Americans have fought and died for, as acknowledged by the Court in *Faretta* "that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of independent counsel," *Faretta, supra*, at 832, has been chipped away at in *Kay*. Plumbers do their own plumbing, electricians do their own electrical work, farmers do their own farming, accountants do their own tax returns, *et cetera*, all of which exemplify the virtues of self-reliance which are the embodiment of the American spirit. However, according to the Court in *Kay*, after spending upwards of seven years or more obtaining a law degree and passing the bar exam, a properly trained attorney-at-law's first inclination when confronted with a legal concern is to retain independent counsel.

28. "In the end, we agree with the Court of Appeals that the overriding statutory concern is the interest in obtaining independent counsel for victims of civil rights violations. *Kay, supra*, at 437. Plaintiff contends the "overriding statutory concern," *Kay, supra*, at 437, in cases of civil rights violations should be in ending civil rights violations just as the overriding statutory concern in FOIA cases should be in eliminating the denial of legitimate FOIA requests. This principle is best served by a process where all meritorious claims receive a proper hearing in a court of law, whether brought by an independent attorney on behalf of a client or an attorney *pro se*, be they an attorney-at-law or not.

29. "The statutory policy of furthering the successful prosecution of meritorious claims is better served by a rule that creates an incentive to retain counsel in every such case." *Kay, supra*, at 438. "Awards of litigation costs and attorney fees under FOIA are left to the sound discretion of the trial court." *Bangor Hydro-Elec. Co. v. U. S. Dep't of the Interior*, 903 F. Supp. 160, 170 (D. Me. 1995). Plaintiff wonders who are the attorneys-at-law interested in pursuing meritorious FOIA requests from requesters who lack the resources to pay said attorneys-at-law and, even if successful in court, attorney

fees may not be awarded to prevailing attorneys-at-law? “We do not, however, rely primarily on the desirability of filtering out meritless claims. Rather, we think Congress was interested in ensuring the effective prosecution of meritorious claims.” *Kay, supra*, at 437. It appears the Court has embraced a scheme that not only primarily filters out meritless claims but meritorious ones as well. However, the Court could never have intended the constitutional violations that occur in the application of *Kay* to FOIA when requesters have been treated arbitrarily and capriciously. If the Court believes Congress was primarily interested in meritorious FOIA requests being granted, the Court will hold that the only relevant standard in the awarding of attorney fees is the agency not having a reasonable basis in law to justify the withholding of records. When agencies bear the burden of paying attorney fees for all meritorious FOIA cases, agencies will ensure compliance with FOIA by mandating a reasonable basis in law to justify the withholding of records.

30. “The question then is whether a lawyer who represents himself should be treated like other *pro se* litigants or like a client who has had the benefit of the advice and advocacy of an independent attorney. We do not think either the text of the statute or its legislative history provides a clear answer.” *Kay, supra*, at 436. The text in FOIA clearly requires the awarding of reasonable attorney fees and other litigation costs as prerequisites for the issuance of written findings pursuant to 5 U.S.C. § 552(a)(4)(F). To avoid violations under the Due Process Clause of the Fifth Amendment, the Court can only conclude that a *pro se* litigant is an attorney *pro se* and each *pro se* litigant possesses the requisite attorney-client relationship with oneself. As the old adage states, “the proof is in the pudding.” A judiciary comprised nearly, if not entirely, of attorneys-at-law should have little trouble in discerning the value of the legal work performed based on the case record. Plaintiff contends attorney fees should commence with the inception of legal work at any point in the FOIA process, including prior to making an official FOIA request. A litigant who performs legal work to resolve a concern in an attempt to avoid court should not be penalized by not being awarded attorney fees for such an effort if the concern results in a court case and said litigant prevails on that very point. Furthermore, to not award successful

pro se litigants attorney fees violates the principle of equal pay for equal work. Clearly, the work has been performed and the results speak for themselves.

31. Neither the Constitution nor FOIA prohibit the awarding of attorney fees to successful *pro se* litigants, be they attorneys-at-law or not. Therefore, it is unconstitutional to not award attorney fees to *pro se* litigants who prevail in court when the agency has no reasonable basis in law to justify the withholding of records.

VIOLATION OF DUE PROCESS CLAUSE OF FIFTH AMENDMENT
DUE TO UNEQUAL PROTECTION OF NATURAL PERSONS

32. "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*, 424 U.S. 1, 93 (1976); *see also Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n. 2 (1975). "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does." *Santa Clara County v. Southern Pacific R. Co.*, 118 U.S.394, 396 (1886).

33. If a natural person cannot have an attorney-client relationship with oneself, then no artificial person such as a corporation or other entity can have an attorney-client relationship with itself. In *Baker & Hostetler LLP v. U. S. Department of Commerce* the D.C. Circuit, relying on dictum in *Kay*, held that a law firm representing itself is eligible for attorney fees. *Baker & Hostetler LLP*, 473 F.3d at 324 (D.C. Cir. 2006). "[A]n organization is not comparable to a *pro se* litigant, because the organization is always represented by counsel, whether in-house or *pro bono*, and thus, there is always an attorney-client relationship." *Kay, supra*, at 436 n. 7.

34. "[T]here is no evidence that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel." *Faretta v. California*, 422 U.S. 806, 832 (1975). If an individual representing oneself is not eligible for attorney fees then a corporation or other entity representing itself via in-house counsel is not eligible for attorney fees. Whether natural or artificial, a person is a person under the Constitution,

as interpreted by the Court. It is unconstitutional under the Due Process Clause of the Fifth Amendment for an artificial person to possess a right that cannot be held by a natural person.

STARE DECISIS

35. “The burden borne by a party advocating the abandonment of an established precedent is greater where the Court is asked to overrule a point of statutory construction, which, unlike constitutional interpretation, may be altered by Congress.” *Patterson v. McLean Credit Union*, 491 U.S. 164, 164 (1989).

36. “We recognize that *stare decisis* embodies an important social policy. It represents an element of continuity in law, and is rooted in the psychologic need to satisfy reasonable expectations. But *stare decisis* is a principle of policy, and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.” *Helvering v. Hallock*, 309 U. S. 106, 119 (1940).

37. “The relevant factors in deciding whether to adhere to *stare decisis*, beyond workability—the precedent’s antiquity, the reliance interests at stake, and whether the decision was well reasoned—counsel in favor of abandoning ...” *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 315 (2010). “Our precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts us on a course that is sure error.” *Id.*, at 362. “We have also examined whether ‘experience has pointed up the precedent’s shortcomings.’” *Id.*, at 363 (quoting *Pearson v. Callahan*, 555 U. S. 223, 233 (2009) (overruling *Saucier v. Katz*, 533 U. S. 194 (2001))).

38. “However, when convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment, and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice, and this practice has continued to this day. This is particularly true when the decision believed erroneous is the application of a

constitutional principle, rather than an interpretation of the Constitution to extract the principle itself.”

Smith v. Allwright, 321 U.S. 649, 665-666 (1944) (footnote references omitted).

39. “*Stare decisis* is a principle of policy and not an inexorable command.” *United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996) (internal quotation marks and citations omitted). “Though from time to time we have overruled governing decisions that are unworkable or are badly reasoned, we have rarely done so on grounds not advanced by the parties.” *Ibid.* (internal quotation marks and citations omitted).

40. The constitutional principle at stake in this case is equal protection under the law as guaranteed by the Due Process Clause of the Fifth Amendment. Correction of constitutional error in this case does not depend upon amendment or altering statutory construction by Congress. The Court merely needs to return to the original meaning of “attorney” as understood by the colonists and Framers as acknowledged in *Faretta*. Adherence to *Kay* involves collision with *Faretta* which is “a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience,” *Helvering, supra*, at 119. The burden of abandonment of an established precedent is more than met in this case as the construction in *Kay* is not well reasoned, unworkable with FOIA and results in violations of the Due Process Clause of the Fifth Amendment, all of which is “a course that is sure error,” *Citizens United, supra*, at 362.

CONCLUSION

41. The Federal Crop Insurance Act allows records to be disclosed as long as information furnished by producers is in aggregate form; FOIA mandates an agency provide the record in any form requested if the record is readily reproducible in that form. FOIA requires RMA to provide the records in the aggregate form requested which is by section for total production, acres harvested and yield for corn and for soybeans for Amherst, Rock, Sheridan and Tilden townships in Cherokee County, Iowa for 2015, 2014, 2013 and 2012.

RELIEF REQUESTED

42. WHEREFORE, Plaintiff William J. Bush respectively requests this Court to:
1. Order RMA to aggregate the records by section as requested, insofar as there are records to aggregate, including a record count of the number of records aggregated by section, and provide to Plaintiff;
 2. Declare no search fee for can be charged Plaintiff according to 5 U.S.C. § 552(a)(4)(A)(viii) as RMA failed to comply with the applicable time limits stated in 5 U.S.C. § 552(a)(6)(A)(ii) for responding to appeal;
 3. Declare Section 1619 of the Food, Conservation and Energy Act of 2008 does not apply in this case and authority for Section 1619 ended on September 30, 2013 with the expiration of the extension of the Food, Conservation and Energy Act of 2008 in the American Taxpayer Relief Act of 2012;
 4. Declare current judicial interpretations denying attorney fees to *pro se* litigants and requiring the awarding of attorney fees to issue a written finding in accordance with 5 U.S.C. § 552(a)(4)(F)(i) violate Plaintiff's rights under the Due Process Clause of the Fifth Amendment;
 5. Declare *pro se* litigants are attorneys *pro se*, be they attorneys-at-law or not;
 6. Declare it is unconstitutional under the Due Process Clause of the Fifth Amendment to subjugate the right of self-representation to the right of assistance by independent counsel;
 7. Declare the only relevant standard in the awarding of attorney fees in FOIA cases is the agency not having a reasonable basis in law to justify the withholding of records;
 8. Declare it is unconstitutional under the Due Process Clause of the Fifth Amendment for an artificial person to possess a right that cannot held by a natural person;
 9. Order RMA to reimburse Plaintiff for all legally permissible attorney fees and costs as provided for in 5 U.S.C. § 552(a)(4)(E) and/or 28 U.S.C. § 2412(d);
 10. Declare RMA has acted with willful neglect regarding compliance with FOIA and 7 CFR Part 1 USDA FOIA regulations and order RMA to comply with FOIA and 7 CFR Part 1 USDA FOIA regulations;

11. Declare RMA has acted arbitrarily and capriciously as RMA has no reasonable basis in law to justify the withholding of the records;
12. Issue a written finding in accordance with 5 U.S.C. § 552(a)(4)(F)(i);
13. Retain jurisdiction of this cause of action until Defendant has complied in full with any and all orders issued by the Court;
14. Expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and
15. Grant such other relief as the Court may deem just and proper.

Date: November 16, 2016

Respectfully submitted,

A handwritten signature in black ink that reads "William J. Bush". The signature is written in a cursive, flowing style.

William J. Bush, *pro se*
945 530th ST
Cleghorn, IA 51014
712-229-9670
wjbb60@gmail.com

XX. APPENDIX INDEX

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United States
Department of
Agriculture

March 10, 2016

Farm and Foreign
Agricultural
Services

William Bush

Risk
Management
Agency

Re: Freedom of Information Act Request 2016-RMA-02545-F

1400 Independence
Avenue, SW
Stop 0801
Washington, DC
20250-0801

Dear Mr. Bush:

This letter is the final response to your Freedom of Information Act request received March 1, 2016. Specifically, you requested, *"the total production, acres harvested, and yield for corn and for soybeans aggregated by section for Amherst, Rock, Sheridan and Tilden townships in Cherokee County, Iowa for 2015, 2014, 2013 and 2012."*

RMA does not have this information available by section for townships within a county because the individual unit tract of land reported by producers have not been aggregated to the section level for townships within any county. FOIA does not require agencies to create new reports/records or to conduct research, analyze data, or answer questions when responding to requests. The Federal Crop Insurance Act does not allow the disclosure of information to the public that is furnished by a producer unless in aggregate form. We have prepared and released average yield per acre information for Corn and Soybeans containing the historical yields underlying the Supplemental Coverage Option (SCO) for the 2016 crop year. The data files and associated layouts can be found at http://www.rma.usda.gov/ftp/Miscellaneous_Files/Area_Yield_Data/. The most recent set of average yields for corn and soybeans that are released publicly are in the file "cy2016_production_area_yield_history_1130.zip"

You may appeal this decision in writing to the Administrator, Risk Management Agency, 1400 Independence Avenue, SW, Room 6092-S, Stop Code 0801, Washington, DC 20250-0801, within 45 days from the date of this letter. The phrase 'FOIA APPEAL' should appear on the letter and the outside of the envelope containing the appeal.

Best regards,

Kimberly E. Morris
RMA FOIA Officer
Executive Planning & Administrative
Support Branch
kimberly.morris@rma.usda.gov

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March 18, 2016

Brandon Willis, RMA Administrator
USDA-RMA
1400 Independence Avenue, SW
Room 6092-S, Stop Code 0801
Washington, DC 20250-0801

RE: FOIA APPEAL

Administrator Willis:

On February 29, 2016, I requested records under the Freedom of Information Act (FOIA). I requested the total production, acres harvested and yield for corn and for soybeans aggregated by section for four townships in Cherokee County, Iowa for four years. My request was received on March 1, 2016 and assigned identification number 2016-RMA-02545-F. On March 10, 2016, I received a response to my request in a letter signed by Kimberly Morris, RMA FOIA Officer. The response stated, "RMA does not have this information available by section for townships within a county because the individual unit tract of land reported by producers have not been aggregated to the section level for townships within any county. FOIA does not require agencies to create new reports/records or to conduct research, analyze data, or answer questions when responding to requests. The Federal Crop Insurance Act does not allow the disclosure of information to the public that is furnished by a producer unless in aggregate form." I am appealing the denial of my request.

Prior to my making an official FOIA request, Kimberly Morris stated in an email dated December 15, 2015 that such a request would be denied as a violation of the Federal Crop Insurance Act 7 U.S.C. § 1502(c) as producer data was required by this statute to be aggregated to the county level. If it were not for the provisions of the Federal Crop Insurance Act, these records would be available for release individually and there would be no need to aggregate the records. 7 U.S.C. § 1502(c)(2)(A) states, "Information ... may be disclosed to the public if the information has been transformed into statistical or aggregate form that does not allow the identification of the person who supplied the information." The operative words are "aggregate form." The Supreme Court of the United States has held, "When terms used in a statute are undefined, we give them their ordinary meaning." Bailey v. United States, 516 U.S. 137, 143, 145 (1995); see also Asgrow Seed Co. v. Winterboer, 513 U.S. 179, 187 (1995). Furthermore, FOIA 5 U.S.C. § 552(a)(3)(B) states, "In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section." Since the RMA has already ceded the argument that records must be aggregated to the county level to comply with the Federal Crop Insurance Act, the only remaining word of contention is "form." However, "form" is used in both statutes and, therefore, must have the same ordinary meaning in both statutes as "form" is not defined otherwise in either statute.

2016-RMA-02545-F is not asking the RMA to create new records. 2016-RMA-02545-F is merely asking the RMA to provide the records in an aggregate form other than the county level aggregate form the RMA has already made these records publicly available. The RMA is not mandated by the Federal Crop Insurance Act to make these records available even in the county level aggregate form; the RMA has chosen to do so. The RMA is contending if these records were not provided by the RMA in the county

level aggregate form, none of these records would be publicly available in any aggregate form at all. The RMA is asserting the incongruous position that the words "aggregate form" which provide no FOIA defense to being specifically exempted from disclosure by the Federal Crop Insurance Act somehow become a shield against disclosure under FOIA. This is a complete misreading of the intent and mandate of FOIA. FOIA empowers the individual in obtaining records from the government and the government can only withhold the records under narrow FOIA exemptions, none of which apply in this case. The RMA is raising the novel and nonsensical defense that FOIA provides the FOIA exemption from disclosure.

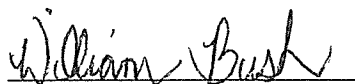
A computer program that can aggregate records by county can just as easily aggregate records by section for townships in a county. Computer programs can be run at any time, day or night, and granting FOIA requests such as this one would not significantly interfere with the operation of the RMA's automated information system. If the RMA's automated information system is not prepared to fulfill a FOIA request such as this one, this would only be due to willful neglect of compliance with FOIA by the RMA. In United States v. Boyle, 469 U.S. 241 (1985), the Supreme Court of the United States stated that "willful neglect" means "a conscious, intentional failure or reckless indifference."

The Federal Crop Insurance Act allows records to be disclosed as long as producer information is in aggregate form; FOIA mandates an agency provide the record in any form requested if the record is readily reproducible in that form. FOIA requires the RMA to provide the records in the aggregate form requested which is by section for four townships in Cherokee County, Iowa for four years.

The first FOIA request made, 2016-RMA-01538-F, asked for the average yield per section for the same townships, county and years. In the RMA's final response, Kimberly Morris stated, "The Risk Management Agency (RMA) does not have records for average yields available by township within a county." In subsequent email exchanges the RMA refused to clarify the reasons 2016-RMA-01538-F was denied and would not even answer if 2016-RMA-01538-F was denied because an average of the yields as opposed to an aggregate of the yields was requested. An appeal of 2016-RMA-01538-F was abandoned due to the suspicion that the reason for the denial was in asking for an average of the yields as opposed to an aggregate of the yields; this suspicion was confirmed in the RMA's response to 2016-RMA-02545-F. A reasonable person could conclude the RMA would have allowed 2016-RMA-01538-F to proceed to a FOIA lawsuit in federal district court before acknowledging this fact. 7 CFR Part 1 USDA FOIA Regulations 1.5(c) states, "If an agency determines that a request does not reasonably describe the records, the agency shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking." 65 Fed. Reg. 46337 (July 28, 2000). This clearly did not happen for 2016-RMA-01538-F and appears to be a clear violation of USDA FOIA Regulations 1.5(c).

For efficacy and privacy reasons, please direct your response to my email address, bbush@netins.net. Please send an acknowledgment of receipt of this letter upon delivery. Thank you.

Sincerely,


William Bush



United States
Department of
Agriculture

Sent via email: wjib60@gmail.com

JUN 15 2016

Farm and Foreign
Agricultural
Services

William Bush

Risk
Management
Agency

Re: Appeal of RMA FOIA Request 2016-RMA-02545-F
New designation for this Appeal 2016-RMA-00145-A

1400 Independence
Avenue, SW
Stop 0801
Washington, DC
20250-0801

Dear Mr. Bush:

This letter is the United States Department of Agriculture (USDA) Risk Management Agency's (RMA) final response to your Freedom of Information Act (FOIA) Appeal dated March 18, 2016 and received March 28, 2016. Specifically, you are appealing RMA's denial of your request by not having information (records) available by section for townships within a county.

Your initial FOIA request to RMA, dated February 29, 2016, requested the total production, acres harvested, and yield for corn and for soybeans aggregated by section for Amherst, Rock, Sheridan and Tilden townships in Cherokee County, Iowa for 2015, 2014, 2013 and 2012. On March 10, 2016, the RMA FOIA Officer responded that

RMA does not have this information available by section for townships within a county because the individual unit tract of land reported by producers have not been aggregated to the section level for townships within any county. FOIA does not require agencies to create new reports/records or to conduct research, analyze data, or answer questions when responding to requests. The Federal Crop Insurance Act does not allow the disclosure of information to the public that is furnished by a producer unless in aggregate form. We have prepared and released average yield per acre information for Corn and Soybeans containing the historical yields underlying the Supplemental Coverage Option (SCO) for the 2016 crop year. The data files and associated layouts are at http://www.rma.usda.gov/ftp/Miscellaneous_Files/Area_Yield_Data/. The most recent set of average yields for corn and soybeans that are released publicly are in the file 'cy2016_production_area_yield_history_1130.zip.'

In fact, RMA does not collect data by section but yield histories are provided by unit as defined by the crop policy, applicable procedures, and Appendix III to the Standard Reinsurance Agreement. In those cases where the section is not the sole basis of the unit (e.g. enterprise unit, optional unit by Farm Serial Number, etc.), the yields cannot be attributed to a specific section.

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2016-RMA-00145-A

Page 2

Furthermore, even if RMA collected information by section, RMA would not be able to release this information pursuant to Exemption 3 at 5 U.S.C. § 552(b)(3) of the FOIA. We are prohibited by statute from publishing the requested data at the farm field level encoded by Common Land Unit. This data is protected by section 1502(c) of the Federal Crop Insurance Act (enclosed). In addition, section 1619 of the Food, Conservation, and Energy Act of 2008 (enclosed) prohibits USDA from disclosing certain categories of information, including geospatial information on agricultural land or operations. RMA can only release crop insurance data aggregated to the county level. Considering producer privacy and protection, the available aggregate levels of crop insurance data can be found online in RMA's Summary of Business application.

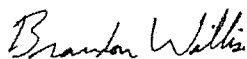
Therefore, I affirm the previous decision of the RMA FOIA Officer as proper because RMA does not collect information by section. I hereby deny your appeal.

This is the final administrative determination on your FOIA appeal. If you are dissatisfied with this decision, you have the right to judicial review in an appropriate United States district court in accordance with 5 U.S.C. § 552(a)(4)(B).

The Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to judicial review. Using OGIS services does not affect your right to pursue judicial review. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
www.ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Sincerely,



Brandon Willis
Administrator

Enclosures



United States
Department of
Agriculture

February 2, 2016

Farm and Foreign
Agricultural
Services

William Bush

Risk
Management
Agency

Re: Freedom of Information Act Request 2016-RMA-01538-F

1400 Independence
Avenue, SW
Stop 0801
Washington, DC
20250-0801

Dear Mr. Bush:

This letter is in response to your Freedom of Information Act request received January 11, 2016. Specifically, you requested, *"the average yield per acre reported to the Risk Management Agency (RMA) for corn and for soybeans aggregated by section for Amherst, Rock, Sheridan and Tilden townships in Cherokee County, Iowa for 2015, 2014, 2013 and 2012. Only if you are able to provide the RMA average yield for corn and for soybeans aggregated by section, I also request the total harvested acres for corn and total harvest acres for soybeans aggregated by section for Amherst, Rock, Sheridan and Tilden townships in Cherokee County, Iowa for 2015, 2014, 2013 and 2012."*

The Risk Management Agency (RMA) does not have records for average yields available by township within a county.

We have prepared and released average yield per acre information for Corn and Soybeans containing the historical yields underlying the Supplemental Coverage Option (SCO) for the 2016 crop year. The data files and associated layouts can be found at http://www.rma.usda.gov/ftp/Miscellaneous_Files/Area_Yield_Data/. The most recent set of average yields for corn and soybeans that are released publicly are in the file "cy2016_production_area_yield_history_1130.zip". You can also find other crop year information at the above link.

You may appeal this decision in writing to the Administrator, Risk Management Agency, 1400 Independence Avenue, SW, Room 6092-S, Stop Code 0801, Washington, DC 20250-0801, within 45 days from the date of this letter. The phrase 'FOIA APPEAL' should appear on the letter and the outside of the envelope containing the appeal.


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2016-RMA-01538-F

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If you have any further questions, please contact me at 202-690-3041.

Best regards,

A handwritten signature in cursive script, appearing to read "Kim E. Morris".

Kimberly E. Morris
RMA FOIA Officer
Executive Planning & Administrative
Support Branch
kimberly.morris@rma.usda.gov

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net]
 Sent: Tuesday, December 01, 2015 9:07 AM
 To: Morris, Kimberly - RMA
 Subject: RMA yields etc.

Ms. Morris,

1. If a person who is not the producer makes a freedom of information request for a unit tract of land, what information is available i.e. a). RMA yields reported by the producer, b). government payments by type, amount, date, and crop year, including crop insurance payments, and c). other (please describe)?
2. If a person who is not the producer makes a freedom of information request regarding a producer, what information is available i.e. a). RMA yields reported by the producer by unit tract of land and location of unit tract of land, b). government payments by unit tract of land, type, amount, date, and crop year, including crop insurance payments, and c). other (please describe)?
3. If a person makes a freedom of information request for a county's RMA yields by unit tract of land, including location of unit tract of land, but with no producer identifying information, would such a request be fulfilled?
4. Why do none the years for RMA FOIA Annual Reports and RMA Requests Logs correspond in the RMA FOIA Reading Room so someone could compare the two?

Thank you for your timely assistance,

William Bush

Morris, Kimberly - RMA <kimberly.morris@rma.usda.gov>
 To: Bill Bush <bbush@netins.net>
 Cc: "Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>

Tue, Dec 1, 2015 at 2:40 PM

Hello Mr. Bush,

Thank you for your questions. To answer items 1-3:

Without an authorization to release records from the producer, the Risk Management Agency is only able to release records aggregated at the county level due to the provisions of the Federal Crop Insurance Act which prohibit release of producer provided information unless a release is provided by each producer or the information is aggregated to the county level. The aggregation is required by the Federal Crop Insurance Act (enclosed) which falls under Exemption 3 of the FOIA. In addition, section 1619 of the Food, Conservation, Energy Act of 2008 (enclosed) prohibits USDA from disclosing certain categories of information, including geospatial information on agricultural land or operations.

The RMA website contains (<http://www.rma.usda.gov/data/sob.html>) all of the Federal crop insurance programs' county level information in various formats (e.g. data files, prepared reports, dynamic report generator user interfaces, etc.).

For item number 4, we have been working on updating our reading room. Unfortunately, with limited resources we haven't been able to keep items as current as we would like. We are continuing to work on this. If there is a particular FOIA Log for a fiscal year or FOIA Annual report for a particular fiscal year you would like to see, you can request this.

Also, the landing page for our information browser (<http://www.rma.usda.gov/tools/>) might have some useful information.

Please let me know if I can be of further assistance.

Kind regards,

Kimberly

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net]
Sent: Tuesday, December 15, 2015 9:20 AM
To: Morris, Kimberly - RMA
Subject: FOIA

Ms. Morris,

If a person files a foia request for the average RMA yield per acre for a section in a township in a county for corn and soybeans for a specified period of time, can you provide that information as long as there are multiple producers in the section and therefore, no individual producer's yield information can be ascertained and the information remains in statistical form? Thank you for your timely response.

William Bush

On Tue, 15 Dec 2015 17:14:57 +0000

"Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>
wrote:

Mr. Bush,

Unfortunately, RMA is still not able to provide producer data unless it's aggregated at least to the County Level per the Federal Crop Insurance Act.

Thank you for your inquiry.

Kind regards,

Kimberly

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net] Sent: Thursday, December 17, 2015 9:00 AM
To: Morris, Kimberly - RMA
Subject: Re: FOIA

Ms. Morris,

Please advise where in the Federal Crop Insurance Act the law stipulates aggregation must be to the County Level as you state.

William Bush

On Thu, 17 Dec 2015 15:37:59 +0000

"Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov> wrote:

Mr. Bush,

USDA's interpretation of the Act is that producer provided information must be aggregated to at least the county level.

Regards,

Kimberly

----- Forwarded message -----

From: Bill Bush <bbush@netins.net>
To: "Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>
Cc:
Date: Thu, 17 Dec 2015 14:34:10 -0600
Subject: Re: FOIA
Ms. Morris,

APPENDIX

Does the USDA have a legal opinion issued by a court of law supporting USDA's assertion that information must be aggregated to at least the county level? If so, please provide said opinion.

William Bush

On Fri, 18 Dec 2015 14:27:18 +0000
"Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>
wrote:

Mr. Bush,

If you would like to request a legal opinion, please file a FOIA request through our Office of General Counsel. The point of contact is below:

OFFICE OF THE GENERAL COUNSEL
Karen M. Carrington Senior Counsel General Law and Research Division U.S. Department of Agriculture

On Fri, 18 Dec 2015 09:07:58 -0600
"Bill Bush" <bbush@netins.net> wrote:
Ms. Morris,

I believe Ms. Carrington has misunderstood my question and, therefore, has not answered the question I am asking. I am asking:
Has the USDA's assertion that yield information be aggregated to the county level been tried at law and has a US court of law upheld the USDA's assertion that yield information must be aggregated to the county level for disclosure purposes of the Federal Crop Insurance Act?

William Bush

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net] Sent: Friday, December 18, 2015 10:26 AM
To: Morris, Kimberly - RMA
Subject: Re: FOIA

Ms. Morris,

I believe I may have misread your previous response as coming from Ms. Carrington. Do I need to contact Ms. Carrington if I want an answer to just the question: Has the USDA's assertion that yield information be aggregated to the county level been tried at law and has a US court of law upheld the USDA's assertion that yield information must be aggregated to the county level for disclosure purposes of the Federal Crop Insurance Act?

William Bush

On Fri, 18 Dec 2015 15:53:56 +0000
"Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>
wrote:

Mr. Bush,

I gave you Ms. Carrington's information because you were asking for a legal opinion. Ms. Carrington or someone in the Office of General Counsel may be able to answer your question below.

Regards,

Case 5:16-cv-04128-LTS Document 1 Filed 11/16/16 Page 29 of 32
Kimberly

On Fri, 18 Dec 2015 10:19:30 -0600

"Bill Bush" <bbush@netins.net> wrote:

Ms. Morris,

As a FOIA Officer acting with the authority and corresponding obligation of FOIA, do you agree the common meaning of the word aggregate is the combination of two or more items?

William Bush

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net]

Sent: Tuesday, December 22, 2015 9:11 AM

To: Morris, Kimberly - RMA

Subject: Re: FOIA

Ms. Morris,

Hello, from the other side. Have you ceased responding to my inquiries or are you in need of more time?

William Bush

----- Forwarded message -----

From: Bill Bush <bbush@netins.net>

To: "Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>

Cc:

Date: Fri, 08 Jan 2016 12:15:47 -0600

Subject: Re: FOIA

Ms. Morris,

Are you asserting my FOIA request would be denied due to being technically infeasible and not due to FOIA exemption 3 statute? The USDA has conducted aerial surveys of all tracts of land which includes the Farm Number, Tract Number, Township name and Section Number. A reasonable person would find it difficult to believe that this information is not included by data field in the RMA Policyholder System. An aggregation computer program is among the simplest to perform and perhaps the reason computers were invented in the first place. Aggregating by section is no more difficult than aggregating by county for a computer if the data fields exist in the file. Please check with the Program Office. If my request is not technically infeasible, I believe the decision to honor or deny my request would be decided by the FOIA Officer. Furthermore, FOIA 5 U.S.C. § 552(a)(3)(B) states, "In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section."

In the FOIA Annual Reports from 2008 - 2010 in the RMA FOIA Reading Room, I noticed in the instances for Exemption 3 Statutes, 7 U.S.C § 1502(c) FCIC Crop Insurance Act Section 502, no case citation was listed. Does this refer to legal citation such as: The supreme court has held, "When terms used in a statute are undefined, we give them their ordinary meaning." Bailey v. United States, 516 U.S. 137, 143, 145 (1995); see also Asgrow Seed Co. v. Winterboer, 513 U.S. 179, 187 (1995)?

Thank you for your assistance.

William Bush

----- Forwarded message -----

From: Bill Bush <bbush@netins.net>
 To: kimberly.morris@rma.usda.gov
 Cc:
 Date: Fri, 05 Feb 2016 08:18:06 -0600
 Subject: Re: 2016-RMA-01538-F Final Response ltr 2.2.16
 Ms. Morris,

I ask for clarification of the RMA's response, "The Risk Management Agency (RMA) does not have records for average yields available by township within a county." Which of the following is the RMA specifically stating:

1. The RMA does not have average yields available by section for townships within a county because the individual unit tract of land yields reported by producers have not been aggregated to the section level for townships within any county.
2. The RMA does not have average yields available by section for townships within a county because it is impossible for the RMA to aggregate individual unit tract of land yields reported by producers to the section level for townships within a county.

Thank you for your response.

William Bush

On Tue, 9 Feb 2016 13:00:25 +0000

"Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov> wrote:

Mr. Bush I sent forth your question and this was the response I received:

The Data folks, said " RMA does not collect legal descriptions for every actual yield that a producer reports. The information collected and sent to RMA is contained in Appendix III to the Standard Reinsurance Agreement. The field names and formats for producer yield history are found in Record Type: P15A, Yield History. These data layouts are located HERE: <http://www.rma.usda.gov/data/m13/>. This information is by year. For example, 2015 yield history information is found HERE: http://www.rma.usda.gov/ftp/Publications/M13_Handbook/2015/approved/P15A_ENHANCED_APP_III.PDF.

Kimberly

Morris, Kimberly - RMA <kimberly.morris@rma.usda.gov>
 To: Bill Bush <bbush@netins.net>
 Cc: "Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>

Wed, Feb 10, 2016 at 9:41 AM

Good morning Mr. Bush,

The response I received to your question below is:

"Legal descriptions are section/township/range, which is what he asked for with average yields. I cannot aggregate average yields by section/township/range because section/township/range is not reported to us for producers' actual yields."

Kimberly

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net]
 Sent: Tuesday, February 09, 2016 4:50 PM
 To: Morris, Kimberly - RMA
 Subject: Re: 2016-RMA-01538-F Final Response ltr 2.2.16

Ms. Morris,

Thank you. Are the data folks referring to Common Land Unit (CLU) when they say RMA does not collect legal descriptions for every actual yield that a producer reports?

William Bush

-----Original Message-----

From: Bill Bush [mailto:bbush@netins.net]
Sent: Friday, February 26, 2016 1:40 PM
To: Morris, Kimberly - RMA
Subject: Re: 2016-RMA-01538-F Final Response ltr 2.2.16

APPENDIX

Ms. Morris,

Will the RMA have a response to any of the following questions I have asked regarding this FOIA request:

Which is true 1 or 2?

1. The RMA does not have average yields available by section for townships within a county because the individual unit tract of land yields reported by producers have not been aggregated to the section level for townships within any county.
2. The RMA does not have average yields available by section for townships within a county because it is impossible for the RMA to aggregate individual unit tract of land yields reported by producers to the section level for townships within a county.
3. Was this FOIA request denied because I asked for an average of the yields and not simply the aggregate of the yields?
4. What is the RMA's policy for disclosure under FOIA now that it has been established that information does not have to be aggregated to the county level to comply with the Federal Crop Insurance Act?

Thank you for your response.

William Bush

On Mon, 29 Feb 2016 20:56:00 +0000

"Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov> wrote:

Mr. Bush,

The Risk Management Agency has provided answers to your questions above and beyond the original scope of the FOIA submitted. At this point, the agency has replied to your FOIA request. If you are dissatisfied with the response, then please reference the instructions on how to file an appeal, which you have been provided.

In addition, the RMA website provides all of the Federal crop insurance program's publically available information in various formats (e.g. data files, prepared reports, dynamic report generator user interfaces, etc.) here: <http://www.rma.usda.gov/data/sob.html>.

Additional data tools and reports can be found on our information browser here: <http://www.rma.usda.gov/tools/>.

If you have a further need of records, please submit a FOIA request via <https://efoia-pal.usda.gov/palMain.aspx> or to kimberly.morris@rma.usda.gov.

Respectfully,

Kimberly Morris

----- Forwarded message -----

From: Bill Bush <bbush@netins.net>
To: "Morris, Kimberly - RMA" <kimberly.morris@rma.usda.gov>
Cc:
Date: Mon, 29 Feb 2016 15:21:17 -0600
Subject: Re: 2016-RMA-01538-F Final Response ltr 2.2.16
Ms. Morris,

Thank you for your response.

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