

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FLORIDA LEGAL SERVICES, INC.)
3000 Biscayne Blvd suite 450)
Miami, FL. 33137,)

Plaintiff,)

v.)

Civil Action No. _____

U.S. DEPARTMENT OF HOMELAND)
SECURITY)
Washington, D.C. 20528,)

Defendant.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Through this action, brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, Plaintiff Florida Legal Services (“FLS”) seeks access to critical government records relating to the provision of assistance to people displaced, since 2004, by hurricanes and flooding in the Southeastern United States in the possession of Defendant Department of Homeland Security (“DHS”) and one of its units, the Federal Emergency Management Agency (“FEMA”). The records requested by FLS will provide crucial public understanding of FEMA’s housing assistance programs available to hurricane and flood victims, FEMA’s procedures for terminating housing assistance, and the public’s rights of notice and appeal of termination of FEMA housing assistance. DHS has failed to provide the requested records despite the mandates of FOIA, necessitating the filing of this Complaint.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties under 28 U.S.C. § 1331 and 5 U.S.C. § 552 (a)(4)(B). Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff FLS is a non-profit public interest law firm whose mission is providing legal assistance to the disadvantaged and indigent in Florida. FLS was formed by the Florida Bar in 1973 to mobilize information and resources and to distribute such resources in collaboration with more than twenty-five other legal aid organizations throughout the state. FLS provides legislative and administrative advocacy, litigation, and policy analysis. One of FLS's primary roles is the provision of educational and technical information to the advocates that serve the impoverished community.

4. Defendant DHS is an agency of the federal government of the United States located in Washington, D.C. FEMA is a part of DHS, and is responsible for managing the federal response and recovery efforts following any national incidents, including the federal efforts in response to natural disasters such as the Gulf Coast hurricanes of 2004 and 2005. FEMA has possession of and control over the records FLS seeks.

STATEMENT OF FACTS

5. On May 4, 2006, FLS requested FEMA records dated from 2004 to the present related to FEMA policies, guidelines, and practices for the provision of housing assistance to victims of hurricanes and flooding in the Southeastern U.S., and FEMA's template or standard forms used for the termination of such housing assistance.¹ FLS requested these records to remedy the public's lack of understanding of FEMA's management of emergency and low-income housing support in the wake of the Gulf Coast hurricanes, the procedures through which FEMA terminates such support, and any rights of appeal the public has to FEMA housing termination procedures. In its letter, FLS requested that all fees associated with the request be waived because disclosure of the requested records is likely to contribute significantly to public understanding of FEMA's response to recent natural disasters and is not in FLS's commercial interest.

¹ See May 4, 2006 letter from V. Greenfield and C. Huddleston to FEMA, attached hereto as Exhibit 1.

6. By letter dated May 11, 2006, FEMA acknowledged receipt of FLS's FOIA request.² In that letter, FEMA denied all of FLS's requests. FEMA stated that FLS's request for waiver of fees "did not establish how provision of the subject records to you at public expense would either primarily benefit the general public or significantly enhance the general public's understanding of FEMA operations or activities compared with its present understanding." Ex. 2 at 2. FEMA also stated that FLS had failed to establish both an ability and intent to distribute effectively the requested information. *Id.*

7. By letter dated June 16, 2006, FLS made a new request for FEMA records since 2004 related to the guidelines, procedures, and written instruments used by FEMA to provide and terminate housing assistance to victims of hurricanes and flooding in the Southeastern U.S.³ FLS requested policy memoranda, field guidelines, instructions, forms, and templates used in the course of terminating housing support. FLS requested these records because of significant gaps in the public's understanding of how and under what circumstances FEMA terminates government-assisted housing to natural disaster victims. FLS explained in its letter that the requested records would provide the public with a better understanding of the "policies, procedures, and processes FEMA employs to terminate leases," "how much advance notice is provided," and "what appeal rights the public has" when FEMA terminates housing support. Ex. 3 at 3. FLS requested that all costs associated with the request be waived because disclosure of the requested records is likely to contribute significantly to public understanding of FEMA's response to recent natural disasters and is not in FLS's commercial interest.

8. By letter dated June 23, 2006, FEMA acknowledged receipt of FLS's letter and denied all of FLS's requests.⁴ This letter is identical in wording to the May 11, 2006 denial letter sent in response to FLS's May 4, 2006 records request under FOIA. In the letter, FEMA denied FLS's request for a fee waiver, explaining that FLS's request "did not establish how the

² See May 11, 2006 letter from J. Ovall to V. Greenfield and C. Huddleston, attached hereto as Exhibit 2.

³ See June 16, 2006 letter from V. Greenfield and C. Huddleston, attached hereto as Exhibit 3.

⁴ See June 23, 2006 letter from J. Ovall to V. Greenfield and C. Huddleston, attached hereto as Exhibit 4.

provision of the subject records to you at public expense would either primarily benefit the general public or significantly enhance the general public's understanding of FEMA operations or activities compared with its present understanding." Ex. 4 at 2. FEMA further stated that FLS had failed to establish "both an ability and intent to effectively distribute the requested information to the general public." *Id.* FEMA stated that FLS was responsible for paying search, review, and duplication fees associated with the request, because FEMA had determined FLS to be a commercial use requester. *Id.* FEMA did not respond directly to FLS's request for records in this letter, but recommended that FLS narrow the scope of its request in order to reduce the fees, which FEMA estimated likely would exceed \$250. *Id.* at 2-3.

9. By letter dated August 17, 2006, FLS appealed FEMA's response to its FOIA request.⁵ In response to FEMA's refusal to grant a fee waiver based on FLS's alleged failure to establish the public's need for the requested information, FLS stated that the "general public is currently unaware of the policies, procedures, and processes FEMA employs to terminate its leases," which has "caused a great deal of confusion as individuals currently residing in FEMA housing look to move to more permanent housing." Ex. 5 at 1. FLS explained that the public does not know what sort of notice of termination of housing assistance FEMA provides, the appeal rights of persons whose housing is or will be terminated, and what appeal forums and processes are available to contest termination of FEMA housing support. *See* Ex. 5 at 1. Due to the public's lack of adequate information concerning these issues, FLS explained, "individuals do not understand the processes they must follow to avoid a termination of their FEMA housing, but even worse, they feel threatened by the unfamiliar bureaucracy and procedures." Ex. 5 at 1. FLS stated that its goal in obtaining the requested records was to "ensure that the public – in particular the undereducated, elderly, disabled and others who face extra barriers to understanding relatively complex procedures – becomes more knowledgeable about these processes so as to more effectively use the assistance provided to them." Ex. 5 at 2. FLS

⁵ *See* August 17, 2006 letter from V. Greenfield and C. Huddleston to FEMA, attached hereto as Exhibit 5.

explained that because the general public has virtually no knowledge of FEMA's housing assistance termination procedures, FLS's use of the requested records will significantly increase public understanding. *See Ex. 5 at 2.*

10. In its appeal letter, FLS also asserted that FEMA was wrong to deny the request for fee waiver on the grounds that FLS failed to establish an ability and intent to effectively distribute the requested information to the public. *See Ex. 5 at 1.* To the contrary, in its initial June 16, 2006 request, which it attached to its appeal letter, FLS explained in detail its intent and ability to distribute the requested information to the public. In its appeal, FLS reiterated that it intends to disseminate the information sought to the legal services community throughout Florida, which in turn will disseminate that information to its client constituency. *See Ex. 5 at 2.* FLS also intends to distribute the requested information through at least two electronic list serves, which in total reach approximately thirty different civil legal assistance and social service organizations serving victims of natural disasters and persons living in government subsidized shelters or housing. *See Ex. 3 at 3; see also Ex. 5 at 1.* Other legal aid organizations serving areas affected by natural disasters will produce community education materials and offer disaster preparedness seminars based on information and publications originally produced by FLS. *Id.* FLS also stated that FEMA housing information gleaned from the requested records would be made available to the general public through its two Web sites. *See Ex. 3 at 3.*

11. FLS's appeal also disputed FEMA's categorization of FLS as a commercial requester. FLS reiterated that its interest in the requested information is strictly non-commercial, that it does not intend to re-sell the information, and that it will receive no personal or commercial benefit from the disclosure of the information to the public. *See Ex. 5 at 2.*

12. By letter dated August 28, 2006, DHS acknowledged receipt of FLS's appeal of the agency's denial of a fee waiver, and assigned it an appeal number. DHS also explained that there were a number of FOIA appeals ahead of FLS's and warned there would be a delay in

adjudicating the matter.⁶ This was the last correspondence received from FEMA or DHS regarding FLS's request for records under FOIA.

13. Under 5 U.S.C. § 552(a)(6)(A), Defendant had 20 working days to respond to FLS's FOIA request and 20 days to respond to its FOIA appeal. More than 20 days have passed since FLS's June 16, 2006 FOIA request and its August 17, 2006 appeal letter. Four hundred forty-five days have passed since FLS submitted its original FOIA request to DHS, yet FLS has received neither a grant of its request for waiver of fees associated with the FOIA request nor any records from FEMA.

14. FLS is therefore deemed to have exhausted its administrative remedies under FOIA. *See* 5 U.S.C. § 552(a)(6)(C)(i).

⁶ *See* August 28, 2006 letter from Erica G. Perel, Office of General Counsel, DHS to V. Greenfield, attached hereto as Exhibit 6.

CLAIMS FOR RELIEF

COUNT I

FAILURE TO PRODUCE RECORDS

15. FLS repeats the allegations set forth above as if stated fully herein.
16. FLS properly requested the records described above from Defendant DHS.
17. Those records were under the custody and/or control of Defendant DHS.
18. Defendant DHS did not produce the records, nor did it assert any statutory exemptions to production.
19. Defendant DHS violated its duty to produce its records in response to FLS's proper FOIA request.

COUNT II

FAILURE TO WAIVE FEES

20. FLS repeats the allegations set forth above as if stated fully herein.
21. On June 16, 2006, FLS asked DHS to waive any fees related to its FOIA request because the use of the records sought is in the public interest and is likely to contribute significantly to public understanding of FEMA's housing support termination procedures, and the information sought is not primarily in FLS's commercial interest.
22. DHS denied FLS's request for a waiver of fees, in violation of FOIA.

COUNT III

FAILURE TO RESPOND TO APPEAL

23. FLS repeats the allegations set forth above as if stated fully herein.
24. On August 17, 2006, FLS appealed DHS's improper denial of its FOIA request and its request for the waiver of fees.
25. As of the date of the filing of this Complaint, DHS has not responded to FLS's appeal, in violation of FOIA.

REQUEST FOR RELIEF

WHEREFORE, FLS respectfully requests that this Court:

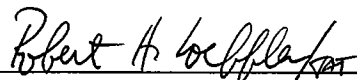
- A) Declare that Defendant's failure to disclose the records requested by FLS is unlawful under FOIA;
- B) Declare that Defendant's failure to waive the fees associated with FLS's FOIA request is unlawful under FOIA;
- C) Declare that the Defendant's failure to respond to FLS's appeal is unlawful under FOIA;
- D) Order Defendant to begin processing FLS's FOIA request immediately, on a schedule set forth by this Court, and to make the requested records available to FLS without any charge;
- F) Award FLS its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- G) Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

FLORIDA LEGAL SERVICES, INC.

By Counsel

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