

February 23, 2018

VIA Electronic Delivery

FEMA Information Management Division
FOIA Request
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Washington, D.C. 20472
fema-foia@fema.dhs.gov

FEMA FOIA Officer
1800 S. Bell Street, Fourth Floor, Mail Stop 3005
Arlington, VA 20598-3005
FEMA-FOIA@fema.dhs.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, and the Federal Emergency Management Agency (“FEMA”) FOIA regulations beginning at 6 C.F.R. Part 5, Democracy Forward Foundation and LatinoJustice PRLDEF (“LatinoJustice”), one of the nation’s leading advocacy organizations working to protect the rights of all Latinos, makes this request through its initiative, Ayuda Legal Huracán María, a disaster relief initiative (collectively, the “Requesters”).

I. Background

Hurricane Maria, a category 5 storm, made landfall in Puerto Rico on September 20, 2017. The hurricane brought with it 30 hours of unrelenting high wind and rain¹² that knocked out electricity for the entire island, eliminated cell phone service for 95% of its residents, forced 60% of gas stations offline, and left more than half of the island without access to clean water.³ This

¹ Robinson Meyer, *What’s Happening With the Relief Effort in Puerto Rico?*, The Atlantic (Oct. 4, 2017), <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956/>.

² *Id.*

³ U.S. Department of Homeland Security, *Hurricane Maria Update*, Nov. 7, 2017, <https://www.dhs.gov/news/2017/11/07/hurricane-maria-update>.

devastation came on top of Hurricane Irma, another category 5 storm, which had hit Puerto Rico only two weeks prior.⁴ While the official death toll from Hurricane Maria is 63 people, the actual number of people who were killed by the storm or its aftermath is estimated at being upwards of 1000 or more.⁵

The danger posed by Hurricane Maria was foreseeable, even before the storm hit. Puerto Rico's governor warned that it could be “the biggest and potentially most catastrophic hurricane to hit Puerto Rico in a century.”⁶ Yet the federal government appears to have been unprepared to respond to the magnitude of the disaster. In contrast to other hurricanes that hit the United States in the fall of 2017, many fewer federal personnel were on the ground in Puerto Rico either before or shortly after the storm.⁷

Further, President Trump, while initially promising support for the U.S. territory in advance of the storm,⁸ quickly began criticizing Puerto Rican government officials and the residents of the island.⁹ Thereafter, the President threatened to withdraw FEMA support from Puerto Rico.¹⁰

Currently, more than two months after Hurricane Maria made landfall, much of Puerto Rico still lacks electricity, and its infrastructure remains decimated.¹¹ In but one example, the lack of reliable cell phone and internet service for much of the island meant that certain municipalities were not made aware that FEMA aid was available, but needed to be retrieved.¹² Lack of connectivity also meant important medical and insurance records could not be accessed, which hampered the delivery of health care to the few who were able to travel to hospitals and

⁴ Alex Johnson, et al., *Hurricane Irma Skirts Puerto Rico, Leaves 1 Million Without Power*, NBC News (Sept. 7, 2017), <https://www.nbcnews.com/storyline/hurricane-irma/hurricane-irma-skirts-puerto-rico-lashing-it-powerful-winds-flooding-n799086>.

⁵ Frances Robles, et al., *Official Toll in Puerto Rico: 64. Actual Deaths May Be 1,052.*, New York Times (Dec. 9, 2017), <https://www.nytimes.com/interactive/2017/12/08/us/puerto-rico-hurricane-maria-death-toll.html>.

⁶ <http://abcnews.go.com/International/merciless-hurricane-maria-pummels-dominica-takes-aim-puerto/story?id=49944250>.

⁷ <http://www.cnn.com/2017/09/26/us/response-harvey-irma-maria/index.html>.

⁸ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 19, 2017, 10:23 PM), <https://twitter.com/realDonaldTrump/status/910328626075389952> (“Be careful, our hearts are with you- will be there to help!”).

⁹ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 30, 2017, 7:26 AM), <https://twitter.com/realDonaldTrump/status/914089003745468417> (“Such poor leadership ability by the Mayor of San Juan, and others in Puerto Rico, who are not able to get their workers to help.”); Donald J. Trump (@realDonaldTrump), Twitter (Sept. 30, 2017, 7:29 AM), <https://twitter.com/realDonaldTrump/status/914089888596754434> (“[They] want everything to be done for them when it should be a community effort.”).

¹⁰ See Donald J. Trump (@realDonaldTrump), Twitter (Oct. 12, 2017), <https://twitter.com/realDonaldTrump/status/918432809282342912> (“We cannot keep FEMA, the Military & the First Responders, who have been amazing (under the most difficult circumstances) in P.R. forever!”)

¹¹ https://www.huffingtonpost.com/entry/puerto-rico-maria-by-the-numbers_us_5a134c85e4b0c335e996b89d; see also Kara Dapena, et al., *Inside Puerto Rico’s Struggle to Recover a Month After Hurricane*, The Wall Street Journal (Oct. 20, 2017), <https://www.wsj.com/articles/inside-puerto-ricos-struggle-to-recover-a-month-after-hurricane-1508491811>.

¹² Dapena, et al., *supra* note 11; Jack Healy, et al., *Aid Is Getting to Puerto Rico. Distributing It Remains a Challenge*, New York Times (Oct. 3, 2017), https://www.nytimes.com/2017/10/03/us/puerto-rico-aid-fema-maria.html?_r=0.

pharmacies, where they often found facilities that were without power and/or severely damaged.¹³

In addition, FEMA has been heavily criticized for a number of self-inflicted errors. Most prominently, it has centralized aid on an island that was left with impassable roads, crippled infrastructure, and few personnel to assist.¹⁴ FEMA also waited a month to fully authorize funding for Categories C-G of FEMA's Permanent Work public assistance in Puerto Rico, despite authorizing such funding in Texas only ten days after the passage of Hurricane Harvey.¹⁵ And FEMA's own poor contracting practices have further impeded Puerto Rico's recovery, such as when FEMA awarded \$30 million in contracts to a new Florida-based company for the provision of tarps to those whose roofs had been blown away in the hurricane.¹⁶ Not a single tarp was provided, and FEMA was forced to cancel the contract, further delaying the aid so greatly needed by those without adequate shelter.¹⁷ Throughout, there has been public concern about FEMA's lack of transparency created, in part, by FEMA's decision to remove statistics about the relief effort from the FEMA website without explanation and at a time when nearly 80% of the island remained without electricity and many homes and communities without drinking water.¹⁸ Though the statistics were later restored, the incident needlessly injured the public's confidence in FEMA's efforts and transparency.¹⁹

Now that Maria has passed, and as the full scale and scope of the devastation visited upon Puerto Rico has only worsened as a result of either inadequate or negligent planning, a series of questions linger about the preparedness of the federal government to respond, the efficacy of the response that has come, whether and to what extent Puerto Rico was viewed as less of a priority relative to contemporaneous hurricane-relief efforts in Florida and Texas, and the extent to which the President's public remarks about Puerto Rico hampered relief efforts. Additionally, despite

¹³ Frances Robles, *Puerto Rico's Health Care Is in Dire Condition, Three Weeks After Maria*, New York Times (Oct. 10, 2017), <https://www.nytimes.com/2017/10/10/us/puerto-rico-power-hospitals.html>.

¹⁴ Mary Anastasia O'Grady, *FEMA's Foul-Up in Puerto Rico*, Wall Street Journal (Oct. 1, 2017),

<https://www.wsj.com/articles/femas-foul-up-in-puerto-rico-1506889400> ("Emergency management is all about anticipating disruptions and establishing contingencies. The failure of the local FEMA office to do so is organizational negligence..."); Danica Cotto and Laurie Kellman, *Puerto Ricans Say U.S. Relief Efforts Failing Them*, USA News (Sept. 28, 2017), <https://www.usnews.com/news/politics/articles/2017-09-28/trump-waives-cargo-restrictions-to-speed-help-to-puerto-rico>; Caitlin Dewey, *Why FEMA sent 'junk food' to Puerto Rican hurricane survivors*, Washington Post (Oct. 24, 2017),

https://www.washingtonpost.com/news/wonk/wp/2017/10/24/why-fema-sent-junk-food-to-puerto-rican-hurricane-survivors/?utm_term=.6b8dbcd46fed.

¹⁵ Alexia Fernandez Campbell, *FEMA has yet to authorize full disaster help for Puerto Rico*, Vox (Oct. 16, 2017), <https://www.vox.com/policy-and-politics/2017/10/3/16400510/fema-puerto-rico-hurricane> (explaining that Categories C-G of FEMA's Permanent Work funding is the primary source of federal assistance for rebuilding critical public infrastructure after a natural disaster).

¹⁶ Tami Abdollah And Michael Biesecker, *Big contracts, no storm tarps for Puerto Rico*, Chicago Tribune (Nov. 28, 2017), <http://www.chicagotribune.com/business/sns-bc-us--hurricane-failed-help-20171128-story.html>.

¹⁷ *Id.*

¹⁸ Jenna Johnson, *FEMA removes — then restores — statistics about drinking water access and electricity in Puerto Rico from website*, Washington Post (Oct. 6, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/10/05/fema-removes-statistics-about-drinking-water-access-and-electricity-in-puerto-rico-from-website/?utm_term=.4256d272eb25.

¹⁹ *Id.*

overwhelming evidence of the ongoing need for a robust and unprecedented federal response, FEMA recently announced that it would soon end new shipments of food and water supplies to Puerto Rico.²⁰ These open questions have yet to be adequately addressed, and so they remain the subject of tremendous public interest.

II. Records Requested

In an effort to understand, and explain to the public, whether and to what extent FEMA was adequately prepared to provide disaster relief in Puerto Rico following Hurricanes Irma and Maria, LatinoJustice request that FEMA produce the following within twenty (20) business days:

1. Any and all records relating to FEMA's advance planning and preparations for providing hurricane-specific relief to Puerto Rico in 2017, including copies and drafts of FEMA's Catastrophic Hurricane Plan for Puerto Rico, or any documents containing similar information.
2. Any and all records concerning or discussing the need to provide Spanish language translations of FEMA materials intended for public distribution in Puerto Rico on hurricane relief.
3. Any and all records discussing or relating to President Donald J. Trump's disaster declarations for Puerto Rico, including any records discussing why the initial disaster declaration did not declare a disaster for all Puerto Rican municipalities.
4. Any and all records, including but not limited to communications, discussing or commenting on Tweets or statements made by President Donald J. Trump regarding hurricanes in 2017, FEMA's hurricane relief efforts, Hurricanes Harvey, Maria or Irma, or Puerto Rico.

In completing this request, please search for records sent or received by the following FEMA offices: Office of the FEMA Administrator, Office of the Chief of Staff, Office of the Deputy FEMA Administrator, and the Office of the Regional Administrator for FEMA Region II.²¹

The time period for this search is from June 1, 2017, to the date on which the search is performed.

III. Format of Production

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes,

²⁰ Adrian Florido, *In Reversal, FEMA Says It Won't End Puerto Rico Food and Water Distribution Wednesday*, NPR (Jan. 31, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/31/582050242/lawmakers-urge-fema-to-reconsider-ending-food-aid-for-puerto-rico>.

²¹ <https://www.fema.gov/media-library-data/1510589595666-fb755b3e163a690238cd14ee5e397692/FEMA.pdf>.

without limitation, all records, including communications, preserved in electronic (including metadata) or written form, such as: all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

We request that you provide responsive records in the following manner:

- Via electronic production (e.g. saved on a USB drive or via email);
- In PDF or TIF format, but with any data records in native format (i.e. Excel spreadsheets in Excel);
In electronically searchable format;
- Each record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requester be able to identify the attachments with emails;
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested records cannot be disclosed in their entirety, please release any material that can be reasonably segregated. See 5 U.S.C. § 552(b). Should any records or portions of records be withheld, we further request that you state with specificity the description of the record to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any record include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a record is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested records are not available within that time period, we request that you provide us with all requested records or portions thereof that are available within that time period, and an estimated timeline of production for the remaining responsive records. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

IV. Request for Fee Waiver

Requesters ask for a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1). Requesters meet the requirements for a fee waiver because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the requesters’ expertise in the subject area and ability to convey the information; the Requesters’ primary interest is in disclosure; and they have no commercial interest in the information.

In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(k)(2)(iii), (k)(3)(ii), , the Requesters qualify as “representatives of the news media,” making the waiver of fees presumptive. A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 6 C.F.R. § 5.11(b)(6).

Requesters are non-profit legal organizations, and a legal support initiative organized and coordinated through the access to justice roundtable in Puerto Rico and LatinoJustice,²² an organization dedicated to civil rights and human rights. Requesters have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government’s record and position on immigrant and racial justice, policing and government transparency and accountability.²³ The Requesters have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of government actions and policies with regard to disaster relief provided to millions of American citizens in the wake of catastrophic hurricanes. Access to this information is crucial for the Requesters, and the communities they serve, to understand and evaluate governmental efforts and their consequences.

²² Launched in the wake of Hurricane Maria, Ayuda Legal Huracán Maria is a legal support initiative organized by the access to justice community in Puerto Rico and coordinated with LatinoJustice, which is working to provide pro bono legal support to those in need in Puerto Rico. LatinoJustice, founded in 1972 as the Puerto Rican Legal Defense and Education Fund, is a nonprofit civil rights legal and advocacy organization that advocates for and defends the constitutional rights and equal protection of all Latinos. LatinoJustice engages in advocacy via numerous local, regional and national coalitions, networks and alliances concerning a myriad of issues related to the broad scope of its work.

²³ LatinoJustice, for example, produces newsletters, blogs, reports, opinion editorials, video interviews and applications and software related to the analysis and understanding of civil rights issues, as well as providing resources for assistance with violations of rights. All of its services and materials are free and available to the public. *See, e.g.*, http://latinojustice.org/briefing_room/.

In addition, the disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts regarding Hurricanes Irma and Maria underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the records sought will contribute significantly to public understanding of an issue of profound public importance.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

V. Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public about an actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(ii). Expedited processing is also required when the subject of the request is a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 6 C.F.R. § 5.5(e)(iv). Expedited processing is required by both 6 C.F.R. 5.5(e)(ii) and (iv).

With regard to subsection (ii), there is an urgent need to inform the public about FEMA’s preparedness, planning and disaster response with regard to Hurricanes Irma and Maria. In addition, decisions related to the economic well-being and health of Puerto Ricans, as well as the rebuilding of infrastructure and essential services that affect the daily lives of all Puerto Ricans, are being made with little transparency and public input, which makes the requested information of urgent importance. Further, and as set forth above, Requesters are primarily engaged in disseminating information.²⁴

With regard to subsection (iv), as discussed above, American citizens are suffering from an ongoing and urgent humanitarian crisis, which appears to have been exacerbated by a deficient disaster response by the federal government. Media outlets are reporting on a daily basis about continued lack of access to basic services for Puerto Ricans. Public confidence in the federal government’s commitment to providing disaster relief to Puerto Ricans and in its ability to do so effectively is plummeting. The urgency of this request therefore justifies expedited processing.

²⁴ *See supra* note 23.

VI. Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact either Robin Thurston at foia@democracyforward.org or 202-448-9090, or Natasha Lycia Ora Bannan at nbannan@latinojustice.org or 212-739-7583 as soon as possible.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Ariadna Godreau Aubert
Ayuda Legal Huracán María

Natasha Lycia Ora Bannan
LatinoJustice PRLDEF

Robin Thurston
Democracy Forward Foundation

CERTIFICATE OF NEED FOR EXPEDITED PROCESSING

I hereby certify that the information provided in the request for expedited processing is true and correct.

/s/Natasha Lycia Ora Bannan
Natasha Lycia Ora Bannan
LatinoJustice PRLDEF