

respond within that statutory timeframe, it has constructively denied the request. *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) (“Congress adopted the time limit provision in

the FOIA in order to ‘contribute to the fuller and faster release of information, which is the basic objective of the Act.’” (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)).

FEMA’s delays in responding to these nine requests not only flout its statutory obligations, they are also violate the President’s clear direction that when it comes to public information, “openness prevails.” Memorandum for the Heads of Executive Dep’ts and Agencies, 74 Fed. Reg. 15, 4683 (Jan. 26, 2009). This instruction is unambiguous: “All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.” *Id.*

Nevertheless, despite USA TODAY’s ample patience over the past three years, these nine requests have, to date, yielded no adequate substantive reply:

1. Request **07-089** was submitted FEMA on November 29, 2006, seeking a copy of records listing complaints about or incidents involving travel trailers provided during the previous three years. FEMA acknowledged receipt of this request by letter dated December 14, 2006. More than a full year later, on January 23, 2008, FEMA acknowledged a delay. In January, 2010 FEMA promised a complete response by February, 2010. To date, FEMA has produced no records responsive to this request.
2. Request **07-268** was submitted to FEMA on March 29, 2007, seeking an electronic copy of any payments made under the National Flood Insurance Program during the past five years. FEMA acknowledged receipt of this request by letter dated April 9, 2007. On March 17, 2008, it sent a letter acknowledging significant delays. In January, 2010, FEMA estimated it would produce responsive records by “early March.” To date, FEMA has provided no substantive response.
3. Request **07-375** was submitted to FEMA on June 8, 2007, seeking copies of any after-action reports in the possession of FEMA that were created during the previous two years. FEMA acknowledged receipt of this request in a letter dated June 12, 2007. FEMA’s latest update, in January 2010, indicated that it would produce responsive records “by the end of this month.” To date, FEMA has provided no substantive response.
4. Request **08-209** was submitted to FEMA on January 11, 2008, seeking an electronic copy of records listing Public Assistance applications since 2004. FEMA acknowledged receipt of this request by letter dated February 5, 2008. To date, FEMA has twice attempted to produce records. Neither of these attempts, however, yielded records reasonably responsive to the request, and FEMA has agreed to search for records that match the plain language of my request.

5. Request **08-643** was submitted on September 2, 2008, seeking copies of records listing Other Needs Assistance payments made subsequent to hurricanes Katrina, Rita and Wilma. FEMA acknowledged in an undated letter that it received this request on September 15, 2008. FEMA indicated in January, 2010 that it was still searching for responsive records. To date, however, FEMA has provided no substantive response, nor has it provided the date by which it expects to do so, as is required by Department of Homeland Security regulation, 6 C.F.R. § 5.5(c)(1).
6. Request **08-051** was submitted on November 7, 2007, seeking copies of Individual and Housing Assistance payments made subsequent to wildfires in Southern California in October, 2007. FEMA acknowledged receipt of this request in a letter dated November 13, 2007. To date, it has provided no substantive response. As of January, 2010, FEMA was unable to provide even a timeline for when it expected to respond, as is required by Department of Homeland Security regulation, 6 C.F.R. § 5.5(c)(1).
7. Request **08-657** was submitted on September 9, 2008, seeking copies of evaluations and sanctions related to compliance with the National Flood Insurance Program (NFIP). FEMA acknowledged this request in a letter dated Oct. 9, 2008. To date, however, FEMA has provided no substantive response, nor has it provided the date by which it expects to do so, as is required by Department of Homeland Security regulation, 6 C.F.R. § 5.5(c)(1).
8. On February 3, 2009, Mr. Heath requested copies of contracts relating to FEMA's administration of the Public Assistance program with regard to hurricanes Katrina and Rita in 2005. It is Mr. Heath's understanding, based on conversations with field staff in Louisiana, that FEMA has begun processing this request. However, to date, FEMA has provided no written acknowledgment of this request, nor has it provided a tracking number. It also has not provided any substantive response, nor has it provided the date by which it expects to do so, as is required by Department of Homeland Security regulation, 6 C.F.R. § 5.5(c)(1).
9. Request **10-172** was submitted on November 18, 2009, seeking copies of records from the National Emergency Management Information System listing Individual Assistance payments made as a result of any disaster in calendar years 2008 and 2009. FEMA acknowledged receipt of this request in a letter dated December. 30, 2009. To date, however, FEMA has provided no substantive response, nor has it provided the date by which it expects to do so, as is required by Department of Homeland Security regulation, 6 C.F.R. § 5.5(c)(1).

These delays are particularly confounding because many of the records these requests seek should not difficult to locate. For example, each of the payment records USA TODAY is seeking is contained in FEMA's National Emergency Management Information System (NEMIS), and can be produced as electronic extracts. Another request seeks such commonplace items as major contracts and price lists — items one would hope FEMA has at its ready disposal. Any reasonably diligent search for these records would have located them months ago.

FEMA's failure to do so has denied the public valuable insight into essential government operations. Indeed, "there is a powerful public interest in learning whether, and how well" FEMA has met its "awesome statutory responsibility" of preparing for and responding to disasters. *News-Press v. U.S. Dep't of Homeland Sec.*, 489 F.3d 1173, 1178 (11th Cir. 2007).

I therefore insist that FEMA produce records responsive to each of these requests by the close of business on **May 31, 2010**.

I look forward to your help in resolving these matters without further delay. Please do not hesitate to contact me directly with any questions or concerns.

Sincerely,

Barbara W. Wall

cc: Brad Heath