

**FREEDOM OF INFORMATION ACT APPEAL**

April 1, 2011

**VIA FEDERAL EXPRESS**

Headquarters FOIA Officer  
Federal Emergency Management Agency  
500 C Street, S.W. Room 840  
Washington, DC 20472

**Re: Appeal of Constructive Denial of Freedom of Information Act Request  
FEMA 10-668**

Dear Sir or Madam:

This firm represents Bloomberg L.P. (“Bloomberg”) and its reporter Justin Blum in connection with their above-referenced Freedom of Information Act (“FOIA”) request to the Federal Emergency Management Agency (“FEMA”). I am writing to appeal the failure of FEMA to respond to the request.

**I. The Request**

On July 28, 2010, Bloomberg reporter Justin Blum submitted a FOIA request (the “Request”) to FEMA seeking copies of or access to:

1. Any and all communication among employees or contractors of FEMA, or between representatives of FEMA and other government agencies, related to FOIA request 10-437. The request was received by FEMA on April 28, 2010.
2. Any and all communication between employees or contractors of FEMA, or between representatives of FEMA and other government agencies, related to an appeal of FOIA request 10-437 filed with the Department of Homeland Security. The tracking number DHS assigned to the appeal is DHS10-087.

On August 10, 2010, FEMA acknowledged receipt of the Request. In the acknowledgement, FEMA stated that it had “queried the appropriate component of FEMA for responsive records” and would review those records when they became available.

Mr. Blum has made numerous attempts to follow up with FEMA since filing the Request on July 28, 2010, to no avail. More than eight months have passed since Mr. Blum submitted the Request, and FEMA has not provided *any* documents responsive to the Request, nor has it identified any basis for withholding such documents. Indeed, it is possible that FEMA has failed to even begin the search for responsive documents.

## **II. FEMA’s Failure to Respond to the Request Within The Time Period Required by the FOIA Constitutes A Constructive Denial of the Request.**

The FOIA requires an agency to respond to a request for records within 20 days. See 5 U.S.C. § 552(a)(6)(A)(i). Therefore, FEMA’s response to the Request was due on or about August 25, 2010. To the extent that FEMA’s statement that it was consulting with “the appropriate component of FEMA” was intended to constitute an invocation of FOIA’s 10-day extension of time to respond where there is a need to consult with “two or more components of [an] agency having substantial subject-matter interest” in a request, FEMA was nevertheless required to respond to the Request by September 9, 2010. See 5 U.S.C. § 552(a)(6)(B)(iii)(III). FEMA’s failure to respond to the Request within the time period required by the FOIA therefore serves as a constructive denial of the Request, and Bloomberg is deemed to have exhausted its administrative remedies. See 5 U.S.C. § 552(a)(6)(C)(i).

FEMA has not asserted that “extraordinary circumstances” exist to justify its refusal to respond to the Request within the time period required by the FOIA. FEMA has not stated, for example, that it has been “deluged with a volume of requests for information vastly in excess of that anticipated by Congress.” Gov’t Accountability Project v. U.S. Dep’t of HHS, 568 F. Supp. 2d 55, 58 (D.D.C. 2008) (citing Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605, 616 (D.C. Cir. 1976)). In light of the foregoing, Bloomberg can be left with no other impression than that FEMA is not exercising due diligence in responding to its Request. See e.g., Bloomberg v. FDA, 500 F. Supp. 2d 371, 375-76 (S.D.N.Y. 2007) (finding “the FDA’s refusal to provide Bloomberg with [ ] easily produced Supplemental FDA Inquiries that clearly constitute ‘government activity’ to suggest[ive] . . . of either an uncooperative stance or a lack of due diligence in this case on the part of the agency).

Bloomberg respectfully requests that FEMA be mindful of the Attorney General’s admonition that “[o]pen government requires agencies to work proactively and respond to requests promptly . . . When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.” United States Attorney General Eric Holder’s “Memorandum For Heads of Executive Departments and Agencies,” dated March 19, 2009, *available at*, [www.justice.gov/ag/foia-memo-march2009.pdf](http://www.justice.gov/ag/foia-memo-march2009.pdf).

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Bloomberg respectfully requests that FEMA respond to this appeal within 20 business days. See 5 U.S.C. § 552(a)(6)(A)(ii). If you have any questions or require any additional information, please contact me directly at (212) 728-8530.

Sincerely,

A handwritten signature in black ink, appearing to read "Deirdre N. Hykal", with a long horizontal flourish extending to the right.

Deirdre N. Hykal

cc: Charles Glasser  
Global Media Counsel, Bloomberg News

Justin Blum  
Reporter, Bloomberg News