

24 September 2018

FEMA  
Office of the Chief Administrative Officer  
Information Management Division (FOIA Appeals)  
500 C St SW, Seventh Floor, Mail Stop 3172  
Washington, D.C. 20472-3172

Dear Madam or Sir:

This is an appeal under the Freedom of Information Act (FOIA) of your decision to withhold portions of four records (records [1]-[4] below) of the Strategic National Risk Assessment (SNRA). You have released the other four records ([5]-[8]) in full.

The remaining portions were withheld pursuant to exemption 5.

- You determined there were no security or information sensitivity issues that would otherwise prevent the requested records from public release.
- No other FOIA interest was cited.

My October 2016 request and November 2017 appeal are incorporated by reference. To minimize the burden on a new reader, the latter is also physically incorporated into this letter following the summary below. My argument is unchanged.

The unclassified SNRA documentation is required to be available by law to parties other than an agency in litigation with the agency. The law is the Information Quality Act (IQA). The parties are external critics, affected persons, and the public.<sup>i</sup>

FEMA claims the SNRA as the objective basis of the National Preparedness System. But FEMA has not submitted it to the critical and stakeholder scrutiny that the IQA standards require; that FEMA committed to; that is central to FEMA's doctrine; and that it needs to ensure that it is sound enough for FEMA and its partners to use.

Scrutiny is not always comfortable, especially when it is critical, and comes from outside. But the possibility of meaningful, critical outside scrutiny is what marks the difference between data, and some stuff we just made up. No amount of declarations that evidence is evidence because the Government says it is, can replace that.

Yet FEMA today is investing a great amount of time, attention, and money trying to keep this risk information from its stakeholders, and from the critical scrutiny needed to ensure the information FEMA uses itself is sound.

This paralyzing fear of external scrutiny is a serious and long-standing problem in the Department's analytic culture. It is one of the reasons why the SNRA disappeared between its 2011 DHS creation and 2015 FEMA revision.

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<sup>i</sup> FOIA is the appropriate administrative mechanism for IQA requests to provide, rather than correct information. OMB (2004a) ([32]) 51.

But it completely contrasts with the confident, open, and transparent way FEMA has always conducted its business with the public. And it completely contrasts with the honest and decisive way the agency deals with every other one of its challenges today – including some far more painful, and requiring far more courage to air in public, than the small embarrassment of being a few years late getting FEMA’s math book out.

From 2011 to 2015, the SNRA was trapped in DHS limbo by factors specific to time and place, which are no longer relevant today. When the White House decided it wanted to edit the SNRA’s findings in 2015 and we pushed back, FEMA had to bury it again. But that Administration is long gone, too. There should be no obstacles left.

The argument I am making today is the same as it was one year ago, and two years ago. An agency cannot withhold under FOIA exemption 5 information which the Information Quality Act requires it to publish.

But since Congress chose not to delegate the IQA’s enforcement to the courts,<sup>ii</sup> the extent to which it should apply to DHS, FEMA, and the SNRA is something only Congress can decide. So they will have to provide that answer to you themselves.

I appreciate your time and consideration, as always.

Thank you,

Andrew Janca, Ph.D.  
andrew.janca@outlook.com

(committee staff)

Unfortunately this letter comes across as a little confusing (and not very nice - I apologized to Disclosure Branch afterward). At the time, I was expecting to send these letters to you within a few days, early enough for you to clarify the IQA questions before Disclosure Branch's deadline for making a decision one way or another. But I got bogged down in writing, and didn't have it ready to send before they made their final decision.

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<sup>ii</sup> DHS, DoJ (2018, August 2). Defendants’ Memorandum of Law in Support of their Motion to Dismiss (August 2, 2018, ECF No. 18) at 13-19 in *Protect Democracy Project, Inc. et al, v. U.S. Department of Justice et al*, case 1:18-cv-10874-DPW (D. Mass. [filed] 05/03/2018).

1 November 2017

FEMA  
Office of the Chief Administrative Officer  
Information Management Division (FOIA Appeals)  
500 C St SW, Seventh Floor, Mail Stop 3172  
Washington, D.C. 20472-3172

Dear Madam or Sir:

This is an appeal under the Freedom of Information Act (FOIA) of your decision to withhold four records (records [1] - [4] below) of the Strategic National Risk Assessment (SNRA). You released three additional records ([6] – [8]). One record, the 2011 PPD-8 Implementation Plan ([5]), remains under review.

- The four withheld records were withheld pursuant to exemption 5, under the deliberative process privilege.
- You determined there were no security or information sensitivity issues that would otherwise prevent the requested records from public release.
- No other FOIA interest was cited.

The SNRA is the strongest, most rigorous, most objective tool for informing investment decisions across all hazards that FEMA possesses. Its quantitative method makes our planning assumptions explicit in a way that makes it possible for any expert, critic, or citizen to examine and question them, to an extent that no other kind of analysis that we practice can do.

That quantitative method also opens up the SNRA for many additional users and uses across the enterprise. It offers a uniform, auditable, repeatable method for assessing risk across all hazards that jurisdictional planners and emergency managers, infrastructure operators, business owners, schools, museums, places of worship, communities, families, and citizens can use to understand and communicate their risks in a common language not available to them today.

The SNRA is the only tool in the world that is capable of being used – right now – to inform cost-benefit tradeoff decisions across every Department in the U.S. Government.

We claim the SNRA as the objective basis of the National Preparedness System. But we have not submitted it to the critical and stakeholder scrutiny that U.S. Government policy requires; that we committed to; that is central to our doctrine; and that it needs to ensure that it is sound enough for us and our many partners to use.

## **Appeal**

A deliberative product cannot be claimed as supporting evidence for final public policy, without losing its deliberative process protection.

In particular, disclosure is required where a decision-maker has referred to an intra-agency memorandum as a *basis* for his decision. Once adopted as a rationale for a decision, the memorandum becomes part of the public record.<sup>1</sup>

When the cited evidence is presented as being scientific or technical in nature, as the SNRA is, the agency has a positive obligation to pro-actively push it out to public and critical scrutiny under the Government-wide standards of the Information Quality Act. These requirements increase in proportion to the scope and importance of the decisions that an analysis is used to justify.<sup>2</sup>

We do not describe the SNRA's findings as deliberative products of a policy making process, based on priorities which can changed in an election. We assert them to be facts of the world, which can't.

We claim that these facts are evidenced by math and science. We claim that they are not within our deliberative power to wish or decide away, but must be dealt with. And we claim that our chosen policy approach follows from the recognition of these facts.

This use of the SNRA as evidence puts the policy claims that depend on it off-limits to the political scrutiny that normally enforces accountability in a democratic system. Reasonable people can disagree with policy priorities. Only ignorant people disagree with facts.

But this is why our use of the SNRA in this way obligates us to ensure that the means for ensuring accountability that science in the Government relies upon in place of elections – peer, public, stakeholder, and Congressional review – are applied to this very large, very technical instrument that we are claiming as justification for so many non-technical things.

We have not done this.

Our failure to do this, given every reason why we should have done so long ago, and no real good reason why we have not, has prevented the socialization and many uses of the SNRA that the U.S. national risk assessment was intended to serve.

FEMA's 2015 revision of the SNRA focused on removing obstacles to its circulation, and making it more useful to more people. My team worked very hard to make this highly sophisticated but little-seen technical product into a broadly accessible planning tool that FEMA's state, local, tribal, territorial, and whole community stakeholders could actually *use* as the shared risk basis of the National Preparedness System that we claimed it to be.

It still hasn't gotten to them.

The Strategic National Risk Assessment indicates that a wide range of threats and hazards continue to pose a significant risk to the Nation, affirming the need for an all-hazards, capability-based approach to preparedness planning.

- *National Preparedness Goal, 2<sup>nd</sup> ed.*

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<sup>1</sup> *National Council of La Raza et al. v. U.S. Department of Justice*, 411 F.3d 350, 358 (2nd Cir. 2005) ([15]), citing *Montrose Chemical Co. v. Train*, 491 F.2d 63, 70 (D.C. Cir. 1974) ([14]).

<sup>2</sup> The Information Quality Act and its SNRA context are discussed below.

Pp. 1-2 of the original (October 2016) FOIA request provides the document numbering; a discussion of the security issues that are often one of the first questions someone has when they hear of the SNRA, but which are omitted as moot in the later letters; and a little orientation that may be helpful. (The complete letter is in the attached zipfile.)

I put the entirety of the arguments that I expected might be needed in appeal in the request letter itself, in hopes of avoiding an appeal in the first place. Other than a change in verb tense, the addition of call-out boxes, and the security discussion on p. 2 below, the substantive content of this letter is repeated word for word in the appeal letter(s) (the Sep. 2018 letter physically incorporates the Nov. 2017 letter) above.

11 October 2016

FEMA FOIA Branch  
Records Management/Disclosure Branch  
500 C Street, S.W., Mailstop 3172  
Washington, D.C. 20472-3172

Dear Madam or Sir:

Under the Freedom of Information Act (FOIA), I request the following records of the Strategic National Risk Assessment (SNRA):

*SNRA documentation*

- 1) **SNRA 2015 Findings** [Report], May 2015 (26 pages).
- 2) **SNRA 2015 Technical Appendix**, May 2015 (452 pages), including both parts:
  - a. Front matter with 2015 added material (238 pages), pp. i-234; and the
  - b. SNRA 2011 Unclassified Documentation of Findings (214 pages), pp. 235-448.
- 3) **SNRA 2015 Working Papers**, May 2015 (153 pages).

*SNRA instructions and terms of reference*

- 4) **PPD-8 Implementation Plan**, May 2011 (13 pages).
- 5) **SNRA Terms of Reference**, June 2011 (2 pages).
- 6) **SNRA 2015 Update Background and General Guidance**, February 2015 (3 pages).
- 7) **SNRA 2015 Qualitative Data Instructions**, February 2015 (6 pages).
- 8) **SNRA 2015 Risk Summary Sheet Instructions & Template**, February 2015 (34 pages).

These records are held by PPD-8 Program Executive Office, National Integration Center. They comprise the unclassified documentation needed to understand and substantially replicate the findings of the SNRA as disseminated to the public in the 2015 National Preparedness Goal, 2nd edition, 30 September 2015, the five revised National Planning Frameworks, 16 June 2016; and the four public revised Federal Interagency Operational Plans (FIOPs), 18 August 2016.

For documents with non-releasable information, please provide all segregable, nonexempt information.

If there are other documents or paper that you believe would add to the SNRA's utility for whole community users and it would not delay the processing or delivery of the documents requested above, please feel free to provide them in addition to the requested documents.

To save time, I will address a couple of questions that may come up in your staff's FOIA determinations. I am not a lawyer, and I apologize in advance for any errors. Please disregard as moot anything which does not make sense, or anything that is moot for any other reason.

### *Regarding Exemptions 1, 3, 7*

I am not requesting any of the classified portions of the SNRA, to simplify the issues requiring consideration in this request.

There should be little, if any, sensitive information in these documents. The requested records contain no FOUO, SSI, PCII, LES, PII, proprietary, or other confidential information. The one possible exception is the national capability charts on pp. 97-98 of the SNRA Working Papers, which you should review.

For the data and analysis presented in the unclassified supporting documentation of the 2015 SNRA, FEMA intentionally used unclassified information to the maximum extent possible to ensure that the findings based upon them could be disseminated to a wide stakeholder audience.<sup>1</sup> This included

- 1) Removing anything not shareable with the public from the existing unclassified documentation,<sup>2</sup> and
- 2) Restricting all new content to material that was “born unclassified” – information that was
  - a. Already in the public domain,
  - b. At a comparable level of both detail and aggregation to the SNRA, and
  - c. Made public by proper authority.<sup>3</sup>

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<sup>1</sup> SNRA 2015 Update and General Guidance (record [6]) pp. 1, 3; OMB (2002) 8460 V.3.b.ii.B.i, ii incorporated at [8] p. 3; [8] p. 9 fourth bullet.

<sup>2</sup> SNRA 2015 Technical Appendix (record [2]) unmarked page 237 (“Unclassified Documentation of Findings”, pdf p. 241) first paragraph and note 1.

<sup>3</sup> The primary sources for the unclassified terrorism analysis in the requested unclassified documentation include:

- The public FBI annual statistical reviews of terrorism in the U.S. for general public audiences (<https://www.fbi.gov/stats-services/publications>)
- Public FBI historical bombing data (DOJ/BJIS *Sourcebook of Criminal Justice Statistics*) from the public pages of the FEMA-funded Homeland Security Digital Library (<https://www.hsdl.org/?view&did=462687>)
- The public DHS biological, chemical, radiological, nuclear, and explosive attack fact sheets for individuals and families at Ready.gov (<https://www.ready.gov/prepare-for-emergencies>, individual hazard pages, Resources)
- Public historical data of attacks on electric facilities from the Department of Energy’s public summaries of industry OE-417 Electric Disturbance Reports ([https://www.oe.netl.doe.gov/OE417\\_annual\\_summary.aspx](https://www.oe.netl.doe.gov/OE417_annual_summary.aspx))

Each of these primary sources is published and maintained by the U.S. Government for the purpose of public information.

Secondary sources include public press reports, public peer-reviewed studies, public insurance industry studies, and the public DHS-funded START Global Terrorism Database (<https://www.start.umd.edu/gtd/>).