

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LATINOJUSTICE PRLDEF,
99 Hudson Street, 14th Floor
New York, N.Y. 10013,

CENTRO DE PERIODISMO
INVESTIGATIVO,
Oficina #306, Facultad de Derecho
Universidad Interamericana de Puerto Rico
Calle Federico Costa #170 Hato Rey
San Juan, P.R. 00918-1303

Plaintiffs,

vs.

FEDERAL EMERGENCY
MANAGEMENT AGENCY,
500 C Street SW
Washington, D.C. 20472,

Defendant.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiffs LatinoJustice PRLDEF (“LatinoJustice”) and Centro de Periodismo Investigativo (“CPI”) bring this action against Defendant Federal Emergency Management Agency (“FEMA”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

2. On February 23, 2018, Plaintiffs submitted three FOIA requests¹ to FEMA requesting, among other things, various records relating to FEMA’s activities in Puerto Rico and the agency’s preparations for, and response to, Hurricanes Irma and Maria.

¹ As explained in detail below, Plaintiff CPI joined as a requester only for one of the three requests.

3. FEMA has failed to meet its statutory obligation to respond to Plaintiffs' FOIA requests. Plaintiffs therefore respectfully request that the Court compel Defendant to comply with the FOIA.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff LatinoJustice is a not-for-profit legal organization incorporated under the laws of New York and based in New York, New York. LatinoJustice uses the power of the law together with advocacy and education to champion an equitable society, and to promote and protect opportunities for all Latinos to succeed in school and work, fulfill their dreams, and sustain their families and communities. Along with the access to justice legal community in Puerto Rico, LatinoJustice has assisted in coordinating and directing Ayuda Legal, a community-based organization providing pro bono legal support in Puerto Rico.

7. Plaintiff CPI is a not-for-profit media entity incorporated under the laws of Puerto Rico and based in San Juan, Puerto Rico. CPI, the leading independent investigative journalism organization in Puerto Rico, works to promote access to information for the people of Puerto Rico through three channels: investigative journalism, litigation and journalism training.

8. Defendant FEMA is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. FEMA has possession, custody, and control of records to which Plaintiffs seek access.

FACTUAL ALLEGATIONS

Hurricane Maria

9. On September 20, 2017, Hurricane Maria made landfall in Puerto Rico. Wind speeds reached 155 miles per hour, and rain fell on the island for thirty consecutive hours,² with some parts of Puerto Rico experiencing more than two feet of rainfall over a twenty-four hour period.³

10. Hurricane Maria decimated Puerto Rico's most critical infrastructure, knocking out power across the entire island,⁴ disabling 95 percent of the wireless cell towers,⁵ and leaving 55 percent of the population without access to clean water.⁶

11. Although Hurricane Maria's punishing wind and rain would have been crippling on its own, its damage was amplified by its proximity to Hurricane Irma, which had skirted Puerto Rico only two weeks earlier.⁷

12. Once the wind and rain stopped, it was immediately apparent that the federal emergency response to Hurricane Maria lacked the sense of urgency required of such a catastrophic natural disaster: Nearly one-week post-Maria, 85 percent of the island's hospitals

² Robinson Meyer, *What's Happening With the Relief Effort in Puerto Rico?*, Atlantic (Oct. 4, 2017), <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956/>.

³ Laris Karklis et al., *Maria's Deluge on Puerto Rico*, Wash. Post, (Sept. 26, 2017), https://www.washingtonpost.com/graphics/2017/national/maria-puerto-rico/?utm_term=.9c6562af09bd.

⁴ Samantha Schmidt et al., *Puerto Rico Entirely Without Power as Hurricane Maria Hammers Island with Devastating Force*, Wash. Post (Sept. 20, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/09/20/hurricane-maria-takes-aim-at-puerto-rico-with-force-not-seen-in-modern-history/?noredirect=on&utm_term=.fcc62cc6a1b6.

⁵ *Hurricane Maria Updates: In Puerto Rico, the Storm 'Destroyed Us'*, N.Y. Times (Sept. 21, 2017), <https://www.nytimes.com/2017/09/21/us/hurricane-maria-puerto-rico.html>.

⁶ Meyer, *supra* note 2.

⁷ *Id.* (Hurricane Irma passed over parts of Puerto Rico on September 6, 2018).

remained closed.⁸ One hundred days post-Maria, more than one-third of the island still lacked access to electricity.⁹

13. The sluggish response exacted a steep human cost: a recent study led by scientists at Harvard University estimated that between 739 - 8,459 people died in Puerto Rico as a result of Hurricane Maria.¹⁰ The primary cause of death for residents was interruptions in medical care due to the destruction of basic infrastructure.¹¹ This death toll would make Hurricane Maria one of the top five deadliest natural disasters in United States history.¹² The tragically high number of deaths resulting from the hurricane is exponentially greater than the Trump Administration's early statement that 16 people had died.¹³

FEMA's Flawed Response

14. As the lead federal agency tasked with disaster response, Defendant FEMA is the federal agency primarily responsible for ensuring that the government is adequately prepared to respond to a natural disaster.

⁸ Meyer, *supra* note 2.

⁹ Alexia Fernández Campbell, *5 Things to Know About Puerto Rico 100 Days After Hurricane Maria*, Vox (Dec. 29, 2017), <https://www.vox.com/2017/12/23/16795342/puerto-rico-maria-christmas>.

¹⁰ Nishant Kishore et al., *Mortality in Puerto Rico after Hurricane Maria*, 379 *New Eng. J. Med.* 162 (May 29, 2018), <https://www.nejm.org/doi/full/10.1056/NEJMsa1803972> (noting that their likely "conservative" estimate of 4,645 deaths represents the 95 percent confidence interval within a range of between 793 and 8,498 deaths).

¹¹ *Id.*

¹² Christopher Ingraham, *Hurricane Maria Was One of the Deadliest Natural Disasters in U.S. History, According to a New Estimate*, Wash. Post: Wonkblog (June 2, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/06/02/hurricane-maria-was-one-of-the-deadliest-natural-disasters-in-u-s-history-according-to-a-new-estimate/?utm_term=.3ae5cb76fdce.

¹³ See Aaron Blake, *Trump Favorably Compared Puerto Rico's Death Toll to Hurricane Katrina. A New Study Now Says Twice As Many Died in Puerto Rico*, Wash. Post (May 29, 2018), https://www.washingtonpost.com/news/the-fix/wp/2018/05/29/trump-once-favorably-compared-puerto-ricos-death-toll-to-katrin-a-new-study-shows-more-than-twice-as-many-died/?utm_term=.2d6407f030b0.

15. But as FEMA's own self-assessment (the After-Action Report) concluded, the agency made serious errors in planning for and responding to Hurricane Maria.¹⁴ Indeed, FEMA's plan for responding to hurricanes like Maria had not been updated since 2012 and contained numerous flawed assumptions.¹⁵ The insufficiency of FEMA's response is magnified when contrasted with FEMA's response to hurricane damage in Florida and Texas during the same hurricane season.

16. Nine days after Maria hit land, FEMA deployed 10,000 federal workers to Puerto Rico. FEMA deployed twice as many people to Florida in response to Hurricane Irma and three times as many people to Texas in response to Hurricane Harvey. Half of those deployed by FEMA to Puerto Rico were inexperienced trainees or were otherwise unqualified for the work they were doing.¹⁶

17. FEMA has claimed that it engaged in preparations such as stockpiling up to 500 generators on the island in advance of Maria and positioning itself to be able to quickly retrofit thousands of homes with plastic roofing and to quickly distribute up to 500,000 blue tarpaulin

¹⁴ See FEMA, 2017 Hurricane Season FEMA After-Action Report at 8-10 (July 12, 2018), <https://www.fema.gov/media-library-data/1531438753896-273f27679ba04c93301af90546abae18/2017FEMAHurricaneAAR.PDF> [hereinafter After-Action Report].

¹⁵ See, e.g., *id.* (noting that FEMA failed to consider that Puerto Rico and the U.S. Virgin Islands, linked for commodity distribution purposes under FEMA's operational plans, might both be crippled by a natural disaster during the same disaster response season, despite the proximity of the two islands); Danny Vinik, *FEMA's Plan Underestimated Puerto Rican Hurricane*, Politico (Apr. 15, 2018), <https://www.politico.com/story/2018/04/15/puerto-rico-hurricane-fema-disaster-523033> (describing FEMA's planning missteps, including its failure to account for the possibility of a storm of Maria's magnitude, and miscalculating the degree to which it could pass on responsibility for leading a response effort to the Commonwealth and local governments in Puerto Rico).

¹⁶ Nicole Einbinder, *How the Response To Hurricane Maria Compared to Harvey and Irma*, Frontline (May 1, 2018), <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-maria-compared-to-harvey-and-irma/>.

sheets.¹⁷ But these promises proved not to be true. In fact, FEMA had only 25 generators on the island and distributed only around 125,000 blue tarps months after they were most needed.¹⁸

18. What aid was delivered remained centrally concentrated in major metropolitan areas, barely reaching the rural communities that badly needed assistance.¹⁹

19. Further, President Trump has said that Hurricane Maria was not a “real catastrophe,” and that the provision of emergency aid to the American citizens living in Puerto Rico would “throw[the Administration’s] budget out of whack.”²⁰

20. On June 21, 2018, President Trump reportedly told Puerto Rico Governor Ricardo Rosselló, “I think we’ve helped you a lot.”²¹

The Need for the Requested Records

21. As the 2018 hurricane season gets underway, the public still lacks a full picture of FEMA’s efforts to provide relief to Puerto Rico after Maria, and the ways in which those efforts fell short. This lack of information has resulted, at least in part, from FEMA’s efforts to shield the information from public view.²²

¹⁷ Laura Sullivan, *How FEMA Failed To Help Victims Of Hurricanes in Puerto Rico Recover*, NPR (May 1, 2018, 4:33 PM), <https://www.npr.org/2018/05/01/607483473/how-fema-failed-to-help-victims-of-hurricanes-in-puerto-rico-recover>.

¹⁸ *Id.*

¹⁹ Patricia Mazzei, *A FEMA Error Drove Fears That Food and Water Aid to Puerto Rico Was Ending. It’s Not.*, N.Y. Times (Jan. 31, 2018), <https://www.nytimes.com/2018/01/31/us/puerto-rico-fema-aid.html> (“While major cities like San Juan have had much of their power restored . . . some towns in the island’s mountainous interior are still in the dark.”).

²⁰ Alexia Fernández Campbell, *Trump to Puerto Rico: Your Hurricane Isn’t a “Real Catastrophe” like Katrina*, Vox (Oct. 3, 2017), <https://www.vox.com/2017/10/3/16411488/trump-remarks-puerto-rico>.

²¹ John Bowden, *Trump to Puerto Rico Governor: I Think We’ve Helped You a Lot*, The Hill (June 21, 2018), <http://thehill.com/homenews/administration/393506-trump-to-puerto-rico-governor-i-think-weve-helped-you-a-lot>.

²² For example, FEMA infamously erased from its website important data concerning access to water and electricity on the island, which data were restored only after news organizations reported that the data had been scrubbed from FEMA’s website. *See, e.g.*, Jenna Johnson, *FEMA*

22. While FEMA's After-Action Report sheds some new light on FEMA's understanding of its response in Puerto Rico, it also raises additional questions. And its self-congratulatory tone contrasts with experiences narrated by Puerto Rico residents who witnessed FEMA's inadequate response firsthand, as well as to the critiques of civic leaders and elected officials.²³

23. A full accounting of the Administration's actions to prepare for and respond to Hurricane Maria is necessary to evaluate FEMA's actions, and to equip the public with the information necessary to have an informed discussion about how FEMA should respond to natural disasters in the future.

24. The importance of the records Plaintiffs request grows as we approach the most active months of the 2018 hurricane season, which officially began on June 1, 2018.²⁴

Plaintiffs' FOIA Requests

25. Plaintiffs LatinoJustice and CPI submitted the following request for records (the "First Request") to FEMA pursuant to the FOIA on February 23, 2018 via email:

- (1) Any and all records describing or discussing an end-date to FEMA-coordinated aid in Puerto Rico, or efforts or processes that would scale down or withdraw FEMA's Hurricane Maria and Irma relief efforts.
- (2) Any and all records pertaining to FEMA's Disaster Housing Strategy in Puerto Rico, including, but not limited to: plans for short-term and long-term alternative housing; records revealing the date on which funding for short-term housing

Removes -- Then Restores -- Statistics About Drinking Water Access and Electricity in Puerto Rico From Website, Wash. 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=.21f4bf62865b.

²³ See After-Action Report, *supra* note 14 at 30 (describing FEMA's celebration of its acquisition process).

²⁴ Patricia Mazzei, *Puerto Rico Nervously Prepares for Hurricane Season: 'What if Another One Comes?'*, N.Y. Times (May 14, 2018), <https://www.nytimes.com/2018/05/14/us/puerto-rico-hurricane-season.html>.

programs became available; housing program funding by zip-code; and biometric information about to whom housing program assistance was provided (*i.e.*, age, gender, income, status as head of household).

- (3) Any and all records pertaining to applications for FEMA assistance, including but not limited to: total number of applications for assistance; the method(s) by which applications were received (*e.g.*, at Disaster Relief Centers, on-line, etc.); the number of applications denied; reasons or justifications for application denials.

Ex. A, First Request at 4-5.

26. LatinoJustice submitted a second request for records pursuant to the FOIA (the “Second Request”) to FEMA on February 23, 2018 via email:

- (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.

Ex. B, Second Request at 4.

27. LatinoJustice submitted a third request for records (the “Third Request,” and together with the First Request and Second Request, the “Requests”) to FEMA on February 23, 2018 via email:

- (1) Any and all records stating, describing, or revealing the total number of Spanish language speakers working for FEMA or FEMA contractors, who were hired in Puerto Rico, or who were hired outside but were deployed to Puerto Rico.

- (2) Any and all records concerning the provision of services and relief to vulnerable or at risk communities, including but not limited to the elderly, people with disabilities, immigrants, transgender individuals.
- (3) Any and all records concerning or discussing FEMA's relief efforts in rural Puerto Rico municipalities, including, but not limited to, Vieques and Culebra.
- (4) Any and all records concerning or discussing the provision of relief for individuals who may not have proper identity documentation or proof of ownership in Puerto Rico (e.g., transgender individuals, homeowners, family members living in homes of relatives who are since deceased, and individuals living in alternative family residential circumstances).
- (5) Any and all records concerning nutritional standards for food aid delivered in Puerto Rico, whether by FEMA directly or through contractors, and monitoring and compliance with those standards.
- (6) Any and all records discussing the U.S.N.S. Comfort and relief efforts in Puerto Rico, including but not limited to the coordination of care, patient identification and transfer, capacity and types of services provided.
- (7) Any and all records or communications relating to discussions within FEMA concerning a need to change, amend, improve, or otherwise alter relief efforts in Puerto Rico.
- (8) Any and all records collecting quantitative or qualitative assessments or measurements of FEMA's Hurricane Maria and Irma relief efforts including, but not limited to: the total amount spent by FEMA in providing hurricane relief in Puerto Rico; the number of FEMA officials or contractors working in Puerto Rico; the number of people assisted by FEMA-coordinated efforts (including directly and through contractors); and the current wait time to receive FEMA or FEMA contractor assistance.

Ex. C, Third Request at 4-5.

28. Each of the Requests was limited to records created between June 1, 2017 and the date on which the search is performed.

29. Plaintiffs sought a waiver of search and duplicating fees for the three FOIA requests under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1), which require waiver of fees if the 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.” *See, e.g.*, Ex. A at 6 (quoting 5 U.S.C. § 552(a)(4)(A)(iii)).

30. FEMA’s determination regarding each of the Requests was due by March 23, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i).

Plaintiffs’ Correspondence with FEMA FOIA Offices

31. FEMA acknowledged receipt of each of Plaintiffs’ three FOIA requests in three separate emails sent on March 6, 2018. For each request, FEMA stated its determination that the request was “too broad in scope or did not specifically identify the records which you are seeking.” FEMA marked the Requests as 2018-FEFO-00509, 2018-FEFO-00510, and 2018-FEFO-00511.

32. On March 15, 2018, Plaintiffs emailed FEMA and asked FEMA to review the records to “see if additional information is needed for FEMA to process them.”

33. FEMA responded by email on March 16, 2018, writing “[w]e are taking another look” at the Requests and stating that it would follow up with Plaintiffs if further clarification about the Requests was needed.

34. Corresponding via email on March 20, 2018, FEMA and Plaintiffs came to understand that FEMA had mistakenly omitted an identification number for Plaintiffs’ First Request because it accidentally assigned both 2018-FEFO-00509 and 2018-FEFO-00510 to Plaintiffs’ Second Request.

35. By email on March 21, 2018, FEMA explained that the error may have occurred because requests are first “routed to DHS” before being sent to FEMA. FEMA assigned Plaintiffs’ First Request 2018-FEFO-00602 and sent a subsequent email acknowledgment letter as confirmation.

36. On April 19, 2018, FEMA emailed Plaintiff LatinoJustice requesting further details about Plaintiffs' Third Request. FEMA stated that if Plaintiff did not respond within five business days, it would administratively close the FOIA request.

37. LatinoJustice replied on April 20, 2018, asking for clarification about how to narrow the request.

38. In an email sent on April 23, 2018, FEMA proposed several potential search terms for portions of the Third Request and asked for assistance in identifying search terms for two of the specific record requests in the Third Request to aid Defendant in identifying responsive records.

39. On April 25, 2018, via email, LatinoJustice proposed search terms for the various records requested in the Third Request.

40. On May 1, 2018, FEMA assured LatinoJustice by email that the proposed search terms "gets us on the right track."

41. On June 7, 2018, Plaintiffs inquired by email as to the status of the FOIA Requests sent to FEMA. Defendant responded via email the same date, promising to "try to have an update on each [of the Requests] by" the following day.

42. FEMA responded by email on June 11, 2018, noting that, with respect to the Requests, responsive documents had been received from some component offices, but that FEMA was still waiting for responsive records from other component offices. FEMA further stated that "[t]here are a lot of records so it will take some time when the case is assigned to a processor for review to determine any withholdings."

43. On June 12, 2018, Defendant stated by email that it hoped to have collected all responsive records from component offices within a "few weeks," at which point the documents

identified as potentially responsive would be “placed in a queue for assigning to processor, which usually has a few dozen cases waiting at any time.”

44. On July 2, 2018, Plaintiffs requested by email a status update from Defendant.

45. As of the date of filing, Defendant has not responded to provide either a further status update on the Requests, or an estimate of a date by which Defendant expects to have received potentially responsive records from component offices, to have completed its review of those potentially responsive records, or to have completed its review so that it may begin producing responsive records to Plaintiffs.

46. Accordingly, as of the date of this Complaint, FEMA has failed to notify Plaintiffs whether FEMA will comply with the FOIA request, *see* 5 U.S.C. § 552(a)(6)(A)(i), or to produce all requested records or demonstrate that they are lawfully exempt from production. *See id.* § 552(a)(6)(C). Nor has FEMA notified Plaintiffs of the scope of any responsive records FEMA intends to produce or withhold and the reasons for any withholdings, or informed Plaintiffs that it may appeal any adequately specific, adverse determination.

47. Because FEMA has “fail[ed] to comply with the applicable time limit provision” of the FOIA, even with the benefit of any extensions of time which FEMA might have claimed, Plaintiffs are “deemed to have exhausted [their] administrative remedies” as to each of the three Requests at issue in this complaint. *See id.* § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

Count One (Violation of the FOIA), 5 U.S.C. § 552

48. Plaintiffs repeat and incorporate by reference the foregoing paragraphs as if fully set forth herein.

49. By failing to respond to Plaintiffs' requests within the statutorily mandated time period, Defendant has violated its duties under FOIA, *see* 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records, to take reasonable steps to release all reasonably segregable nonexempt information, and to not withhold responsive records.

50. Plaintiffs are being irreparably harmed by Defendant's violation of the FOIA, and Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. order Defendant to conduct a search for any and all records responsive to the Requests and demonstrate that it employed search methods reasonably likely to lead to discovery of records responsive to the Requests;
2. order Defendant to produce, by a date certain, any and all nonexempt records responsive to the Requests and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendant from continuing to withhold any and all nonexempt records responsive to the Requests;
4. order Defendant to grant Plaintiffs' request for a fee waiver;
5. award Plaintiffs their attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant any other relief this Court deems appropriate.

Dated: July 31, 2018

Respectfully submitted,

/s/ Robin F. Thurston

Javier M. Guzman (D.C. Bar No. 462679)
Robin F. Thurston (D.C. Bar No. 1531399)
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
(202) 448-9090
jguzman@democracyforward.org
rthurston@democracyforward.org

Natasha Lycia Ora Bannan
LatinoJustice PRLDEF
99 Hudson Street
14th Floor
New York, N.Y. 10013
(212) 739-7583
nbannan@latinojustice.org
** Pro hac vice motion forthcoming*