

18 February 2020

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

Dear Madam or Sir:

This is a request for records under the Freedom of Information Act (FOIA).

### **Context**

I have to refer my boss for perjury. I am requesting the information below to clarify the factual record, so I can make this referral with an evidence base that is clear, concrete, and unambiguous enough to be outside the realm of argument.

### **Detail**

This letter primarily references three information products. The first one is the Strategic National Risk Assessment (SNRA), whose 2015 update I helped lead in the FEMA organization I belonged to then. The second is an unfinished analytic product of my current office, FEMA National Preparedness Assessment Division (NPAD), called the National Threat and Hazard Identification and Risk Assessment (National THIRA, or NTHIRA). I contributed to this product too.

The third is a sworn declaration by a manager in my chain of command in a FOIA lawsuit for the SNRA's documentation.<sup>1</sup> This declaration asserts that the 2015 SNRA is predecisional because FEMA never actually used it: instead, the agency has actually been using our own office's yet-to-be-finished product in its place since 2015. The Government's argument is almost 100% based on the specific factual assertions of this declaration.<sup>2</sup>

### **Why FOIA**

Some of the specific requests (#1, 8, 9) below are for records which I know exist. Others (#2-7) are to confirm a negative which only FEMA can authoritatively confirm.

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<sup>1</sup> National Preparedness Directorate (NPD), FEMA (2019, April 30). Declaration 28-1, *Public Employees for Environmental Responsibility v. U.S. Department of Homeland Security* 1:2018-cv-00158, D.D.C.: at <https://ia800105.us.archive.org/18/items/gov.uscourts.dcd.192957/gov.uscourts.dcd.192957.28.1.pdf>.

<sup>2</sup> U.S. Department of Justice (2019, April 30). Memorandum of points and authorities in opposition to plaintiff's cross-motion for summary judgement. Document 28, *Public Employees for Environmental Responsibility v. U.S. Department of Homeland Security* 1:2018-cv-00158, D.D.C.: at <https://ia800105.us.archive.org/18/items/gov.uscourts.dcd.192957/gov.uscourts.dcd.192957.28.0.pdf>.

The Government's core assertion is that none of the things that make the unclassified SNRA subject to mandatory FOIA release are true because 1) they are actually true of something else, and 2) have been all along. To support a referral for perjury I need to show that this assertion is false, and false in a way that is clear, concrete, and allows no possibility of ambiguity, opinion, or interpretation. The only way to do that is to test it directly.

Section #1 describes and requests records that would not exist if the declaration's claims of the product they document were true. Sections #2-7 describe and request the specific records that would 1) necessarily exist and 2) have a definite official status in FEMA's eyes that would preclude their withholding under a lawful FOIA exemption, if the declaration's claims of the products they document were true.

Three records (sections #8-9) which partly substantiate some of the declaration's claims are also requested.

### **Requested records**

#### **National Preparedness Goal**

FEMA's responses, including the fully responsive responses to requests #1 (2/9 production pp. 303-304), #6 (2/9 interim response letter), and #9 (4/9/21 production), and the responses to the other requests, are at <https://5usc2302.github.io/risk/2020-FEFO-00401/>.

#### 1. Please provide

- a. Page 5 (the ninth [9<sup>th</sup>] page of the file), or the entire document if you prefer, of the delta markup version of the National Preparedness Goal dated 24 March 2015 with filename DELTA\_NPG\_to\_Current\_REDLINE\_20150323kmf kbf.docx.
- b. Page 5 (the seventh [7<sup>th</sup>] page of the file), or the entire document if you prefer, of the annotated redline version of the National Preparedness Goal dated 23 April 2015 with filename DRAFT\_National\_Preparedness\_Goal\_20150423REDLINEwNotes.docx.

Record (a) documents the reason for the Goal writers' editorial choice to refer to the 2015 SNRA by using the present tense ("continues"), rather than by the year it was made.<sup>3</sup> Record (b) documents that the authority for the risks that DHS added to the 2011 SNRA findings in the Goal, Frameworks, and FIOPs was the 2015 SNRA.<sup>4</sup>

These records are held by National Integration Center, FEMA.

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<sup>3</sup> FEMA needed the updated SNRA to support the National Preparedness System for five years. FEMA (2015, June 10), written testimony for hearing "Defense support of civil authorities: A vital resource in the Nation's homeland security missions." House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response, and Communications: at <http://docs.house.gov/meetings/HM/HM12/20150610/103575/HHRG-114-HM12-Wstate-FentonR-20150610.pdf>.

<sup>4</sup> Margin annotations requested page, requested record #1b.

I reported the perjury, which FEMA's response confirmed. But FEMA refused to correct the false filing, and won its case upon it ([https://5usc2302.github.io/risk/5\\_U.S.C.\\_2302\\_justification/Detail\\_\(full\).pdf](https://5usc2302.github.io/risk/5_U.S.C._2302_justification/Detail_(full).pdf)).

## National risk assessment

### *Risk identification*

2. Please provide the finalized, non-draft, and complete documentation of **the primary national assessment tool to identify national catastrophic threats** facing the United States, its tribes, and its territories that **FEMA began using in 2015**.<sup>5</sup>

### *Risk assessment*

3. Please provide the finalized, non-draft, and complete documentation of **the main national risk assessment vehicle which FEMA began using in 2015**.<sup>6</sup>
4. Please provide the finalized, non-draft, and complete documentation of **the main national risk assessment vehicle which FEMA was using** as of 30 April 2019.<sup>7</sup>
5. Please provide the finalized, non-draft, and complete documentation of **the main national risk assessment vehicle which FEMA is using today**.

Responsive records to #2, #3, and possibly (depending on whom in FEMA you ask) #4 are held by many FEMA organizations, including yours. There may or may not exist responsive records to #5.

## National THIRA

6. Please provide the finalized, non-draft, and complete documentation of
  - a. The **2015 National THIRA**,<sup>8</sup> and
  - b. The **National THIRA as of 30 April 2019**.<sup>9</sup>

“Complete” includes both i) methodology and ii) fully documented (sourced) finalized content, including finalized scenarios, impacts, and whatever else FEMA considers to be an essential part of a complete and finalized National THIRA.<sup>10</sup>

7. **If the 2015 National THIRA was never finalized or does not exist**, please provide the earliest *finalized* edition or iteration of the National THIRA as approved by FEMA.

If no record corresponding to any of the requested items #6-#7 above exists, please reply that no responsive records were found.

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<sup>5</sup> NPD (2019) ¶ 8.

<sup>6</sup> NPD (2019) 2.

<sup>7</sup> NPD (2019) 10.

<sup>8</sup> NPD (2019) 2, 8.

<sup>9</sup> NPD (2019) 8, 9, 10, 11.

<sup>10</sup> For example, the methods document which FEMA recently published (FEMA (2019), note 13 below) completely provides the methods half (i) for #8 (the first National THIRA) below, but the content is missing.

8. Please provide **the first National THIRA**.

You may hold this part of your response open until the first National THIRA is complete and finalized.<sup>11</sup>

Since the last piece (the national capability targets<sup>12</sup>) complete<sup>will</sup> adjudication ~~two weeks~~ <sup>this week</sup> ago this should be very soon, most likely before the end of the extended thirty working days that the law allows you without further permission from me. If not, I agree in advance to a voluntary extension of time until that date.

- Please note that the outstanding methods document<sup>13</sup> which the agency published in July is not by itself responsive to this request. It is a necessary part of a full product, but the content is missing.
- For the national capability targets and their specific supporting documentation, for segregability purposes please err on the side of caution, because they are very new.

These records, when completed, will be held by National Preparedness Assessment Division, FEMA.

Context (National Capability Targets)

9. Please provide the Administrator's **Annual Planning Guidance** (APG), which is not presently public as far as I have been able to tell, for
- a. **Fiscal year 2016**, emailed to all hands FEMA 1 October 2015; and
  - b. **Calendar year 2020**, emailed to all hands FEMA 12 December 2019.

These records are held by the Office of the Administrator, FEMA.

Notes

Production

For documents with non-releasable information, please provide

- A) The **front or cover page**, with the **document title** and the agency or Department seal;
- B) A page count; and
- C) All other segregable, nonexempt information.

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<sup>11</sup> The largest piece of the National THIRA which has been finalized since April is already public so I am not requesting it today, just the other parts. Federal Emergency Management Agency (2019, July 25). 2019 National Threat and Hazard Identification and Risk Assessment (THIRA): overview and methodology. DHS National Preparedness Assessment Division: at <https://web.archive.org/web/20190725231745/https://www.fema.gov/media-library/assets/documents/181470>.

<sup>12</sup> FEMA (2019) p. 13.

<sup>13</sup> FEMA (2019).

For an interim twenty day response to requests #6-7, please feel free to reduce the scope of this request, and your search and review, to only those chapters, portions, or pages of a responsive record (or reference to a published document) – including the cover page with the document title and seal, and page count – that are or would be sufficient to substantiate that a responsive record exists.

### FOIAbility

THIRA information, capability estimates, and capability targets are not FOIA exempt.<sup>14</sup>

### Public and agency interest

A government employee may petition his own agency if 1) it is in the public interest, 2) it is consistent with law and policy, and 3) the public interest outweighs any negative impact to the agency's interest.<sup>15</sup>

My organization's mission is to get the best, most useful, most accurate, most truthful information that we can to FEMA's decision-makers and our Federal, state, local, and whole community partners. We do what we do because we believe that good information can save lives, even if it challenges what our leaders would prefer to be true.

Although this declaration comes from someone else's lawsuit, it is a problem for my work for three reasons. The first is that the Nation needs the SNRA, and this declaration is blocking it. The second is that at the moment, that court is the only entity capable of holding us accountable in our work, and we need that accountability to do our job. The third is that this declaration purports to speak for my office and our work: if this claim is perceived as credible, it will discredit both.

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<sup>14</sup> Federal Emergency Management Agency (2019, April 5, June 18). Documents 12-13, joint status reports with plaintiff, 12 p. 1, 13 p. 2, unredacted pages of 2019/02/15, 2019/04/15 releases non-exempt. *American Oversight v. Federal Emergency Management Agency* 1:2018-cv-02470, D.D.C.

- Federal Emergency Management Agency (2016, March). Region II draft Threat and Hazard Identification and Risk Assessment (THIRA). Bates pp. 000322-000719. FEMA 2019/02/15 release to American Oversight, 2019-FELI-00001: at <https://assets.documentcloud.org/documents/5788192/FEMA-Records-Regarding-Hurricane-Maria-Response.pdf>.
- Commonwealth of Puerto Rico (2016). Threat and Hazard Identification and Risk Assessment (THIRA) and State Preparedness Report (SPR). Bates pp. 003153-003311. FEMA 2019/04/15 release to American Oversight, 2019-FELI-00001: at <https://assets.documentcloud.org/documents/6184550/FEMA-Reports-regarding-Disaster-Preparation.pdf>.
- U.S. Virgin Islands (2017). Threat and Hazard Identification and Risk Assessment (THIRA). Bates pp. 000087-000145. FEMA 2019/02/15 release to American Oversight, 2019-FELI-00001: at <https://assets.documentcloud.org/documents/5788192/FEMA-Records-Regarding-Hurricane-Maria-Response.pdf>.

<sup>15</sup> *Borough of Duryea, Pennsylvania, et al. v. Guarnieri*, 564 U.S. 379 (2011).

## **Handling**

I am an individual seeking information for personal use, and not for a commercial use.

I request a waiver of fees for this request because it is in the public interest. If you deny this waiver, then please go ahead and process the request without the waiver in order to not delay things further.

- If so, please supply the records without informing me of the cost if the fees do not exceed \$1,000, which I agree to pay. If additional fees are necessary, please let me know in advance of fulfilling my request.

I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you,

A handwritten signature in blue ink, appearing to read "Andrew Janca". The signature is fluid and cursive, with a large initial "A" and "J".

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