Date: August 12, 2008

Item No. 2
File No. 08030

SUNSHINE ORDINANCE TASK FORCE

COMPLAINT COMMITTEE

AGENDA PACKET CONTENTS LIST*

☒ **Determination of jurisdiction of complaint filed by Kimo Crossman against the Clerk of the Board and the SOTF Administrator on the department's new redaction policy. (action item) (attachment)**

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Completed by: Chris Rustom **Date:** August 8, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

August 6, 2008

Nick Goldman, Chair
Members of the Complaint Committee

Re: Kimo Crossman v. Clerk of the BOS and SOTF Administrator (08030)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Kimo Crossman_ against the Clerk of the BOS and SOTF Administrator.

BACKGROUND

Kimo Crossman has reviewed the new redaction policy issued from the Clerk of the Board of Supervisors and takes issue with it.

COMPLAINT

On May 29,2008 Kimo Crossman filed a complaint against the Clerk of the Board of Supervisors and the Sunshine Ordinance Task Force Administrator Office alleging violations of sections 67.21, 67.26 and 67.27 of the Sunshine Ordinance and the California Constitutional provisions.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force ***does not*** have jurisdiction over the allegations. The complaint does not claim that a record or document was improperly withheld but that the policy may lead to a practice that would violate the Sunshine Ordinance. There is no active case which the Task Force can decide.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure

Requests. CPRA Section 6253 generally covers Public Records Requests. These aforesaid sections are inapplicable to this case.

In this case, Kimo Crossman takes issue with the current redaction policy of the Clerk of the Board. Under Section 67.30(c), Kimo Crossman could request that the Chair of the Task Force agendize the topic of the Clerk of the Board's redaction policy for a Task Force discussion. At that meeting, the Task Force could make recommendations to the Clerk of the BOS. At this time, the complaint alleging that the policy of the Clerk of the Board of Supervisors violates the Ordinance is not properly before the Task Force and the Task Force does not have jurisdiction to hear this complaint.

"Kimo Crossman"
<kimo@webnetic.net>
08/06/2008 06:09 PM

To "'SOTF'" <sotf@sfgov.org>, "'Ernest Llorente'" <Ernest.Llorente@sfgov.org>
cc <elc@lrolaw.com>, <rak0408@earthlink.net>, <grossman356@mac.com>, <Libraryusers2004@yahoo.com>, "'James Chaffee'"
bcc

Subject Mr. Llorente says deny Complaint Jurisdiction over COB illegal redaction of Contact Info - not a public record denial (submittal for 08030)

Submittal for #08030

Llorente goes too far – this is a matter within the **purview of the taskforce because it relates to the ordinance**. That's the only question for Complaints to answer.

More evidence will be submitted before the full hearing.

There are other non inspection/production of public records/public meeting provisions in sunshine – ten day rule before contract approved and written summary of verbal contract negotiations are two examples. Keeping a Department head calendar or storing records in a professional manner. Efficient use of technology. Restrictions on funds used to lobby against Open Government. Department head declaration for training. 67.21 C Info about Info queries and required referrals to DA.

I believe that since the Sunshine taskforce advises and hears complaints on *any* violation of the ordinance - it is clear that this policy by the COB violates the requirements under 67.24 (i) (not specific type of info analysis in new policy) & 67.21 (k) (Public info must be released per CPRA) and can be heard on 67.30 C & 67.34 (failure to discharge any duty) and similar provisions in CPRA).

67.24
(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance

67.30
(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter.

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

67.21
(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

-----Original Message-----
From: SOTF [mailto:sotf@sfgov.org]
Sent: Wednesday, August 06, 2008 4:54 PM
To: kimo@webnetic.net; Angela Calvillo; Frank Darby
Subject: DCA Jurisdictional Letter: #08030_Kimo Crossman v Clerk of the Board, SOTF Administrator

Attached is a copy of the Deputy City Attorney's Jurisdictional Letter to the Complaint Committee.

(See attached file: 08030 Jurisdiction.pdf)

As a reminder this complaint will be heard by the Committee on

When: Tuesday, August 12, 2008
Where: City Hall, Room 406
Time: 4:00 PM

Chris Rustom
Asst. Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
OFC: (415) 554-7724
FAX: (415) 554-7854
SOTF@sfgov.org 08030 Jurisdiction.pdf

<complaints@sfgov.org>
05/29/2008 09:38 AM

To <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

History: This message has been forwarded.

Submitted on: 5/29/2008 9:38:00 AM

Department: Clerk of the Board, SOTF Administrator

Contacted: various

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21, 67.26, 67.27, constitutional provisions to petition government for redress and freedom of association

Description: The one-size-fits-all new redaction policy is badly flawed on many legal and procedural levels. It does not withhold minimally, the legal citations are unapplied -it does not do a factual analysis and apply balancing tests for each records request. It overturns the policy and procedure of decades of city methods. It equates getting an unsolicited call or email with a deep invasion of privacy which is not balanced with a reduced expectation of privacy for public officials or even citizens who just choose to contact their government (not whistleblowers) - and who often want to be connected with citizens or officials who wish to address their concerns. This violates constitutional provisions to petition one's government for redress and freedom of association.

Hearing: Yes

Date: 5/28

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic

Anonymous:

"Kimo Crossman" <kimo@webnetic.net>
05/28/2008 05:58 PM

To <sotf@sfgov.org>
cc
bcc
Subject SOTF Complaint - Illegal withholding policy by Clerk of the Board/SOTF Administrator

Please include the below email chain in the file for this complaint.

Submitted on: 5/28/2008

Department: Clerk of the Board and SOTF Administrator

Contacted: various

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21, 67.26, 67.27, constitutional provisions to petition government for redress and freedom of association

Description: The attached one-size-fits-all new redaction policy is badly flawed on many legal and procedural levels. Please include the below email chain in the file for this complaint. It does not withhold minimally, the legal citations are unapplied -it does not do a factual analysis and apply balancing tests for each records request. It overturns the policy and procedure of decades of city methods. It equates getting an unsolicited call or email with a deep invasion of privacy which is not balanced with a reduced expectation of privacy for public officials or even citizens who just choose to contact their government (not whistleblowers) – and who often want to be connected with citizens or officials who wish to address their concerns. This violates constitutional provisions to petition one's government for redress and freedom of association.

Hearing: Yes

Date: 5/28/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Wednesday, May 28, 2008 5:43 PM
To: 'Allen Grossman'; 'Joe Lynn'; 'h. brown'; 'marc@cybre.net'; 'Richard Knee'; 'Dougcoms@aol.com'; kristin@chu.com; SCau1321@aol.com; 'sotf@sfgov.org'; 'Bruce Wolfe, MSW'; 'amwashburn@comcast.net'; 'SPJNC_FOIC_Witherell Amanda'; 'oliverlear@yahoo.com'; 'Charles Marsteller'; 'Larry Bush'; 'kgokhale@newamericamedia.org'; 'melissagriff@gmail.com'; 'Sarah Phelan'; ' tr@sfbg.com'; 'SPJNC_FOIC_Witherell Amanda'; 'steve@sfbg.com'; 'Pmonette-shaw@earthlink.net'
Cc: 'terry@calaware.org'; 'Board of Supervisors'; 'Nilka Julio'; 'Angela Calvillo'
Subject: SF COB new ridiculous redaction of all personal info is attached- Official Misconduct by SOTF found
Importance: High

Clerk – please log this and any email responses as new and separate Complaints to the Clerk of the Board and a Communication to the Board

Apparently the Clerk, Angela Calvillo believes that members of the public should only be able to contact political officials who do not have city offices at the official city meetings. Additionally she believes that the city should prevent people from petitioning their government for redress by preventing them from contacting one another to collaborate.

This new policy (attached) which appears to equate unsolicited letters/emails/phone calls with a deep invasion of privacy of people who have chosen to be public officials.

There are already laws against SPAM, Harassment, Cyberbulling and Identity Theft and there is no persuasive evidence that contact information on public records has resulted in significant increases of these. If someone is a public official or has sent a letter with their contact info they usually like to be contacted and they are welcome to tell the contactor to no longer do so if they wish. One asks why the Clerk is not redacting the names of people as well? It is a proven fact

that people complete sign-in sheets and sent letters/emails with their contact info on it in hopes that someone will care about what they say. The Clerk's representative indicated that even the Sunshine Taskforce would not be able to examine the unredacted information.

This has huge policy implications a change to decades of prior practice with no hearing. The number of redactions required is staggering. No analysis was performed on the cost to implement this policy nor the requirement to balance the right of the public to observe the functioning of government (like employee salaries) vs the expectation of privacy for each request as required by law– something most people who contact government do not have (except whistleblowers).

There is no provision for confidential constituent communications in California or deliberative communications under SF Sunshine. No procedures were provided to show how the clerk will minimally redact email addresses – username only? Or how a clerk will identify if a street address or phone number or email is a business or personal one including if a person works from their home. No description on how the clerks will contact people to see if they want their information released.

As of 5/27 the Clerk of the Board and the SOTF Administrator have been found in Official Misconduct and referred to the Board of Supervisors for refusal to not redact emails addresses on SOTF policy body communications.

An inquiry to the City Attorney's office for 2005-2007 showed they had received no complaints from citizens over disclosure of information.

Ethics Commission does not redact Statement of Economic Interest form 700
Assessor/Recorder does not redact records of property sales
Election department does not redact applications for pending political positions.

6253(b) allows inspection of original records or exact copy.

Please send complaints to all:
Board.of.Supervisors@sfgov.org
Nilka.Julio@sfgov.org
Angela.Calvillo@sfgov.org

-----Original Message-----
From: SOTF [mailto:sotf@sfgov.org]
Sent: Wednesday, May 28, 2008 4:49 PM
To: Kimo Crossman
Subject: Re: Immediate Disclosure Request : Please provide the new COB policy on redaction of personal information

Mr Crossman,

Attached is the document you requested.

(See attached file: Redacting Policy.pdf)

Chris Rustom
Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.

http://www.sfgov.org/site/sunshine_form.asp?id=34307

"Kimo Crossman"
<kimo@webnetic.ne
t>
05/28/2008 02:43
PM

To
"'Board of Supervisors'"
<Board.of.Supervisors@sfgov.org>,
<sotf@sfgov.org>

cc

Subject
Immediate Disclosure Request :
Please provide the new COB policy
on redaction of personal
information

Please treat this as an immediate disclosure request

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Wednesday, May 28, 2008 11:50 AM
To: 'Board of Supervisors'; 'sotf@sfgov.org'
Subject: Please provide the new COB policy on redaction of personal information
Importance: High


Redacting Policy.pdf

SOTF/SOTF/SFGOV
06/05/2008 02:15 PM

To SOTF/SOTF/SFGOV@SFGOV
cc Angela Calvillo/BOS/SFGOV@SFGOV
bcc
Subject COB/SOTF-A Response: #08030_Kimo Crossman vs COB & SOTF-A

This e-mail is in response to the above titled complaint.

In the complaint the complainant expresses criticism of the Department's policy, which is his right. However, the matter is not within the jurisdiction of the Task Force (Sections 67.1 (e), 67.21(e) and (h), 67.30, and 67.33). The Department is therefore contesting jurisdiction, and requesting a prehearing conference with the Complaint Committee of the Task Force.

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

"Kimo Crossman"
<kimo@webnetic.net>
06/06/2008 06:36 PM

To '"SOTF"' <sotf@sfgov.org>
cc '"Board of Supervisors"' <Board.of.Supervisors@sfgov.org>, '"Angela Calvillo"' <Angela.Calvillo@sfgov.org>
bcc
Subject submittal for #08030 Complaint

Attached submittal for #08030 Complaint

Also please make this part of the "C" page for BOS and send to the City Attorney legal counsel which is advising the Clerk on her new privacy policy News-Press v DHS.pdf

H

News-Press v. U.S. Dept. of Homeland Sec.
C.A.11 (Fla.),2007.

United States Court of Appeals,Eleventh Circuit.
The NEWS-PRESS, division of Multimedia Holdings Corporation, Cape Publications, Inc., publisher of Florida Today, Pensacola News-Journal, division of Multimedia Holdings Corporation, Plaintiffs-Appellants,
v.
U.S. DEPARTMENT OF HOMELAND SECURITY, Federal Emergency Management Agency, Defendants-Appellees.
Sun-Sentinel Company, publisher of the South Florida Sun-Sentinel, Plaintiff-Appellee,
v.
U.S. Department of Homeland Security, Federal Emergency Management Agency, Defendants-Appellants.
Nos. 05-16771, 06-13306.

June 22, 2007.

Background: News organizations brought action against the Federal Emergency Management Agency (FEMA) pursuant to the Freedom of Information Act (**FOIA**), seeking disbursement data for the four hurricanes that hit Florida during 2004, in particular, the names and addresses of individuals who applied for disaster assistance or made insurance claims. The United States District Court for the Middle District of Florida, No. 05-00102-CV-FTM-29-DNF,John E. Steele, J., 2005 WL 2921952, granted in part and denied in part the parties' cross-motions for summary judgment, and news organizations appealed. Newspaper publisher brought a separate **FOIA** action against FEMA, seeking similar information for the 2004 Florida hurricanes as well as for 27 additional disasters in various states dating back some ten years. The United States District Court for the Southern District of Florida, No. 05-60340-CV-KAM,Kenneth A. Marra, J., 431 F.Supp.2d 1258, granted in part and denied in part the parties' cross-motions for summary judgment, and FEMA appealed.

Holdings: After consolidating the appeals, the Court of Appeals, Marcus, Circuit Judge, held that:

(1) in **FOIA** cases in which the facts are undisputed, de novo review is the proper standard of review of district court decisions on summary judgment;

(2) given the substantial public interest involved, FEMA failed to establish that disclosure of the addresses of the households that received Individuals and Households Program (IHP) aid "would constitute a clearly unwarranted invasion of personal privacy" within meaning of **FOIA exemption**;

(3) FEMA's disclosure of the names of IHP aid recipients "would constitute a clearly unwarranted invasion" of those individuals' personal privacy; and

(4) FEMA had to disclose the addresses of National Flood Insurance Program (NFIP) claimants.

Judgment of first district court reversed and remanded; judgment of second district court affirmed.

West Headnotes

[1] Records 326 ⇐62

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k62 k. In General; Request and Compliance. Most Cited Cases
Once agency was required to disclose records to one member of the public, the Freedom of Information Act (**FOIA**) required it to release the same records to any other citizen who requested them. 5

U.S.C.A. § 552.

[2] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
In Freedom of Information Act (**FOIA**) cases in which the facts are undisputed, de novo review is the proper standard of review of district court decisions on summary judgment. 5 U.S.C.A. § 552.

[3] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
While courts generally review challenges to agency action for an abuse of discretion, where an action is brought under the Freedom of Information Act (**FOIA**), there can be no question of review for abuse of discretion. 5 U.S.C.A. § 552.

[4] Records 326 ⚿31

326 Records
326II Public Access
326II(A) In General
326k31 k. Regulations Limiting Access; Offenses. Most Cited Cases
Under the Privacy Act, the Federal Emergency Management Agency (FEMA) could not disclose the names and addresses of disaster assistance applicants to the newspapers requesting such information where the newspapers admittedly had not secured the written permission of the applicants to disclose such information. 5 U.S.C.A. § 552a.

[5] Records 326 ⚿54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k54 k. In General. Most Cited Cases
Freedom of Information Act (**FOIA**) generally requires federal agencies to disclose records in their possession upon request, but permits agencies to withhold records if one of several **exemptions** applies. 5 U.S.C.A. § 552.

[6] Records 326 ⚿31

326 Records
326II Public Access
326II(A) In General
326k31 k. Regulations Limiting Access; Offenses. Most Cited Cases

Records 326 ⚿55

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k55 k. **Exemptions** or Prohibitions Under Other Laws. Most Cited Cases
Net effect of the interaction between the Freedom of Information Act (**FOIA**) and the Privacy Act is that where the **FOIA** requires disclosure, the Privacy Act will not stand in its way, but where the **FOIA** would permit withholding under an **exemption**, the Privacy Act makes such withholding mandatory upon the agency. 5 U.S.C.A. §§ 552, 552a.

[7] Records 326 ⚿50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements

326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
In enacting the Freedom of Information Act (**FOIA**), Congress created a broad disclosure statute which evidences a strong public policy in favor of public access to information in the possession of federal agencies. 5 U.S.C.A. § 552.

[8] Records 326 ⚿50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
In enacting the Freedom of Information Act (**FOIA**), Congress sought to open agency action to the light of public scrutiny, by requiring agencies to adhere to a general philosophy of full agency disclosure. 5 U.S.C.A. § 552.

[9] Records 326 ⚿50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
Basic purpose of the Freedom of Information Act (**FOIA**) is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed. 5 U.S.C.A. § 552.

[10] Records 326 ⚿50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
Freedom of Information Act's (**FOIA's**) limited **exemptions** do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act. 5 U.S.C.A. § 552.

[11] Records 326 ⚿54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k54 k. In General. Most Cited Cases
Policy of the Freedom of Information Act (**FOIA**) requires that the Act's disclosure requirements be construed broadly, the **exemptions** narrowly. 5 U.S.C.A. § 552.

[12] Records 326 ⚿65

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and Burden of Proof. Most Cited Cases
Under the Freedom of Information Act (**FOIA**), agency bears the burden of justifying its action, whether it withholds entire records or portions of records. 5 U.S.C.A. § 552.

[13] Records 326 ⚿52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases
When documents are within the Freedom of Information Act's (**FOIA's**) disclosure provisions, citizens generally should not be required to explain why they seek the information. 5 U.S.C.A. § 552.

[14] Records 326 ⚿52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases
Federal Emergency Management Agency's (FEMA's) disclosure of the addresses of households that received disaster assistance following particular Florida hurricanes or other federally-declared disasters would further a substantial public interest, for purposes of determining whether agency was required to disclose such information under the Freedom of Information Act (**FOIA**); news organizations sought the information in order to investigate whether FEMA had been a proper steward of billions of taxpayer dollars, this asserted interest went to the core purpose of the **FOIA**, which was contributing significantly to public understanding of the operations or activities of the government, scope of news organizations' investigations went well beyond earlier government inquiries, and disclosure of households' zip codes, as opposed to their addresses, would not have been sufficient to assess FEMA's conduct. 5 U.S.C.A. § 552(b)(6).

[15] Records 326 ⇐58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases
Given substantial public interest involved in Federal Emergency Management Agency's (FEMA's) disclosure of addresses of households that received Individuals and Households Program (IHP) aid following Florida hurricanes or other federally-declared disasters, FEMA failed to establish that disclosure of addresses "would constitute a clearly unwarranted invasion of personal privacy" within meaning of Freedom of Information Act (**FOIA**) **exemption** and, thus, the information had to be disclosed; Congress did not intend addresses to automatically be withheld under **FOIA**, even when they could be linked with other information about individuals, disclosure of addresses would not enable others to link aid recipients with any highly personal information already disclosed by FEMA, there was no evidence that disclosure would create reasonable risk of identity theft or "actual theft," and risk of reporters or solicitors contacting recipients was small and the annoyance caused thereby modest. 5 U.S.C.A. § 552(b)(6).

[16] Records 326 ⇐58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases
Congress's primary purpose in enacting the Freedom of Information Act (**FOIA**) **exemption** for "personnel and medical files and similar files" was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information. 5 U.S.C.A. § 552(b)(6).

[17] Records 326 ⇐58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases
Under the Freedom of Information Act (**FOIA**) **exemption** for "personnel and medical files and simil-

ar files," personal information in government agency files is **exempt** from mandatory disclosure only if: (1) the information was within personnel, medical, or similar files, and (2) a balancing of individual privacy interests against the public interest in disclosure reveals that disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C.A. § 552(b)(6).

[18] Records 326 ⚿58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases
As used in the Freedom of Information Act (**FOIA**) **exemption** for "personnel and medical files and similar files," the term "similar files" has a broad, rather than a narrow, meaning, and includes any detailed government records on an individual which can be identified as applying to that individual. 5 U.S.C.A. § 552(b)(6).

[19] Records 326 ⚿65

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and Burden of Proof. Most Cited Cases
Under the Freedom of Information Act (**FOIA**) **exemption** for "personnel and medical files and similar files," an agency's burden of showing that disclosure "would constitute a clearly unwarranted invasion of personal privacy" is an onerous one. 5 U.S.C.A. § 552(b)(6).

[20] Records 326 ⚿58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; **Exemptions**
326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases
While names and addresses qualify as potentially protectable "similar files" under the Freedom of Information Act (**FOIA**) **exemption** for "personnel and medical files and similar files," the release of a list of names and other identifying information does not inherently and always constitute a "clearly unwarranted" invasion of personal privacy; instead, whether disclosure of a list of names is a significant or a de minimis threat depends upon the characteristics revealed by virtue of being on the particular list, and the consequences likely to ensue. 5 U.S.C.A. § 552(b)(6).

[21] United States 393 ⚿82(5)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(5) k. Relocation Assistance and Disaster Aid. Most Cited Cases
There is no "means test" for receiving Individuals and Households Program (IHP) aid from the Federal Emergency Management Agency (FEMA); that is, unlike many government benefits programs, such as welfare, Medicaid, and unemployment, one need not fall below a certain annual income level to qualify for disaster assistance. Robert T. Stafford Disaster Relief and Emergency Assistance Act, § 101 et seq., 42 U.S.C.A. § 5121 et seq.

[22] Records 326 ⚿58

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure;

Exemptions

326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases

Federal Emergency Management Agency's (FEMA's) disclosure of the names of individuals who received Individuals and Households Program (IHP) aid following Florida hurricanes or other federally-declared disasters, pursuant to Freedom of Information Act (**FOIA**) request by news organizations investigating the agency's disbursement activities, "would constitute a clearly unwarranted invasion" of those individuals' personal privacy, so as to fall within **FOIA exemption**, even though court had found that FEMA was required to disclose the addresses where damage was alleged to have occurred; news organizations articulated only one central need for the IHP names, that is, to investigate whether some individuals defrauded FEMA, this public interest was not terribly strong, the names were not necessary to determine the extent of fraud against FEMA, and withholding the names would substantially reduce the potential for negative secondary effects from disclosing the addresses. 5 U.S.C.A. § 552(b)(6).

[23] Records 326 ⇐58

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; **Exemptions**

326k58 k. Personal Privacy Considerations in General; Personnel Matters. Most Cited Cases

Pursuant to Freedom of Information Act (**FOIA**) request by news organizations investigating the Federal Emergency Management Agency's (FEMA's) disbursement activities, FEMA had to disclose the addresses of households that made claims under the National Flood Insurance Program (NFIP) following Florida hurricanes or other federally-declared disasters; there was a substantial public interest in news organizations' investigation of federal government's decision to continue insuring flood-prone property, and FEMA failed to explain why being identifiable as someone who purchased federal flood insurance would constitute any invasion of privacy, much less a "clearly unwarranted" one. 5 U.S.C.A. § 552(b)(6).

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Appeals from the United States District Court for the Southern District of Florida.

Before CARNES, MARCUS and KRAVITCH, Circuit Judges.

MARCUS, Circuit Judge:

These consolidated appeals arise out of an unprecedented storm season in which four hurricanes-Hurricanes Charley, Frances, Ivan, and Jeanne-hit Florida within one six-week period during 2004. In response, the Federal Emergency Management Agency ("FEMA") disbursed $1.2 billion in individual disaster assistance to more than 605,500 Floridians, and also paid out claims to tens of thousands of individuals whose structures were insured under FEMA's National Flood Insurance Program. After questions were raised *1178 concerning how individual disaster assistance was disbursed in one Florida county following one of the hurricanes, the plaintiff newspapers collectively requested, under the Freedom of Information Act, 5 U.S.C. § 552

FOIA"), disbursement data for all four 2004 hurricanes plus an additional 27 disasters dating back some ten years. FEMA redacted the names and addresses from the data it provided, on the grounds that disclosing this information "would constitute a clearly unwarranted invasion of personal privacy" within the meaning of **Exemption** 6 of the **FOIA**, 5 U.S.C. § 552(b)(6). In *News-Press v. U.S. Department of Homeland Security,* the United States District Court for the Middle District of Florida held that disclosure of both the names and the addresses was **exempt** under **Exemption** 6. In *Sun-Sentinel v. U.S. Department of Homeland Security,* the United States District Court for the Southern District of Florida reached nearly the opposite conclusion, holding that **FOIA** requires FEMA to disclose the addresses, although not the names.

At issue today is whether FEMA has established that the names and addresses of 1.3 million individuals who applied for aid or made insurance claims after one of 31 federally-declared disasters are **exempt** from disclosure under the **FOIA**, on the grounds that releasing this information "would constitute a clearly unwarranted invasion of personal privacy" within the meaning of **Exemption** 6. After thorough review, we conclude that the addresses are not **exempt** under **Exemption** 6 because FEMA has failed to meet its heavy burden of showing a "clearly unwarranted invasion of personal privacy." In light of FEMA's awesome statutory responsibility to prepare the nation for, and respond to, all national incidents, including natural disasters and terrorist attacks, there is a powerful public interest in learning whether, and how well, it has met this responsibility. Plainly, disclosure of the addresses will help the public answer this question by shedding light on whether FEMA has been a good steward of billions of taxpayer dollars in the wake of several natural disasters across the country, and we cannot find any privacy interests here that even begin to outweigh this public interest. However, because there is only minimal additional public interest in disclosing the names, we conclude that they are **exempt** under **Exemption** 6.

I. *Background*

The following facts are culled from both summary judgment records and are undisputed. In the aftermath of the September 11, 2001 terrorist attacks, Congress created a Cabinet-level Department of Homeland Security ("DHS") to serve as an umbrella organization for twenty-two federal departments. Homeland Security Act of 2002, Pub.L. No. 107-296, 116 Stat. 2135 (2002). On January 10, 2003, President George W. Bush nominated Michael D. Brown ("Brown") to serve as the DHS's first Under Secretary of Emergency Preparedness and Response. On March 1, 2003, the Federal Emergency Management Agency ("FEMA")-whose mission is to "lead the effort to prepare the nation for all potential disasters and to manage the federal response and recovery efforts following any national incident-whether natural or man-made," http://www. fema. gov/ library/ view Record.do?id=1756; *see also* Homeland Security Act § 502, 116 Stat. at 2212-was formally folded into the DHS, and Brown assumed the position of Director of FEMA.

A. *The 2004 Florida Hurricane Season*

Within six weeks during August and September of 2004, portions of Florida sustained extensive damage from Hurricanes***1179** Charley, Frances, Ivan, and Jeanne-the first time since 1886 that a state has been struck by four hurricanes in a single year. After each hurricane, President Bush issued a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* ("the Stafford Act"), and directed FEMA to provide federal disaster assistance to the affected areas. At that time, FEMA's response to the four 2004 hurricanes comprised the largest mobilization of emergency response and disaster recovery resources in FEMA history, exceeding even the agency's operational response to the attacks of September 11, 2001.

As a result of the 2004 hurricanes, FEMA received over 33,000 claims from Floridians under

the National Flood Insurance Program ("NFIP"). Under this program, homeowners, renters, and business owners in certain designated flood-prone areas are eligible to purchase federal flood insurance for their building structures and their contents.

FEMA also paid out $1.2 billion in aid to more than 605,500 Floridians under the Individuals and Households Program ("IHP"), which provides financial assistance (that is not repaid by the recipient) and direct services to individuals and households who seek to "prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition" when those needs cannot be met in any other way. 44 C.F.R. § 206.111; *see also*42 U.S.C. § 5174(a)(1). There are two components of the IHP-Housing Assistance ("HA") and Other Needs Assistance ("ONA")-and roughly half of the IHP aid was disbursed under each component. Under the HA component, FEMA compensates individuals for temporary housing, the repair or replacement of damaged housing, or for "hazard mitigation measures" to their residences to reduce the likelihood of damage in the future. Individuals may also receive direct assistance in the form of temporary FEMA housing. Finally, 95,000 Floridians qualified for Expedited Assistance ("EA"), a form of Housing Assistance under which they were immediately given, without inspection, funds in the equivalent of one month's fair market rent to be used toward their disaster-related housing needs. Under the ONA component, FEMA compensates individuals for funeral expenses, medical and dental costs, the repair and replacement of personal property, transportation expenses, moving and storage expenses, and other expenses, such as generators, deemed by FEMA to constitute a necessary expense or serious need.

With the exception of EA, all other IHP aid is disbursed only after FEMA's contract inspectors verify the accuracy of claims, including the existence of disaster-related damage to real and personal property, as well as ownership or occupancy. Inspectors using portable data devices upload their findings to FEMA's processing system, the National Emergency Management Information System ("NEMIS"), and in more than 90% of cases, an award is made on the basis of that inspection information.[FN1] Inspectors determine the amount of personal property loss under the ONA component using the Generic Room Concept: rather than comparing the state of household belongings after a disaster to the state of those belongings before the disaster, FEMA inspectors compare the post-disaster state of a household's belongings to the belongings in a *hypothetical* room FEMA has predetermined constitutes an "average" American kitchen, ***1180** bathroom, living room, or bedroom.[FN2] The value of a full, hypothetical room ranges from $862 (for a bathroom) to $2,495 (for a bedroom). Inspectors make ONA awards by categorizing rooms in one of three ways. If the inspector determines that all items in a room must be replaced, the household receives the full value of an average room. If some of the room's contents must be replaced but others can be repaired, however, the household receives only a portion of the value of a full room. Finally, if all of a room's items can be repaired, then the household receives a still smaller portion of the value of a full room.

FN1. NEMIS automatically determines eligibility in over 90% of cases based on business rules encoded in its software. FEMA caseworkers determine eligibility in the remaining cases.

FN2. For example, the average kitchen, according to FEMA, consists of 25 items: dinnerware, glassware, and flatware for 8; a set of mixing bowls; a set of pots and pans with lids; a set of dining linens; 4 sets of dish towels/pot holders; a 7-piece knife set; a cooking spoon; a meat fork; a spatula; a whisk; miscellaneous cooking utensils; a dish rack/drainer; a coffee maker; a handheld mixer; a 2-slot toaster; a blender; an electric can opener; a fire extinguisher; a mop and bucket; a broom; a

trash can; a 2'x4' area rug; and a 3'x4' mini blind set. The average living room consists of 9 items: an upholstered 8' sofa, loveseat, and chair; a coffee table; two end tables; two lamps; a clock; a 5'x8' area rug; and a 4'x5' mini blind set. The average bedroom consists of 11 items: two twin beds, standard pillows, sheet sets, blankets and bedspreads; two four-drawer chests; two nightstands; two lamps; an 18" x48" mirror; a 5'x8' area rug; and a 4'x5' mini blind set. The average bathroom consists of 11 items: two towel racks; four sets of personal brushes/combs; four sets of personal hygiene items at $50 each; a shower rod and curtain; a tub mat; a laundry hamper; a toilet paper holder; a storage cabinet; a 3-piece rug set; and a 3'x4' mini blind set.

Damage to other personal property, such as appliances, clothing, and automobiles, is assessed differently. For example, inspectors categorize damaged automobiles as "destroyed," "repairable," or "cosmetic," and award the replacement cost rather than market value; inspectors must confirm that damage is disaster-related, but are not required to note how they confirmed this, or even the type of damage sustained. Similarly, inspectors are generally permitted to award money for losses to personal property that is not present at the time of inspection, so long as the damage or loss can be reasonably verified in some other way. Inspectors note such verbal representations as "PP Verbal"s, but are not required to document how they verified the loss, or even what the lost item was.

Of the $1.2 billion paid in IHP aid to Floridians as a result of the 2004 hurricane season, $31 million went to residents of Miami-Dade County for damage resulting from Hurricane Frances alone, including $13 million in Housing Assistance (over $1 million of which was disbursed to 1,400 residents as Expedited Assistance) and just under $18 million in Other Needs Assistance (the majority of which was disbursed to compensate personal property losses).

By October of 2004, soon after the hurricane season ended, the media had begun to question why Miami-Dade County, which in fact suffered only tropical storm-force sustained winds and no substantial rainfall accumulation, had been declared eligible for disaster relief as a result of Hurricane Frances, the eye of which made landfall some 100 miles to the north of the county,[FN3] and why its residents apparently ***1181** required $31 million in IHP assistance. Counties that suffered direct hits, the media reports claimed, received less aid. Reports also surfaced that since 2003, the number of National Flood Insurance Program-covered properties that have flooded repeatedly had more than doubled; for example, one North Miami property had reportedly flooded 17 times but remained NFIP-eligible, and without increased premiums. The media's concern was soon shared by federal, state, and local officials, as well as by the public at large.

FN3. In the days before Frances made landfall, based on its anticipated path, then-Florida Governor Jeb Bush submitted a disaster declaration request to FEMA requesting that all 67 Florida counties be declared eligible for public assistance and that 18 counties, including Miami-Dade, be declared eligible for individual assistance, including IHP aid. President Bush declared Frances a major disaster and authorized FEMA to provide public assistance to all Florida counties, but IHP aid to only five counties, *not* including Miami-Dade. President Bush did, however, authorize FEMA to designate other counties eligible for IHP aid subject to FEMA's completion of a Preliminary Damage Assessment ("PDA") for such counties. Within 24 hours after the hurricane's impact and *without* performing a PDA, FEMA amended the declaration to include for IHP eligibility Miami-Dade and the other 12

> counties that the Governor had initially requested but that were excluded in the President's declaration. Once a county is declared eligible for IHP relief, any resident of that county may apply for IHP aid.

We recount in some detail both the various allegations that FEMA's disbursement of IHP aid in Miami-Dade (and quite possibly in other Florida counties during 2004 and indeed in other states in other years after other disasters) was plagued with fraud, waste, and abuse, as well as FEMA's responses to these allegations. We do so for several reasons. First, the weight of the discernible public interest in learning whether FEMA has been a good steward turns, in part, on how many tax dollars were spent in IHP aid following various disasters, as well as how much of that money may have been disbursed under conditions of fraud, waste, or abuse. Similarly, the weight of the public interest also turns in some measure on whether whatever problems occurred in Miami-Dade after Hurricane Frances were likely confined to that occasion and location, or whether they may instead be an indication of more systemic problems in FEMA's individual assistance program that may have affected many more Americans and billions more tax dollars. Finally, the weight of the public interest turns, in part, on whether these questions have already been answered fully, or whether, instead, important questions remain that the names or addresses may help resolve.

In a prepared statement distributed to the press, Daniel Craig, FEMA's Director of Recovery ("Craig"), downplayed the possibility that either applicant fraud or agency error contributed to FEMA's distribution of aid to Floridians. "[W]hen you consider the magnitude of the recovery effort," he said, "our process handled the applications very well." *Prepared Statement of FEMA Director of Recovery Daniel Craig Regarding Florida Disaster Assistance* 3 (Jan. 10, 2005). "[T]here's currently no evidence of widespread fraud, waste or abuse of FEMA's disaster assistance programs in Florida." *Id.* at 1. "We've found that the majority of concerns raised regarding assistance provided to individuals in Florida have logical explanations and are *not* representative of widespread fraud." *Id.* at 2 (emphasis in original).

Despite FEMA's attempts to downplay any systemic problems in its distribution process, various internal and external investigations into FEMA's response to Hurricane Frances in Miami-Dade County soon began. In January of 2005, both the Office of Inspector General ("OIG") of the Department of Homeland Security and the United States Senate Committee on Homeland Security and Governmental Affairs ("Senate Committee") announced they were opening investigations. Meanwhile, on March 2, 2005, the United States Attorney for the Southern District of Florida announced the indictments of fourteen ***1182** Miami-Dade defendants on charges that each fraudulently claimed thousands of dollars-sometimes tens of thousands of dollars-in damage to his or her personal property from Hurricane Frances. In some cases, the indictments charged that damage to the defendant's personal property had been sustained prior to Hurricane Frances. In at least three cases, the indictments charged that the defendant claimed losses from a hurricane-damaged property where he had not resided at the time of the hurricane.

On May 18, 2005, the OIG released the results of its internal audit into FEMA's response to the 2004 hurricane season. *See* Dep't of Homeland Sec., Office of the Inspector Gen., *Audit of FEMA's Individuals and Households Program in Miami-Dade County, Florida, for Hurricane Frances* (2005) [hereinafter *OIG Audit Report*].[FN4] The audit was overseen by Richard Skinner, then Acting Inspector General ("Skinner"). On the same day, the Senate Committee held hearings pursuant to its own investigation, in which it heard testimony from Brown and Skinner concerning the *OIG Audit Report.*

> FN4. The *OIG Audit Report* is available at http:// www. dhs. gov/ xoig/ assets/ mg-

mtrpts/ OIG_ 05- 20_ May 05. pdf.

The purpose of the OIG audit was "to determine whether FEMA had sufficient evidence to support [Miami-Dade] county's eligibility for IHP assistance and whether adequate program controls existed to ensure that funds were provided only to eligible applicants, for eligible expenses." *Id.* at 3. Importantly, the audit was limited to (1) only 3% of (2) IHP awards (3) disbursed to residents of Miami-Dade County (4) who claimed damage from Hurricane Frances. In addition, the audit did not "evaluate the controls in NEMIS or the validity and reliability of its data." *Id.* at 7. Nor did the audit attempt to determine the extent of potential fraud. *Id.* Yet despite the limited scope of the audit, the report concluded that the errors it identified were likely systemic:

The policies, procedures, and guidelines used in Miami-Dade County for the IHP were also used throughout the State of Florida, casting doubt about the appropriateness of IHP awards made to individuals and households in other counties of the state as a result of the four hurricanes, particularly those counties that had only marginal damage. Further ..., most of the procedures were used for disasters in other states making the conditions and recommendations broadly applicable to FEMA's implementation of the IHP nationwide.

Id. at 4.

The report found "shortcomings" at both "key control points" in the IHP award process-the disaster declaration process and the verification of losses reported by individuals. *Id.* at 3. Specifically, the report found that FEMA designated Miami-Dade County eligible for IHP assistance without a proper preliminary damage assessment, that claims were not properly verified, that guidelines for making awards were generally lacking, that oversight of inspections was deficient, and that funds disbursed were not based on actual losses. The report concluded that while Miami-Dade "residents obviously sustained some degree of damage,""such damages did not necessarily warrant federal assistance," and "the inclusion of Miami-Dade County in the amended declaration was questionable." *Id.* at 10-11.

The report made sixteen recommendations for improvement. For instance, the report questioned FEMA's use of the Generic***1183** Room Concept which, as FEMA itself was forced to admit, almost by definition results in applicants receiving federal funds for items they did not own at the time of the disaster. The report concluded that since this procedure "may permit funding to repair or replace items not damaged or destroyed by a major disaster," it is "inconsistent with the Stafford Act and is potentially wasteful." *Id.* at 13-14. The report was also critical of FEMA inspectors reporting damage based only on the verbal assurances of applicants. *Id.* at 15 & n. 19. Similarly, the report found that FEMA inspectors failed to document how vehicle damage and losses were disaster-related, and that the generic replacement amount of $6,500 often far exceeded the blue book value of the car. *Id.* at 16-17. Finally, the report found that thousands of applicants who received money to be used as rental assistance remained in their allegedly unsafe homes. *Id.* at 25.

Before finalizing its report, the OIG presented FEMA with a draft and allowed FEMA to submit a formal response.[FN5] FEMA's response, signed by Brown, began oddly. FEMA expressed its "gratifi[cation] that the report affirms the absence of widespread or systemic Recovery program fraud, waste or abuse in the state, and conclusively establishes that no special treatment was afforded to Miami-Dade County." *Id.* at 43.[FN6] As noted, however, the report expressly stated that it had not attempted to determine the extent of fraud, and Skinner himself would later object to this characterization of the audit report.

FN5. FEMA's response appears at pages 43-57 of the *OIG Audit Report* as Appendix H: Management Comments.

FN6. The same week that FEMA respon-

> ded to the draft audit report, it issued two public statements. The first, issued by Brown, noted that "Inspector General audits and congressional oversight are not uncommon events in the wake of a major disaster, and while every disaster sadly comes with some level of fraud and abuse, I am pleased by the report's findings verifying our own initial conclusions of nothing widespread." *See* http:// www. fema. gov/ news/ newsrelease. fema? id= 17427. The second was a press release entitled "Hurricane Season 2005: Building on Success," which touted FEMA's response to the "unprecedented" 2004 hurricane season as having involved the delivery of aid "more quickly and more efficiently than ever before," and outlined ways in which techniques that evolved during the 2004 season would be implemented in 2005 and beyond. *See* http:// www. fema. gov/ news/ newsrelease. fema? id= 17324.

However, FEMA then went on to "take exception to many of the individual conclusions contained" in the report, *id.*, such that the OIG later determined that six of the report's sixteen recommendations were "unresolved," meaning that FEMA and the OIG either did not agree that a problem existed, or disagreed on the proper solution. Generally speaking, FEMA rejected any suggestion that Miami-Dade County should not have been included in the Hurricane Frances declaration, calling the OIG's conclusions to the contrary "inaccurate and misplaced." *Id.* at 50.

Although the strongest sustained winds Miami-Dade County experienced were 47 miles per hour-which, as measured by the Saffir-Simpson scale,FN7 constitute only ***1184** tropical storm-force winds-FEMA argued that "the Saffir-Simpson scale is predicated on *sustained* winds, and does not fully account for the impact of wind gusts that may reach hurricane force, wind-driven rain, and high-velocity tornadic winds that commonly occur in the outer bands of hurricanes." *Id.* at 49. Moreover, FEMA said, "the affected areas of Miami-Dade County were predominantly low-income neighborhoods that contained much of the State's oldest housing stock, and were not built to more recent State and local building codes." Thus, "homes in Miami-Dade County were far more susceptible to damage." *Id.*

> FN7. "The Saffir-Simpson Hurricane Scale is a 1-5 rating based on the hurricane's present intensity. This is used to give an estimate of the potential property damage and flooding expected along the coast from a hurricane landfall. Wind speed is the determining factor in the scale, as storm surge values are highly dependent on the slope of the continental shelf in the landfall region ....[A]ll winds are [measured] using the U.S. 1-minute average." *OIG Audit Report* at 32. A tropical storm involves winds ranging from 39 mph to 73 mph. A category I hurricane involves winds from 74 mph to 95 mph. *Id.* at 10 n. 10.

FEMA also objected to the OIG's extrapolation from its Miami-Dade response to conclusions about FEMA's overall disaster relief procedures and policies. "The scope of the audit is extremely narrow (Miami-Dade County), yet the audit's conclusions are overly broad." As a result, FEMA said, "many" of the OIG's "*program-wide* conclusions ... are, at best, misleading." *Id.* at 45. FEMA argued that "the extraordinary nature of the challenging 2004 hurricane season," which involved FEMA working at "several times above our standard operating capacity," made FEMA's response during this time unique, so that "the OIG expectation of error-free execution and a seamless trail of decision-supporting documentation is both unrealistic and inappropriate." *Id.*

At the May 18, 2005 Senate Committee hearings, Director Brown continued to vigorously defend FEMA's response to Hurricane Frances in

Florida as well as its general policies and procedures. He reiterated that he "strongly disagree [d] with any objection to the inclusion of Miami-Dade County in the Hurricane Frances declaration," calling the OIG's conclusions to the contrary "inexplicable." *See FEMA's Response to the 2004 Florida Hurricanes: A Disaster for Taxpayers?: Hearings Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 109th Cong. (2005) [hereinafter *Senate Hearings*][FN8] (written statement of Brown at 14). And although Brown conceded that "there was some assistance given incorrectly-perhaps through errors in data entry, inspections, and even through fraudulent claims"-he remained "proud of how *few* errors have surfaced out of the hundreds of thousands of inspections conducted." *Id.* at 11.[FN9] Brown said it was "clear that many of those early concerns [regarding Miami-Dade County] are misguided," and blamed the media for causing "[p]erspective ... to have been lost in the public discussion." *Id.* at 8. He warned that "[m]edia portrayals can be dramatic and compelling, but they can also be inaccurate or incomplete. They should not be considered the only starting point for inquiries or reviews of policies and procedures as they often can be, despite good intentions, misleading, misguided, or flawed." *Id.* at 12.

FN8. The *Senate Hearings* are available at http:// www. senate. gov/~ govt- aff/ index. cfm? Fuseaction= Hearings. Detail& Hearing ID= 235.

FN9. FEMA's own quality control inspections in Miami-Dade County showed what the Senate Committee called "alarming" error rates of 37% on personal property inspections, 18.5% on unsafe home determinations, 16% on furnishings, 16% on clothing, and 11.5% on willingness to relocate. For instance, the quality control report found instances in which thousands of dollars were paid to recipients whose homes showed no damage; in one case, money was provided to repair a dryer in a home where no dryer existed. Brown, however, defended those rates as "commendable." *Senate Hearings* (oral testimony of Brown at 74-76).

In July of 2005, the Senate Committee released its preliminary findings, which largely tracked those of the OIG. *See**1185 Senate Comm. on Homeland Sec. & Governmental Affairs, *Senators Collins & Lieberman Release Findings & Recommendations to Improve Safeguards in FEMA's Disaster Relief Program* (July 10, 2005) [hereinafter *Collins & Lieberman Press Release*].[FN10] Like the OIG, the Committee's investigation found "serious shortcomings at key stages of FEMA's program"-specifically, in FEMA's designation of counties as eligible for relief and in its administration of the IHP-that "allowed taxpayer dollars to be wasted." *Id.* The Committee found fourteen problems in FEMA's administration of the IHP and identified nineteen "[n]ecessary [i]mprovements" to "ensure fairness, accountability, and transparency in the administration of the IHP program." *Id.* Like the OIG, the Committee concluded that "[b]ecause the policies, procedures, and guidelines used in Florida were for the most part used throughout the nation, we are deeply concerned about the appropriateness of IHP awards nationwide." *Id.* at 3.

FN10. The Committee interviewed over 40 witnesses and reviewed over 50,000 pages of documents related to FEMA's response to the 2004 Florida hurricane season. *See Collins & Lieberman Press Release, available at* http:// www. senate. gov/~ govt- aff/ index. cfm? Fuse Action= Press Releases. Detail& Affiliation = R& Press Release_ id= 1042& Month= 7& Year= 2005.

By June 28, 2005, FEMA had initiated 6,579 recoupment actions to recover more than $27 million as the result of duplicate payments or overpayments to Floridians during 2004.[FN11]

FN11. In some cases, FEMA payments duplicated payments from private insurance

companies, and in other cases FEMA payments duplicated themselves. In still other cases, damage was not disaster-related, applicants received rental assistance to escape habitable homes, applicants had already received assistance from a fellow household member, or applicants received assistance legitimately but were overpaid. *See News-Press v. United States Department of Homeland Security,* No. 2:05-cv-102-FTM-29DNF (M.D.Fla. Nov. 4, 2005), Decl. of Jeff Cull, R45 ¶¶ 4-5 (describing recoupment data received from FEMA).

B. *Procedural History*

While the OIG and the Senate Committee investigated FEMA's response to the 2004 Florida hurricanes, various Florida media outlets tried to do the same by requesting various FEMA documents under the **FOIA**, 5 U.S.C. § 552, which requires that "each [federal] agency, upon any request for records ... shall make the records promptly available to any person,"*id.* § 552(a)(3)(A), subject to certain statutory **exemptions**, *see id.* § 552(b).

In *News-Press v. United States Department of Homeland Security,* No. 2:05-CV-102-FTM-29DNF, 2005 WL 2921952 (M.D.Fla. Nov.4, 2005), three news organizations-*The News-Press* and *Pensacola News Journal,* both divisions of Multimedia Holdings Corporation, and Cape Publications, publisher of *Florida Today* (collectively, "News")-submitted several **FOIA** requests seeking, in pertinent part: (1) NEMIS data pertaining to IHP awards from the four 2004 Florida hurricanes, including applicants' names and addresses; and (2) spreadsheet data reflecting NFIP claims for the same hurricanes, including addresses of the flooded properties.

In *Sun-Sentinel Co. v. United States Department of Homeland Security,* 431 F.Supp.2d 1258 (S.D.Fla.2006), the *South Florida Sun-Sentinel* ("Sun") requested, in pertinent part, the same NEMIS data from the four 2004 Florida hurricanes, as well as from 27 additional disasters in various states spanning back to 1998, including hurricanes, tropical storms, tornadoes, and wildfires. In both cases, FEMA released voluminous amounts of responsive***1186** data, but withheld nearly 1.3 million IHP applicants' names and addresses and 33,000 NFIP claimants' addresses,[FN12] citing the Privacy Act, 5 U.S.C. § 552a, and **FOIA Exemption** 6, the combination of which requires agencies to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). After exhausting their administrative appeals, News and Sun sued FEMA and its parent agency, the Department of Homeland Security, in the United States District Courts for the Middle and Southern Districts of Florida, respectively, seeking to compel disclosure of the names and addresses. The newspapers conceded that names and addresses constitute "similar files" for purposes of **Exemption** 6, so the parties' dispute was limited to whether their disclosure "would constitute a clearly unwarranted invasion of personal privacy." Following oral arguments on the parties' cross motions for summary judgment, each district court rendered its decision.

FN12. FEMA says it withheld from News approximately 605,500 IHP names and addresses and 33,000 NFIP addresses related to the four 2004 Florida hurricanes. *See News,* Def's. Mot. for Summ. J. at 16. FEMA says it withheld from Sun an additional 684,866 names and addresses related to the other 27 disasters. *See Sun,* Berl Jones Decl. at 3.

In *News,* the district court held that disclosure of the names and addresses "would constitute a clearly unwarranted invasion of personal privacy," and thus that this information was properly withheld under **Exemption** 6. Balancing what it deemed to be "substantial" privacy interests in withholding the names and addresses against "the extent to

which disclosure ... would contribute to the public understanding of the operations and activities of FEMA,"*News,* 2005 WL 2921952, at *18, the court concluded that the former "substantially outweighs" the latter, *id.* at *19. The court acknowledged the "significant, legitimate public interest in the activities and operations of FEMA, both with regard to the 2004 Florida Hurricanes and generally," and held that "knowing whether FEMA has adequately performed its statutory duties is certainly cognizable under **FOIA**." *Id.* at *18. However, the court found that "[d]isclosure of the names and addresses would say little more about FEMA" beyond what was, or could be, known about FEMA from the documents that FEMA had already released. *Id.*

About five months later, the district court in *Sun* reached nearly the opposite conclusion. Although the court conceded that disclosing the addresses "[c]learly ... raises a substantial privacy interest" by making it possible to link the addresses to the already released personal information, 431 F.Supp.2d at 1268, it nevertheless held that "the release of these addresses ... is uniquely important under the facts of this case,"*id.* at 1273. The court concluded that "there is a substantial and legitimate public interest in FEMA's handling of disaster assistance in the wake of recent hurricanes,"*id.* at 1269, and that "the addresses will provide critical information that is currently lacking from the public debate,"*id.* at 1270 n. 7. However, the court found that disclosing the names, which the court said would involve the same "significant" privacy interest as disclosing the addresses, would be "clearly unwarranted" because the public interest in the names is only minimal.

News appeals the *News* court's decision that the names and addresses of IHP applicants and the addresses of NFIP claimants in the four 2004 Florida hurricanes were properly withheld under **Exemption** 6. FEMA, in turn, appeals the *Sun* court's decision ordering disclosure of the ***1187** addresses of IHP applicants in the four Florida hurricanes as well as 27 additional disasters nationwide. (Sun does not appeal the district court's decision that the names were properly withheld under **Exemption** 6.) We consolidated the two appeals.

II. *Discussion*

A. *Standard of Review*

The parties dispute the proper standard of appellate review in these cases.[FN13] Sun, which succeeded on its relevant claims in the district court, urges this Court to review that entire decision deferentially, for clear error only. Both FEMA and News, by contrast, argue that we must review these cases de novo. In even moderately close cases, the standard of review may be dispositive of an appellate court's decision. And in these cases, where two different district courts reached nearly opposite conclusions, the standard of review would appear to be particularly important: after all, under clear error review, but not de novo review, it would be possible to affirm both courts, yielding the anomalous result that disclosure of the names and addresses would constitute a clearly unwarranted invasion of personal privacy in the Middle District of Florida but not in the Southern District.

> FN13. The **FOIA** clearly provides that a district court's review of an agency's decision to withhold information is de novo, *see*5 U.S.C. § 552(a)(4)(B), but is silent as to the proper standard of appellate review.

[1] However, due to a peculiarity of the **FOIA**, it is largely-although not wholly-irrelevant to the practical outcome of these cases whether we review the district court decisions de novo or for clear error. Even assuming arguendo that clear error review is the proper standard, we would easily affirm the *Sun* decision under this standard. And once FEMA is required to disclose records to one member of the public, the **FOIA** requires it to release the same records to any other citizen who requests them. *See, e.g.,Nat'l Archives & Records Admin. v. Favish,* 541 U.S. 157, 172, 124 S.Ct. 1570, 158 L.Ed.2d

319 (2004) ("As a general rule, if the information is subject to disclosure, it belongs to all."). Thus, even if we also affirmed *News* under clear error review, the plaintiffs in that case could simply rely on the decision in *Sun* to gain access to nearly all of the information they seek. However, only the IHP addresses are at issue in the *Sun* appeal, whereas News also seeks the IHP names and the NFIP addresses. Therefore, we cannot avoid deciding the proper standard of review in these cases.

[2] This Court has set out two lines of cases governing the standard of review of district court decisions, on summary judgment, in **FOIA** cases, one providing for clear error review and the other calling for de novo review. In *Stephenson v. Internal Revenue Serv.,* 629 F.2d 1140 (5th Cir.1980), FN14 the former Fifth Circuit held in binding precedent that "[a]n appellate court has two duties in reviewing determinations under **FOIA**. (1) We must determine whether the district court had an adequate factual basis for the decision rendered and (2) whether upon this basis the decision reached was clearly erroneous." *Id.* at 1144 (footnote omitted); *see also Chilivis v. Sec. & Exch. Comm'n,* 673 F.2d 1205, 1210 (11th Cir.1982); *Currie v. Internal Revenue Serv.,* 704 F.2d 523, 528 (11th Cir.1983). In each of those cases, there was a *factual* dispute between the parties ***1188** as to the very *nature* of the withheld documents, and thus as to whether they even fell within the applicable **exemption**. And for the most part, determining the factual nature of the withheld documents was dispositive of those plaintiffs' **FOIA** claims. We therefore reviewed the district courts' decisions for clear error.

> FN14. The Eleventh Circuit, in *Bonner v. City of Prichard,* 661 F.2d 1206 (11th Cir.1981) (en banc), adopted as precedent the decisions of the former Fifth Circuit decided prior to October 1, 1981.

In today's cases, by sharp contrast, the parties do not dispute the nature of the withheld information, which all agree consists of names and addresses of IHP applicants and NFIP claimants.[FN15] The parties do not even dispute whether the names and addresses constitute "similar files" for purposes of **Exemption** 6-a mixed question of fact and law. In fact, at oral argument, counsel for Sun-the only party that has suggested that the *Stephenson* standard of review might be applicable here-conceded that there are no factual disputes *of any kind* in this case.[FN16]

> FN15. Thus, in both cases, the parties agreed that neither a so-called *Vaughn* index describing the withheld names and addresses, *see Vaughn v. Rosen,* 484 F.2d 820, 827-28 (D.C.Cir.1973); *Ely v. Fed. Bureau of Investigation,* 781 F.2d 1487, 1493-94 (11th Cir.1986), nor an in camera inspection of them was necessary to provide the district court with an adequate factual basis on which to determine the applicability of **Exemption** 6.
>
> FN16. The parties agreed that the closest thing to a disputed fact in these cases is the *News* court's finding that disclosure of the names or addresses could lead to identity theft. However, counsel for FEMA conceded at oral argument that there is no basis in the record to support this finding, such as evidence that FEMA has already released applicants' social security numbers, mothers' maiden names, or other data which, when paired with the disclosed names or addresses, could predictably lead to identity theft.

[3] In *Cochran v. United States,* 770 F.2d 949 (11th Cir.1985), we squarely held that where, as here, "the facts of the case are undisputed and the only issue is the proper balance under **FOIA exemption** six, the 'clearly erroneous' standard employed in *Chilivis* and *Stephenson* is inappropriate." *Id.* at 956 n. 8 (citations omitted). Although we noted in *Cochran* that "[w]e need not determine whether the proper standard of review of the district court's application of the balancing test is de novo or abuse of discretion, since it would have no effect

on the result in the present case,"*id.* at 955-56 n. 8, the abuse of discretion standard was only potentially at issue in that case because the plaintiff had brought a so-called "reverse **FOIA**" case under the Privacy Act, 5 U.S.C. § 552a.[FN17] No one argues that abuse of discretion applies to these cases, nor could they.[FN18] Thus, the only remaining standard of review *Cochran* leaves open is de novo review. Indeed, in *Times Publishing Co. v. United States Department of Commerce,* 236 F.3d 1286 (11th Cir.2001), we held, in an **Exemption** 3[FN19] case involving "cross-motions ***1189** for summary judgment in the district court based upon the undisputed record," that "[w]e review the district court's grant of summary judgment de novo." *Id.* at 1288 & n. 1. Similarly, in *Office of the Capital Collateral Counsel v. Department of Justice,* 331 F.3d 799 (11th Cir.2003), we again squarely held, citing *Cochran* and *Times,* that in an **Exemption** 6 case, like this one, where the facts were not in dispute, where the plaintiff agreed the information constituted "similar files," and where the issue on appeal was "limited to the legal application of **FOIA exemption** 6, [that] the *Chilivis* clear error standard does not apply," and "appellate review is de novo." *Id.* at 802 & n. 4.[FN20]

FN17. That is, the plaintiff argued that the agency violated the Privacy Act by releasing personal information about him that, he said, fell within **FOIA Exemption** 6.

FN18. While courts generally review challenges to agency action for an abuse of discretion, it is clear that where, as here, an action is brought under the **FOIA**, there can be no question of review for abuse of discretion. *See Currie,* 704 F.2d at 526-28 (rejecting agency's argument that its decision to withhold tax returns under **FOIA Exemption** 3 should be reviewed for abuse of discretion under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.,* where plaintiff had brought an action to compel disclosure under the **FOIA**).

FN19. **Exemption** 3 covers records "specifically **exempted** from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3).

FN20. To the extent that any of our cases decided after *Cochran* could be read as suggesting that a district court's balancing of interests under **Exemption** 6 is reviewed for clear error, *see, e.g., O'Kane v. U.S. Customs Serv.,* 169 F.3d 1308, 1309-10 (11th Cir.1999) (per curiam) (stating that we review a district court's grant of summary judgment de novo but its **FOIA** "determinations" for clear error, and holding, in that **Exemption** 6 case, that the district court "did not clearly err in determining that an individual's interest in his or her home address outweighs the 'public interest' [plaintiff] asserts"), we are bound by *Cochran*'s plain holding that in such cases, "the 'clearly erroneous' standard employed in *Chilivis* and *Stephenson* is inappropriate." *Cochran,* 770 F.2d at 956 n. 8. *See Cohen v. Office Depot, Inc.,* 204 F.3d 1069, 1072 (11th Cir.2000) ("[W]here two prior panel decisions conflict we are bound to follow the oldest one.").

B. *The Privacy Act and the Freedom of Information Act*

[4] In denying the plaintiffs' requests for names and addresses, FEMA said it was prevented from disclosing that information by both the Privacy Act, 5 U.S.C. § 552a, and by **FOIA Exemption** 6. The Privacy Act provides that:

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency,

except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be ... required under section 552 of this title [the **FOIA**].

5 U.S.C. § 552a(b)(2). The newspapers have admittedly not secured the written permission of the applicants to disclose their names or addresses. Thus, FEMA may not disclose this information unless such disclosure is required by the **FOIA**.

[5][6] The **FOIA**, in turn, generally requires federal agencies to disclose records in their possession upon request, *see id.*§ 552(a)(3)(A), but permits agencies to withhold records if one of several **exemptions** applies, such as **Exemption** 6's **exemption** for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,"*id.*§ 552(b)(6). The net effect of the interaction between the two statutes is that where the **FOIA** requires disclosure, the Privacy Act will not stand in its way, but where the **FOIA** would permit withholding under an **exemption**, the Privacy Act makes such withholding mandatory upon the agency. Thus, as both district courts correctly held, the dispositive question in these cases is whether disclosure of the names or addresses "would constitute a clearly unwarranted invasion of personal privacy" under **FOIA Exemption** 6.[FN21] *See Cochran,* 770 F.2d at 954-55 (explaining the "clearly established"***1190** relationship between the Privacy Act and **FOIA Exemption** 6).

> FN21. The **FOIA**, 5 U.S.C. § 552, provides that: "(b) This section does not apply to matters that are ... (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy ...."

*C. The Freedom of Information Act and **Exemption** 6*

The **FOIA** was expressly intended to avoid the pitfalls of its predecessor, § 3 of the Administrative Procedure Act of 1946, Pub.L. No. 79-404, 5 U.S.C. § 1002 (1964) ("APA"). Although § 3 provided that matters of official record be made available to the public, disclosure was subject to several qualifications. Requesters had to show that they were "properly and directly concerned" with the information, and agencies could in any case refuse to disclose records pertaining to "any function of the United States requiring secrecy in the public interest" or which the agency deemed "confidential for good cause found." Nor did § 3 provide a remedy for wrongful withholding of records. As the Senate Report to the **FOIA** said, § 3 was "full of loopholes which allow agencies to deny legitimate information to the public. It has been shown innumerable times that withheld information is often withheld only to cover up embarrassing mistakes or irregularities and justified by [§ 3's vague exceptions]." S.Rep. No. 88-1219, at 8 (1964). The House similarly commented that "[g]overnment agencies whose mistakes cannot bear public scrutiny have found 'good cause' for secrecy." H.R.Rep. No. 89-1497, at 27 (1966), U.S. Code Cong. & Admin. News 1966, pp. 2418, 2423. Thus, § 3 "was generally recognized as falling far short of its disclosure goals and came to be looked upon more as a withholding statute than a disclosure statute." *Envtl. Prot. Agency v. Mink,* 410 U.S. 73, 79, 93 S.Ct. 827, 35 L.Ed.2d 119 (1973) (citing S.Rep. No. 89-813, at 5 (1965); H.R.Rep. No. 89-1497, at 5-6, U.S. Code Cong. & Admin. News 1966, at 2422-23).

[7][8][9] In supplanting § 3 with the **FOIA**, Congress created "a broad disclosure statute which evidences a strong public policy in favor of public access to information in the possession of federal agencies." *Cochran,* 770 F.2d at 954 (quotation marks omitted). "Without question, the Act is broadly conceived. It seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information

from possibly unwilling official hands." *Mink,* 410 U.S. at 80, 93 S.Ct. 827. "In enacting the **FOIA** ..., Congress sought to open agency action to the light of public scrutiny. Congress did so by requiring agencies to adhere to 'a general philosophy of full agency disclosure.' " *U.S. Dep't of Justice v. Tax Analysts,* 492 U.S. 136, 142, 109 S.Ct. 2841, 106 L.Ed.2d 112 (1989) (quoting S.Rep. No. 89-813, at 3) (other quotation marks and citations omitted). "The basic purpose of **FOIA** is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.,* 437 U.S. 214, 242, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978); *see also Nat'l Archives & Records Admin. v. Favish,* 541 U.S. 157, 171-72, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004) ("**FOIA** is often explained as a means for citizens to know 'what the Government is up to.' This phrase should not be dismissed as a convenient formalism. It defines a structural necessity in a real democracy."(citation omitted)). Fittingly, President Johnson signed the **FOIA** into law on July 4, 1966, and it became effective on July 4, 1967. Like its overall goal of broad disclosure, the specific

provisions of the Freedom of Information Act stand in sharp relief against those of § 3. The Act eliminates the "properly and directly concerned" test of ***1191** access, stating repeatedly that official information shall be made available "to the public," "for public inspection." ... Aggrieved citizens are given a speedy remedy in district courts, where "the court shall determine the matter de novo and the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(3).

Mink, 410 U.S. at 79, 93 S.Ct. 827.

[10][11] However, "Congress realized that legitimate governmental and private interests could be harmed by release of certain types of information,"*Fed. Bureau of Investigation v. Abramson,* 456 U.S. 615, 621, 102 S.Ct. 2054, 72 L.Ed.2d 376 (1982), and provided for certain exceptions to the rule of broad disclosure. Nevertheless, "these limited **exemptions** do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Dep't of the Air Force v. Rose,* 425 U.S. 352, 361, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976). Because the net effect of the **FOIA,** with its **exemptions,** is to " 'place[ ] emphasis on the fullest responsible disclosure,' " *Mink,* 410 U.S. at 80, 93 S.Ct. 827 (quoting S.Rep. No. 89-813, at 3), the Supreme Court has "repeatedly stated that the policy of the Act requires that the disclosure requirements be construed broadly, the **exemptions** narrowly,"*Rose,* 425 U.S. at 366, 96 S.Ct. 1592 (quotation marks, alteration, and citations omitted); *see also Tax Analysts,* 492 U.S. at 151, 109 S.Ct. 2841 ("Consistent with the Act's goal of broad disclosure, these **exemptions** have been consistently given a narrow compass."); *U.S. Dep't of Justice v. Julian,* 486 U.S. 1, 8, 108 S.Ct. 1606, 100 L.Ed.2d 1 (1988) ("**FOIA exemptions** are to be narrowly construed."); *Abramson,* 456 U.S. at 630, 102 S.Ct. 2054 (same).

D. *Application of **Exemption** 6 to the Withheld Information*

[12] We now apply **Exemption** 6 to each category of withheld information at issue in these appeals-the addresses of the households that received IHP aid, the names of the IHP recipients, and the addresses of households that made flood insurance claims under the NFIP. We do so keeping in mind that FEMA bears the burden of justifying its action whether it withholds entire records or, as here, portions of records. *See U.S. Dep't of State v. Ray,* 502 U.S. 164, 173, 112 S.Ct. 541, 116 L.Ed.2d 526 (citing 5 U.S.C. § 552(a)(4)(B)).

1. *IHP Addresses*

a. *Public Interest*

[13] The Supreme Court has explained that, "as

a general rule, when documents are within **FOIA's** disclosure provisions, citizens should not be required to explain why they seek the information. A person requesting the information needs no preconceived idea of the uses the data might serve." *Favish,* 541 U.S. at 172, 124 S.Ct. 1570. "When disclosure touches upon certain areas defined in the **exemptions**, however, the statute recognizes limitations that compete with the general interest in disclosure, and that, in appropriate cases, can overcome it .... To effect this balance and to give practical meaning to the **exemption**, the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable." *Id.* Instead, the requester must indicate how disclosing the withheld information "would serve the core purpose of the **FOIA**, which is contributing significantly to public understanding of the operations or activities of the government." *U.S. Dep't of Def. v. Fed. Labor Relations Auth.,* 510 U.S. 487, 495, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994) (quotation marks and emphasis omitted).

[14] Here, the newspapers say that the public has a powerful interest in knowing ***1192** whether FEMA appropriately handled disaster relief claims, and that the addresses where alleged damage occurred are necessary to determine whether aid was in fact disbursed to those who suffered disaster-related damage. We easily conclude, as did both district courts, that the asserted interest in learning whether FEMA is a good steward of (sometimes several billions of) taxpayer dollars in the wake of natural and other disasters is one which goes to "the core purpose of the **FOIA**, which is contributing significantly to public understanding of the operations or activities of the government." *Id.* at 495, 114 S.Ct. 1006; *see also U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press,* 489 U.S. 749, 773, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989) ("**[FOIA]** focuses on the citizens' right to be informed about what their government is up to. Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose."(quotation marks omitted)). Moreover, although courts "generally accord Government records and official conduct a presumption of legitimacy,"*Ray,* 502 U.S. at 179, 112 S.Ct. 541, the newspapers have put forth ample evidence that FEMA's response to Hurricane Frances in Miami-Dade County may have been plagued with fraud, waste, or abuse.

The newspapers have identified a substantial public interest cognizable under **FOIA** that would be served by disclosing the addresses. FEMA now bears the "burden of demonstrating that the disclosure of the [IHP data already released] adequately served the statutory purpose and that the release of the information identifying the particular [IHP addresses] would constitute a clearly unwarranted invasion of ... privacy." *Id.* at 175, 112 S.Ct. 541. FEMA says, and the district court in *News* agreed, that disclosing the addresses would not serve the admittedly legitimate interest of evaluating the adequacy of FEMA's aid disbursement under the IHP. The district court held that "[r]elease of the ... address[es] will shed little additional light on FEMA's conduct .... [D]isclosure of the addresses will say *something* about FEMA, at least to the extent they reveal the addresses at which physical damage was claimed to have occurred. Nonetheless, ... this carries little weight in the overall scheme of things in the balancing process." *News,* 2005 WL 2921952, at *18. The district court held that the most important public benefit to come from the addresses would also "tip[ ] the scale towards the privacy invasion side." *Id.* The newspapers indicated that they might have occasion to attempt to contact some of the aid recipients in order to learn more about FEMA's operations. The district court determined that any new information thereby learned about FEMA's disaster response was more than offset by the privacy invasion that would result. *Id.* at *18-19. We disagree.

In focusing on the possibility of learning more about FEMA through aid recipient interviews, the district court gave inadequate weight to the substantial light that would be shed on FEMA's activit-

ies *directly* from the release of the addresses. As the newspapers have explained, they plan to superimpose the path of each of 31 disasters on a street-level map showing the specific households where damage was alleged to have occurred, and where FEMA dollars were disbursed. Any "outliers"-homes outside the path of the disaster that nevertheless received FEMA aid-plainly would raise red flags. It is true that the newspapers have indicated that, depending on their initial findings, they may attempt to contact the residents of some outlier homes. But it is worth noting that, as Acting Inspector General Skinner opined, the inspection data was often so vague and ***1193** conclusory that in order to verify the appropriateness of an award, the OIG itself was often forced to interview recipients. *See Senate Hearings* (oral testimony of Skinner at 50).[FN22] In any case, we consider the privacy implications of contacting IHP aid recipients below. For now it is enough to conclude that the red flags raised by the release of the addresses (or the absence of such flags) themselves constitute valuable information.

> FN22. Thus, for example, one applicant received $6,500 to replace a car that the inspector indicated had been destroyed by electrical fire. The inspection report did not indicate how a hurricane could have caused an electrical fire or how the inspector verified the damage. Skinner testified that only by calling the aid recipient did the OIG discover that the car had allegedly been towed prior to the inspection and that the award was based on the owner's verbal representations. "[T]hat was not reflected in the inspector's report. We obtained that information by, in fact, talking to the ... individual." *Senate Hearings* (oral testimony of Skinner at 50).

FEMA responds that the addresses are not necessary to determine whether FEMA has been a good steward, for two reasons. First, FEMA says that the OIG and the Senate have already undertaken thorough investigations into FEMA's method of IHP aid disbursement. Second, FEMA says that the IHP data it has already released, broken down by zip code, is sufficient. Neither argument is persuasive.

As for the previous investigations, FEMA rejected several of the OIG's findings, and disputed the significance of the OIG audit report. FEMA claimed that the audit "affirms the absence of widespread or systemic Recovery program fraud, waste or abuse in the state, and conclusively establishes that no special treatment was afforded to Miami-Dade County." *OIG Audit Report* at 43. But Skinner testified that this was "not at all" a fair reflection of the audit's conclusions. *Senate Hearings* (oral testimony of Skinner at 36). He noted that the audit did indeed reveal "some very serious systemic weaknesses" in the IHP; that "the purpose of the audit was not to identify fraud, waste, and abuse per se"; that the investigation remains ongoing and it was "premature" to conclude that there was no widespread fraud, waste, or abuse; and that much fraud is de minimis and is thus difficult to prosecute. *Id.* at 36-37.

Moreover, in the same breath that it declared that the OIG report "confirm[ed] the fundamental soundness of FEMA's time-tested policies, procedures, and guidelines,"*OIG Audit Report* at 48, FEMA "[took] exception to many of the individual conclusions contained" in the OIG report, *id.* at 43, and six of the OIG's recommendations remained unresolved. FEMA cannot fairly claim here that the OIG and Senate investigations conclusively determined the extent of FEMA's problems, especially when it vigorously disputed much of those investigations' findings before Congress and in its press releases to the public.

But even if FEMA agreed with the OIG and the Senate about the meaning of the findings, the newspapers seek to evaluate FEMA's conduct going well beyond FEMA's response to Hurricane Frances in Miami-Dade County. As the *Sun* court recognized, and as FEMA itself has emphasized to Congress,

"[t]he scope of the OIG audit is *extremely narrow*." *Id.* at 45 (emphasis added). Again, that audit was limited to only 3% of IHP aid recipients in one Florida county following one hurricane, and the Senate investigation appears to have largely tracked the scope of the OIG audit. By comparison, News seeks to investigate FEMA's response across Florida***1194** for all four 2004 hurricanes, and Sun seeks to investigate an additional 27 disasters. The results of the OIG and Senate investigations thus cannot be said to have resolved the question of whether FEMA appropriately disbursed aid in other areas, following other disasters.

Nor can the public simply extrapolate from the OIG and Senate investigations conclusions about the appropriateness of FEMA's disaster response in general. Although both the OIG and the Senate Committee expressed grave concerns that the problems they uncovered in FEMA's Miami-Dade response were not limited to that disaster, FEMA protested that the OIG report reached "overly broad" conclusions based on an "extremely narrow" inquiry, and thus that those conclusions were, "at best, misleading." *Id.* Brown told the Senate Committee that "[t]he extrapolation of things that were found in Miami-Dade to other areas of the state, particularly areas of the state that were particularly hard hit, I think does draw incorrect ... conclusions." *Senate Hearings* (oral testimony of Brown at 65). He explained that in hard-hit areas where damage is severe and thus obvious, the inspectors' job of verifying damage is relatively easy. "It's more difficult for an inspector to make a determination of what has really occurred in those marginal areas .... Particularly when you're making those discerning kinds of judgments in housing stock that is old and decrepit, and ... is certainly substandard." *Id.*

Brown also argued that it would be inappropriate to conclude, from the fact that in Miami-Dade the Generic Room Concept yielded awards for personal property that the recipient never owned, that this method similarly overcompensates victims in other areas. "[I]n most areas, it is safe to assume that in the destroyed home that you see, that is, the typical middle-class home, it's easy to make the assumption that, yes, there is that property in the structure." *Id.* at 66. After FEMA so vigorously disputed the prior investigations' findings and urged that no extrapolations be made from them, we are not disposed to hear FEMA tell us that these same investigations are sufficient to allow the public to satisfy its interest in knowing whether, in general, FEMA appropriately distributes disaster relief.

For similar reasons, we reject FEMA's second argument that the addresses are unnecessary to evaluate FEMA's performance of its statutory duties. FEMA says that the IHP aid disbursement data it has already provided the newspapers, which is broken down by zip code, is sufficient. It is important to recall, however, that Sun requested IHP data not only from hurricanes, tropical storms, and wildfires, but also from tornados, which routinely destroy one home while leaving the home next to it intact. FEMA does not begin to explain why disclosing the zip code in which an IHP recipient resided would be sufficient to assess the appropriateness of that disbursement in such a context.

As for IHP data from hurricanes and similar disasters, the newspapers and the district court in *Sun* say that zip codes, which can cover a large piece of geography in less densely populated areas, are still too indiscriminate an area to allow the newspapers to determine whether it was appropriate for FEMA to have disbursed aid to any given home within a zip code. Indeed, they point out that even in smaller zip codes, houses on one street may be damaged-say because they border a river and suffer flood damage-while houses on the next street over may suffer little or no damage. They find support for these contentions from an unlikely source: FEMA itself. When the media first began raising questions about the appropriateness of ***1195** FEMA aid to Miami-Dade County, since the path of the storm fell some 100 miles to the north, top FEMA officials criticized the media, and emphas-

ized that the existence of damage cannot always be inferred from the path and strength of the storm, but that each home must instead be evaluated independently.

Thus, for example, FEMA Director of Recovery Daniel Craig issued a press release stressing that the appropriate amount of aid can be assessed only on a home-by-home basis:

While each application is subject to the same eligibility criteria, *it's important to caution against making comparisons of damage assistance provided across individuals, communities or counties.* There are many factors that determine whether a citizen is eligible for FEMA assistance, and *two homes next to each other may have different eligibility because of these factors.* Did they have insurance? Were they under-insured? Was there wind damage or flood damage? Did the roof leak or basement flood? Is the applicant a renter or homeowner? Do they live in a mobile home? Is it a primary residence? Did the applicant lose electricity? Do they have special medical needs? All of these factors make a difference. In a disaster, every state, every county and *every home is different.*

Prepared Statement from FEMA Director of Recovery Daniel Craig Regarding Florida Disaster Assistance 2 (Jan. 10, 2005) (emphasis added). Brown similarly specifically blamed the existence of "faulty results and incorrect conclusions" on[e]arly press reports that engaged in county-by-county comparisons of total outlays .... In addition to levels of damage, many factors influence the distribution of IHP assistance, including the population, the proportion of insured applicants in counties affected by disasters, and income levels .... [S]trict comparisons of totals between counties, *as opposed to individuals,* does not take into consideration the multitude of other factors, such as insurance and income levels, which can preclude registrants from receiving FEMA aid.

Senate Hearings (written statement of Brown at 8-9) (emphasis added).

Similarly, when the Senate Committee questioned Brown about his decision to require inspection companies to perform twice the number of daily inspections as they were required to perform under their contract, thus forcing those companies to hire new, untrained inspectors, Brown defended that decision this way:

I can do one of two things. I can either stop all inspections, such as was done in the 1994 Northridge earthquake, and just *pay money out based on zip codes,* or I can ramp up, work with the contractors, do everything I can trying to be a *good steward of the taxpayer dollars and get eyes on every claim. My objective was to get eyes on every claim made, and not pay things out by zip code.* So when you're doing 885,000 inspections, there are going to be errors. I want to clean those up. But I still believe I made the right decision in terms of the taxpayers and the disaster victims of continuing to get aid out to them, but not do it on a blanket basis, like was done in 1994, or a zip code basis.

Id. at 78 (emphasis added). "Again," Brown reiterated, "the choice was ramp up the inspections, try to get as many out there so I've got eyes on *every claim,* or just do the *blanket zip code. I refuse to do the latter.*" *Id.* at 81-82 (emphasis added). The Committee "agree[d] with [Brown] that [he] made the right decision in not ***1196** doing the zip code approach." *Id.* at 82 (statement of Sen. Collins).

If it would not constitute good stewardship of taxpayer dollars simply to make decisions about disaster aid based on zip code, then neither can zip codes be seen as an altogether accurate or complete way for the public to evaluate FEMA's distribution of aid. We note also that in *Sun,* the district court asked whether it would satisfy Sun's needs if FEMA provided the locations by something more specific than a zip code but less specific than a street address-say, a nine-digit zip code, which essentially narrows down a location by street, though not by house. Sun's counsel responded that she believed that FEMA was incapable of breaking down the information by anything other than zip codes or

street addresses. If this was incorrect, FEMA's counsel did not correct the record. *See Sun,* Tr. at 52. Given FEMA's own vigorous arguments regarding the inappropriateness of making aid decisions by zip code and the need to consider individual, house-by-house factors, we conclude that faced with a choice of disclosing the aid information by zip code or by street address, the latter must prevail.

In short, the public interest in determining whether FEMA has been a proper steward of billions of taxpayer dollars is undeniable and powerful. FEMA's responses to the various investigations of its disbursement in Miami-Dade county following Hurricane Frances have produced more questions than answers. The addresses, however, will go a long way in resolving the factual disputes that exist between FEMA, on the one hand, and the OIG and the Senate Committee, on the other. Thus, we readily find that the addresses would further a powerful public interest.

b. *Privacy Interests*

[15] Having concluded that the addresses would serve a substantial and legitimate public interest cognizable under the **FOIA**, we turn to the countervailing privacy interests that FEMA has identified to determine whether FEMA has met its burden of demonstrating that these privacy interests are so weighty that, despite the substantial public interest involved, disclosing the addresses "would constitute a clearly unwarranted invasion of personal privacy."

[16] "Congress'[s] primary purpose in enacting **Exemption** 6 was to protect individuals from the *injury and embarrassment* that can result from the *unnecessary* disclosure of *personal* information." *U.S. Dep't of State v. Wash. Post Co.,* 456 U.S. 595, 599, 102 S.Ct. 1957, 72 L.Ed.2d 358 (1982) (emphasis added). "[I]t is quite clear from the committee reports that the primary concern of Congress in drafting **Exemption** 6 was to provide for the confidentiality of *personal* matters in such files as those maintained by the Department of Health, Education, and Welfare, the Selective Service, and the Veterans' Administration." *Rose,* 425 U.S. at 375 n. 14, 96 S.Ct. 1592 (citing S.Rep. No. 89-813, at 9 (1965); H.R.Rep. No. 89-1497, at 11 (1966), U.S. Code Cong. & Admin. News 1966, at 2428) (emphasis added) (partially quoted in *Wash. Post Co.,* 456 U.S. at 599, 102 S.Ct. 1957).

[17][18] To achieve this end, Congress established, in **Exemption** 6, the following two-tier test: "personal information in government agency files is **exempt** from mandatory disclosure only if: (1) the information was within personnel, medical, or similar files; and (2) a balancing of individual privacy interests against the public interest in disclosure reveals that disclosure of the information" would constitute a clearly unwarranted invasion of personal ***1197** privacy. *Cochran,* 770 F.2d at 955. The Supreme Court has made clear that "similar files" has a "broad, rather than a narrow, meaning,"*Wash. Post Co.,* 456 U.S. at 600, 102 S.Ct. 1957, and includes any "detailed Government records on an individual which can be identified as applying to that individual,"*id.* at 602, 102 S.Ct. 1957 (quoting H.R.Rep. No. 89-1497, at 11, U.S. Code Cong. & Admin. News 1966, at 2428). The records at issue here fall within this broad definition, as the newspapers have conceded.

Instead, the crux of **Exemption** 6 is its second prong, which asks whether disclosure "would constitute a clearly unwarranted invasion of personal privacy." *See id.* at 600; S.Rep. No. 89-813, at 9 ("[T]he scope of the **exemption** is held within bounds by the use of the limitation of 'a clearly unwarranted invasion of personal privacy.' "); H.R.Rep. No. 89-1497, at 11, U.S. Code Cong. & Admin. News 1966, at 2425 (same). Courts reviewing the legislative history of the **FOIA** have concluded that Congress's use of the "clearly unwarranted" language "was a considered and significant determination,"*Rose,* 425 U.S. at 378 n. 16, 96 S.Ct. 1592, and "the expression of a carefully con-

sidered congressional policy favoring disclosure,"*Getman v. NLRB,* 450 F.2d 670, 674 n. 11 (D.C.Cir.1971). In fact, during hearings on the bill, various agencies strenuously urged deletion of either the modifier "clearly" or the entire phrase "clearly unwarranted," so that agencies would have been permitted to withhold information whenever its disclosure would result in any invasion of privacy. *See Hearings on S. 1160 Before the Subcomm. on Admin. Practice & Procedure of the Senate Comm. on the Judiciary,* 89th Cong. 36 (1965) (statement of Edwin Rains, Assistant Gen. Counsel, Treasury Dep't); *id.* at 491 (statement of William Feldesman, NLRB Solicitor); *Hearings on H.R. 5012 before a Subcomm. of the House Comm. on Gov't Operations,* 89th Cong. 56, 230 (1965) (statement of Fred Burton Smith, Acting Gen. Counsel, Treasury Dep't); *id.* at 257 (testimony of William Feldesman, NLRB Solicitor); *see also Hearings on S. 1160,* at 417 (testimony of the Gen. Counsel, Dep't of Def.) (objecting to "heavy" burden of showing a clearly unwarranted invasion of personal privacy); *cf. Hearings on H.R. 5012,* at 151 (testimony of Clark R. Molenhoff, Vice Chairman, Sigma Delta Chi Comm. for Advancement of Freedom of Info.) (urging retention of "clearly unwarranted"). As the Supreme Court noted, however, "[t]he terms objected to were nevertheless retained, as a 'proper balance,' H.R.Rep. No. 1497, p. 11, U.S. Code Cong. & Admin. News 1966, at 2428, to keep the 'scope of the **exemption** ... within bounds,'S.Rep. No. 813, p. 9." *Rose,* 425 U.S. at 378 n. 16, 96 S.Ct. 1592.

Moreover, this legislative history "stands in marked contrast" to the record surrounding **Exemption** 7(C), which covers investigatory files compiled for law enforcement purposes. *Id.* As the Supreme Court has explained, **Exemption** 7(C) was once drafted to match **Exemption** 6: agencies had to show that disclosure of law enforcement records "would" constitute a "clearly unwarranted" invasion of personal privacy:

Exemption 7 was amended to **exempt** investigatory files compiled for law enforcement purposes only to the extent that their production would "constitute a clearly unwarranted invasion of personal privacy" or meet one of several other conditions. In response to a Presidential request to delete "clearly unwarranted" from the amendment in the interests of personal privacy, the Conference Committee dropped the "clearly," and the bill was enacted as reported by the conference committee.

***1198** *Id.* (citations omitted). On October 27, 1986, **Exemption** 7 was again amended as part of the bipartisan Anti-Drug Abuse Act of 1986. Congress further reduced the burden on agencies withholding records under this **exemption** by replacing the onerous requirement that they show that disclosure "would" constitute an unwarranted invasion of personal privacy with the far lesser burden of showing that disclosure "could reasonably be expected to" do so. These two differences between the **exemptions**, and **Exemption** 6's comparative narrowness, are thus "no mere accident in drafting." *Nat'l Archives & Records Admin. v. Favish,* 541 U.S. 157, 165-66, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004); *see also U.S. Dep't of Justice v. Reporters' Comm. for Freedom of the Press,* 489 U.S. 749, 756 n. 9, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989) ("[T]he move from the 'would constitute' standard to the 'could reasonably be expected to constitute' standard represents a considered congressional effort 'to ease considerably a Federal law enforcement agency's burden in invoking [**Exemption** 7].' " (quoting 132 Cong. Rec. 31425 (1986))). What Congress was willing to yield with respect to **Exemption** 7 it has steadfastly refused to yield as to **Exemption** 6.

[19] The federal courts, including this one, have therefore generally concluded that an agency's burden under **Exemption** 6 of showing that disclosure "would constitute a clearly unwarranted invasion of personal privacy" is an onerous one. *See, e.g.,Cochran,* 770 F.2d at 955 ("If the balance [between an individual's right to privacy and the public's right to know] is equal the court should tilt the balance in favor of disclosure."); *Stern v. Fed.*

Bureau of Investigation, 737 F.2d 84, 91 (D.C.Cir.1984) (**Exemption** 6's language "require[s] a balance tilted emphatically in favor of disclosure"); *Kurzon v. Dep't of Health & Human Servs.,* 649 F.2d 65, 67 (1st Cir.1981) ("By restricting the reach of **exemption** 6 to cases where the invasion of privacy ... is not only unwarranted but clearly so, Congress has erected an imposing barrier to nondisclosure under this **exemption**."(citing K. Davis, *Administrative Law Treatise* § 5:38 (2d ed.1978))).

The district court in *News* held that disclosure of the addresses where disaster damage was alleged to have occurred "would constitute a clearly unwarranted invasion of personal privacy." We remain unpersuaded. As a threshold matter, the legislative histories behind the **FOIA** and the Privacy Act show that Congress did not intend either names or addresses to automatically be withheld, even when they could be linked with other information about those individuals. Between 1973 and 1977, numerous bills were introduced that would have amended the **FOIA** (or established an independent law) by either prohibiting or limiting the sale or distribution by federal agencies of lists of names and addresses, including names and addresses of individuals registered with, or required to provide information to, an agency. Agencies would have been permitted to release such lists only if specifically authorized to do so by statute or by their statutory function, or if the recipient certified that it would not use the list for commercial or other solicitation. *See*H.R.s 855, 889, 1779, 2578, 3995, 4468, 5434, 6838, 6839, 6840, and 8086, 93d Cong. (1973); H.R. 12558, 93d Cong. (1974); H.R.s 662, 721, 869, and 1464, 94th Cong. (1975); H.R. 1048, 95th Cong. (1977). None of these bills survived committee. Moreover, the Privacy Act prohibits federal agencies from *selling or renting* an individual's name and address, but specifically cautions that this provision "shall not be construed to require the withholding of names and addresses otherwise permitted to be made public." 5 U.S.C. § 552a(n).

***1199** [20] Similarly, the federal courts have held that while names and addresses qualify as potentially protectable "similar files" under **Exemption** 6, the release of a list of names and other identifying information does not inherently and always constitute a "clearly unwarranted" invasion of personal privacy. Instead, "whether disclosure of a list of names is a significant or a de minimis threat depends upon the characteristic(s) revealed by virtue of being on the particular list, and the consequences likely to ensue." *Ray,* 502 U.S. at 176 n. 12, 112 S.Ct. 541 (internal quotation marks omitted).

The district court in *News* gave five reasons why the disclosure of these particular addresses would be clearly unwarranted. First, the court observed that release of the addresses "will enable others to link the great deal of highly personal information already disclosed by FEMA to particular individuals." 2005 WL 2921952, at *16. As both district courts accurately acknowledged, once addresses are disclosed, it would be fairly simple for anyone so inclined to determine, through public records, the residents of those addresses at the time of the disasters. Those individuals could then be linked to the information FEMA has already disclosed about their IHP awards.

This makes it important to understand precisely what information FEMA has already released about IHP applicants that could be linked to them if their addresses are disclosed. In *News,* FEMA introduced into the record five pages of NEMIS data constituting what FEMA referred to as a "representative sample" of the IHP information FEMA has already released. For each entry, the spreadsheet includes the following fields: a disaster number assigned to the relevant hurricane or other disaster; a nine-digit registration ID assigned to the applicant; damage type, which in the sample was either "Hail/Rain/Wind Driven Rain," "Tornado/Wind," or, in one case, "Other"; item description, which in each case in the sample was "Clothing"; and item quantity, which ranged in the sample from one to

seven. There is also a category that appears to indicate the level of damage of each item, which in every case in the sample was "Replace." Another category appears to indicate whether each item was covered by insurance; in the sample, the ratio was about seven "Uninsured" items to every "Insured" item of clothing. A final category apparently indicates the amount of the FEMA award for that item; each item[FN23] of clothing in the representative sample was assigned a generic amount-either $822.23, $822.70, $833.5, $844.81 or $853.99-and those found to have had multiple items of clothing damaged received multiples of one of these amounts.

> FN23. Judging from the amounts awarded, we assume that each "item" of clothing was in fact a unit akin to something like a full wardrobe.

FEMA says that it provided News and Sun with NEMIS data broken down by individual applicant, including disaster number and registration ID, as well as the following inspection information: line item description, quantity recorded, insurance status for line item, damage level, item amount, and damage type. These categories seem to be reflected in the "representative sample" FEMA submitted into evidence. However, FEMA says that it released the following additional information about each IHP recipient: zip code, county, category of assistance, assistance status, assistance type, assistance status detail, eligibility date, approved date, eligible amount, determination type, and ownership status. And FEMA says that it released the following additional inspection information: Small Business ***1200** Loan ("SBA") status,[FN24] water level, cause of damage, personal property description, clothing, miscellaneous item description, generic room, essential tool item description, and real property damage item description.

> FN24. The U.S. Small Business Administration provides low-interest disaster loans to homeowners, renters, and owners of non-farm businesses of any size that sustained uninsured or underinsured damage or loss to real or personal property.

Assuming FEMA did release this greater number of categories of data, the only categories that bear any remote resemblance to information one might find in a medical or personnel record are "SBA status," "ownership status" (presumably referring to whether the IHP recipient owns or rents her home), and "insurance status for line item." We discuss the implications of this information below, in our consideration of stigma. For now, it is enough to observe that there is no evidence in the record to support the proposition, suggested in FEMA's briefs, that detailed descriptions of applicants' personal property have been released. As the newspapers have pointed out, because FEMA awards money for repair and replacement of damaged personal property based on predetermined, generic amounts, as the sample data indicates, property is described in the broadest and most generic of terms-"clothing," not "Gucci heels" or "Keds"; "television," not "high definition plasma" or "black and white set from 1974"-and is assigned an equally generic monetary value that cannot indicate anything about the specific kind or quality of property the IHP recipient once possessed. Indeed, counsel for FEMA conceded as much at oral argument.

[21] Second, the district court in *News* held that the individuals would suffer "public embarrassment or stigma" as recipients of government assistance. *Id.* at *16. But, as FEMA's counsel conceded at oral argument, there is no "means test" for receiving IHP aid from FEMA. That is, unlike many government benefits programs, such as welfare, Medicaid, and unemployment, one need not fall below a certain annual income level to qualify for disaster assistance. Indeed, outside the context of this litigation, FEMA has gone to some lengths to disabuse citizens of the notion that FEMA aid is a type of welfare. *See, e.g.*, FEMA, *Common Misunderstandings May Cause Some Victims To Miss Disaster Assistance* (Sept. 27, 2004) [hereinafter *Common Mis-*

understandings Press Release] (It is "[n]ot [t]rue" that applicants "have to be poor to qualify for disaster assistance .... Federal and state disaster assistance programs may be available to those who suffered damage, regardless of income. The programs are not 'welfare.' The kinds of help provided depend on the applicant's circumstances and unmet disaster-related needs.").[FN25]

FN25. The press release is available at http:// www. fema. gov/ news/ newsrelease. fema? id= 14333.

However, both an IHP applicant's insurance status and her SBA status may be relevant, although not dispositive, in determining whether she will receive funds from FEMA. As for SBA status, it does not appear that this status is expressly indicated in the NEMIS data. Instead, FEMA argues that since IHP recipients must necessarily have been turned down for an SBA loan, identification as an IHP recipient is tantamount to identification as having been turned down for an SBA loan which, in turn, suggests the individual is poor or has bad credit. Our response to this argument is twofold. First, those applying for Housing Assistance ("HA") under*1201 the IHP *need not* apply for an SBA loan, and it is a violation of the Stafford Act, 42 U.S.C. 5174(a)(2), for FEMA to require otherwise. *See McWaters v. FEMA,* 408 F.Supp.2d 221, 232 (E.D.La.2005) (finding that FEMA, through "miscommunication or inartful communication," caused some applicants to believe that an SBA loan application is a necessary prerequisite to receiving any HA aid and granting a preliminary injunction preventing FEMA from continuing to communicate the same); *McWaters v. FEMA,* 436 F.Supp.2d 802 (making preliminary injunction permanent upon finding that FEMA violated the court's prior order by issuing a February 13, 2006 press release with the "confusing and incorrect" headline "SBA Loan Application Necessary for Assistance").[FN26]

FN26. *See* www. fema. gov/ news/ newsrelease. fema? id= 23562 (last visited June 18, 2007).

Second, while it is true that an Other Needs Assistance ("ONA") applicant must first apply for an SBA loan, the applicant will be eligible for IHP aid *either* if she is denied an SBA loan *or* if she claims that that loan does not meet all of her covered needs and expenses. *See* 44 C.F.R. § 206.119(a). Even in the former case, FEMA has elsewhere stressed that being turned down for an SBA loan is not tantamount to being turned down for a regular bank loan. According to FEMA, it is "[n]ot [t]rue" that applicants "have to be turned down by [their] bank before [they] can apply for a disaster loan," as the SBA "has its own criteria for determining each loan applicant's eligibility." *Common Misunderstandings Press Release*. Because a recipient of ONA may have been denied an SBA loan or may simply have represented to FEMA (accurately or not) that such a loan was insufficient to cover her needs, being identified as an ONA aid recipient is not tantamount to being identified as one who was turned down for an SBA loan, much less one who was turned down for a regular bank loan.

As for insurance, FEMA's regulations allow insured individuals to receive IHP aid if their claim is denied or if the insurance proceeds are less than the maximum amount of assistance FEMA can provideFN27 and are insufficient to meet the applicant's covered needs.[FN28] *See*44 C.F.R. § 206.113(a)(2), (4). Insured individuals may also receive IHP aid if their insurance proceeds are delayed, subject to the individual's obligation to repay such aid if she later receives it from her insurance company. *See id.* § 206.113(a)(3). In fact, in response to the OIG's finding that insured applicants were awarded financial assistance even in cases where FEMA regulations prohibited it, *see OIG Audit Report* at 23-24, FEMA said that "over 20 years of experience in previous disasters" suggested "that these multiple, back-to-back storms would cause additional delays in aid delivery to the public, not just from FEMA and other Federal agencies, but also from State and local authorities, private insurers, and voluntary agencies,"*id.* at 46. Thus, FEMA said, in providing IHP aid to insured

applicants, it had simply responded to "credible indications that area residents were likely to face assistance*1202 delays due to multiple, back-to-back storms, delayed insurance settlements, and the limited number of insurance adjusters and available building contractors." *Id.* at 55-56. Indeed, FEMA has elsewhere highlighted that insured individuals are eligible for FEMA assistance: "Insurance is your main source for money to put your life back in order after a disaster. But there are many things that insurance does not cover. That is where federal disaster programs may be able to help." *Common Misunderstandings Press Release.*

> FN27. Currently $28,200, as adjusted. *See*42 U.S.C. § 5174(h); 44 C.F.R. § 206.110(b).
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> FN28. According to FEMA's counsel, FEMA's disaster relief program "makes no provision for [insurance] deductibles as such," and FEMA's website says that FEMA does not cover deductibles per se. *See* Frequently Asked Questions, http:// www. fema. gov/ assistance/ dafaq. shtm# 18. However, the unmet needs of insured individuals are covered, *see id.,* so that if an insured individual still has unpaid losses after her insurance settlement, which she likely would if she had a hefty deductible, then presumably FEMA could pay for those losses.

If the addresses are released, some IHP recipients may be **identifiable** as having lacked insurance to cover a specific damaged item, such as clothing. And although the record is not clear, it also appears that some individuals may be **identifiable** as home renters rather than owners. We acknowledge that some IHP recipients may feel some stigma if these facts become known to others.[FN29] However, the "[l]egislative history of [**Exemption** 6] disfavors privacy claims by those who receive a governmental benefit." 2 James T. O'Reilly, *Federal Information Disclosure* § 16:53 (3d ed.2000). The Senate Report accompanying the **FOIA** expressly stated that "health, welfare, and selective service records are highly personal to the person involved, yet *facts concerning the award of a pension or benefit should be disclosed to the public.*" S.Rep. No. 89-813, at 9 (1965) (emphasis added). The House Report similarly observed that **Exemption** 6 was "intended to cover detailed Government records on an individual which can be **identified** as applying to that individual and *not the facts concerning the award of a pension or benefit* or the compilation of unidentified statistical information from personal records." H.R.Rep. No. 89-1497, at 11, U.S. Code Cong. & Admin. News 1966, at 2428 (1966) (emphasis added). Although the House Report also said that "[t]he public has a need to know, for example, the details of an agency opinion or statement of policy on an income **tax** matter, but there is no need to **identify** the individuals involved in a **tax** matter *if the **identification** has no bearing or effect on the general public,"id.* at 8 (emphasis added), these addresses *do* have a bearing-and a crucial one at that-on the public's ability to assess FEMA's performance of its statutory duties. *Cf. Reporters' Comm.,* 489 U.S. at 773-74, 109 S.Ct. 1468 ("The deletions were unquestionably appropriate because the names of the particular cadets were irrelevant to the inquiry into the way the Air Force Academy administered its Honor Code; leaving the **identifying** material in the summaries would therefore have been a 'clearly unwarranted' invasion of individual privacy."(discussing *Rose,* 425 U.S. 352, 96 S.Ct. 1592, 48 L.Ed.2d 11)).

> FN29. We note, however, that it is highly unlikely that the newspapers will publish a list of many IHP recipients indicating after each name whether a particular individual rents her home, had some uninsured property, or was possibly turned down for an SBA loan. Nevertheless, once the addresses are disclosed, this information would be available for anyone sufficiently disposed to seek it out.

In any case, FEMA's counsel conceded at oral

argument that it is "essentially right" that the already-released IHP data does not even remotely resemble the kind of information Congress intended **Exemption** 6 to protect-that is, "personal information" whose release would cause "injury and embarrassment." *Wash. Post Co.*, 456 U.S. at 599, 102 S.Ct. 1957. Indeed, counsel for FEMA conceded that FEMA does not regard stigma as a "crucial" factor on the privacy side of the calculus at all.

Third, the district court in *News* determined that disclosure would create "a reasonable danger of identity theft, not to ***1203** mention actual theft." 2005 WL 2921952, at *17. As we noted earlier, however, there is no evidence whatsoever in the record to support this conclusion as to identity theft, as FEMA's counsel has conceded.

As for "actual theft," the district court worried that if thieves knew that residents of a certain address received a generic amount of money to replace, say, a television, they would find these locations profitable to burgle. But, IHP aid recipients are not required to spend money they receive replacing a particular item; they may well invest that money elsewhere or simply put it in the bank. Moreover, it has been several years since these individuals applied for FEMA aid; the 2004 Florida hurricane season is nearly three years old, and some of the other disasters implicated in Sun's **FOIA** request are nearly ten years old. The "new" items the *News* court was concerned about are almost certainly no longer tempting to thieves, if they ever were. In short, we think that thieves will not find the IHP addresses to be useful at all.

Fourth, the court held that News's intention to make direct contact with at least some recipients "magnifies the importance of the personal privacy interest at stake" by rendering the individuals "the target of unsolicited and perhaps unwanted contact." *Id.* However, individuals are under no obligation to speak to reporters, and on balance, the modest annoyance of a "no comment" is simply the price we pay for living in a society marked by freedom of information laws, freedom of the press, and publicly-funded disaster assistance.

FEMA also argues that IHP recipients had a reasonable expectation of privacy in the information they provided to the agency, since they are provided with "FEMA's privacy policy, which explains that the Privacy Act governs the disclosure of individually identifiable information of this sort." In the first place, FEMA does not have the power to promise that it will not disclose that which the **FOIA** requires it to disclose. But in fact, FEMA's privacy policy[FN30] cautions that an applicant's information "may be shared with [her] bank, insurance company, or other assistance providers to ensure there is no duplication of benefits," as well as with "state and local governmental agencies to help reduce future disaster losses," and nowhere promises that FEMA will not disclose this information to still other sources. Moreover, the policy refers applicants to FEMA's Individual Assistance Privacy Impact Assessment,[FN31] which states (at page 2) that the individual assistance data is subject to a variety of "legal requirements," including the **FOIA**. Finally, as FEMA's Privacy Impact Assessment for the EP & R/FEMA Privacy Act "Disaster Recovery Assistance Files" System of Records[FN32] indicates (at § 2.1), "[i]ndividuals always have the right not to apply for Federal disaster assistance."

FN30. *Available at* http:// www. fema. gov/ help/ privacy_ registration. shtm.

FN31. *Available at* http:// www. fema. gov/ pdf/ help/ privacy. pdf.

FN32. *Available at* http:// www. fema. gov/ pdf/ help/ part_ ad. pdf.

Finally, the district court in *News* held that since FEMA must make available to any requestor what it makes available to the newspapers, disclosure would allow "commercial advertisers or solicitors" to bother the disaster victims with offers of "special goods, services, and causes likely to appeal to" them. *Id.* Again, because it has been several

years since the disasters, it seems unlikely that building contractors ***1204** and the like would find soliciting these individuals very profitable, and there is no record evidence to support this supposition. In any case, to the extent that IHP aid recipients experience slightly more commercial solicitation than the average American, this, too, is a modest intrusion, at most.[FN33]

FN33. FEMA also relies on several cases, most of which barred the release of names and addresses under **Exemption** 6, for the proposition that there is a privacy interest in names and addresses, especially where they are coupled with additional information. We do not deny that a privacy interest against disclosure may exist, although it is not very substantial here, but unlike each of the privacy interests detailed in these cases, the privacy interest here is dwarfed by the powerful public interest in disclosure. *See U.S. DOD v. FLRA,* 510 U.S. 487, 497, 114 S.Ct. 1006, 127 L.Ed.2d 325 (1994) (public interest is "negligible, at best"); *FLRA v. U.S. DOD,* 977 F.2d 545, 548 (11th Cir.1992) ("no **FOIA**-related public interest"); *FLRA v. U.S. Dep't of Treasury,* 884 F.2d 1446, 1452 (D.C.Cir.1989) (public interest is "only modestly distinguishable" from that in the court's prior decision in *Horner,* where the public interest was "absolute zero"); *Painting & Drywall Work Pres. Fund, Inc. v. Dep't of Hous. & Urban Dev.,* 936 F.2d 1300, 1303 (D.C.Cir.1991) ("no obvious public interest"); *Am. Fed'n of Gov't Employees, Local 1923 v. United States,* 712 F.2d 931, 932 (4th Cir.1983) (per curiam) ("[A]ny benefits flowing from disclosure of the [addresses] would inure primarily to the union, in a proprietary sense, rather than to the public at large."); *Lepelletier v. FDIC,* 164 F.3d 37, 47 (D.C.Cir.1999) ("no clearly discernible public interest"); *Forest Guardians v. U.S. FEMA,* 410 F.3d 1214, 1219-20 (10th Cir.2005) (declining to quantify the privacy interest in NFIP data where the public interest was "*nonexistent*"); *Comm. on Masonic Homes of R.W. Grand Lodge, F. & A.M. of Pa. v. NLRB,* 556 F.2d 214, 221 (3d Cir.1977) ("no significant public interest"); *Wine Hobby USA, Inc. v. U.S. IRS,* 502 F.2d 133, 137 (3d Cir.1974) ("no direct or indirect public interest"); *FLRA v. U.S. DOD,* 984 F.2d 370, 375 (10th Cir.1993) ("[E]ven a 'minimal' privacy interest in an employee's name and home address outweighs a nonexistent public interest ...."); *Hopkins v. U.S. Dep't of Hous. & Urban Dev.,* 929 F.2d 81, 88 (2d Cir.1991) (disclosure "would shed no light on HUD's performance in enforcing the prevailing wage laws"); *Sheet Metal Workers Int'l Ass'n, Local No. 9 v. U.S. Air Force,* 63 F.3d 994, 998 (10th Cir.1995) (only additional public interest in employee names was "attenuated," since it would be achieved, if at all, derivatively, through direct contact with the employees (quotation marks omitted)); *Painting Indus. of Haw. Market Recovery Fund v. U.S. Dep't of Air Force,* 26 F.3d 1479, 1485 (9th Cir.1994) (same); *Nat'l Ass'n of Retired Fed. Employees v. Horner,* 879 F.2d 873, 878-79 (D.C.Cir.1989) (disclosure of names and addresses of individuals on government annuity rolls, indicating that they were either retired or disabled and the recipient of monthly government annuity checks, involves only a "modest" privacy interest, despite expectation of a "barrage of solicitations" by mail, phone, and at home, and disclosure must be barred only because there is "no public interest in" their disclosure); *Minnis v. U.S. Dep't of Agric.,* 737 F.2d 784, 787 (9th Cir.1984) (disclosure "would not further [a cognizable **FOIA**] objective" and the public interest in disclosure was there-

fore "negligible"); *Heights Cmty. Cong. v. Veterans Admin.*, 732 F.2d 526, 530, 527 (6th Cir.1984) (district court was not clearly erroneous in barring release of addresses of veterans who received federal loans where community group stated a public interest "in merely 'monitoring' the operation of a federal program, without more," to determine if "lenders and realtors [not the government] were manipulating the VA loan program so as to steer white and black veterans into specific areas of" the city, where it was likely that any lender or realtor accused of steering would "interrogat[e]" the veterans and where the community group could instead solicit participation in its investigation from veterans); *Aronson v. U.S. Dep't of Hous. & Urban Dev.*, 822 F.2d 182, 186-88 (1st Cir.1987) (*requiring* disclosure of names and addresses of individuals "owed a substantial sum of money" by HUD despite an expectation they "may become ... target[s] for those who would like to secure a share of that sum by means scrupulous or otherwise," where HUD had failed to locate the individuals after one year, such that disclosure would serve the "quite substantial" public interest "in the revelation and consequent correction of an inability of HUD to disburse funds to their rightful owners").

***1205** In order to affirm withholding the addresses, we would have to find that the privacy interests against disclosure are *greater* than the public interest in disclosure. *See Cochran*, 770 F.2d at 955 ("If the balance is equal the court should tilt the balance in favor of disclosure."). This we cannot do. Quite simply, the disclosure of the addresses serves a powerful public interest, and the privacy interests extant cannot be said even to rival this public interest, let alone *exceed* it, so that disclosure would constitute a "clearly unwarranted" invasion of personal privacy. On this record we do not find the balancing calculus to be particularly hard.

2. Names of IHP Award Recipients

[22] News also appeals the district court's decision not to require FEMA to disclose the names of IHP aid recipients. Although we conclude that FEMA must disclose the addresses where damage was alleged to have occurred, disclosure of the names of the IHP recipients "would constitute a clearly unwarranted invasion" of those individuals' personal privacy. The newspapers articulate only one central need for the IHP names. Of the several indictments involving Floridians who allegedly defrauded FEMA following the 2004 hurricane season, at least three involve individuals who allegedly applied for IHP aid using someone else's address. Because those homes did suffer damage, knowing that aid was disbursed there would not suggest fraud. But if the recipients' names were also disclosed, then News theoretically could use public records to cross-reference those names with the disaster addresses to determine whether those individuals had any legitimate connection to that property, or whether they instead defrauded FEMA.

As the *Sun* court noted, withholding the names would "substantially reduce [ ]" the potential for negative secondary effects of disclosing the addresses. Although we have previously acknowledged that it is possible to derive names from addresses through public records, we see no reason to enable this process with a ready-made list of names, absent some compelling public interest. And we cannot say that the public interest News has articulated is terribly strong. As the district court in *Sun* explained, "[w]hereas the addresses go [ ] to the heart of whether FEMA improperly disbursed funds to property that sustained no damage, the names of disaster claimants are not as probative. In [the vast majority of] cases where the name and address[ ] accurately reflect the property where the disaster claimant resides, the name of the disaster claimant would provide no further insight into the operations of FEMA." 431 F.Supp.2d at 1271. As for those

cases, presumably relatively few, where a recipient provided someone else's disaster-struck address, the recipient's name would say more about her actions than FEMA's. In any case, the names are not necessary to determine the extent of fraud against FEMA: News can contact the legitimate residents of the homes where FEMA aid went to confirm that they did, in fact, apply for and receive aid. Accordingly, we conclude that the convenience to News of a ready list of names from which to research the extent of fraud against FEMA is outweighed by the increased privacy risks to those individuals of having the same ready list of names and addresses available to commercial solicitors, members of the press seeking quotes, and others, and that disclosure of the IHP recipients' names would therefore constitute a clearly unwarranted invasion of personal privacy.

3. *Addresses of NFIP Claimants*

[23] Finally, News appeals the district court's decision not to require FEMA to ***1206** disclose the addresses of Florida residences that were the subject of NFIP claims in 2004. News claims (and FEMA does not dispute) that one North Miami building has flooded seventeen times but remains eligible for NFIP insurance coverage without increased premiums, and that in general, in two years preceding this lawsuit, the number of NFIP-insured properties that have flooded more than once more than doubled-from 5,844 buildings with $285 million in losses in 2003 to 12,177 properties with $692 million in losses in 2005. News argues that without access to the NFIP addresses, it cannot begin to evaluate this trend and the concomitant cost to taxpayers of the federal government's decision to continue insuring flood-prone property. We agree that this constitutes a substantial public interest, and that the NFIP addresses would serve that purpose.

Against this public interest in disclosure we weigh the privacy interests against disclosure. The NFIP addresses have received comparably little attention from the parties. FEMA provided News with spreadsheets entitled "2004 Florida Loss Report by County/Community/Date of Loss" and "Florida Premiums for Policies In Force Report by County/Community" but withheld the addresses of the claimants. No representative sample of this released data is part of the record, and FEMA has not begun to explain why being identifiable as someone who purchased federal flood insurance would constitute any invasion of privacy, much less a clearly unwarranted one. We, therefore, readily conclude that FEMA has failed to meet its burden and must disclose the NFIP addresses.

III. *Conclusion*

The public interest in evaluating the appropriateness of FEMA's response to disasters is not only precisely the kind of public interest that meets the **FOIA's** core purpose of shedding light on what the government is up to; the magnitude of this public interest is potentially enormous. "The critical nature of [disaster] assistance makes reports of waste, mismanagement and outright fraud particularly disturbing. We cannot sweep such allegations under the rug; we must face them head-on to preserve public confidence in this critical program." Sen. Joseph I. Lieberman, *Senators Collins and Lieberman: Investigation Reveals Waste, Mismanagement and Fraud in FEMA's Disaster Aid Program in Miami-Dade* (May 18, 2005), *available at* http:// lieberman. senate. gov/ newsroom/ release. cfm? id= 237837. "The tradition of Americans helping Americans in the aftermath of a disaster .... will be jeopardized if Americans come to feel their tax dollars are not being spent fairly, efficiently-and with accountability." *Senate Hearings* (written statement of Sen. Lieberman at 2). Nor is ensuring that FEMA properly spends taxpayer money only of concern to Floridians and residents of other hurricane-ravaged states. As Senator Bill Nelson of Florida told the Senate Committee, it is also of concern "to Californians, who live on fault lines, and Washingtonians, who live in the shadows of active volcanoes; rural Americans, who live near rivers

that swell; and city-dwellers, who live in metropolitan areas that could be targeted by terrorists." *Senate Hearings* (written statement of Sen. Bill Nelson at 2). Although we acknowledge the privacy interests at stake, given the enormous public interest involved, we cannot say that FEMA has come close to meeting its heavy burden of showing that the privacy interests are of such magnitude that disclosure of the IHP and NFIP addresses *would* constitute a *clearly unwarranted* invasion of personal privacy under **Exemption** 6.

***1207** The judgment of the district court in *Sun* is AFFIRMED. The judgment of the district court in *News* is REVERSED and REMANDED for further proceedings consistent with this opinion.

C.A.11 (Fla.),2007.
News-Press v. U.S. Dept. of Homeland Sec.
489 F.3d 1173, 35 Media L. Rep. 2289, 20 Fla. L. Weekly Fed. C 767

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"Kimo Crossman"
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To '"SOTF" <sotf@sfgov.org>
cc
bcc
Subject submittal for #08030 Complaint

submittal for #08030 Complaint

Some more useful privacy citations in other states and at a federal level.

Privacy

CALIFORNIA: 1998 Cal. Att'y Gen. Ops. 98-901: "Claims for senior citizens' exemptions from assessment of a parcel tax levied by a school district are subject to inspection by members of the general public. The public and the media have a legitimate need to know whether government officials are performing their duties in a responsible manner. Here, property owners have a significant interest in knowing whether other property owners are complying with the law and whether public officials are fairly performing their duties in granting exemptions from the tax. On the other hand, if the information in question is not disclosed, the rights of privacy of the senior citizens in the district would be protected. Arguably, they would not be subject to unwanted solicitations directed to them due solely to their having surpassed the age of 65. Such speculation, however, is not basis for denying disclosure under the terms of section 6255."

FEDERAL: Arieff v. Dep't of the Navy, 712 F. 2d 1462 (D.C.C. 1983): Production of documents, not secondary effects of release, must be the source of invasion of privacy.

FEDERAL: Nat'l Ass'n of Retired Federal Employees v. Horner, 633 F. Supp. 1241 (D.D.C. 1986): ".... this circuit has recognized only a slight privacy interest in a person's name and address... Unless the release of names and addresses, standing alone, will embarrass the individuals involved, this circuit has determined that the information is entitled to little protection."

FEDERAL: Pearson v. Edgar, 965 F.Supp. 1104 (N.D.Ill. 1997): "...(h)omeowners must continue to sift through mass mailings and answer numerous telephone calls. These intrusions and interruptions are generally viewed simply as a cost of life in modern society. Homeowners who are not interested in such solicitations routinely either discard these materials or terminate the telephone calls or door-to-door contacts. The Supreme Court has observed that the short, though regular journey from mail box to trash can...is an acceptable burden, at least so far as the Constitution is concerned." (Citing Bolger v. Youngs Drug Products Corp. 463 U.S. 60).

FEDERAL: Kilroy v. Nat'l Labor Relations Bd., 633 F.Supp. 136 (S.D. Ohio 1985): " An invasion of privacy occurs when disclosure would subject a person to embarrassment, harassment, physical danger, disgrace, or loss of employment or friends."

GEORGIA: Pensyl v. Peach County, Ga. 314 S.E. 2d 434 (Ga. 1984): " The tax officials testified that due to the personal privacy concerns of homeowners, they changed their policy of making such records available shortly before this taxpayer requested them. The taxpayer responds that the policy change occurred when numerous taxpayers were challenging their 1983 (tax) assessments." (At 436).

ILLINOIS: Lieber v. Southern Illinois University, 680 N.E. 2d 374 (Ill. 1997): "If... personal information embraced even basic identification, the public would have no right to learn the names of officials they had placed in office, and a person could not confirm that the doctor who was about to perform surgery on him was actually licensed to practice medicine. We do not believe the General Assembly intended such absurd results. Where the legislature intended to exempt a person's identity from disclosure, it did so explicitly."

ILLINOIS: Emery v. Kimball Hill Inc., 445 N.E. 2d 59 (Ill.App. 1983): "Fair reports of what is shown on public records may be circulated freely and without liability. Similarly, it is axiomatic that truth is a defense to a defamation action." (At 61).

KENTUCKY: 1989 Ky. Att'y Gen.Ops. 89-50: "Information regarding the location of real property, its description, ownership history through time, and valuation history, as well as information concerning the description and valuation of tangible personal property such as vehicles, watercraft, and mobile homes, are the principal types of information recorded upon the cards in question. Such information, in being factual information about property, rather that a person, is not of a "personal nature." This is particularly so where the information (e.g., ownership, location, etc.,) regarding that property is, in general, subject to recognized public recordation and routine public perusal – for example, in a deed book. Much of the property description information contained upon the cards in question is typically readily observable such as from a public street (number of stories, type of construction, etc.). Accordingly, information of such character contained upon the cards in question must be made available for inspection without a court order. Inspection of such information cannot be properly denied pursuant to KRS 61.878 (1) (a)."

LOUISIANA: Webb v. City of Shreveport, 371 So. 2d 316 (La.App. 1979): "A person's employment, where he lives, and where he works are exposures which we all must suffer. We have no reasonable expectation of privacy as to our identity or as to where we live or work." (At 319).

MASSACHUSETTS: Attorney General v. Collector of Lynn, 385 N.E. 2d 505 (1979): "Next, the collectors argue that the lists of tax delinquents are exempted from public inspection...because disclosure would constitute an invasion of personal privacy. Public disclosure of the lists of tax delinquents does involve some invasion of personal privacy. Publication of one's name on such a list would certainly result in personal embarrassment.... However, we cannot say that disclosure publicized 'intimate details' of a 'highly personal' nature. The records disclose only whether an owner is meeting his public responsibilities. Finally, any invasion of privacy resulting from the disclosure of the records of tax delinquents is also outweighed by the public right to know...whether public employees are diligently collecting delinquent accounts. The public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner."

MASSACHUSETTS: Pottie v. School Committee of Braintree, 482 N.E. 2d 813 (Mass. 1985): " Names and addresses are not 'intimate details of highly personal nature'." (At 817).

MICHIGAN: Tobin v. Michigan Civil Service Commission, 331 N.W. 2d 184 (Mich. 1982): " Names and addresses are not ordinarily personal, intimate, or embarrassing pieces of information. The supposed right to keep such information secret is at best riddled with exceptions. Certainly the expectation that the person...will be subject to unsolicited messages...is insufficient to create an actionable invasion of privacy, since the mailing of unsolicited messages not amounting to harassment is not actionable. We find no violation of the common-law right of privacy in the contemplated release of names and addresses...."

NEW MEXICO: McNutt v. New Mexico State Tribune Co., 538 P.2d 804 (1975): " The addresses of most persons appear in many public records:...property assessment rolls..., etc., all of which are open to public inspection. We, therefore, hold that an individual's home address is a public fact and that its mere publication, without more, cannot be viewed as an invasion of privacy." (At 808).

NEW YORK: Lamont v. Commissioner of Motor Vehicles, 269 F. Supp. 880 (S.D. N.Y. 1967): Plaintiff sued in Federal Court for $10,000, claiming he was compelled to register his car with the state and then the state made his name and address available as a public record. He claimed "...considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitations to which they are subjected" and claimed the state's action was "... in violation of the right of privacy and constitutes deprivation of their liberty and property under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution." The court ruled: "The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the enclave that requires constitutional defense to protect 'the privacies of life'. The short, though regular, journey from mailbox to trash can in an acceptable burden, at least so far as the constitution is concerned. The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of 'public records,' available to anyone on demand. ...(P)laintiff proposes to stretch the constitutional dimensions of 'privacy' far beyond any reasonably foreseeable limits the courts ought to enforce." (At 883-884)

NEW YORK: Szikszay v. Buelow, 436 N.Y.S. 2d 558 (1981): " Respondents contend that providing petitioner with the (assessment roll) tapes amounts to an 'unwarranted invasion of personal privacy'.... Respondents allege, as well, that a further invasion of privacy will result because much of the land in Cattaraugus County in owned by non-residents...and that this information would be useful to someone interested in vandalizing or burglarizing the real property involved. In view of the history of public access to assessment records, and the continued availability of such records to public inspection, whatever invasion of privacy may result by providing copies of...tapes to petitioner would appear to be permissible rather than 'unwarranted'. It appears that petitioner could obtain the information he seeks if he wanted to spend the time to go through the records manually and copy the necessary information."

OHIO: Shibley v. Time, Inc., 341 N.E. 2d 337 (1975): "The right of privacy does not extend to the mailbox and therefore it is constitutionally permissible to sell...lists to direct mail advertisers.... (T)he practice complained of here does not constitute an invasion of privacy even if appellants' unsupported assertion that this amounts to the sale of personality profiles is true because these profiles are only used to determine what type of advertisement is to be sent." (At 339 and 340).

OREGON: Kotulski v. Mt. Hood Community College, 660 P.2d 1083 (Or.App. 1983): " We cannot say that one's address is information that 'normally would not be shared with strangers'. Addresses are commonly listed in telephone directories, printed on checks and provided to merchants."

PENNSYLVANIA: Westmoreland Cty. Bd. of Assessment Appeals v. Montgomery, 321 A.2d 660 (Pa. Cmwlth. 1974): "We simply cannot conclude that the information contained in the building record if made public, would operate to the prejudice or impairment of a person's reputation or personal security, as claimed by the Board."

PENNSYLVANIA: City of Philadelphia v. Doe, 405 A.2d 1317 (Pa. Cmwlth. 1979): "It has never been deemed...an invasion of privacy to make public a citizen's tax records. We do hold...that embarrassment does not rise to the level of an invasion of that right...."

TEXAS: Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W. 2d 668 (Tex. 1976): Discusses "...the people's right to publicize information which is a matter of public record without fear of sanctions by the State. Once information is made a matter of public record, the protection accorded freedom of speech and press by the First Amendment may prohibit recovery for injuries caused by any further disclosure of and publicity given to such information...."

WASHINGTON: 1975 Wash. Att'y Gen.Ops. No. 15: Although the public records law prohibits officials from providing a "list of individuals" when such is intended for commercial usage, the law "does not prohibit access to raw data from which a person could construct his own list of individuals for commercial purposes." (At 7). Note: Conclusion repeated in 1983 Ops. No. 9. (At 6).

WEST VIRGINIA: Hechler v. Casey, 333 S.E. 2d 799 (W.Va. 1985): " The court is of the opinion that...an individual's name and residential address...are not 'personal' or 'private' facts but are public in nature in that they constitute information normally shared with strangers and are ascertainable by reference to many publicly obtainable books and records. Thus, disclosure of an individual's name and address would not result in an unreasonable invasion of privacy."

WISCONSIN: Wisc. Stat. Sec. 895. 50. (2)(C): " (It) is not an invasion of privacy to communicate any information available to the public as a matter of public record."

ILLINOIS

Illinois court deems plumbers' names, addresses public record

The Illinois Department of Public Health must disclose the names and home addresses of licensed plumbers and apprentice plumbers in response to a state Freedom of Information Act request, a state appeals court in Chicago ruled Dec. 21.

The court rejected the department's claim that the information was protected by a privacy exemption to the state FOI law.

Justice Margaret O'Mara Frossard affirmed a decision by the Cook County Circuit Court that the department must provide the addresses to the Chicago Journeymen Plumbers Local 130. Names and addresses constitute basic identification information, she wrote, and cannot be exempted.

Although the state law, like the federal FOI Act, allows the exemption of personal information that would constitute a clearly unwarranted invasion of personal privacy, the appellate court ruled that names and addresses of individuals do not constitute "personal information." It quoted a 1996 Illinois Supreme Court decision that although names and addresses are "unquestionably personal in the sense that they are specific to particular persons," the statutory exemption means "more than simply that."

Frossard distinguished this ruling from another Illinois appellate court decision finding that names and addresses of scholarship winners could be denied because receipt of scholarship money is "personal" information, beyond mere identification.

(Chicago Journeymen Plumbers Local 130 v. Dep't of Health; requesters' attorney: Julian Schreiber, Chicago) — *RD*

public. Thus there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record, such as the date of his birth, the fact of his marriage, his military record, the fact that he is admitted to the practice of medicine or is licensed to drive a taxicab . . . .

Similarly, there is no liability for giving further publicity to what the plaintiff himself leaves open to the public eye. Thus he normally cannot complain when his photograph is taken while he is walking down the public street and is published in the defendant's newspaper. Nor is his privacy invaded when the defendant gives publicity to a business or activity in which the plaintiff is engaged in dealing with the public.

RESTATEMENT, *supra*, at cmt. b.

There are other individuals who have not sought publicity or consented to it, but through their own conduct or otherwise have become a legitimate subject of public interest. . . . The same is true as to those who are . . . involved in judicial proceedings or other events that attract public attention. These persons are regarded as properly subject to the public interest . . . .

Id. at cmt. f.

No Washington case has held that public employees' names are private and subject to the personal privacy exemption. Washington's public records act contains no blanket exemption for names, as it does for addresses. RCW 42.17.310(1)(u) exempts from disclosure "[t]he residential addresses or residential telephone numbers of employees . . . of a public agency." Generally, however, absent such a statute so providing, lists of names and addresses are not private. *See* Phillip E. Hassman, Annotation, *Publication of Address as Well as Name of Person as Invasion of Privacy*, 84 A.L.R.3D 1159 (1978); Andrea G. Nadel, Annotation, *What Constitutes Personal Matters Exempt From Disclosure by Invasion of Privacy Exemption Under State Freedom of Information Act*, 26 A.L.R.4TH 666 (1983).

Certain federal cases have held that the privacy exemption of the Freedom of Information Act (FOIA), 5 U.S.C.

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§ 552(b)(6) prevents disclosure of names and addresses when coupled with employee job classification, and salary and benefits information. *Painting Indus. of Haw. Mkt. Recovery Fund v. United States Dep't of Air Force*, 26 F.3d 1479, 1483 (9th Cir. 1994); *Painting & Drywall Work Pres. Fund, Inc. v. Dep't of Housing & Urban Dev.*, 936 F.2d 1300, 1303 (D.C. Cir. 1991). And, in the law enforcement context, at least one federal court has held that the right to privacy for officers involved in a specific investigation outweighed the public interest in disclosure of their names. *Nix v. United States*, 572 F.2d 998, 1003, 1006 (4th Cir. 1978) (holding that names of FBI agents who investigated alleged beating of prisoner by prison guards and name of assistant United States attorney who made the decision that the alleged civil rights violation lacked criminal prosecutive merit need not be disclosed to prisoner under FOIA; pointing out that FOIA is not designed to supplement the rules of civil discovery but rather to inform the public about the action of governmental agencies). In interpreting Washington's public disclosure act, our courts may look to the federal courts and their interpretation of FOIA. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998). However, it is important to bear in mind that the " 'state act is more severe than the federal act in many areas.' " *PAWS II*, 125 Wn.2d at 266 (quoting *Hearst*, 90 Wn.2d at 129). Most significantly, unlike federal cases interpreting FOIA, "the use of a test that balances the individual's privacy interest against the interest of the public in disclosure is not permitted."

"Kimo Crossman"
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06/05/2008 06:40 PM

To "'SOTF'" <sotf@sfgov.org>
cc
bcc
Subject submittal for #08030 Complaint

submittal for #08030 Complaint

From Terry Francke of Calaware:

Even if the clerk has such quasi-legislative authority by some prior lawful delegation, Proposition 59 requires that "A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest." I don't see anything approaching the factual specificity of a "finding" in the clerk's memo.

The specious (and given the vacuum of either legal authority or documented abuse, shameless) pretext of protecting "privacy" should not distract from the fact that what the clerk is doing is to destroy the pathways for intercommunication among the citizenry by removing contact information, attached for whatever reason to whatever message or document, from access by any party but . . . the government. No more effective means can be imagined to prevent people in the community with a potential common interest in an issue from combining to their advantage and -- how does the phrase go? -- "petitioning for the redress of grievances."

Please note that if these addresses can be found by the names of people (which can't be redacted) in the phone book or the internet or they are addresses printed in the newspaper then I am going to be surprised at the redactions. I would also ask that addresses be minimally redacted in the same way police reports list the block and street of crimes "18xx Market street"

Calaware's opinion on redactions:

The variety of exemptions in the CPRA for home phone/address information for particular classes of individuals in particular kinds of records creates the strong implication that aside from those situations there is no inherent confidentiality or expectation of privacy. If home phone and address information were categorically exempt as a matter of privacy of other policy, there would be no need to codify protection in these special instances.

Many agencies might argue a public interest exemption under Section 6255, but that balancing exercise has been abrogated in the SF Sunshine Ordinance. The only basis that I can see for re-introducing the balancing test would be under Evidence Code Section 1040, the privilege for official

information received in confidence, but it would be the department's burden affirmatively to show that the information had really been received on condition that it would not be disclosed. If that fact were shown, then the question would be what the library asserts as the public interest in nondisclosure, and whether that interest outweighs the public interest in disclosure.

Terry Francke
Californians Aware

From California First Amendment Coalition

Here is some analysis on personal email addresses and personal emails of someone performing city business (is there a reasonable expectation of privacy when someone contacts their government for a standard request and makes no effort to obscure personal info) I know there is the unpublished San Diego reader case about email addresses

Mr. Crossman,

Holme Roberts & Owen LLP is general counsel for the California First Amendment Coalition and responds to CFAC action line inquiries. In responding to these inquiries, we can give general information regarding open government and speech issues, but cannot provide specific legal advice or representation.

At least one court, Holman v. Superior Court of San Diego County, 31 Med. L. Rptr. 1993 (2003), determined that there is no absolute privilege exempting private identifying information such as email addresses and cellular and land line telephone numbers. The court determined, however, that such information could be exempted from disclosure under the California Public Records Act ("CPRA") if it is found that the public interest in nondisclosure outweighs the public interest in disclosure -- the balancing analysis found in section 6255 of the CPRA. It appears, therefore, that disclosure of such identifiable information will depend on the facts of each particular case. (As we know 6255 cannot be applied under the San Francisco Sunshine Ordinance -kimo).

In the Holman case, a media entity sought disclosure of email records containing email addresses, and cellular and landline telephone records of an employee that had recently been hired and who was allegedly connected with an entity with whom the agency was engaged in a controversial project. The court of appeals first determined that there was "no absolute privilege exempting private identifying information from disclosure" under section 6254, subdivision (k), which exempts from disclosure any information that is exempt pursuant to state or federal law. The court went on to state, however, that personal information protected by California's constitutionally guaranteed right of privacy can be exempted from CPRA disclosure under the balancing test set forth in section 6255 -- the "catch-all" provision.

With respect to the "catch-all" analysis on email addresses, the court weighed the interest furthered by disclosure (i.e., the activities of a

person hired as a staff member of the agency for which she may have had no prior experience, and who was allegedly connected to an entity with whom the agency was then engaged in a controversial project) against the interests furthered by nondisclosure (i.e., the chilling effect associated with revealing email addresses of those the employee dealt with), and determined that the public interest served by not disclosing the email information does not clearly outweigh the public interest served by disclosure.

Similarly, with respect to telephone numbers, the court determined that under the facts of this case, the parties who called or were called by the employee in her governmental capacity had a correspondingly diminished interest in retaining the privacy of those contacts, and the limited scope of the disclosure here -- the telephone numbers of those contacting a specific governmental employee for a limited period of time -- will have a de minimus chilling impact on future communications. Because the disclosure here sought "appears necessary (or even indispensable) to furthering the particularized governmental accountability concerns," the reasons supporting nondisclosure, the court concluded, do not clearly outweigh the substantial public interest in ensuring governmental accountability. The court exempted from disclosure the land line phone records only because the bills reflecting the employee's calls were not limited to the employee's land line calls but included calls placed by others who used that same land line.

I hope you find this information helpful.

Isela Castaneda
Holme Roberts & Owen LLP

(San Francisco Counsel for California First Amendment Coalition)
560 Mission Street, 25th Floor
San Francisco, California 94105-2994
Tel: 415.268.1956
Fax: 415.268.1999
isela.castaneda@hro.com

Some of the law cited by Clerk

Clerk of the Board/Mr. Darby

You have not processed these redactions in good faith.

This matter would have been easy for the Clerk of the Board to assert independence from the City Attorney I am sorry to see this choice by your office. You have not addressed any of the writings I have provided that state that an explicit exemption is required to redact home address info. Please do so. Privacy must be balanced with allowing the observation of government and public interest in disclosure both of which are relevant here.

One has to ask, what about Tree Permits or Assessor records, are they going to be redacted too? If we take the alleged right to privacy to the full extreme why aren't you redacting the names as well?

Unless these search warrants were filed under seal - this information is public record.

6250 is a broad statement which happens to mention privacy - it does not specifically discuss address redactions

6254 (c) discusses withholding complete files like personnel and medical matters - this search warrant is not that and it was widely reported in the press.

6254 (k) is for evidence code privilege for confidential informers - not relevant here.

6254.21 is for posting information online - I did not request that this information be posted online by your office and you have not done so.

6255 cannot be invoked under Sunshine 67.21 G

California Constitution, Article I, Section 1. - broad statement which mentions privacy - it does not specifically discuss address redactions.
67.21 g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.
6254 (c)
(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

6254
(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c) (1) No person, business, or association shall publicly post or publicly display on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand of that person, business, or association to not disclose his or her home address or telephone number. A written demand made under this paragraph by a state constitutional officer, a mayor, or a Member of the Legislature, a city council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address. A written demand made under this paragraph by an elected official shall be effective for four years, regardless of whether or not the official's term has expired prior to the end of the four-year period. For this purpose, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(2) An official whose home address or telephone number is made public as a result of a violation of paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees.

(d) (1) No person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.

(2) Notwithstanding any other provision of law, an official whose home address or telephone number is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than

four thousand dollars ($4,000).
(e) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.
(f) For purposes of this section, "elected or appointed official" includes, but is not limited to, all of the following:
(1) State constitutional officers.
(2) Members of the Legislature.
(3) Judges and court commissioners.
(4) District attorneys.
(5) Public defenders.
(6) Members of a city council.
(7) Members of a board of supervisors.
(8) Appointees of the Governor.
(9) Appointees of the Legislature.
(10) Mayors.
(11) City attorneys.
(12) Police chiefs and sheriffs.
(13) A public safety official as defined in Section 6254.24.
(14) State administrative law judges.
(15) Federal judges and federal defenders.
(16) Members of the United States Congress and appointees of the President.
(g) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.
67.1 Findings (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by

Please provide balancing tests applied and specific facts for each redaction.

-----Original Message-----
From: Frank Darby [mailto:Frank.Darby@sfgov.org]
Sent: Tuesday, December 11, 2007 1:25 PM
To: kimo@webnetic.net
Cc: Angela Calvillo
Subject: Fw: Redacting info

Mr. Crossman,

Attached is a redacted version of the search warrant that you requested. Personal and private information of individuals such as their home addresses and the vehicle identification number were redacted pursuant to California Government Code Section 6250, 6254 (c), 6254 (k), 6254.21, and 6255 and California Constitution, Article I, Section 1. These redactions were made because disclosure would constitute an unwarranted invasion of personal privacy.

(See attached file: Search Warrant.pdf)

Frank Darby, Jr.
Manager, IT/Records & Information
Office of the Clerk of the Board of Supervisors

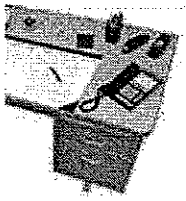
Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

From: Scott Albright [mailto:salbright@rcfp.org]
Sent: Thursday, May 29, 2008 2:20 PM
To: kimo@webnetic.net
Subject:

See attached for the case we discussed. I'll be in touch on Monday.

Scott H. Albright, Esq.
Reporters Committee for Freedom of the Press
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209
703.807.2100
salbright@rcfp.org

www.rcfp.org



Frank Darby /BOS/SFGOV
06/26/2008 12:01 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject Continuance Requested: #08030_Kimo Crossman vs COB/SOTF-A

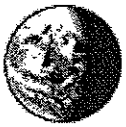
To Honorable Members of the SOTF:

This e-mail is in response to your e-mail regarding the special SOTF meeting to be held on July 8, 2008.

With regards to the above titled complaint, please note that the department has contested jurisdiction of this matter. We are requesting a continuance to the August 12, 2008, meeting of the Complaint Committee, because I am the most knowledgeable person who can speak to the matter and I will not be available for the July 8, 2008, meeting.

Frank Darby, Jr.
Records & Information Manager
Office of the Clerk of the Board of Supervisors

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548



"Kimo Crossman"
<kimo@webnetic.net>
06/30/2008 06:14 PM

To "'SOTF'" <sotf@sfgov.org>, <SCau1321@aol.com>, "'Kristin Murphy Chu'" <kristin@chu.com>
cc <Frank.Darby@sfgov.org>
bcc
Subject Kimo's Response: #08030_Kimo Crossman vs COB & SOTF-A Complaint Dispute

This is my written response to the dispute over jurisdiction.

The Taskforce clearly has jurisdiction on this matter since it directly pertains to the Sunshine Ordinance. There are many portions of the ordinance that do not pertain to production of records or public forum – for example the ten day rule for draft contracts.

The Taskforce can and I believe will find that this policy is a violation of the Sunshine Ordinance under 67.30 (c)

67.30 (c) **The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter**. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task

Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

07/09/2008 10:30 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>, "Kimo Crossman" <kimo@webnetic.net>

cc

bcc

Subject submittal for #08030 & 08022 Complaints

SOTF Clerk please include this as a submittal for #08030 & 08022 Complaints

---------- Forwarded message ----------
From: **Matt Dorsey** <Matt.Dorsey@sfgov.org>
Date: Mon, Nov 26, 2007 at 5:31 PM
Subject: Re: Immediate Disclosure Request - home phone number or home address complaints
To: kimo@webnetic.net

Kimo,

You have asked for "correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their home address or home phone number was revealed by the city."

Following a search for records responsive to your request, I have identified none.

Best,
MATT DORSEY

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

http://www.sfgov.org/cityattorney/

"Kimo Crossman" <kimo@webnetic.net>

11/21/2007 04:39

To "'Matt Dorsey'" <Matt.Dorsey@sfgov.org>, "'Cityattorney'" <CityAttorney@sfgov.org>
cc "'Alexis Thompson'" <Alexis.Thompson@sfgov.org>, "'Amanda Witherell'" <amanda@sfbg.com>, "'James Chaffee'" <chaffeej@pacbell.net>, <Dougcoms@aol.com>, "'Erica Craven'" <elc@lrolaw.com>, "'Allen Grossman'" <grossman356@mac.com>, "'Harrison Sheppard'" <hjslaw@jps.net>, <home@prosf.org>, <info@whatsrightwithlawyers.com>, "'Joe Lynn'" <joelynn114@hotmail.com>, "'Peter Warfield'" <

PM

libraryusers2004@yahoo.com>, "'Marc Salomon'" <marc@cybre.net>, "'Oliver Luby'" <oliverlear@yahoo.com>, "'Paul Zarefsky'" <Paul.Zarefsky@sfgov.org>, <Pmonette-shaw@earthlink.net>, <rak0408@earthlink.net>, "'Sue Cauthen'" <SCau1321@aol.com>, "'Bruce Wolfe MSW'" <sotf@brucewolfe.net>, "'SOTF'" <sotf@sfgov.org>, "'Steve Jones'" <Steve@sfbg.com>, "'Wayne Lanier'" <w_lanier@pacbell.net>

Subject Immediate Disclosure Request - home phone number or home address complaints

ct

Immediate Disclosure Request

To City Attorney

Please provide correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their home address or home phone number was revealed by the city.

Please email to me this information on a daily incremental basis and in its original format. If it exists as paper only then please provide in a scanned PDF format.

kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

07/09/2008 10:31 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>
cc
bcc
Subject submittal for #08030 & 08022 Complaints

SOTF Clerk please include this as a submittal for #08030 & 08022 Complaints

---------- Forwarded message ----------
From: **Matt Dorsey** <Matt.Dorsey@sfgov.org>
Date: Wed, Nov 21, 2007 at 1:19 PM
Subject: Re: Immediate Disclosure Request - email privacy complaints
To: kimo@webnetic.net
Cc: Alexis Thompson <Alexis.Thompson@sfgov.org>, Amanda Witherell <amanda@sfbg.com>, James Chaffee <chaffeej@pacbell.net>, Dougcoms@aol.com, Erica Craven <elc@lrolaw.com>, Allen Grossman <grossman356@mac.com>, Harrison Sheppard <hjslaw@jps.net>, home@prosf.org, info@whatsrightwithlawyers.com, Joe Lynn <joelynn114@hotmail.com>, Peter Warfield <libraryusers2004@yahoo.com>, Marc Salomon <marc@cybre.net>, Oliver Luby <oliverlear@yahoo.com>, Paul Zarefsky <Paul.Zarefsky@sfgov.org>, Pmonette-shaw@earthlink.net, rak0408@earthlink.net, Sue Cauthen <SCau1321@aol.com>, Bruce Wolfe MSW <sotf@brucewolfe.net>, SOTF <sotf@sfgov.org>, Steve Jones <Steve@sfbg.com>, Wayne Lanier <w_lanier@pacbell.net>

Kimo,

You have asked for "correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their email address was revealed by the city."

Following a search for records responsive to your request, I have identified none.

Thanks for your request, Kimo. Have a happy and safe holiday!

Best,
MATT DORSEY

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4662 Direct
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(415) 554-6770 TTY

http://www.sfgov.org/cityattorney/

"Kimo Crossman" <kimo@webnetic.net>

11/21/2007 09:23 AM

To"'Paul Zarefsky'" <Paul.Zarefsky@sfgov.org>, "'Matt Dorsey'" <Matt.Dorsey@sfgov.org>, "'Alexis Thompson'" <Alexis.Thompson@sfgov.org>

cc"'Allen Grossman'" <grossman356@mac.com>, "'Wayne Lanier'" <w_lanier@pacbell.net>, "'Peter Warfield'" <libraryusers2004@yahoo.com>, "'James Chaffee'" <chaffeej@pacbell.net>, <home@prosf.org>, <Pmonette-shaw@earthlink.net>, "'Oliver Luby'" <oliverlear@yahoo.com>, "'Joe Lynn'" <joelynn114@hotmail.com>, "'Marc Salomon'" <marc@cybre.net>, <rak0408@earthlink.net>, <Dougcoms@aol.com>, "'SOTF'" <sotf@sfgov.org>, "'Bruce Wolfe MSW'" <sotf@brucewolfe.net>, "'Amanda Witherell'" <amanda@sfbg.com>, "'Steve Jones'" <Steve@sfbg.com>, <info@whatsrightwithlawyers.com>, "'Harrison Sheppard'" <hjslaw@jps.net>, "'Erica Craven'" <elc@lrolaw.com>, "'Sue Cauthen'" <SCau1321@aol.com>

Subject Immediate Disclosure Request - email privacy complaints

Immediate Disclosure Request

To City Attorney

Please provide correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their email address was revealed by the city.

Please email to me this information on a daily incremental basis and in its original format. If it exists as paper only then please provide in a scanned PDF format.