

DRAFT

November 9, 2005

R. David Paulison, Acting Director
Federal Emergency Management
500 C Street, SW., Room 840
Washington, DC 20472

Dear Mr. Paulison:

We write as members of the Louisiana Legislative Black Caucus, to request contact data for our constituents who have evacuated their homes in the aftermath of Hurricane Katrina. More specifically, we request that the Federal Emergency Management Authority (FEMA) disclose the names, telephone numbers, addresses, and email addresses where our constituents may now be reached, as kept in FEMA records.

We are aware that the Freedom of Information Act (FOIA) forbids disclosure of "personal . . . files," 5 U.S.C. 552(b)(6), and that there are judicial decisions that recognize that contact data is such personal information as exempted from disclosure. Yet, we also recognize that not all personal files are exempted from disclosure. More specifically, FOIA exempts "personal . . . files *the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.*" 5 U.S.C. 552(b)(6) (emphasis added).

As members of the legislature, we seek to communicate with our constituents. We seek to do so for two central reasons. First, we seek the guidance of our constituents as we undertake decisions on their behalf. Second, we seek to apprise them of the decisions that we are taking on their behalf as legislators. It is vitally important that we do so, for in communication with their constituents, legislators assure that democratic government - of the people and by the people - is in concert with the will of the people and that it does the people's will. It is counterintuitive that Congress intended that FOIA constitute a barrier here in Louisiana to the implementation of the republican form of state government that the United States Constitution requires that the federal government guarantee. United States Constitution, Article IV, Section 4.

It is clear that Congress intended that individuals be spared unwarranted intrusions respecting their personal information. But under the circumstances when large swaths of a major metropolitan area have been quite literally emptied of population in the aftermath of the greatest natural disaster in the history of the United States, and when there is no way for legislators to undertake the ordinary, expected, and responsible task of seeking advice and counsel from their constituents and feeding information back to their constituents, it cannot be that the disclosure of constituents' contact data to their legislators is a disclosure "*which would constitute a clearly unwarranted invasion of personal privacy.*" For communication from legislative representatives is part of the political compact made by the people with their government, and such communication is not that from which the people require protection, but is instead that which the people require. In short, constituents have no privacy interest in protecting their contact data from legislators who represent them, when because of a natural disaster legislators are without the ordinary mechanisms of obtaining contact with their constituents. That is true particularly when we as legislators wish to communicate with our constituents regarding the health and safety of or constituents and governmental decisions including new legislation regarding their health and safety after Hurricane Katrina. (See Privacy Act at 5 U.S.C. 552a(b)(8), which provides an exemption from ordinary non-disclosure rules.)

We are aware that as of November 8, 2005, FEMA has agreed to send elections material to displaced Louisianians, on behalf of Louisiana's chief elections officer, Secretary of State Al Ater. This is commendable on the part of FEMA, but it does not meet our interest in being able to communicate with our constituents. Moreover, presuming that FEMA's agreement is in response to a FOIA request for contact data from Secretary Ater, there was no reason for FEMA to refuse the request and agree to a mere second best solution, for under the Privacy Act , records containing personal information *may* be disclosed "to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law." 5 U.S.C. 552a(b)(7). Beyond this, we maintain that FEMA is obligated to release contact data to all local elections officials such as registrars of voters and clerks of court, who have need of such data to carry out their assigned tasks to enforce laws related to elections and voter eligibility.

Attached to this letter and incorporated into it by reference is a computer file showing the breakdown of our legislative districts by street. We trust that this will provide you with information of sufficient specificity such that you can identify those persons whose contact data we have requested. We trust that the information we seek is readily available, as the agency is in present contact with victims of the

hurricane. We ask that you expedite your response to this request, as the legislature of the state is now in session and without the information we seek, we cannot properly inform our constituents about the health, safety, and other matters respecting which we have a compelling need to communicate to our constituents.

In advance, thank you for your attention.

Sincerely,

MEMBERS OF THE LOUISIANA LEGISLATIVE
BLACK CAUCUS WHOSE DISTRICTS WERE
SEVERELY IMPACTED BY HURRICANES RITA
AND KATRINA

LA. REPRESENTATIVE CEDRIC RICHMOND,
DISTRICT 101

LA. REPRESENTATIVE AUSTIN BADON,
DISTRICT 100

LA. SENATOR DIANA BAJOIE, DISTRICT 5

LA. REPRESENTATIVE KAREN CARTER,
DISTRICT 93

LA. SENATOR ANN DUPLESSIS, DISTRICT 2

LA. REPRESENTATIVE CHERYL GRAY,
DISTRICT 98

LA. REPRESENTATIVE TERRELL HARRIS,
DISTRICT 87

LA. REPRESENTATIVE JALILA JEFFERSON-
BULLOCK, DISTRICT 91

LA. REPRESENTATIVE JUAN LAFONTA,
DISTRICT 96

LA. REPRESENTATIVE CHARMAINE
MARCHAND, DISTRICT 99

LA. REPRESENTATIVE ARTHUR MORRELL,
DISTRICT 97

LA. SENATOR EDWIN MURRAY, DISTRICT 4

LA. SENATOR ROY QUEZAIRE,
DISTRICT 58

LA. SENATOR DERRICK SHEPHERD,
DISTRICT 3

cc: Cleo Fields, Counsel
Al Ater, LA. Secretary of State