

**CLOSED
CIVIL
CASE**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 05-60340-CIV-MARRA

SUN SENTINEL COMPANY, publisher
of the South Florida Sun-Sentinel,

Plaintiff,

v.

U.S. DEPT. OF HOMELAND SECURITY, and its component
FEDERAL EMERGENCY MANAGEMENT AGENCY,

Defendants.

FILED by *[Signature]* D.C.
MAY 17 2006
CLARENCE MAUDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

FINAL JUDGMENT REGARDING PRODUCTION OF RECORDS

This Final Judgment is entered pursuant to and in furtherance of this Court's April 14, 2006 Opinion and Order granting in part and denying in part the parties' cross motions for summary judgment in this case. The Court incorporates its April 14, 2006 Order [D.E. 63] as if fully set forth herein and further orders as follows:

Addresses of Disaster Claimants

Within fifteen (15) days after the stay described in paragraph nine expires, FEMA shall begin a rolling production of the addresses of disaster claimants contained in the NEMIS database with respect to the disasters that are the subject of the Sun-Sentinel's requests. The rolling production shall be completed within 90 days of when the stay expires.

[Handwritten initials]

Inspector Comments

On or before June 15, 2006, FEMA shall begin a rolling production of the inspector comments contained in the NEMIS database with respect to the disasters that are the subject of the Sun-Sentinel's requests. The rolling production shall be completed by September 15, 2006.

Inspector Names and Identification Numbers

On or before June 30, 2006, FEMA shall produce to the Sun-Sentinel the names and identification numbers of FEMA inspectors encompassed by the Sun-Sentinel's request.

Email Communications to or from Michael Brown

On or before May 17, 2006, FEMA shall produce to the Sun-Sentinel copies of all emails found not to have been privileged pursuant to this Court's Order of April 14, 2006.

Quality Control Materials

On or before May 17, 2006, FEMA shall produce to the Sun-Sentinel the final quality control reports in an unredacted form, except that names of disaster applicants may be redacted pursuant to this Court's April 14, 2006 order.

On or before June 15, 2006, FEMA shall produce to the Sun-Sentinel the interim quality control reports, except that names of disaster applicants may be redacted pursuant to this Court's April 14, 2006 order.

On or before June 30, 2006, FEMA shall produce to the Sun-Sentinel the quality control check sheets in an unredacted form, except that names of disaster applicants may be redacted pursuant to this Court's April 14, 2006 order.

Final Order

This is a final order from which appeal may be taken in accordance with the applicable rules of civil procedure, rules of appellate procedure, and local rules.

Stay Pending Appeal

FEMA has represented to the Court that it intends to appeal those portions of this Judgment and the Court's April 14, 2006 order requiring release of claimants' addresses and seeks a stay pending appeal. A stay is warranted in this case because absent a stay, the addresses in question would be disclosed and FEMA's appellate review would be rendered meaningless.

Because of the extraordinary amount of litigation in which the United States and its agencies are involved, and because of the government's need to review thoroughly all cases throughout the country to determine which are worthy of appellate review, the government is given more time to file a notice of appeal than other litigants. Fed.R.App.P. 4(a)(1) (60 days for the government as compared to 30 days for other litigants in civil cases); Fed.R.App.P. 4(b)(1) (30 days for the government as compared to 10 days for defendants in criminal cases). Because FEMA has already determined that an appeal is warranted and will be taken, the sixty (60) day time frame to which it is entitled by rule is not needed in this case.

As the parties are aware, there is presently pending in the Eleventh Circuit Court of Appeals a case involving, in part, the identical issue being appealed by FEMA in this case, namely, the propriety under the Freedom of Information Act of either releasing or withholding the addresses of claimants for monetary reimbursement from FEMA stemming from hurricane related damage. The News Press, et al. v. U.S. Department of Homeland Security, et al., Case No. 05-16771-F ("the News Press appeal"). The Court is advised that the appellant in the News

Press Appeal has quoted portions of this Court's April 14, 2006 Order in its reply brief and has provided a copy of the Order to the Court of Appeals. Given that this Court's April 14, 2006 Order has been presented to the Court of Appeals and that the Sun-Sentinel was not a party to the News Press appeal, this Court believes it would be unfortunate if the appellate remedies of the parties to this case are directly or indirectly resolved by a decision in the News Press appeal without their full participation before the appellate court. Granting a full and complete stay from the date of judgment through the end of the appellate process in this case will permit FEMA to delay filing its notice of appeal for sixty (60) days, even though it has already determined it will appeal. If FEMA was to take that course of action, it would unnecessarily delay the prosecution of the appeal of this case and increase the risk that the merits of this Court's Order will be decided either directly or indirectly by the Eleventh Circuit's resolution of the News Press appeal, without the parties to this case having the opportunity to be heard on the merits of this Court's April 14, 2006 Order. The only way to remedy that potential inequity is to grant FEMA a limited stay in the first instance. The limited stay would be extended automatically to the completion of appellate review once FEMA files its notice of appeal. By proceeding in this fashion, FEMA will be protected with the stay it seeks and deserves, but it will discourage an unnecessary and unwarranted delay in the prosecution of its appeal. Therefore, a stay is hereby granted for 20 days from the date hereof. If FEMA files its notice of appeal within said time period, the stay shall continue throughout the pendency of the appeal. The stay is limited to release of claimants' addresses only and does not affect the production of any other information pursuant to this Order and the Court's April 14, 2006 order.

Expedited Consideration and Review

This Court hereby requests the Clerk to expedite preparation and forwarding of the record of this appeal to the Eleventh Circuit Court of Appeals. The appellant(s) on appeal shall cooperate with the clerk to enable the clerk to prepare the record.

Attorney's Fees

The Sun-Sentinel may seek an award of attorneys' fees pursuant to applicable rules. Any such motion shall be briefed in accordance with the briefing schedule provided by applicable rule. This Court shall delay ruling on any such motion until resolution of the issues on appeal, pursuant to agreement of the parties. The parties shall notify the Court as to whether they desire a ruling on the fees motion upon completion of appellate proceedings in this case.

Conclusion

The Clerk shall close this case and all pending motions are denied as moot.

DONE and ORDERED in Chambers at Fort Lauderdale in the Southern District of Florida, this 17th day of May 2006.



KENNETH A. MARRA
U. S. DISTRICT JUDGE

Copies provided:
AUSA Steven R. Petri
Rachel Fugate, Esquire