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May 10, 2021

VIA EMAIL (FOIA@sba.gov)

Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third Street SW, Eighth Floor
Washington, DC 20416

Re: Request for Records Relating to Paycheck Protection Program

Dear Ms. Hardy:

Pursuant to the Freedom of Information Act 5 U.S.C. § 552 (hereinafter the “FOIA”) and the U.S. Small Business Administration’s (SBA’s) implementing regulations, 13 C.F.R. § 102.1 et seq., and on behalf of the Associated General Contractors of America (hereinafter “AGC”), I hereby make the following requests for the production of SBA records relating to Paycheck Protection Program (PPP) loans.

- I. In any electronic format that standard software can readily read, and preferably in Microsoft Excel, I request your production of all records of the following information on each PPP loan that SBA has approved:
 - A. the borrower’s name;
 - B. the city and the state in which the borrower is located;
 - C. the borrower’s NAICS code;
 - D. the date on which SBA approved the borrower’s loan;
 - E. into which of the following categories the borrower’s loan fits:
 1. under \$2 million;
 2. between \$2 million and \$5 million; or
 3. between \$5 million and \$10 million;
- F. whether SBA has received an application for the forgiveness of the borrower’s loan, and if so:
 1. the date on which SBA received that application;
 2. whether SBA (or any entity acting on the agency’s behalf, or on its instructions) has requested the borrower to respond to SBA Form 3509 or SBA Form 3510, and if so;

- a. to which of those two forms SBA (or any other entity acting on the agency's behalf, or on its instructions) has requested the borrower to respond; and
 - b. whether SBA has received the borrower's response to the relevant form (whether SBA Form 3509 or SBA Form 3510), and if so:
 - i. the date on which SBA received that response;
 3. whether SBA (or any other entity acting on the agency's behalf, or on its instructions) has made any subsequent requests for borrower to provide additional information; and
 - G. whether SBA has granted or denied the borrower's application for the forgiveness of its loan either in whole or in part, and if so:
 1. the date on which SBA granted or denied the borrower's application for the forgiveness of its loan either in whole or in part.
- II. In any electronic format that standard software can readily read, I request your production of all records of all contracts that meet the following criteria:
- A. the contracts are between SBA and any other entity, other than a lender; and
 - B. the contracts obligate such other entity to assist SBA in scoring or otherwise evaluating applications for the forgiveness of PPP loans over \$2 million, including but not limited to contracts obligating such other entity to assist SBA in scoring or otherwise evaluating responses to SBA Form 3509 or SBA Form 3510.
- III. In any electronic format that standard software can readily read, I request your production of all records of all other contracts (not responsive to the immediately preceding request) that meet the following criteria:
- A. the contracts are between SBA and any other entity, other than a lender; and
 - B. the contracts obligate such other entity to assist SBA in collecting information from borrowers of PPP loans over \$2 million; and
 - C. such information is something that SBA (or any other entity acting on the agency's behalf, or at its direction) may review or consider in the process scoring or otherwise evaluating applications for the forgiveness of such loans, including but not limited to information that SBA (or any other entity acting on the agency's behalf, or at its direction) may review or consider in the process scoring or otherwise evaluating responses to SBA Form 3509 or SBA Form 3510.
- IV. In any electronic format that standard software can readily read, I request your production of all records of all standards and procedures that SBA has required or instructed other entities to apply or follow in the process of meeting their obligations under any of the contracts that SBA identifies in response to the two requests that immediately precede this one, and all records of all other guidance that SBA has provided to such other entities.

V. In any electronic format that standard software can readily read, I request your production of all records of all standards and procedures that SBA has required or instructed its own employees to apply or follow in the process of scoring or otherwise evaluating applications for the forgiveness of PPP loans over \$2 million, including but not limited to their scoring or other evaluation of responses to SBA Form 3509 or SBA Form 3510.

VI. In any electronic format that standard software can readily read, I request your production of all records of all descriptions, summaries and explanations of the “multi-factor analysis” to which SBA referred on December 9, 2020, when it posted its Frequently Asked Question (FAQ) # 53 on its web site. (As of the date of this letter, such FAQ remains on SBA’s web site, *inter alia*, at the following URL: <https://www.sba.gov/sites/default/files/2021-04/PPP%20FAQs%204.6.21%20FINAL-508.pdf>.)

In conjunction with your response, please also indicate the date on which you made the copies of the records that you provide in response to the first of these six questions.

If you regard any of these records (or portions thereof) as potentially exempt from the FOIA’s disclosure requirements, I request that you nevertheless exercise your discretion to disclose them. As the FOIA requires, please also release all segregable, nonexempt portions of these records. See 5.U.S.C. § 552(a)(8). To permit me to make an intelligent and informed decision on whether to file an administrative appeal of any denied records (or portions thereof), and in accordance with SBA’s implementing regulations, please also identify and describe any withheld records (or portions thereof) and explain the basis for your claims to an exemption from disclosure.


AGC agrees to pay reasonable fees, as prescribed by the SBA regulations on the FOIA, but would appreciate your contacting me in advance if the fees appear likely to exceed \$1,000.

Let me also confirm that I will serve as the AGC point of contact for these requests: My street address is 2300 Wilson Boulevard, Suite 300, Arlington, VA 22201. My direct line is 703-837-5335. And my email address mike.kennedy@agc.org.

Please email the requested records directly to me at the email address that I have provided.

Thank you for devoting your time and your attention to this matter.

Sincerely,


Michael E. Kennedy
General Counsel