

Hans Bader  
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May 25, 2021

Small Business Administration  
Freedom of Information/Privacy Acts Office  
Email: [FOIA@sba.gov](mailto:FOIA@sba.gov)

Re: FOIA REQUEST; FEE WAIVER REQUESTED

Dear Sir or Madam:

Pursuant to FOIA, Liberty Unyielding (a media entity) and the Bader Family Foundation (a tax-exempt non-profit 501(c)(3)) hereby request the following records:

1. Emails in the covered date range about the constitutionality or unconstitutionality of prioritizing the award of grants to female-owned restaurants or to restaurants owned by blacks, Hispanics, or non-whites in any COVID-19 relief legislation or the American Rescue Plan Act, where such emails were sent or received by the SBA's Administrator or general counsel or deputy general counsel, and where such emails were also sent or received by anyone outside the Small Business Administration.
2. Emails in the covered date range about the constitutionality or unconstitutionality of prioritizing the award of grants from the Restaurant Revitalization Fund in the American Rescue Plan Act, to small business concerns owned and controlled by women, or to socially and economically disadvantaged small business concerns, where such emails were sent to the SBA's Administrator or general counsel or deputy general counsel, and where such emails were also sent or received by anyone outside the Small Business Administration.
3. Any email in the covered date range sent to or by the SBA Administrator about whether any provision in the American Rescue Plan (including any provision dealing with restaurants) violates constitutional provisions against racial discrimination or violates constitutional equal-protection provisions or complies with constitutional provisions regarding racial discrimination or equal protection.

The "covered date range" begins on February 1, 2021, and ends on the date on which you process this request, or June 23, 2021, whichever is earlier. (By "process this request," I mean begin to identify or gather responsive records). The term "administrator" in this FOIA request includes any acting administrator. Please produce records in an electronic format.

We request a fee waiver (including a waiver of search and review fees) because disclosure of the information sought is in the public interest; because Liberty Unyielding is a media entity; and because this request is not for commercial benefit.

This FOIA request deals with an issue of great public interest and concern: race-specific relief for restaurant owners. This is a matter of national media coverage and great legal and political controversy,

as well as a key government policy. See, e.g., Jonathan Mattise, *Suit challenges restaurant aid priority to women, minorities*, ABC News, May 12, 2021 (<https://abcnews.go.com/US/wireStory/suit-challenges-restaurant-aid-priority-women-minorities-77650760>); John Kruzel, *Federal judge says Biden restaurant fund discriminated against white male*, The Hill, May 19, 2021 (<https://thehill.com/regulation/554361-federal-judge-says-biden-restaurant-fund-discriminated-against-white-male>).

We request a fee waiver partly because Liberty Unyielding is a blog that qualifies as media. That's because for years, it has published daily and has been cited by newspapers and law reviews. Courts ruled that a non-profit that blogged qualified as a media entity, even though it blogged far less than Liberty Unyielding. See *Cause of Action v. FTC*, 799 F.3d 1108 (D.C. Cir. 2015). Liberty Unyielding contains thousands of articles, and is read by tens of thousands of people monthly. Between November 2020 and April 2021, it had between 90,000 and 290,000 readers monthly, according to Similarweb. See <https://www.similarweb.com/website/libertyunyielding.com>.

Hans Bader and Liberty Unyielding are regularly cited about civil-rights, civil-liberties, and legal issues by the press. See, e.g., George Leef, *Vermont Thumbs Its Nose at the Constitution*, National Review, April 2, 2021 (citing "Hans Bader" at "Liberty Unyielding" about racial discrimination) ([www.nationalreview.com/corner/vermont-thumbs-its-nose-at-the-constitution](http://www.nationalreview.com/corner/vermont-thumbs-its-nose-at-the-constitution)); Richard A. Epstein, *The Role of Guidances in Modern Administrative Procedure*, 8 Journal of Legal Analysis 47 (2016) (<https://doi.org/10.1093/jla/lav012>) (professor cited a Liberty Unyielding article by Bader about civil-rights guidance); Alan Greenblatt, *Reparations for Slavery: Are slaves' descendants owed compensation?*, CQ Researcher, Aug. 23, 2019 (quoting Bader of Liberty Unyielding, [https://library.cqpress.com/cqresearcher/document.php?id=cqresrre2019082300#REF\[24\]](https://library.cqpress.com/cqresearcher/document.php?id=cqresrre2019082300#REF[24])); Editorial, *Democrats need voters to forget the economy and other commentary*, New York Post, July 8, 2019, [nypost.com/2019/07/08/democrats-need-voters-to-forget-the-economy-and-other-commentary](http://nypost.com/2019/07/08/democrats-need-voters-to-forget-the-economy-and-other-commentary) (quoting "Hans Bader" of "Liberty Unyielding"); George Will, *'Alice in Wonderland' coercion*, Oklahoman, May 26, 2013, [www.oklahoman.com/article/3833883/george-f-will-alice-in-wonderland-coercion](http://www.oklahoman.com/article/3833883/george-f-will-alice-in-wonderland-coercion) (syndicated columnist cited Hans Bader about civil-rights and civil-liberties issues); Roger Clegg, *University of Pittsburgh Medical Center Punishes Doctor Who Questioned Affirmative Action*, National Review, Aug. 5, 2020, [www.nationalreview.com/corner/university-of-pittsburgh-medical-center-punishes-doctor-who-questioned-affirmative-action/](http://www.nationalreview.com/corner/university-of-pittsburgh-medical-center-punishes-doctor-who-questioned-affirmative-action/) (quoting Bader and linking to Liberty Unyielding).

As syndicated columnist George Will notes, Hans Bader is a former employee of the Education Department's Office for Civil Rights – a "former OCR lawyer." See George Will, *'Alice in Wonderland' coercion*, Oklahoman, May 26, 2013, available at <https://www.oklahoman.com/article/3833883/george-f-will-alice-in-wonderland-coercion>. Bader has also litigated cases involving racial classifications and affirmative action. See, e.g., *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9<sup>th</sup> Cir. 1997). Thus, Bader has expertise in the civil-rights issues related to this FOIA request.

Moreover, Bader has already published at Liberty Unyielding about the very program at issue in this FOIA request. See Bader, *Lawsuit filed against Biden administration for racial and gender bias in COVID relief*, Liberty Unyielding, March 12, 2021 (<https://libertyunyielding.com/2021/05/12/lawsuit-filed-against-biden-administration-for-racial-and-gender-bias-in-covid-relief/>).

Hans Bader and Liberty Unyielding have demonstrated an ability to disseminate the results of FOIA requests to the broader public. When agencies produce records to Bader, he posts them on the internet, and includes a hyperlink to them in blog posts at Liberty Unyielding and other blogs that reproduce

Bader's Liberty Unyielding blog posts. See, e.g., Hans Bader, *Court orders release of records related to claim global warming causes severe winter cold*, Liberty Unyielding, March 18, 2016 (<https://libertyunyielding.com/2016/03/18/court-orders-release-of-records-related-to-claim-global-warming-causes-severe-winter-cold>).

Hans Bader has already been quoted by the media to a national audience about the issues related to this FOIA request. (See Mairead McArdle, *Biden's Restaurant Relief Program Excludes White Male Owners*, Daily Wire, May 12, 2021) (<https://tinyurl.com/9cb74rhf>).

Other web sites link to Bader blog posts at Liberty Unyielding disclosing records released under FOIA, making the records available to a broad cross-section of the public – including judges and policymakers who read blogs. See, e.g., *CEI v. OSTP*, 185 F.Supp.3d 26, 29 (D.D.C. 2016) (federal judge reopened a case after coming across records posted on the internet by Bader that were at variance with the agency's earlier representations to the court) (the judge wrote, "The court learned through public sources that" supposedly non-existent documents had been "uncovered"; "Surprised by this revelation, the court issued an Order to Show Cause asking why it should not reconsider its initial decision.").

A fee waiver is appropriate because this FOIA request furthers the public interest. That's because the requested records, which relate to a major federal program and civil-rights issues, concern identifiable operations or activities of the government; the records are likely to contribute to an understanding of specific government operations or activities and are meaningfully informative in relation to the subject matter of the request; disclosure would contribute to the understanding of the public at large (including a national audience), as opposed to that of the individual requester or a narrow segment of interested persons, given Liberty Unyielding's (and Hans Bader's) demonstrated ability to disseminate information on this subject to the broader public, and the subject matter expertise of Hans Bader, a former employee of the federal Office for Civil Rights who has expertise in civil-rights issues; and because the disclosure will contribute significantly to public understanding of government operations or activities. Thus, disclosure of the information sought is in the public interest.

Moreover, co-requester Bader Family Foundation is a non-profit, tax-exempt 501(c)(3) entity that focuses on civil-liberties and civil-rights issues, so this request is not for commercial benefit. And Hans Bader derives no income from Liberty Unyielding, which will be used to disseminate the results of this FOIA request. As you can see from Pro Publica's web site, Bader Family Foundation is a tax-exempt nonprofit, and Hans Bader was a trustee of the Bader Family Foundation as shown on its IRS filing for 2018: see <https://projects.propublica.org/nonprofits/organizations/276359747>

I, Hans Bader, declare under penalty of perjury under the laws of the United States of America that the facts stated above are true and correct, this 25th day of May 2021.

*Hans Frank Bader*

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