

DECLARATION OF JEFFREY S. GUTMAN

I, Jeffrey S. Gutman, am over 18 years of age and competent to testify:

1. I am a Professor of Clinical Law and the Director of the Public Justice Advocacy Clinic at George Washington Law School. I have over ten years of experience supervising students who represent individuals seeking unemployment compensation in administrative appeals hearings in the District of Columbia. I am a 1986 graduate of Harvard Law School, have been on the faculty at George Washington University Law School since 1994 and am a member of the District of Columbia Bar in good standing.

2. The Clinic represents approximately ten individuals each academic year in unemployment appeals hearings before the District of Columbia Office of Administrative Hearings (OAH). Nearly all of our cases challenge a DOES determination that the claimant quit without good cause or engaged in misconduct causing their termination. I prepare teaching materials for Clinic students which require me to review all reported unemployment cases decided by the D.C. Court of Appeals and changes to the OAH Rules of Procedure.

3. Based upon discussions convened periodically by advocates for unemployment compensation claimants, I have become aware that unless or until OAH receives a written notice of determination from DOES from a claimant when they file a notice of appeal, OAH will not schedule an unemployment compensation appeal hearing.

4. This understanding is supported by the OAH UI appeals form (Attachment A), which states, "You may submit this form first, but we cannot schedule a hearing or proceed with your case until you submit a copy of the DOES decision you are appealing." I most recently reviewed this form on OAH's website, <https://oah.dc.gov/node/163602>, on December 20, 2021.

5. I attend periodic UI Stakeholders' Meetings convened by the Office of Administrative Hearings and attended by select OAH Administrative Law Judges and staff, DOES representatives, and representatives for both individuals seeking unemployment compensation and employers.

6. On or about May 21, 2021, I attended a UI Stakeholders' Meeting convened virtually by OAH Administrative Law Judge Paul Handy, the Principal ALJ for the unemployment compensation calendar.

7. As part of the agenda, Judge Handy presented data on the number of unemployment compensation appeals filed at OAH in recent months. To the best of my recollection, Judge Handy shared that OAH had recently received many hundreds of unemployment compensation appeals each month – a dramatic rise over the pre-COVID-19 numbers. To the best of my recollection, Judge Handy shared that a significant number of such appeals forms were filed without any attached written notice of determination. I recall that Judge Handy said that OAH did not schedule hearings in such cases. Instead, it issued a letter or order to the claimant requesting a copy of a notice of determination.

8. On or about September 30, 2021 I filed a Freedom of Information Act request with the D.C. Department of Employment Services. My request, assigned number 2022-FOIA-08482, is attached as Attachment B. I requested eleven categories of records. In general, I requested records that referred to the numbers of individuals who filed an application for unemployment insurance or pandemic unemployment assistance on or prior to October 1, 2021, and the dates of such applications, but whose claims had not been decided; records that referred to the numbers of individuals who filed an application for unemployment insurance or pandemic unemployment assistance, and the dates of such application, and whose claims had been granted,

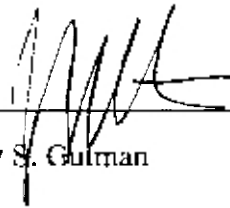
but had yet to receive retroactive benefits; records that referred to the numbers of individuals who applied for a weekly benefit amount (and dates of such applications) higher than the pandemic unemployment assistance minimum and whose requests were granted, but had not been paid a retroactive amount, and records that referred to the average amount of benefits paid to persons granted unemployment insurance or pandemic unemployment assistance in whole or in part since March 15, 2020.

9. On December 28, 2021, I received a response to my request. That response is attached as Attachment C. It stated that DOES had no records responsive to any of my requests.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 31, 2021

Washington, DC



Jeffrey S. Guttman

Declaration of Jeffrey S. Gutman

Signed December 31, 2021

Attachment A



DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
ONE JUDICIARY SQUARE
441 4TH STREET NW, SUITE 450N
WASHINGTON, DC 20001
Tel: (202) 442-9094 Fax: (202) 442-4789
Email: oah.filing@dc.gov

UNEMPLOYMENT INSURANCE APPEAL FORM

Use this form to request a hearing before an Administrative Law Judge if you wish to appeal a decision of the Department of Employment Services ("DOES") concerning unemployment insurance benefits.

READ INSTRUCTIONS HERE AND ON THE REVERSE SIDE

For Help and Information, call (202) 442-9094

- 1. Please submit with this form a copy of the Claims Examiner's Determination or other DOES decision you are appealing.
2. Claimants must continue to file claim forms with DOES, even while their appeals are pending in the Office of Administrative Hearings.
3. Save the envelope in which you received the DOES decision you are appealing. Bring the envelope to the hearing.
4. Complete the following for CLAIMANT or EMPLOYER, and sign below.

CHECK ONE: I AM: THE CLAIMANT []

OR THE EMPLOYER []

Claimant's Name: _____

Employer's Name: _____

Soc. Sec. No. (last four digits): XXX-XX-

Representative (if any): _____

Representative (if any): _____

Claimant's FULL Address (with unit number, zip code):

Employer's/Rep.'s FULL Address (with unit number, zip code):

Claimant's Telephone: _____

Claimant's Email: _____

*Do you consent to service by email? Yes

Employer's/Rep.'s Telephone: _____

Employer's/Rep.'s Fax: _____

Employer's/Rep.'s Email: _____

*Do you consent to service by email? Yes

Claimant: Are you self-employed? No

If you most recently worked for the DC Government, state the agency, department or office for which you worked:

In addition to the attorneys listed in the attached documents, law students may be available to provide free legal assistance to claimants in DOES cases. Would you like us to share your contact information with a law school clinic for the purpose of representing you in your case? Yes

YOUR REASON FOR FILING APPEAL: _____

Will you need an INTERPRETER for the hearing? If so, what LANGUAGE? _____

YOUR SIGNATURE: _____

TURN OVER FOR MORE INSTRUCTIONS



UNEMPLOYMENT INSURANCE APPEAL FORM, PAGE 2

ADDITIONAL INSTRUCTIONS

- **WHERE TO FILE:** You **MUST** file your appeal with the **Office of Administrative Hearings**. The Office of Administrative Hearings (“OAH”) is not part of the Department of Employment Services. You cannot file your appeal at a DOES One-Stop Center or any other DOES office.

During the COVID-19 Public Health Emergency, OAH is not open for walk-in visits or in-person filing. You may file an appeal by mail, by fax or by email. You are strongly encouraged to file your appeal by email or fax, as filing by mail will result in delays.

By Mail. You may file an appeal by mail at the following address:

**Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW, Suite 450 North
Washington, DC 20001-2714**

By Fax. You may file an appeal by fax to **(202) 442-4789**. If possible, please include a copy of the Claims Examiner’s Determination or other written decision you are appealing. Faxes received after 5:00 p.m. or on any non-business day are considered “filed” on the next business day. An appeal sent by fax will not be filed unless it is complete and legible when received.

By Email. You may file an appeal by email to **OAH.FILING@DC.GOV**. If possible, please attach a scanned copy of the Claims Examiner’s Determination or other written decision you are appealing.

- **APPEAL DEADLINE:** Your appeal must be either postmarked by the U.S. Postal Service (not a private postage meter) or actually received by the Office of Administrative Hearings within **fifteen (15)** calendar days of the date DOES mailed the Claims Examiner’s Determination to you. The date of mailing is usually stated on the Claims Examiner’s Determination. The deadline runs from the date DOES mailed the Determination to you, not from the date you received it. If the Claims Examiner’s Determination was NOT mailed to you, or if was not mailed to your correct address, you must file within **fifteen (15)** calendar days of actual delivery of the Claims Examiner’s Determination.

If the 15-calendar-day filing deadline falls on a Saturday, Sunday or a legal holiday, the deadline is extended to the next business day.

The appeal deadline may be extended if an administrative law judge finds “good cause” or “excusable neglect” for a delay. The person filing the appeal bears the burden of proving at the hearing that there was a good reason for the delay. In addition, during the COVID-19 Public Health Emergency, a judge may extend the deadline under the Chief Administrative Law Judge’s order extending the appeal filing deadline to 30 days after the end of the Public Health Emergency. **If you file an appeal late without a good reason, your case may be dismissed.**

No one is authorized to give you different instructions about the deadline.

- **RULES:** The Rules of Procedure for the Office of Administrative Hearings may be found at www.oah.dc.gov and in the Office of Administrative Hearings Resource Center.

Please note: *By checking the YES box, I consent, according to OAH Rule 2841.16, to receive orders or any other documents issued in this case by email.

- **FURTHER INFORMATION:** For further information about this document or filing an appeal, please call (202) 442-9094.

Declaration of Jeffrey S. Gutman

Signed December 31, 2021

Attachment B



The Jacob Burns Community Legal Clinics

Tonya Sapp
General Counsel
Department of Employment Services
4058 Minnesota Avenue, NE, 5th Floor, Suite 5800
Washington, DC 20019

September 30, 2021

Dear Ms. Sapp:

Pursuant to D.C. Code § 2-531, *et seq.*, I request the following categories of records:

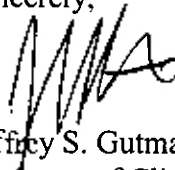
1. All records that refer or relate to the number of individuals who filed an application with DOES for unemployment insurance benefits on or prior to October 1, 2021, but whose claims have not yet been decided as of the date of your response to this request.
2. All records that refer or relate to the date on which the individuals identified in Request #1 filed an application with DOES for unemployment insurance benefits.
3. All records that refer or relate to the number of individuals who filed an application for Pandemic Unemployment Assistance (“PUA”) benefits on or prior to October 1, 2021, but whose claims have not yet been decided as of the date of your response to this request.
4. All records that refer or relate to the date on which the individuals identified in Request #3 filed an application with DOES for Pandemic Unemployment Assistance.
5. All records that refer or relate to the number of individuals who filed an application with DOES for unemployment insurance benefits and whose claims were granted prior to October 1, 2021, but who have yet to be paid a retroactive award of benefits for all weeks in which they are eligible for benefits as of the date of the response to this request.
6. All records that refer or relate to the date on which the individuals identified in Request #5 filed an application with DOES for unemployment insurance benefits.
7. All records that refer or relate to the number of individuals who filed an application with DOES for PUA and whose claims were granted prior to October 1, 2021, but who have yet to be paid a retroactive award of PUA for all weeks in which they are eligible for benefits as of the date of the response to this request.
8. All records that refer or relate to the date on which the individuals identified in Request #7 filed an application with DOES for PUA.
9. All records that refer or relate to the number of individuals who filed an application with DOES for a weekly benefit amount higher than the minimum for PUA and whose requests were granted prior to October 1, 2021, but who have yet to be paid a retroactive award of their increased PUA weekly benefit amount as of the date of the response to this request.
10. All records that refer or relate to the date on which the individuals identified in Request #9 filed a request with DOES for a higher PUA weekly benefit amount.
11. All records that refer or relate to the average amount of money paid since March 15, 2020 to each person who applied for unemployment insurance or PUA since March 15, 2020 whose claims were granted in whole or in part.

Please note that I am not requesting the names of claimants or information that may identify any claimant of unemployment insurance or PUA and that all such information may be redacted.

Pursuant to D.C. Code § 2-532(c)(1), a response to this request is due within 15 days, excluding Saturdays, Sundays, days of the Initial COVID-19 closure, and legal public holidays.

Pursuant to D.C. Code § 2-532(b), I request that the documents be furnished without charge, as a “waiver ... of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.” Understanding the extent, if any, of backlogs at DOES will benefit the public by revealing the operations of government and by facilitating policy recommendations that will promote the efficient operation of DOES to the benefit of claimants.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Gutman', written over a horizontal line.

Jeffrey S. Gutman
Professor of Clinical Law

Declaration of Jeffrey S. Gutman

Signed December 31, 2021

Attachment C

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

DR. UNIQUE MORRIS-HUGHES
DIRECTOR

28 December 2021

Jeffrey Gutman
Professor
George Washington University Law School
2000 G Street, NW
Washington, DC 20052

Sent via email only to jgutman@law.gwu.edu

Re: Response to Your Freedom of Information Act Request: 2022-FOIA-08482

Dear Requester:

This constitutes the response of the Department of Employment Services (DOES) to your request under the District of Columbia Freedom of Information Act (FOIA), dated 1 October 2021. At this time, there are no fees associated with this request. The following is the response to your specific requests.

REQUEST #1: All records that refer or relate to the number of individuals who filed an application with DOES for unemployment insurance benefits on or prior to October 1, 2021, but whose claims have not yet been decided as of the date of your response to this request.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975); *Judicial Watch, Inc. v. Dep't of State*, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); *Frank v. U.S. Dep't of Justice*, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #2: All records that refer or relate to the date on which the individuals identified in Request #1 filed an application with DOES for unemployment insurance benefits.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975); *Judicial Watch, Inc. v. Dep't of State*, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); *Frank v. U.S. Dep't of Justice*, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor

Office of the General Counsel

4058 Minnesota Ave, N.E. • Suite 5800 • Washington, D.C. 20019 • Office: 202.671.1500 • Fax: 202.724.7472

is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #3: All records that refer or relate to the number of individuals who filed an application for Pandemic Unemployment Assistance (“PUA”) benefits on or prior to October 1, 2021, but whose claims have not yet been decided as of the date of your response to this request.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep’t of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep’t of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #4: All records that refer or relate to the date on which the individuals identified in Request #3 filed an application with DOES for Pandemic Unemployment Assistance.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep’t of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep’t of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #5: All records that refer or relate to the number of individuals who filed an application with DOES for unemployment insurance benefits and whose claims were granted prior to October 1, 2021, but who have yet to be paid a retroactive award of benefits for all weeks in which they are eligible for benefits as of the date of the response to this request.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep’t of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep’t of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #6: All records that refer or relate to the date on which the individuals identified in Request #5 filed an application with DOES for unemployment insurance benefits.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep’t of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep’t of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #7: All records that refer or relate to the number of individuals who filed an application with DOES for PUA and whose claims were granted prior to October 1, 2021, but who have yet to be paid a retroactive award of PUA for all weeks in which they are eligible for benefits as of the date of the response to this request.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep't of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep't of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #8: All records that refer or relate to the date on which the individuals identified in Request #7 filed an application with DOES for PUA.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep't of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep't of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #9: All records that refer or relate to the number of individuals who filed an application with DOES for a weekly benefit amount higher than the minimum for PUA and whose requests were granted prior to October 1, 2021, but who have yet to be paid a retroactive award of their increased PUA weekly benefit amount as of the date of the response to this request.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep't of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep't of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #10: All records that refer or relate to the date on which the individuals identified in Request #9 filed a request with DOES for a higher PUA weekly benefit amount.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975); Judicial Watch, Inc. v. Dep't of State, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); Frank v. U.S. Dep't of Justice, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. Yeager v. Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982).

REQUEST #11: All records that refer or relate to the average amount of money paid since March 15, 2020 to each person who applied for unemployment insurance or PUA since March 15, 2020 whose claims were granted in whole or in part.

RESPONSE: DOES has no documents responsive to this request. DOES is not obligated under FOIA to create records that do not exist in order to satisfy a request. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975); *Judicial Watch, Inc. v. Dep't of State*, 177 F. Supp. 3d 450, 456 (D.D.C. 2016); *Frank v. U.S. Dep't of Justice*, 941 F. Supp. 4, 5 (D.D.C. 1996). A requestor is entitled only to records that an agency has in fact chosen to create and retain. *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982).

If you have any questions or concerns regarding this matter, please e-mail the FOIA Officer at tonya.robinson@dc.gov.

If for any reason, you interpret this to be a denial of your request, please know that, under D.C. Official Code § 2-537 and 1 DCMR § 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. An administrative appeal can be submitted to the Mayor online via the DC government Public FOIA Portal, <https://foia-dc.gov/App/Index.aspx>. An administrative appeal may also be submitted by mail or email. The appeal must include (1) a copy of the original request; (2) a copy of the public body's written denial letter issued to you, if any; (3) a written statement of the arguments, circumstances, or reasons in support of the information sought by your request; and (4) a daytime telephone number, and e-mail and/or U.S. Mail address at which you can be reached. The appeal letter must include "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as marked on the outside of the envelope. You may direct the written appeal to:

The Mayor's Office of Legal Counsel
FOIA Appeal
1350 Pennsylvania Ave, NW
Suite 407
Washington, DC 20004

An electronic version of the same information can be e-mailed to the Mayor's Office of Legal Counsel at foia.appeals@dc.gov. Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency or to the agency head if no officer is designated. Failure to follow these administrative steps will result in a delay in the processing and commencement of a response to your appeal to the Mayor.

Respectfully,

Tonya A. Robinson

Tonya A. Robinson
General Counsel/FOIA Officer

Digitally signed by Tonya A. Robinson
DN: cn=Tonya A. Robinson, o=DOES, ou=DOES GC,
email=tonya.robinson@dc.gov, c=US
Date: 2021.12.28 18:19:18 -05'00'