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BY EMAIL & U.S. MAIL

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General Counsel and Director of Professionalism
American Academy of Actuaries
1850 M Street, N.W., Suite 300
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Re: Access to Meetings

Dear Paul:

I represent Karen Smith, MAAA, with respect to her desire to attend meetings of the American Academy of Actuaries, including meetings of the Academy Board, the Actuarial Standards Board (“ASB”) and its committees, and the Committee on Qualifications (“CoQ”). Please direct all future communications concerning this matter to me.

Ms. Smith has been a member of the actuarial profession for over 25 years. She is very interested in openness and transparency in actuarial governance and standards setting. As indicated in emails to Academy staff in December and January and letters dated January 8 and January 19, 2018, Ms. Smith would like to attend, at her expense, upcoming ASB meetings, including its planning meeting on February 1-2, 2018, and certain committee meetings.

Article I, section 1 of the Academy’s Bylaws states that “Members *shall* be entitled to attend meetings of the Academy.” (Emphasis added.) Article XI, section 1 of the Bylaws establishes the ASB as an entity “within the Academy.” Section I.E.2 of the ASB’s Procedures Manual, entitled “Open Meeting Policy,” states, “*All* meetings of the ASB are open, and members of the actuarial profession and the public at large are invited to attend and observe the proceedings.” (Emphasis added.) The ASB reminds actuaries and other interested parties of its liberal open meeting policy in its annual reports and quarterly newsletters. *See, e.g.*, ASB 2016 Annual Report, at 6 (“All ASB meetings are open to the public, and interested parties may attend.”); 31 ASB Boxscore No. 3, at 2 (8/2017) (“All ASB meetings are open to the public, and interested parties may attend.”).

Section I.E.4 of the ASB Procedures requires the publication of the “time, date and place” of ASB meetings in, among other places, the Academy’s *Actuarial Update* and the *ASB Boxscore*

to facilitate attendance by members of the actuarial profession and the public at large. However, the most recent edition of *Actuarial Update*, from December 2017, provides none of this information for ASB meetings. Although *Actuarial Update* directs readers to the Academy's online events calendar, the online calendar provides no information about the time and place of ASB meetings in March, June, September, and December (other than that they will be in Washington, DC), and omits the ASB's planning meeting in February. Even more deficient is the *ASB Boxscore*, which lists only the dates of some (but not all) meetings, without any indication as to time and place, making it impossible for someone to attend one of the "open" meetings.

In emails to Erica Kennedy, the Academy's Assistant Director of Professionalism (Actuarial Standards), Ms. Smith indicated her intent and desire to attend the ASB February and March 2018 meetings, and requested information about the time, date, and place of these meetings. Rather than provide this information, Ms. Kennedy indicated that the February meeting was "an annual off site planning meeting" "to discuss internal and administrative matters only." According to past ASB annual reports, however, these planning meetings have included discussions on such substantive topics as: "reputation risk and stakeholder engagement"; "the profession's duty to the public and relationship with regulators"; "the level of prescription in standards[,] increasing member awareness of standards[,] and obtaining more feedback on standards"; and, "principles of actuarial work and ISAP concepts, such as peer review and sensitivity testing." (See 2016, 2015, 2013, 2012 ASB Annual Reports.) Although Ms. Kennedy says that the planning meeting "is not an open meeting," nothing in the ASB Procedures or other ASB material provides a basis for excluding the ASB planning meeting from the ASB's policy that "all" meetings are open. If Ms. Smith wishes to attend the planning meeting, the open meeting policy permits her to do so.

The same is true for ASB committee meetings. Section II.G of the ASB's Procedures confirms that ASB "[c]ommittee meetings are open to the public" as well. Although Ms. Smith asked Ms. Kennedy for the time, date, and place of the next ASB pension committee meeting, Ms. Kennedy has not yet provided that information.

On January 17, 2018, Ms. Smith emailed Academy staff about her desire to attend the next scheduled meeting or conference call of the Academy's Committee on Qualifications. In response, you state that CoQ conference calls "concern confidential information about specific individual actuaries" and that Ms. Smith's attendance would somehow "have a chilling effect on the deliberative process and substantially interfere with it." As a former chair of the CoQ and member of the CoQ as recently as 2015, Ms. Smith is well-aware of the content of CoQ calls/meetings. In addition to discussions about the drafting of the Qualification Standards, CoQ calls include deliberations regarding:

- Whether the Qualification Standards should be updated or revised;
- Reviewing and responding to correspondence from the actuarial community to the CoQ;
- Drafting and reviewing responses to Requests for Information;

- Guidance to be issued in the form of frequently asked questions posted on the Academy website; and
- Responses to individual actuary questions submitted through the Academy website.

During Ms. Smith's tenure, the Academy staff relayed the contents of the submitted questions *without revealing the requesting actuary's name or firm*, which prudently mitigated the disclosure of confidential information.

To close all CoQ meetings to the actuarial profession is an overly broad reaction. As with all Academy meetings, Ms. Smith is willing to leave any portion of a CoQ call that involves confidential information. During her CoQ tenure, most of the discussion did not fall into that category. Earlier this month, Ms. Smith attended a Council of Professionalism meeting in Scottsdale, where her presence had no discernible impact on deliberations of council members while she was there. If the possibility of member deliberation being affected were the test for whether a meeting should be open, then no Academy meeting would ever be open. Given the extremely important charge of the CoQ, presumably the committee members have the personal and professional maturity to have their deliberations observed.

Moreover, your suggestion that the presence of Ms. Smith or other observers might have a "chilling effect on the deliberative process and substantially interfere with it" is disturbing, and suggests that Committee members have something to hide. It suggests that you and Academy leadership believe that a Committee charged with the important role of qualification standards for members of the entire actuarial profession should not be subject to open scrutiny or accountable—in essence, that the Committee qualification standards does not have to adhere to open meeting policies to which all other Academy committees must follow.

In addition, you cryptically reference the Academy's Conflict of Interest Policy, claiming that you believe "there is a likelihood of an apparent conflict of [Ms. Smith's] own interests with the interests of this Academy committee." Ms. Smith is not currently volunteering at the Academy and, specifically, she is not volunteering on the CoQ. Thus, it is impossible for there to be a conflict of interest within the meaning of the Actuarial Code of Professional Conduct because she has no Principal. As it is hard to imagine what type of conflict you might be alluding to with respect to Ms. Smith, who is acting on her behalf as a member of the profession, unless you disclose the basis for your assertion, we will assume it is nothing more than a bullying tactic designed to undermine Ms. Smith's efforts to exercise her rights as an Academy member.

Finally, for the Academy to unilaterally make determinations that a member has a conflict of interest or an adverse interest as a basis for excluding members from an open meeting is totally inconsistent with the Academy's open meeting policy and general transparency principles. It is inappropriate for the Academy to single out members and exclude them from otherwise open meetings, and potentially demonstrates personal bias against that member.

In light of the open meeting requirements in the Academy's Bylaws and ASB Procedures, we request the following:

1. Academy Board: The exact time and exact place of the Academy Board meeting next week in Washington. Given the timing, we would appreciate your providing that information as soon as possible to allow Ms. Smith to make necessary travel arrangements and minimize unnecessary expense. In addition, we would appreciate a copy of the meeting's agenda once it is available.
2. ASB Planning Meeting: The exact times, dates, and exact place of the February planning meeting so that Ms. Smith can attend, at her own expense, along with a copy of the agenda.
3. ASB Quarterly Meetings: The exact times, dates, and exact place of the remaining ASB quarterly meetings for 2018, along with a copy of the agenda when it becomes available.
4. ASB Pension Committee Meetings: The exact times, dates, and exact place of the remaining ASB Pension Committee meetings for 2018, along with a copy of the agenda when it becomes available.
5. CoQ Conference Calls: The exact times, dates, and conference dial-in information for the remaining CoQ calls for 2018, along with a copy of the agenda when it becomes available.
6. Future Disclosure: A commitment from the Academy/ASB to abide by ASB disclosure requirements in section I.E.4 of the ASB's Procedures regarding publication of time, date, and place of future meetings of the ASB and its committees.
7. ASB Open Meetings: A commitment from the Academy/ASB to abide by ASB open meeting requirements for *all* future meetings of the ASB and its committees, as section I.E.2 of the ASB Procedures mandates.
8. Alleged Conflict of Interest: To the extent you truly believe there is a factual basis to suggest a conflict of interest relating to Ms. Smith's attendance on a CoQ conference call, please fully disclose the alleged conflict. Otherwise, we will conclude that there is no conflict.

It is our hope, in the interest of openness and transparency, a desire to avoid the hypocrisy of failing to comply with its own standards, a lack of personal bias against Ms. Smith, and assuming the Academy has nothing to hide, that the Academy will allow Ms. Smith to attend these meetings as an observer, will provide the information requested in a timely manner, and will commit to abiding by the open meeting requirements applicable to the Academy and to be expected of an organization that purports to "serve the public and the U.S. actuarial profession" by, among other things, setting "qualification, practice and professionalism standards for actuaries."

Please provide the information regarding the Academy Board meeting by the end of this week, and confirm, by close of business on January 30, 2018, that you will take the requested steps outlined above. To the extent it would be helpful, Ms. Smith and I are willing to meet with you to discuss these matters next week when she is in town for the Board meeting.

Because of the likelihood of litigation and regulatory reporting in the event that these issues cannot be resolved amicably by the parties, please preserve all documents and electronically stored information that relate to the Academy, ASB, ASB committees, and CoQ policies, practices, and communications concerning member requests for access, member access, and denial of member access to meetings during the last five years, any memos, emails, minutes regarding whether to include the ASB planning meeting on the ASB meeting schedule and any minutes or call notes that documents the contents of CoQ calls, as well as all documents and electronically stored information concerning Ms. Smith, including, but not limited to, discussions in connection with the 2017 Selection Committee meeting and the Academy volunteer conflict of interest policy. As you know, the Academy's failure to preserve relevant information in these circumstances may result in serious legal sanctions in any future litigation.

Thank you for your consideration and anticipated cooperation.

Very truly yours,



David S. Wachen