

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY** )  
**AND ETHICS IN WASHINGTON,** )  
*et al.,* )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
**U.S. DEPARTMENT OF HOUSING** )  
**AND URBAN DEVELOPMENT,** )  
) )  
Defendant. )  
\_\_\_\_\_ )

Civil No. 18-cv-0114 (KBJ)

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE A SUR-REPLY  
TO DEFENDANT’S MOTION TO DISMISS AND SUPPORTING MEMORANDUM**

Plaintiffs in the above-captioned action hereby move to file a sur-reply, Exhibit A to this motion, to advise the Court of recent events that bear directly on Defendant’s argument, set forth in its reply in support of its motion to dismiss (Dkt. 17), that plaintiffs’ claims are moot.

In its reply the U.S. Department of Housing and Urban Development (“HUD”) argued that Plaintiffs’ claim that HUD engages in a pattern and practice of improperly denying fee waivers is moot because HUD had notified plaintiffs that no fees would be charged for processing the specific Freedom of Information Act (“FOIA”) requests identified in the complaint. On October 1, 2018, Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) submitted a new FOIA request to HUD for records of meetings, appointments, and scheduled events of Secretary Ben Carson on three specified days.<sup>1</sup> One day later, HUD advised CREW its request for a fee waiver was denied in language nearly identical to that HUD used in

<sup>1</sup> That request is attached as Exhibit B.

the FOIA requests at issue here.<sup>2</sup> CREW has filed an administrative appeal, which is attached as Exhibit D.

As this most recent action by HUD demonstrates, plaintiffs' claims are far from moot; not only are HUD's challenged actions capable of repetition but they are in fact being repeated to plaintiffs' detriment. Plaintiffs respectfully submit that the Court's proper consideration of the issues this case presents would be aided by a full, up-to-date factual record.

Pursuant to Local Rule 7(m), counsel for Plaintiffs contacted Defendant's counsel on this date to seek the government's position on this motion. As of the filing of this motion, Plaintiffs had not received a response from Defendants to this inquiry.

### **CONCLUSION**

For the foregoing reasons, plaintiffs respectfully request that this motion be granted and that they be permitted to file a sur-reply.

October 12, 2018

Respectfully submitted,

/s/ Anne L. Weismann

Anne L. Weismann

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<sup>2</sup> HUD's response is attached as Exhibit C.

*Attorney for Freedom From Religion Foundation*