

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

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<b>CITIZENS FOR RESPONSIBILITY AND ETHICS</b>	)	
<b>IN WASHINGTON, et al.</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Case No. 18-cv-0114 (KBJ)</b>
<b>UNITED STATES HOUSING AND URBAN</b>	)	
<b>DEVELOPMENT,</b>	)	
	)	
<b>Defendant.</b>	)	

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**MEMORANDUM IN OPPOSITION TO PLAINTIFF’S  
MOTION FOR LEAVE TO FILE SUR-REPLY**

Defendant United States Housing and Urban Development (“HUD”), by and through undersigned counsel, has moved to dismiss the Complaint in this action, which asserted four counts under the Freedom of Information Act (“FOIA”), all of which pertain in some respect to HUD’s denial of Plaintiffs’ requests for a fee waiver as to the specific requests at issue in this lawsuit. As addressed in the motion, which remains pending, none of the counts asserts that HUD has improperly withheld documents under FOIA or failed to conduct an adequate search for records under FOIA and none seeks to compel the production of records under FOIA. Instead, the claims asserted in the Complaint are narrowly focused on the fee waiver issue.

As to Counts II-IV, HUD argued that those counts should be dismissed as moot because, after the filing of this lawsuit, HUD notified Plaintiffs that no fees would be charged for the processing of the underlying FOIA requests that are the subject of those counts. *See, e.g., Hall v. CIA*, 437 F.3d 94, 99 (D.C. Cir. 2006); *Houser v. Church*, 271 F. Supp. 3d 197, 204 (D.D.C. 2017) (dismissing as moot denial of fee waiver count based on *Hall*).

Plaintiff now moves for leave to file a sur-reply, arguing that HUD's argument for mootness should be rejected based on a new FOIA request that Plaintiff submitted to HUD that post-dates the filing of this lawsuit (and the filing of Defendant's motion to dismiss). Specifically, Plaintiff contends that HUD's denial of the fee waiver request in that new request indicates that "HUD's challenged actions are capable of repetition."

Plaintiff's motion for leave to file a sur-reply should be denied because HUD's response to the new FOIA request has no bearing on the mootness issue before the Court as to the FOIA requests at issue in this lawsuit. First, Plaintiff acknowledges that it has administratively appealed the denial of the fee waiver request contained in this new FOIA request and that that administrative appeal is pending. Accordingly, it is premature for Plaintiff to even raise this as an issue in light of that procedural posture. Second, in any event, the new request is not a request that is the subject of this lawsuit and, therefore, cannot be cited as a basis for arguing against mootness as to the claims at issue in the lawsuit, which are based on different requests.

Finally, Plaintiff's argument that its claim is capable of repetition does not resolve the mootness question. In *Hall*, the plaintiff had argued that the media status claim fell within an exception to the mootness doctrine because it was capable of repetition were Hall to seek a fee waiver on that basis in the future. However, even "[a]ssuming in Hall's favor that the matter is capable of repetition," the Court "fail[ed] to see how the issue has any tendency to evade review" because "[d]enials of fee waivers do not seem inherently of such short duration that they cannot ordinarily be fully litigated before their cessation." *Hall*, 437 F.3d at 99. Here, the denial of the fee waivers, both as to the requests at issue in this case and as to the new request, do not have a tendency to evade review, even if allegedly capable of repetition. Indeed, as to the requests at

issue in this case, the instant lawsuit was filed to seek review of those determinations. And, as to the new request, Plaintiff apparently has sought review through the agency administrative process. Accordingly, this exception to mootness is not available.

For the foregoing reasons, Plaintiff's motion for leave to file a sur-reply should be denied.

Respectfully submitted,

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