



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

March 15, 2018

Mr. Andrew Seidel  
Staff Attorney  
Freedom From Religion Foundation  
P.O. Box 750  
Madison, WI 53701

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-01686

Dear Mr. Seidel:

This letter acknowledges that the Department of Housing and Urban Development will not charge a fee for your Freedom of Information Act (FOIA) request dated and received on August 7, 2017. You requested a fee waiver, which was denied by HUD.

However, upon further review of your request, HUD has determined that no fee will be charged for this request. The search can be performed using HUD's automated e-discovery system and the results can be provided to you electronically, so no fees are required for search time, document review, or duplication.

If you have any questions regarding your request, please contact me at (202) 402-3450. Thank you for your interest in the Department's programs and policies.

Sincerely,

*Ethan Bodell*

Ethan G. Bodell, Esq.  
Government Information Specialist  
Office of the Executive Secretariat

EXHIBIT 1



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

March 15, 2018

Mr. Ryan D. Jayne, Esq.  
Staff Attorney  
Freedom From Religion Foundation  
P.O. Box 750  
Madison, WI 53701

RE: Freedom of Information Act Request  
FOIA Control No.: 18-FI-HQ-00188

Dear Mr. Jayne:

This letter acknowledges that the Department of Housing and Urban Development will not charge a fee for your Freedom of Information Act (FOIA) request dated October 26, 2017. Your request was received on October 27, 2017, and you requested a fee waiver, which was denied by HUD.

However, upon further review of your request, HUD has determined that no fee will be charged for this request. The search can be performed using HUD's automated e-discovery system and the results can be provided to you electronically, so no fees are required for search time, document review, or duplication.

If you have any questions regarding your request, please contact me at (202) 402-3450. Thank you for your interest in the Department's programs and policies.

Sincerely,

*Ethan Bodell*

Ethan G. Bodell, Esq.  
Government Information Specialist  
Office of the Executive Secretariat

EXHIBIT 2



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

March 20, 2018

Ms. Maya Gold  
Citizens for Responsibility and Ethics  
in Washington  
455 Massachusetts Ave., NW, 6<sup>th</sup> Floor  
Washington, DC 20001

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-01836

Dear Ms. Gold:

This letter acknowledges that the Department of Housing and Urban Development will not charge a fee for your Freedom of Information Act (FOIA) request dated August 28, 2017. Your request was received on August 28, 2017, and you requested a fee waiver, which was denied by HUD.

However, upon further review of your request, HUD has determined that no fee will be charged for this request. The search can be performed using HUD's automated e-discovery system and the results can be provided to you electronically, so no fees are required for search time, document review, or duplication.

If you have any questions regarding your request, please contact me at (202) 402-4315. Thank you for your interest in the Department's programs and policies.

Sincerely,

*Eugene McGirt*

Eugene McGirt  
Government Information Specialist

EXHIBIT 3



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

March 20, 2018

Anne L. Weismann, Esq.  
Chief FOIA Counsel  
Citizens for Responsibility and Ethics  
in Washington  
455 Massachusetts Ave., NW, 6<sup>th</sup> Floor  
Washington, DC 20001

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-02149

Dear Ms. Weismann:

This letter acknowledges that the Department of Housing and Urban Development will not charge a fee for your Freedom of Information Act (FOIA) requests dated September 20, 2017. Your request was received on September 21, 2017, and you requested a fee waiver, which was denied by HUD.

However, upon further review of your request, HUD has determined that no fee will be charged for this request. The search can be performed using HUD's automated e-discovery system and the results can be provided to you electronically, so no fees are required for search time, document review, or duplication.

If you have any questions regarding your request, please contact me at (202) 402-4315. Thank you for your interest in the Department's programs and policies.

Sincerely,

*Eugene McGirt*

Eugene McGirt  
Government Information Specialist

EXHIBIT 4

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

August 7, 2017

Re: FOIA Request

Dear FOIA Officer:

I am writing on behalf of the Freedom From Religion Foundation to request public records from HUD. FFRF is a national nonprofit organization with over 29,000 members across the country. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

We understand that Secretary Carson is a sponsor of bible studies put on by Capitol Ministries (CM), a 501(c)(3) nonprofit organization whose vision is "to evangelize elected officials and lead them toward maturity in Christ."<sup>1</sup> According to CM's website, Secretary Carson and eight other Cabinet officials are listed as White House Cabinet Sponsors of the organization's bible studies.<sup>2</sup>

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), I request a copy of the following:

1. Any correspondence, including emails, between CM representatives and any representative of HUD, including Secretary Carson, since January 1, 2017.
2. Any internal correspondence, including emails, between representatives of HUD, including Secretary Carson, since January 1, 2017, regarding the Cabinet bible studies and/or CM.
3. Any of Secretary Carson's daily schedules that include the Cabinet bible study since January 1, 2017.

In order to determine our status under FOIA for the purpose of assessing fees, please be advised that FFRF is a registered 501(c)(3) nonprofit organization. We request a waiver of fees because of our nonprofit status and because release of these records is in the public interest. The subject of the request is a matter of concern to FFRF members, HUD personnel, and the public.

If any of the records can be sent electronically, those can be emailed to [aseidel@ffrf.org](mailto:aseidel@ffrf.org). Thank you for your time and attention to this matter.

Sincerely,



EXHIBIT 5

Andrew Seidel  
Staff Attorney  
ALS:rac

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<sup>1</sup> <http://capmin.org/about/>.

<sup>2</sup> <https://capmin.org/ministries/washington-dc/white-house-cabinet-sponsors/>.

## FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

October 26, 2017

Re: FOIA Request

Dear FOIA Officer:

I am writing on behalf of the Freedom From Religion Foundation to request public records from HUD. FFRF is a national nonprofit organization with more than 29,000 members nationally. FFRF's purposes are to protect the constitutional principle of separation between church and state, and to educate the public on matters relating to nontheism.

We understand that Secretary Carson attended an event entitled "Revive Us 2" at the Museum of the Bible on October 24, 2017. The event was described as a "giant revival" by Kirk Cameron, who led the event.

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), I request a copy of the following:

1. Any correspondence, including emails, to or from any representative of HUD, including Secretary Carson, regarding the "Revive Us 2" event, since January 1, 2017; and
2. Secretary Carson's daily schedule from October 24, 2017.

In order to determine our status under FOIA for the purpose of assessing fees, please be advised that FFRF is a registered 501(c)(3) nonprofit organization. We request a waiver of fees because of our nonprofit status and because release of these records is in the public interest. The subject of the request is a matter of concern to FFRF members, HUD personnel, and the public.

If any records are available in electronic format (preferred), those can be emailed to [ryan@ffrf.org](mailto:ryan@ffrf.org). If I can provide any clarification that will help expedite your attention to my request, please contact me at (608) 256-8900. Thank you for your time and attention to this matter.

Sincerely,



Ryan D. Jayne  
Staff Attorney

EXHIBIT 6



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

August 7, 2017

Mr. Andrew Seidel  
Staff Attorney  
Freedom From Religion Foundation  
PO Box 750  
Madison, WI 53701

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-01686

Dear Mr. Seidel:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated and received on August 7, 2017. You requested expedited processing.

Pursuant to HUD regulations at 24 C.F.R. § 15.110(h), HUD may waive or reduce the fee if it determines that (1) disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) that you are not seeking the information for your own commercial interests. To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. See D.C. Technical Assistance Organization, Inc. et al., v. HUD, 85 F. Supp. 2d 46 (D.C. Cir. 2000). Those factors are as follows: (1) whether the subject matter of the requested documents specifically relates to "operations or activities of the government"; (2) whether the requested documents will be "likely to contribute" to an understanding of specific government activities or operations; (3) whether the disclosure will contribute to a greater understanding on the part of the public at large; and (4) whether disclosure of the requested documents will contribute "significantly" to the public's understanding of government activities or operations. *Id.*

Your request fails to meet criteria 2–4 above. "A requester seeking a fee waiver bears the initial burden of identifying the public interest to be served," and that public interest must be asserted with reasonable specificity. See *Physicians Committee for Reasonable Medicine v. HHS*, 480 F. Supp. 2d 119 (D.C. Cir. 2007) citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that "conclusory statements that the disclosure will serve the public interest are not sufficient" to meet the requester's burden of showing that the fee waiver requirements are met. See *id.* citing *Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2001).

You state that fees should be waived because of your nonprofit status and because release of the records is in the public interest. Your request for a fee waiver is denied.

While the Department seeks to waive fees where appropriate, HUD is also obligated to safeguard the public treasury by refusing to grant waivers except as provided by the FOIA. As the proper focus must be on the benefit to be derived by the general public, any personal benefit by the requester, or the requester's particular financial situation, are not factors entitling the requester to a fee waiver.

You may appeal this determination within 90 days from the date of this letter. If you decide to appeal, your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting the appeal. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:

U.S. Department of Housing and Urban Development  
Attention: FOIA Appeals  
Office of Ethics, Appeals and Personnel Law  
Ethics and Appeals Division  
451 Seventh Street, SW, Suite 2130  
Washington, DC 20410

Telephone: (202) 708-3815

You may also submit your appeal online at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia/foiaappeals](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia/foiaappeals).

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

Telephone: 202-741-5770; toll free at 1-877-684-6448

FAX: 202-741-5769

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

For your information, your FOIA request, including your identity and any information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal information, such as home address, telephone number, or Social Security number, all of which are protected from disclosure under FOIA Exemption 6.

If you have any questions regarding your request, please contact me at (202) 402-3450.  
Thank you for your interest in the Department's programs and policies.

Sincerely,

*Ethan Bodell*

Ethan G. Bodell, Esq.  
Government Information Specialist  
Office of the Executive Secretariat



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

October 27, 2017

Mr. Ryan D. Jayne, Esq.  
Staff Attorney  
Freedom From Religion  
Foundation  
P.O. Box 750  
Madison, WI 53701

RE: Freedom of Information Act Request  
FOIA Control No.: 18-FI-HQ-00188

Dear Mr. Jayne:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated October 26, 2017. Your request was received by the Department's FOIA Branch on October 27, 2017, and you requested a fee waiver.

Pursuant to HUD regulations at 24 C.F.R. § 15.110(h), HUD may waive or reduce the fee if it determines that (1) disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) that you are not seeking the information for your own commercial interests. To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. See D.C. Technical Assistance Organization, Inc. et al., v. HUD, 85 F. Supp. 2d 46 (D.C. Cir. 2000). Those factors are as follows: (1) whether the subject matter of the requested documents specifically relates to "operations or activities of the government"; (2) whether the requested documents will be "likely to contribute" to an understanding of specific government activities or operations; (3) whether the disclosure will contribute to a greater understanding on the part of the public at large; and (4) whether disclosure of the requested documents will contribute "significantly" to the public's understanding of government activities or operations. *Id.*

While nonprofit organizations and public interest groups are often capable of disseminating information, they do not presumptively qualify for fee waivers; rather they must, like any requester, meet the statutory requirements for a full waiver of all fees. See *Forest Guardians v. DOI*, 416 F.3d 1173 (10th Cir. N.M 2005). "A requester seeking a fee waiver bears the initial burden of identifying the public interest to be served," and that public interest must be asserted with reasonable specificity. See *Physicians Committee for Reasonable Medicine v. HHS*, 480 F. Supp. 2d 119 (D.C. Cir. 2007) citing *National Treasury Employees Union v.*

Griffin, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that “conclusory statements that the disclosure will serve the public interest are not sufficient” to meet the requester’s burden of showing that the fee waiver requirements are met. See *id.* citing *Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2001).

In your request, you state that “FFRF is a registered 501(c)(3) nonprofit organization. We request a waiver of fees because of our nonprofit status and because release of these records is in the public interest. The subject of the request is a matter of concern to FFRF members, HUD personnel, and the public.” Your request fails to meet the criteria above. Therefore, your request for a fee waiver is denied.

While the Department seeks to waive fees where appropriate, HUD is also obligated to safeguard the public treasury by refusing to grant waivers except as provided by the FOIA. As the proper focus must be on the benefit to be derived by the general public, any personal benefit by the requester, or the requester’s particular financial situation, are not factors entitling the requester to a fee waiver.

You may appeal this determination within 90 days from the date of this letter. If you decide to appeal, your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting the appeal. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:

U.S. Department of Housing and Urban Development  
Attention: FOIA Appeals  
Office of Ethics, Appeals and Personnel Law  
Ethics and Appeals Division  
451 Seventh Street, SW, Suite 2130  
Washington, DC 20410

Telephone: (202) 708-3815

You may also submit your appeal online at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia/foiaappeals](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia/foiaappeals).

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

Telephone: 202-741-5770; toll free at 1-877-684-6448

FAX: 202-741-5769

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

For your information, your FOIA request, including your identity and any information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal information, such as home address, telephone number, or Social Security number, all of which are protected from disclosure under FOIA Exemption 6.

If you have any questions regarding your request, please contact Mr. Ethan Bodell at (202) 402-3450. Thank you for your interest in the Department's programs and policies.

Sincerely,

A handwritten signature in cursive script that reads "Ethan Bodell".

Ethan G. Bodell, Esq.  
Government Information Specialist  
Office of the Executive Secretariat



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

SEP 11 2017

Andrew Seidel  
Staff Attorney  
Freedom From Religion Foundation  
P.O. Box 750  
Madison, WI 53701

RE: Freedom of Information Act Appeal  
FOIA Control No: 17-FI-HQ-01686  
FOIA Appeal No: 17-A-C-00050

Dear Mr. Seidel,

This letter responds to a Freedom of Information Act ("FOIA") appeal received on August 11, 2017. On August 7, 2017, you requested: (1) any correspondence, including emails, between Capitol Ministries ("CM") and any representatives of HUD, including Secretary Carson, since January 1, 2017; (2) any internal correspondence, including emails, between representatives of HUD, including Secretary Carson, since January 1, 2017, regarding the Cabinet bible studies and/or CM; and (3) any of Secretary Carson's daily schedules that include the Cabinet bible study since January 1, 2017. You also requested a fee waiver. In support of the waiver request, you stated that the Freedom From Religion Foundation (FFRF) is a registered 501(c)(3) nonprofit organization and release of the records is in the public interest. You also stated that the subject of the request is a matter of concern to FFRF members, HUD personnel, and the public. On August 7, 2017, HUD denied your request for a fee waiver because you failed to demonstrate that the information sought is in the public interest. Specifically, HUD stated that your request failed to meet criterion 2-4 of the public interest requirements.

While nonprofit organizations and public interest groups are often capable of disseminating information, they do not presumptively qualify for fee waivers; rather they must, like any requester, meet the statutory requirements for a full waiver of all fees. See Forest Guardians v. DOI, 416 F.3d 1173 (10th Cir. N.M. 2005). To be granted a fee waiver, a requester must show that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii) (2006). For a request to be in the "public interest," four criteria must be satisfied: (1) the request must concern the operations or activities of government; (2) the disclosure must be "likely to contribute" to an understanding of the subject by the public; (3) disclosure must contribute to the public's understanding as opposed to the individual understanding of the requester or a narrow segment of interested persons; and (4) disclosure must be likely to contribute significantly to such public understanding. See Judicial Watch, Inc. v. DOJ, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (analyzing a Department of Justice fee waiver regulation identical to HUD's).

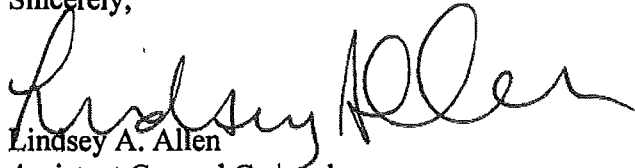
Your request fails to meet criterion (1): the request must concern the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii); see Brown v. U.S. Patent & Trademark Office, 226 F. App'x 866, 869 (11th Cir. 2007) (holding that requester failed to adequately explain how requested records were "related to the activities and operations" of agency); FOIA Update, Vol. VIII, No. 1, at 6 ("New Fee Waiver Policy Guidance"). Although in most cases records possessed by a federal agency will meet this threshold, the records must be sought for their informative value with respect to specifically identified government operations or activities. See e.g., Judicial Watch, Inc. v. Reno, No. 00-0723, 2001 WL 1902811, at \*10 (D.D.C. Mar. 30, 2001) (upholding agency's assessment of fees, reasoning that while agency's response to citizen letters regarding Cuban emigré Elian Gonzales would likely contribute to understanding of agency actions, incoming citizen letters to agency on that topic do not), summary judgment granted on other grounds, (D.D.C. Sept. 25, 2001); S.A. Ludsin & Co. v. SBA, No. 96 CV 5972, 1998 WL 355394, at \*14 (E.D.N.Y. Apr. 2, 1998) (holding that disclosure of appraisals of government property do not "in any readily apparent way" contribute to public's understanding of operations or activities of government); Atkin v. EEOC, No. 91-2508, slip op. at 27-28 (D.N.J. Dec. 4, 1992) (finding requested list of agency attorneys and their bar affiliations "clearly does not concern identifiable government activities or operations"), appeal dismissed for failure to timely prosecute sub nom. Atkin v. Kemp, No. 93-5548 (3d Cir. 1993). In this case, you seek records pertaining to White House cabinet bible studies. Although, HUD officials may attend these sessions, your request for documents related to a Cabinet bible study does not relate to HUD operations or activities. Therefore, we deny your request for a fee waiver.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
 National Archives and Records Administration  
 8601 Adelphi Road - OGIS  
 College Park, MD 20740-6001  
 E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
 Web: <https://ogis.archives.gov>  
 Telephone: 202-741-5770  
 Fax: 202-741-5769  
 Toll-free: 1-877-684-6448

Judicial review of this determination under 5 U.S.C. §552(a)(4) is available in the United States Court for the judicial district in which you reside or have your principal place of business, in the District of Columbia, or in the judicial district where the records you seek are located.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsey Allen", written over the printed name.

Lindsey A. Allen  
Assistant General Counsel  
for Ethics and Appeals Law

cc: Helen Foster, Executive Secretary  
John Shumway, Assistant General Counsel, Office of Administrative Law



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

Mr. Ryan D. Jayne, Esq.  
Staff Attorney  
Freedom From Religion Foundation  
P.O. Box 750  
Madison, WI 53701

January 9, 2018

RE: Freedom of Information Act Appeal  
FOIA Control No: 18-FI-HQ-00188  
FOIA Appeal No: 18-A-HQ-00017

Dear Mr. Jayne,

This letter responds to your Freedom of Information Act ("FOIA") appeal which we received on December 11, 2017. In your initial request sent on October 26, 2017, you requested 1) any correspondence, including emails, to or from any representative of HUD regarding the "Revive Us 2" event, since January 1, 2017, and 2) Secretary Carson's daily schedule from October 24, 2017. On October 27, 2017, you received a letter denying your fee waiver request because you failed to meet the public interest criteria. You are appealing the denial of your fee waiver because you allege that release of the records is a matter of concern to Freedom From Religion Foundation (FFRF) members, HUD personnel, and the public, and is therefore in the public interest. After review of the situation, your appeal is denied.

Pursuant to HUD's FOIA regulations, HUD may waive or reduce the fee if it determines: (1) disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of government; and (2) disclosure of the information is not primarily in the commercial interest of the requester. 24 C.F.R. § 15.106(k). To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. See *D.C. Technical Assistance Organization, Inc. et al. v. HUD*, 85 F. Supp. 2d 46 (D.C. Cir. 2000). The four factors are as follows: (1) the subject of the requested records should concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated; (2) the disclosable portions of the requested records should be meaningfully informative about government operations or activities and "likely to contribute" to an increased public understanding of those operations or activities; (3) the disclosure should contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester; and (4) the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, should be enhanced by the disclosure to a significant extent. 24 C.F.R. § 15.106(k)(2).

Your request fails to meet criterion 3 and 4 stated above. In order to meet criterion (3), a requester must substantiate his or her ability to disseminate information. *Judicial Watch, Inc. v. DOJ*, 122 F. Supp. 2d 13, 18 (D.D.C. 2000). Further, the requester must show that he or she will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. *Carney v.*

EXHIBIT 10

*DOJ*, 19 F.3d 807, 815 (2d Cir. 1994). In your appeal, you state that “FFRP has several channels of communication, which can reach millions of citizens” and you listed several of those channels. However, you failed to mention in your appeal how you would disseminate to a broad audience outside of your organization.

A requester seeking a fee waiver also bears the initial burden of identifying the public interest to be served and that public interest must be asserted with reasonable specificity. *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that “conclusory statements that the disclosure will serve the public interest are not sufficient” to meet the requester’s burden of showing that the fee waiver requirements are met. *Judicial Watch, Inc. v. DOJ*, 185 F. Supp.2d 54, 60 (D.D.C. 2001). Your contention that the disclosure of the documents will contribute to the public’s knowledge of how Secretary Carson and other senior HUD officials are conducting their offices does not satisfy criterion (4) and is conclusory.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Judicial review of this determination under 5 U.S.C. § 552(a)(4) is available in the United States Court for the judicial district in which you reside or have your principal place of business, in the District of Columbia, or in the judicial district where the records you seek are located.

Sincerely,



Lindsey A. Allen  
Assistant General Counsel  
Ethics and Appeals Law Division

cc: Helen Foster, Executive Secretary  
John Shumway, Assistant General Counsel, Administrative Law Division

**CREW** | citizens for responsibility  
and ethics in washington

25, 2017

MAIL: [FOIARequests@hudoi.gov](mailto:FOIARequests@hudoi.gov)

U.S. Department of Housing and Urban Development  
Freedom of Information Act Office  
451 Seventh Street, S.W., Room 10139  
Washington, D.C. 20410-3000

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Housing and Urban Development ("HUD") regulations.

First, CREW requests copies of all communications from March 6, 2017 to the present between or involving Mrs. Candy Carson and any of the following HUD officials:

- Acting Deputy Secretary Janet Golrick
- Chief of Staff Sheila Greenwood
- Chief Operations Officer David Eagles
- Deputy Chief of Staff Deana Bass
- Deputy Chief of Staff Hunter Kurtz
- Senior Advisor to the Secretary Adolfo Marzol
- White House Liaison Andrew Hudghes
- Chief Information Officer Johnson Joy
- Ginnie Mae Executive Vice President Maren Kasper
- Congressional Relations Officer Victoria Barton
- Senior Policy Advisor Christopher Bourne

Second, CREW seeks copies of all calendars and/or other records from March 6, 2017 to the present reflecting meetings with Mrs. Candy Carson and these same 11 individuals.

Third, CREW seeks copies of all communications from March 6, 2017 to the present between or involving Mr. Ben Carson, Jr. ("B.J.") and any of these 11 individuals.

Fourth, CREW seeks copies of all calendars and/or other records from March 6, 2017 to the present reflecting meetings with Mr. "B.J." Carson and any of these 11 individuals.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, including for any individuals cc'ed or bcc'ed on responsive emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you

455 Massachusetts Avenue, N.W., 6th Floor, Washington, D.C. 20001 | 202.408.5565 phone | 202.588.5020 fax | [www.citizenforethics.org](http://www.citizenforethics.org)

EXHIBIT 11

provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

### Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and HUD regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

According to *New York Magazine*, Secretary Carson's family has been taking a "visible role in the department."<sup>1</sup> Both Candy Carson, Secretary Carson's wife, and B.J. Carson, their second-oldest son, are commonly-seen figures at HUD. Mrs. Carson, described as "omnipresent," gave an introductory speech on Secretary Carson's first day in office and has reportedly "been spending far more time inside the department's headquarters at L'Enfant Plaza than anyone could recall a secretary's spouse doing in the past."<sup>2</sup> B.J. Carson has reportedly been included in email chains within the department and was seen leaving the office of new HUD Chief Operating Officer David Eagles. He also took an active role in Secretary Carson's recent visit to Baltimore, talking to entrepreneurs at a health fair and introducing them to his father.<sup>3</sup>

The requested records would shed light on the influence that Secretary Carson's family has on HUD priorities and policy decisions, even though they have no official role in the agency. The records would also inform the public about HUD operations.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

<sup>1</sup> Alec MacGillis, *Is Anybody Home at HUD?*, *New York Magazine*, August 22, 2017, available at <http://nymag.com/daily/intelligencer/2017/08/ben-carson-hud-secretary.html>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all of the documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

### Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [mgold@citizensforethics.org](mailto:mgold@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at [mgold@citizensforethics.org](mailto:mgold@citizensforethics.org) or at Maya Gold, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Maya Gold', written over a horizontal line.

Maya Gold  
Research Associate

09-20-'17 16:41 FROM- C. R. E. W

202-588-5020

T-024 P0002/0004 F-029

**CREW****citizens for responsibility  
and ethics in washington**

IN-FI-HQ-02149

September 20, 2017

**BY FACSIMILE: 202-619-8365**

U.S. Department of Housing and Urban Development  
 Freedom of Information Act Office  
 451 7th Street, S.W., Room 10139  
 Washington, D.C. 20410-3000

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Housing and Urban Development ("HUD") regulations.

First, CREW requests copies of all records concerning authorization for and the costs of HUD Secretary Ben Carson's use of non-commercial aircraft for any official travel since his confirmation on March 2, 2017. This includes all such authorizations Secretary Carson or anyone acting on behalf of Secretary Carson sought, whether or not such authorization was granted.

Second, CREW seek records sufficient to show the amount of money budgeted for Secretary Carson's travel, whether on a yearly or fiscal year basis, for 2017 and 2018, and the amount budgeted for the Secretary's travel for 2016.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc'ed or bcc'ed.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

EXHIBIT 12

09-20-'17 16:41 FROM- C. R. E. W

202-588-5020

T-024 P0003/0004 F-029

Freedom of Information Officer  
 September 20, 2017  
 Page 2

### Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and HUD regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Recent news reports have focused on the use by agency heads of non-commercial aircraft for official government travel. For example, it was recently reported that HHS Secretary Tom Price travelled by private jet on five separate flights during a one-week period, all at a cost of thousands of dollars in excess of what commercial flights would have cost. Dan Diamond and Rachana Pradhan, Price's Private-Jet Travel Breaks Precedent, *Politico*, Sept. 19, 2017, available at <http://www.politico.com/story/2017/09/19/tom-price-chartered-planes-flights-242908>. Treasury Secretary Steven Mnuchin has been criticized for his use of a private plane to travel to Lexington, Kentucky, during which he took in the solar eclipse at Fort Knox with his wife, and his earlier request to travel by government plane for his honeymoon. See, e.g., Charles Ventura, Steven Mnuchin Requested an Air Force Jet for His European Honeymoon, Report Says, *USA Today*, Sept. 13, 2017, available at <https://www.usatoday.com/story/news/politics/onpolitics/2017/09/13/steven-mnuchin-military-jet-honeymoon/664335001/>. And Secretary Carson had a very visible role in introducing President Trump at a campaign rally in Phoenix, Arizona, raising questions about whether his trip was government-funded. See Philip Bump, Why Ben Carson's Appearance in Phoenix Was Likely a Violation of Federal Law, *Washington Post*, available at [https://www.washingtonpost.com/news/politics/wp/2017/08/23/why-ben-carsons-appearance-in-phoenix-was-likely-a-violation-of-federal-law/?utm\\_term=.ef0c277c9aff](https://www.washingtonpost.com/news/politics/wp/2017/08/23/why-ben-carsons-appearance-in-phoenix-was-likely-a-violation-of-federal-law/?utm_term=.ef0c277c9aff). The requested records will shed light on whether and to what extent Secretary Carson also has broken with prior practice and used non-commercial aircraft for government travel.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to

09-20-17 16:42 FROM- C. R. E. W

202-588-5020

T-024 P0004/0004 F-029

Freedom of Information Officer  
September 20, 2017  
Page 3

include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

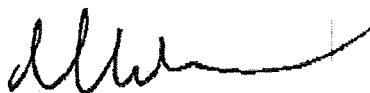
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

#### **Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [aweismann@citizensforethics.org](mailto:aweismann@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at [aweismann@citizensforethics.org](mailto:aweismann@citizensforethics.org) or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann  
Chief FOIA Counsel



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

August 31, 2017

Ms. Maya Gold  
Citizens for Ethics  
455 Massachusetts Avenue, NW  
Sixth Floor  
Washington, DC 20001

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-01836

Dear Ms. Gold:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated August 28, 2017. Your request was received on August 28, 2017, and you requested a fee waiver.

Pursuant to HUD regulations at 24 C.F.R. § 15.110(h), HUD may waive or reduce the fee if it determines that (1) disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) that you are not seeking the information for your own commercial interests. To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. See *D.C. Technical Assistance Organization, Inc., et al., v. HUD*, 85 F. Supp. 2d 46 (D.C. Cir. 2000). Those factors are as follows: (1) whether the subject matter of the requested documents specifically relates to "operations or activities of the government"; (2) whether the requested documents will be "likely to contribute" to an understanding of specific government activities or operations; (3) whether the disclosure will contribute to a greater understanding on the part of the public at large; and (4) whether disclosure of the requested documents will contribute "significantly" to the public's understanding of government activities or operations.

Your request fails to meet the criteria stated above. A requester seeking a fee waiver bears the initial burden of identifying the public interest to be served, and that public interest must be asserted with reasonable specificity. See *Physicians Committee for Reasonable Medicine v. HHS*, 480 F. Supp. 2d 119 (D.C. Cir. 2007) citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that "conclusory statements that the disclosure will serve the public interest are not sufficient" to meet the requester's burden of showing that the fee waiver requirements are met. See *id.* citing *Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2001).

While the Department seeks to waive fees where appropriate, HUD is also obligated to safeguard the public treasury by refusing to grant waivers except as provided by the FOIA. As the proper focus must be on the benefit to be derived by the general public, any personal benefit by the requester, or the requester's particular financial situation, are not factors entitling the requester to a fee waiver. Therefore, based on the foregoing, your request for a fee waiver is not in the "public interest" as required by statute and is therefore denied.

You may appeal this determination within 90 days from the date of this letter. If you decide to appeal, your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting the appeal. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:

U.S. Department of Housing and Urban Development  
Attention: FOIA Appeals  
Office of Ethics, Appeals and Personnel Law  
Ethics and Appeals Division  
451 Seventh Street, SW, Suite 2130  
Washington, DC 20410

Telephone: (202) 708-3815

You may submit your appeal online at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia/foiaappeals](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia/foiaappeals).

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

Telephone: 202-741-5770; toll free at 1-877-684-6448

FAX: 202-741-5769

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

If you have any questions regarding your request, please contact me at (202) 402-4315. Thank you for your interest in the Department's programs and policies.

Sincerely,

*Eugene McGirt*

Eugene McGirt  
Government Information Specialist



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

September 21, 2017

Anne L. Weismann, Esq.  
Chief FOIA Counsel  
Citizens for Responsibility and Ethics  
in Washington  
455 Massachusetts Ave., NW, 6<sup>th</sup> Floor  
Washington, DC 20001

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-02149

Dear Ms. Weismann:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated September 20, 2017. Your request was received on September 21, 2017, and you requested a fee waiver.

Pursuant to HUD regulations at 24 C.F.R. § 15.110(h), HUD may waive or reduce the fee if it determines that (1) disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) that you are not seeking the information for your own commercial interests. To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. See *D.C. Technical Assistance Organization, Inc., et al., v. HUD*, 85 F. Supp. 2d 46 (D.C. Cir. 2000). Those factors are as follows: (1) whether the subject matter of the requested documents specifically relates to "operations or activities of the government"; (2) whether the requested documents will be "likely to contribute" to an understanding of specific government activities or operations; (3) whether the disclosure will contribute to a greater understanding on the part of the public at large; and (4) whether disclosure of the requested documents will contribute "significantly" to the public's understanding of government activities or operations.

Your request fails to meet the criteria stated above. A requester seeking a fee waiver bears the initial burden of identifying the public interest to be served, and that public interest must be asserted with reasonable specificity. See *Physicians Committee for Reasonable Medicine v. HHS*, 480 F. Supp. 2d 119 (D.C. Cir. 2007) citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that "conclusory statements that the disclosure will serve the public interest are not sufficient" to meet the requester's burden of showing that the fee waiver requirements are met. See *id.* citing *Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2001).

While the Department seeks to waive fees where appropriate, HUD is also obligated to safeguard the public treasury by refusing to grant waivers except as provided by the FOIA. As the proper focus must be on the benefit to be derived by the general public, any personal benefit by the requester, or the requester's particular financial situation, are not factors entitling the requester to a fee waiver. Therefore, based on the foregoing, your request for a fee waiver is not in the "public interest" as required by statute and is therefore denied.

You may appeal this determination within 90 days from the date of this letter. If you decide to appeal, your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting the appeal. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:

U.S. Department of Housing and Urban Development  
Attention: FOIA Appeals  
Office of Ethics, Appeals and Personnel Law  
Ethics and Appeals Division  
451 Seventh Street, SW, Suite 2130  
Washington, DC 20410

Telephone: (202) 708-3815

You may submit your appeal online at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia/foiaappeals](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia/foiaappeals).

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

Telephone: 202-741-5770; toll free at 1-877-684-6448

FAX: 202-741-5769

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

If you have any questions regarding your request, please contact me at (202) 402-4315. Thank you for your interest in the Department's programs and policies.

Sincerely,

*Eugene McGirt*

Eugene McGirt  
Government Information Specialist



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

Anne Weismann  
Citizens for Responsibility and Ethics in Washington  
455 Massachusetts Avenue, NW  
Washington, D.C. 20001

OCT - 6 2017

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-01836  
FOIA Appeal No.: 17-A-HQ-00056

Dear Ms. Weismann:

This letter responds to your Freedom of Information Act (FOIA) appeal received by our office on September 11, 2017. In your initial request sent on August 25, 2017, you requested copies of all communications from March 6, 2017, to the present between or involving Candy Carson and 11 HUD officials, along with all communications from March 6, 2017, to the present between or involving Ben Carson, Jr. and those same 11 officials. You also requested a waiver of all fees and to not be charged search or review fees because you qualify as a member of the news media. On August 31, 2017, you received a letter denying your request for a fee waiver. The letter did not make a determination with respect to your request to be categorized as a representative of the news media.

In your appeal, you contend the following: (1) the documents requested pertain to the level of influence close family members of Secretary Carson have in running the agency and making policy decisions; (2) disclosure of the information is likely to contribute to the public's understanding of the level of influence Secretary Carson's wife and son have on agency business and operations; (3) release of the information will contribute to greater public understanding of the roles the Secretary's family members play at HUD as opposed to CREW's interests; and (4) disclosure of the information will contribute "significantly" to public understanding of HUD activities and how the agency operates applying the objective standard.

*Fee Waiver*

As HUD indicated in the denial of your fee request, pursuant to HUD regulations at 24 C.F.R. § 15.106(k), HUD may waive or reduce the fee if it determines that (1) disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) that you are not seeking the information for your own commercial interests. To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. 24 C.F.R. § 15.106(k)(2)(i)-(iv). Those factors are as follows: (1) whether the subject matter of the requested records concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated; (2) whether the requested records are meaningfully informative about government operations or

[www.hud.gov](http://www.hud.gov)

[espanol.hud.gov](http://espanol.hud.gov)

activities and likely to contribute to an increased public understanding of those operations or activities; (3) whether the disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester; and (4) whether disclosure of the requested records will increase the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure. *Id.*

We affirm HUD's determination that your request fails to meet the criteria stated above. "A requestor seeking a fee waiver bears the initial burden of identifying the public interest to be served," and that public interest must be asserted with reasonable specificity. *See Physicians Committee for Reasonable Medicine v. HHS*, 480 F. Supp. 2d 119 (D.C. Cir. 2007) *citing National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that "conclusory statements that the disclosure will serve the public interest are not sufficient" to meet the requester's burden of showing that the fee waiver requirements are met. *See id. citing Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2001). In this case, you have only speculated that the information contained in these requested documents may demonstrate that Secretary Carson's wife and son have an influence over agency matters. However, you have provided no compelling facts to support this claim aside from the presence of Secretary Carson's wife at the agency and his son reportedly showing up on email chains and appearing at the department. These actions alone do not support your claim that the requested information will contribute to a greater understanding on the part of the public at large. Furthermore, you have not provided facts to demonstrate how release of this information will "significantly" increase public understanding of government activities. Therefore, you have failed to meet the public interest requirement.

#### *Representative of the News Media*

You argue that CREW should not be charged search or review fees because it qualifies as a "representative of the news media" pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). You state that the FOIA office failed to address your initial request regarding classification as a representative of the news media. Since the FOIA office has not yet provided you with a response on this matter, it is not ripe for appeal.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769

Toll-free: 1-877-684-6448

Judicial review of this determination under 5 U.S.C. § 552(a)(4) is available in the United States Court for the judicial district in which you reside or have your principal place of business, in the District of Columbia, or in the judicial district where the records you seek are located.

Sincerely,

*Lindsey Allen*

Lindsey A. Allen  
Assistant General Counsel  
for Ethics and Appeals Division

cc: Helen Foster, Executive Secretary  
John Shumway, Assistant General Counsel, Administrative Law Division



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-0500

OFFICE OF GENERAL COUNSEL

**OCT 24 2017**

Anne L. Weismann  
Citizens for Responsibility and Ethics in Washington  
455 Massachusetts Ave., NW 6<sup>th</sup> Floor  
Washington, DC 20001

RE: Freedom of Information Act Request  
FOIA Control No.: 17-FI-HQ-02149  
FOIA Appeal No.: 17-A-HQ-00059

Dear Ms. Weismann:

This letter responds to your Freedom of Information Act (FOIA) appeal received by our office on September 27, 2017. By letter dated September 20, 2017, you requested a fee waiver for records concerning authorization for and the costs of HUD Secretary Ben Carson's use of non-commercial aircraft for any official travel since his confirmation on March 2, 2017, including all such authorizations Secretary Carson or anyone acting on behalf of Secretary Carson sought, regardless of whether such authorization was granted. You also requested records sufficient to show the amount of money budgeted for Secretary Carson's travel, whether on a yearly or fiscal basis, for 2017 and 2018, and the amount budgeted for the Secretary's travel for 2016. By letter dated September 21, 2017, HUD denied your request for fee waiver stating that your request failed to meet the criteria for a fee waiver under the FOIA and the applicable regulations at 24 C.F.R. § 15.106(k). The letter did not make a determination with respect to your request to be categorized as a representative of the news media.

In your appeal, you contend the following: (1) your request concerns "operations or activities of the government, as it seeks documents pertaining to whether Secretary Carson, like other agency heads in this Administration, is using non-commercial aircraft to travel for official HUD business; (2) the disclosure is likely to contribute to the public's understanding of Secretary Carson's travel and the extent to which he used taxpayer funds to finance travel on government or private aircraft at costs that far exceed commercial rates; and (3) the disclosure of the requested records will contribute "significantly" to public understanding of HUD activities and how the agency operates applying the objective standard for value of the requested information that the FOIA requires.

As HUD indicated in the denial of your fee request, pursuant to HUD regulations at 24 C.F.R. § 15.106(k), HUD may waive or reduce the fee if it determines that (1) disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) that you are not seeking the information for your own commercial interests. To satisfy the public interest requirement, four factors must be considered in sequence when determining whether the fee waiver request concerns documents that will contribute to the greater public understanding of government activities. See D.C. Technical Assistance Organization, Inc., et al., v. HUD, 85 F.

Supp. 2d 46 (D.C. Cir. 2000). Those factors are as follows: (1) the subject of the requested records should concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated; (2) the disclosable portions of the requested records should be meaningfully informative about government operations or activities and “likely to contribute” to an increased public understanding of those operations or activities; (3) the disclosure should contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester; and (4) the public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, should be enhanced by the disclosure to a significant extent. See 24 C.F.R. § 15.106(k).

We affirm HUD’s determination that your request fails to meet the criteria stated above. “A requestor seeking a fee waiver bears the initial burden of identifying the public interest to be served,” and that public interest must be asserted with reasonable specificity. See Physicians Committee for Reasonable Medicine v. HHS, 480 F. Supp. 2d 119 (D.C. Cir. 2007) citing National Treasury Employees Union v. Griffin, 811 F.2d 644, 647 (D.C. Cir. 1987). The courts have held that “conclusory statements that the disclosure will serve the public interest are not sufficient” to meet the requester’s burden of showing that the fee waiver requirements are met. See id., citing Judicial Watch, Inc. v. DOJ, 185 F. Supp. 2d 54, 60 (D.D.C. 2001). Your contention that the requested records will contribute “significantly” to public understanding of HUD activities and how the agency operates applying the objective standard for value of the requested information that the FOIA requires does not satisfy the criteria and is conclusory.

With respect to your assertion that CREW should not be charged search or review fees because it qualifies as a “representative of the news media” pursuant to 5 U.S.C. 552(a)(4)(A)(ii)(II). You state that the FOIA office failed to address your initial request regarding classification as a representative of the news media. Since the FOIA office has not yet provided you with a response on this matter, it is not ripe for appeal.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Judicial review of this determination under 5 U.S.C. § 552(a)(4) is available in the United States Court for the judicial district in which you reside or have your principal place of business, in the District of Columbia, or in the judicial district where the records you seek are located.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsey Allen", written in a cursive style.

Lindsey A. Allen  
Assistant General Counsel  
for Ethics and Appeals Division

cc: Helen Foster, Executive Secretary  
John Shumway, Assistant General Counsel, Administrative Law Division