

EXHIBIT A

CREW | citizens for responsibility and ethics in washington

September 6, 2017

U.S. Department of Housing and Urban Development
Attn: FOIA Appeals
Office of Ethics, Appeals and Personnel Law
Ethics and Appeals Division
451 Seventh Street, S.W., Suite 2130
Washington, D.C. 20410

Re: Administrative Appeal in FOIA Control No. 17-FI-HQ-01836

Dear FOIA Appeals Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") hereby appeals the initial denial by the U.S. Department of Housing and Urban Development ("HUD") of CREW's request for a waiver of fees associated with processing the above-referenced Freedom of Information Act ("FOIA") request. As set forth below, this initial denial contravenes both the law and the facts.

On August 25, 2017, CREW submitted to HUD by email a request for four categories of records. First, CREW requested all communications from March 6, 2017, to the present between or involving Mrs. Candy Carson, the wife of HUD Secretary Ben Carson, and 11 enumerated HUD officials. Second, CREW requested copies of all calendars and other records reflecting meetings between Mrs. Carson and these same 11 individuals. Third, CREW requested copies of all communications from March 6, 2017 to the present involving Mr. Ben Carson, Jr. ("B.J."), a son of Secretary Carson, and any of these 11 individuals. And fourth, CREW requested copies of all calendars and other records reflecting meetings between Mr. B.J. Carson and these same 11 individuals. For your convenience, a copy of this request is enclosed as Exhibit A.

CREW also requested a waiver of fees associated with processing its request because the subject 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. *Id.* Specifically, as CREW's request explains, HUD Secretary Carson's family, including his wife Candy Carson and his second-oldest son B.J. Carson, reportedly have been taking a "visible role" at HUD.¹ CREW outlined specific ways in which both Carsons have become commonly-seen figures at HUD, and explained the requested records would shed light on the influence Secretary Carson's family has on HUD priorities and policy decisions, even absent any official agency role.

CREW also requested a fee waiver as a member of the news media, explaining how it regularly publishes and disseminates information to the public in a variety of ways, including through its website, reports, and blog posts.

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

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By letter dated August 31, 2017, Government Information Specialist Eugene McGirt on behalf of HUD advised CREW its request for a fee waiver was denied. According to Mr. McGirt, CREW's request "is not in the 'public interest.'" Mr. McGirt did not address CREW's request to be categorized as a member of the news media for fee purposes. For your convenience, a copy of his letter is enclosed as Exhibit B.

Under the FOIA, 5 U.S.C. § 552(e)(6), a requester should be granted a fee waiver "if 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." Here, Mr. McGirt concluded initially, with virtually no analysis, that CREW's request is not in the public interest. Significantly, he failed to consider the clear and convincing explanation CREW proffered regarding the public's interest in the requested documents.

First, without question CREW's request concerns "operations or activities of the government," as it seeks documents pertaining to the level of influence close family members of Secretary Carson have in running the agency and making policy decisions, even though they have no official agency positions. As outlined in CREW's request, Mrs. Carson, purportedly "omnipresent" at HUD, gave an introductory speech on Secretary Carson's first day in office before ceding the mic to her husband.² Secretary Carson's son also has taken an active role at HUD, reportedly "showing up on email chains within the department and appearing often at headquarters."³ He was even observed leaving the office of HUD's chief operating officer, "who was crafting a HUD reorganization to accompany the cuts."⁴

Second, the requested disclosure 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. CREW has requested communications and documented meetings between 11 top agency officials and Mrs. Carson and between those same officials and Mr. B.J. Carson. This information is not in the public domain; the *New York Magazine* article only hints at this, but does not provide the level of detail and comprehensive picture CREW's request seeks.

Third, the requested records will contribute to greater "public understanding" of the roles Secretary Carson's family members play at HUD, and not simply to CREW's interest,⁵ although as a public interest organization CREW serves as a stand-in for the public. Further, as an organization that regularly uses the FOIA to obtain documents that it analyzes and shares with

² MacGillis, *New York Magazine*, Aug. 22, 2017.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., *Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1179 (10th Cir. 2005) ("FOIA fee waivers are limited to disclosures that enlighten more than just the individual requester").

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the public through reports, press releases, and other means,⁶ CREW has the proven ability to share the request information to the public.

Fourth, disclosure of the requested records will contribute "significantly" to public understanding of HUD activities and how the agency operates applying the objective standard for the value of the requested information that the FOIA requires.⁷ Little currently is known about the precise roles Mrs. Carson and Mr. B.J. Carson play at HUD; the requested records will provide a wealth of detail and shed great light on their level of influence.

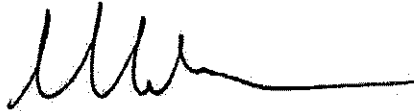
For all these reasons, HUD's initial fee waiver denial clearly was in error and must be reversed.

Mr. McGirt further erred in failing to address CREW's request that it also be treated as a media requester. As the courts have recognized, a non-profit organization like CREW that "regularly publishes or disseminates information to the public" qualifies as a member of the news media.⁸ CREW's request lays out the numerous ways in which it routinely and systematically disseminates information to the public. Mr. McGirt did not even address this showing, much less explain how it failed to meet the statutory criteria. Accordingly, his denial of a fee waiver is contrary to law and fact.

Finally, I note that CREW has been accorded near universal recognition that it qualifies for a fee waiver given the nature of its requests and what it does with this kind of information. HUD's initial determination not only departs from this history, but suggest political influence may have been brought to bear on the agency's FOIA process.

For all these reasons, I respectfully request that you reverse Mr. McGirt's initial determination and grant CREW a fee waiver.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

encl.

⁶ See Exhibit A at 2.

⁷ See DOJ FOIA Update, Vol. VIII, No. 1, at 8 (Jan. 1, 1987), available at <https://www.justice.gov/oip/blog/foia-update-new-fee-waiver-policy-guidance>.

⁸ *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

EXHIBIT B

CREW

**citizens for responsibility
and ethics in washington**

September 21, 2017

U.S. Department of Housing and Urban Development
Attn: FOIA Appeals
Office of Ethics, Appeals and Personnel Law
Ethics and Appeals Division
451 7th Street, S.W., Suite 2130
Washington, D.C. 20410

Re: Administrative Appeal in FOIA Control No. 17-F1-HQ-02149

Dear FOIA Appeals Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") hereby appeals the initial denial by the U.S. Department of Housing and Urban Development ("HUD") of CREW's request for a waiver of fees associated with processing the above-referenced Freedom of Information Act ("FOIA") request. As set forth below, this initial denial contravenes both the law and the facts and appears to be part of a pattern and practice by HUD to unlawfully deny CREW fee waivers under the FOIA.

On September 20, 2017, CREW submitted to HUD by facsimile a request for two categories of records. First, CREW requested 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. Second, CREW requested records sufficient to show the amount of money budgeted for the HUD Secretary's travel in 2016, 2017, and 2018. A copy of this request is enclosed as Exhibit A.

CREW also requested a waiver of fees associated with processing its request because the subject 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. *Id.* Specifically, as CREW's request explains, 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,

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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.* As CREW explained, 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, questions that lie at the heart of the activities and operations of the government.

CREW also requested a fee waiver as a member of the news media, explaining how it regularly publishes and disseminates information to the public in a variety of ways, including through its website, reports, and blog posts.

Less than 24 hours later, by letter dated September 21, 2017, Government Information Specialist Eugene McGirt on behalf of HUD advised CREW its request for a fee waiver was denied. According to Mr. McGirt, CREW's request "is not in the 'public interest.'" Mr. McGirt did not address CREW's request to be categorized as a member of the news media for fee purposes. For your convenience, a copy of his letter is enclosed as Exhibit B.

Under the FOIA, 5 U.S.C. § 552(e)(6), a requester should be granted a fee waiver "if 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." Here, Mr. McGirt concluded initially, with virtually no analysis that CREW's request is not in the public interest. Significantly, he failed to consider the clear and convincing explanation CREW proffered regarding the public's interest in the requested documents.

First, without question CREW's 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. How the Secretary and HUD spend taxpayer funds could not be more relevant to the "operations or activities of the government," particularly at a time of massive budget cuts.

Second, the requested disclosure is "likely to contribute" to the public's understanding of Secretary Carson's travel and the extent to which he has used taxpayer funds to finance travel on government or private aircraft at costs that far exceed commercial rates. Currently, as discussed above, there is considerable public focus on other cabinet officials who have used private and government aircraft in circumstances that suggest non-compliance with governing policies and regulations, and that are a sharp break from the practices of their predecessors. Indeed, reportedly the Treasury Department's Inspector General is examining Secretary Mnuchin's travel, and members of Congress have called for an investigation into HHS Secretary Price's use of non-commercial aircraft for official government travel. Under these circumstances, to call the subject of CREW's request not in the public interest is nothing short of absurd.

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September 21, 2017
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Third, disclosure of the requested records will contribute “significantly” to public understanding of HUD activities and how the agency operates applying the objective standard for the value of the requested information that the FOIA requires.¹ Little currently is known about Secretary Carson’s travel and the extent to which he uses non-commercial flights at a significantly higher cost to the taxpayers who fund his trips. The records CREW has requested will fill in this gap.

For all these reasons, HUD’s initial fee waiver denial clearly was in error and must be reversed. I note further that this is the second time within the past month that HUD has denied CREW’s fee waiver request based on a similarly insubstantial conclusion. Both requests seek information that has the potential to place Secretary Carson in an embarrassing or damaging light, raising the possibility, if not likelihood, that the fee waiver requests were denied for an improper basis. This conduct by HUD suggests a pattern and practice that violates the terms of the FOIA.

Mr. McGirt further erred in failing to address CREW’s request that it also be treated as a media requester. As the courts have recognized, a non-profit organization like CREW that “regularly publishes or disseminates information to the public” qualifies as a member of the news media.² CREW’s request lays out the numerous ways in which it routinely and systematically disseminates information to the public. Mr. McGirt did not even address this showing, much less explain how it failed to meet the statutory criteria. Accordingly, his denial of a fee waiver is contrary to law and fact.

Finally, I note that CREW has been accorded near universal recognition that it qualifies for a fee waiver given the nature of its requests and what it does with this kind of information. HUD’s initial determination not only departs from this history, but suggests that once again political influence may have been brought to bear on the agency’s FOIA process.

For all these reasons, I respectfully request that you reverse Mr. McGirt’s initial determination and grant CREW a fee waiver.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Chief FOIA Counsel

encl.

¹ See DOJ FOIA Update, Vol. VIII, No. 1, at 8 (Jan. 1, 1987), available at <https://www.justice.gov/oip/blog/foia-update-new-fee-waiver-policy-guidance>.

² *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

EXHIBIT A

CREW | citizens for responsibility and ethics in washington

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).

Freedom of Information Officer
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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=.cf0c277c9aff. 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. 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

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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. 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 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,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', with a long, sweeping horizontal line extending to the right.

Anne L. Weismann
Chief FOIA Counsel

EXHIBIT B





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, 6th 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.

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

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 C

FREEDOM FROM RELIGION *foundation*

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

August 11, 2017

SENT VIA U.S. MAIL & ONLINE THROUGH PUBLIC ACCESS LINK

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

Re: FOIA Control No.: 17-FI-HQ-01686

Dear FOIA Appeals Officer:

I am writing on behalf of the Freedom From Religion Foundation, a 501(c)(3) nonprofit, to appeal a decision by HUD's Office of the Executive Secretariat regarding a FOIA request we submitted on August 7, 2017.

We requested copies of internal correspondence between HUD representatives regarding White House cabinet bible studies, correspondence between HUD representatives and Capitol Ministries, and any daily schedules of Secretary Carson that include the cabinet bible study. We also requested a fee waiver. Ethan Bodell of HUD OES denied the fee waiver that same day.

Mr. Bodell denied the fee waiver because we allegedly failed to demonstrate our claim that the information sought is in the public interest. He stated that our request "fails to meet criteria 2-4," and enumerated: "(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."

2. The requested documents are likely to contribute to an understanding of specific government activities or operations.

We are seeking records related to HUD communications and documents related to weekly meetings by the Secretary of HUD. The records concern a weekly bible study sponsored and attended by Trump administration cabinet members. The records may reveal critical information about whether this administration is complying with constitutional requirements. The interests of the people—We the People—can be no higher. The release of the records will also contribute to an understanding of the

influence of an outside organization upon government and provide information on the actions of the Secretary of HUD.

Disclosure of the records will contribute significantly to public understanding of whether the government is complying with the Establishment Clause of the First Amendment. The documents will contribute to a greater understanding of the bible study meetings, including: who attends, if staff are pressured into attending, if staff time and government resources are spent organizing the bible study, and what access this preacher—essentially an unregistered lobbyist—might have.

This type of information is directly related to the operations of government. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (Finding that the second prong was met when material would contribute to public understanding of IRS operations); *See also, Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 107 (D.D.C. 2006) (Concluding that request for communications between HHS and a public affairs firm pertained to the operations of government). The documents may disclose the influence of Capitol Ministries and whether the Constitution is being followed by top officials. Such interests are sufficient to satisfy the second prong of the waiver criteria. *See Judicial Watch, Inc.*, 326 F.3d at 1314 (Finding that “the American people have as much interest in knowing that key IRS decisions are free from the taint of conflict of interest as they have in discovering that they are not.”).

3. The disclosure will contribute to a greater understanding on the part of the public at large.

FFRF will use the records to contribute to the public understanding of government operations, including the circumstances surrounding the weekly White House cabinet bible study.

The subject matter has significant public interest. Both the program itself and FFRF's opposition have been widely covered in the media:

- “Atheists ‘appalled’ by weekly White House Bible study,” *Fox News*, August 5, 2017. Video segment. <http://video.foxnews.com/v/5532948000001/?#sp=show-clips>
- Bradford Richardson, “Atheists ‘appalled’ by White House Bible study,” *The Washington Times*, August 3, 2017. <http://www.washingtontimes.com/news/2017/aug/3/atheists-appalled-white-house-bible-study/>
- “White House bible study wastes time, money,” News Release, FFRF.org, August 2, 2017. <https://ffrf.org/news/news-releases/item/30065-white-house-bible-study-wastes-time-money>
- Valerie Strauss, “Top Trump administration officials flock to weekly Bible study classes at White House,” *The Washington Post*, August 1, 2017. <https://www.washingtonpost.com/news/answer-sheet/wp/2017/08/01/top-trump->

[administration-officials-flock-to-weekly-bible-study-classes-at-white-house/?utm_term=.0dcdbdf6f3524](https://www.usatoday.com/story/news/politics/onpolitics/2017/07/31/members-donald-trumps-cabinet-get-together-weekly-bible-study/525811001/)

- Jessica Estepa, "Cabinet members get together for weekly Bible study," *USA Today*, July 31, 2017. <https://www.usatoday.com/story/news/politics/onpolitics/2017/07/31/members-donald-trumps-cabinet-get-together-weekly-bible-study/525811001/>
- Jennifer Wishon, "Bible Studies at the White House: Who's Inside This Spiritual Awakening?" *Christian Broadcasting Network News*, July 31, 2017. <https://www1.cbn.com/cbnnews/politics/2017/july/bible-studies-at-the-white-house-whos-at-the-heart-of-this-spiritual-awakening>
- Olivia Beavers, "Report: Trump Cabinet members attend weekly Bible study," *The Hill*, July 31, 2017. <http://thehill.com/homenews/administration/344615-report-trump-cabinet-members-gathering-for-weekly-bible-study>
- Penny Starr, "Cabinet Members Launch White House Bible Study," *Breitbart*, July 31, 2017. <http://www.breitbart.com/big-government/2017/07/31/cabinet-members-launch-white-house-bible-study/>
- Leonardo Blair, "Trump Cabinet Members Attend Weekly Bible Study for 'Maturity in Christ,'" *The Christian Post*, May 2, 2017. <http://www.christianpost.com/news/trump-cabinet-members-attend-weekly-bible-study-maturity-christ-181292/>
- Brendan O'Connor, "The Trump Cabinet Has Its Own Weekly Far-Right Bible Study Group," *Splinter News*, April 20, 2017. <https://splinternews.com/the-trump-cabinet-has-its-own-weekly-far-right-bible-st-1794471769>

The information we seek is currently not publicly available; the man who leads the studies "declined to answer questions about the cabinet member Bible study."¹ If responsive documents are provided to FFRF, it is positioned to disclose that information to the public.

FFRF has several channels of communication, which can reach millions of citizens, including:

- Directly to our 29,000 members, including through our newspaper *Freethought Today*.
- Directly to our 500,000+ social media followers.
- Via news releases to an extensive network of media contacts.
- Via our blog, *Freethought Now*, on the Patheos network, which gets millions of hits every month.
- Via our weekly radio show and podcast, *Freethought Radio*, which airs on 92.1 FM in Madison, Wisconsin and about a dozen other states. The podcast has been downloaded nearly 7 million times.
- And via our weekly Facebook show *Ask An Atheist*, whose videos have over 100,000 views.

¹ <https://splinternews.com/the-trump-cabinet-has-its-own-weekly-far-right-bible-st-1794471769>.

4. Disclosure of the requested documents will contribute significantly to the public's understanding of government activities or operations.

Records related to the bible study will contribute to the public's knowledge of how cabinet officials are conducting their offices. A request that contributes significantly "to citizens' understanding of the workings of their government" satisfies the fourth prong. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Educ.*, 593 F. Supp. 2d 261, 270 (D.D.C. 2009), *citing Judicial Watch, Inc. v. Gen. Servs. Admin.*, 2000 WL 35538030, at *11 (D.D.C. Sept. 25, 2000).

The disclosure of documents will aid the public in understanding how top officials in the federal government are using (or misusing) federal resources for the purpose of regular bible study meetings.

More broadly, there are few things more important and valuable than public oversight of our secular government. If cabinet officials are not complying with the requirements of the Constitution, as these documents may show, it is vital for the public to know.

A final note, the FOIA request form on HUD's Freedom of Information Act Public Access Website does not give enough room to those who request fee waivers to adequately explain their case. Responses are limited to 255 characters, which is an inadequate amount of space to fully explain four criteria used by HUD to determine a fee waiver.

Please confirm that FFRF will be granted a fee waiver.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Seidel". The signature is stylized with a large, sweeping "A" and a cursive "Seidel".

Andrew Seidel
Staff Attorney

ALS:rac

EXHIBIT D

FREEDOM FROM RELIGION *foundation*

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

December 8, 2017

SUBMITTED VIA U.S. MAIL AND ONLINE THROUGH PUBLIC ACCESS LINK

U.S. Department of Housing and Urban Development
Attention: FOIA Appeals
Ethics and Appeals Division
451 Seventh Street, SW, Ste. 2130
Washington, D.C. 20410

Re: Appeal of fee waiver denial

Dear FOIA Appeals Officer:

I am writing on behalf of the Freedom From Religion Foundation, a 501(c)(3) nonprofit, to appeal a decision by HUD's Office of the Executive Secretariat regarding a FOIA request we submitted on October 27, 2017.

FFRF requested copies of correspondence to or from HUD representatives regarding an event entitled "Revive Us 2" at the Museum of the Bible, as well as Secretary Carson's daily schedule on October 24, 2017. FFRF is a national nonprofit organization whose purposes are to protect the constitutional principle of separation between church and state, and to educate the public on matters relating to nontheism.

FFRF also explained in its original request that we were inquiring because Secretary Carson was reportedly attending the "Revive Us 2" event, which was described as a "giant revival" by Kirk Cameron, who led the event. FFRF requested a fee waiver based on FFRF's nonprofit status and because the release of the records is a matter of concern to FFRF members, HUD personnel, and the public, and is therefore in the public interest.

Mr. Bodell denied the fee waiver without stating a reason other than a conclusory, "[y]our request fails to meet the criteria above," referring to the 4-factor test in *D.C. Technical Assistance Organization, Inc. et al., v. HUD*, 85 F.Supp. 2d 46 (D.C. Cir. 2000). Both FFRF's original request and Bodell's denial letter are enclosed.

1. The subject matter of the requested documents specifically relates to “operations or activities of the government.”

FFRF’s request directly concerned Secretary Carson’s operations and activities while acting in his official capacity as a representative of HUD. Secretary Carson’s daily schedule details his official activities during the day in question. Correspondence to or from HUD representatives regarding an event attended by Secretary Carson obviously relate to HUD’s involvement with the event, including Secretary Carson’s attendance, and thus obviously relate to HUD’s “operations or activities” as well.

2. The requested documents are “likely to contribute” to an understanding of specific government activities or operations.

FFRF requested documents in order to determine whether Secretary Carson’s visit complied with constitutional requirements. The interests of the people—We the People—can be no higher. The release of the records will also provide information on the actions of the Secretary of HUD.

Disclosure of the records will contribute significantly to public understanding of whether the government is complying with the Establishment Clause of the First Amendment. The documents will contribute to a greater understanding of HUD’s involvement in the “Revive Us 2” event, including: who attended in addition to Secretary Carson, if staff were pressured into attending, if staff time and government resources were spent organizing the event.

This type of information is directly related to the operations of government. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that the second prong was met when material would contribute to public understanding of IRS operations); *See also, Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 107 (D.D.C. 2006) (concluding that request for communications between HHS and a public affairs firm pertained to the operations of government). The documents may disclose whether HUD and its top officials are complying with the Constitution. Such interests are sufficient to satisfy the song prong of the waiver criteria. *See Judicial Watch, Inc.*, 326 F.3d at 1314 (finding that “the American people have as much interest in knowing that key IRS decisions are free from the taint of conflict of interest as they have in discovering that they are not.”).

3. The disclosure will contribute to a greater understanding on the part of the public at large.

FFRF will use the records to contribute to the public understanding of government operations, including the circumstances Secretary Carson’s attendance at religious events.

The subject matter has significant public interest. The religion clauses of the First Amendment provide among the most cherished of American foundational liberties, and the involvement of senior government officials with religious events, including attendance at those events, raises obvious concerns that this involvement may violate the Establishment Clause of the First Amendment.

The information we seek is currently not publicly available. HUD publishes neither its internal correspondence nor Secretary Carson's daily schedules. If responsive documents are provided to FFRF, it is positioned to disclose that information to the public.

FFRF has several channels of communication, which can reach millions of citizens, including:

- Directly to our 29,000 members, including through our newspaper *Freethought Today*
- Directly to our 500,000+ social media followers.
- Via news releases to an extensive network of media contacts.
- Via our blog, *Freethought Now*, on the Patheos network, which gets millions of hits every month.
- Via our weekly radio show and podcast, *Freethought Radio*, which airs on 92.1 FM in Madison, Wisconsin and about a dozen other states. The podcast has been downloaded nearly 7 million times.
- And via our weekly Facebook show *Ask An Atheist*, whose videos have over 100,000 views.

4. Disclosure of the requested documents will contribute significantly to the public's understanding of government activities or operations.

Records related to HUD's involvement with the "Revive Us 2" event will contribute to the public's knowledge of how Secretary Carson and other senior HUD officials are conducting their offices. A request that contributes significantly "to citizens' understanding of the workings of their government" satisfies the fourth prong. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Educ.*, 593 F. Supp. 2d 261, 270 (D.D.C. 2009), citing *Judicial Watch, Inc. v. Gen. Servs. Admin.*, 2000 WL 35538030, at *11 (D.D.C. Sept. 25, 2000).

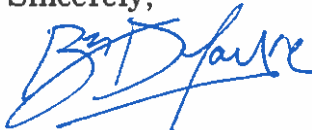
The disclosure of documents will aid the public in understanding how top officials in the federal government are using (or misusing) federal resources for the purpose of attending, organizing, or promoting a religious event.

More broadly, there are few things more important and valuable than public oversight of our secular government. If Secretary Carson is not complying with the requirements of the Constitution, as these documents may show, it is vital for the public to know.

A final note, the FOIA request form on HUD's Freedom of Information Act Public Access Website does not give enough room to those who request fee waivers to adequately explain their case. Responses are limited to 255 characters, which is an inadequate amount of space to fully explain four criteria used by HUD to determine a fee waiver.

Please confirm that FFRF will be granted a fee waiver.

Sincerely,



Ryan D. Jayne
Staff Attorney

Enclosure

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. 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



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.

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

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

EXHIBIT E



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

OFFICE OF ADMINISTRATION

FEB 6 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 is an interim response to your Freedom of Information Act (FOIA) request dated October 26, 2017. Your request was received on October 27, 2017, and you asked for Department of Housing and Urban Development records related to Secretary Ben Carson's attendance at an event titled "Revive Us 2" at the Museum of the Bible on October 24, 2017, to include:

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

Your request is granted in part. In response to item 2 of your request, enclosed is Secretary Carson's daily schedule from October 24, 2017. I am withholding personal details from the Secretary's calendar under Exemption 6 of the FOIA, because release of such information would constitute an unwarranted invasion of personal privacy. The interest of the general public in reviewing these portions of government documents does not outweigh the individuals' right to privacy.

Please be advised that an electronic search is being conducted for records responsive to item 1 of your request. A final response letter, containing any additional responsive records and all applicable appeal language, will be sent to you at the completion of that search.

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. Please also be advised that all appeal rights related to your request will be provided to you in a final response letter.

If you have 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 black ink, appearing to read "Deborah R. Snowden". The signature is fluid and cursive, with the first name being the most prominent.

Deborah R. Snowden
Acting Chief FOIA Officer
Office of the Executive Secretariat

Enclosures

October 24, 2017

Tuesday

October 2017

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November 2017

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

TUESDAY		Notes
24		
<div> <div>From Oct 23</div> <div>DENVER for MBA Annual Convention and Expo</div> </div>		
7 AM		
8		
9		
10		
11	FLY from DEN to IAD	
12 PM		
1		
2		
3		
4		
5		
6	DINNER at the Office Secretary's Dining Room	
12:00am - 12:30am		
8:00pm - 10:00pm PERSONAL (b)(6)		

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE AMERICAN SOCIETY FOR
THE PREVENTION OF CRUELTY
TO ANIMALS,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT,

Defendant.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, arises from two requests by Plaintiff The American Society for the Prevention of Cruelty to Animals (ASPCA) to the United States Department of Housing and Urban Development (HUD or “the Department”) for records relating to HUD’s Moving to Work (MTW) demonstration program. The ASPCA sought information regarding HUD’s policy of exempting housing authorities participating in the MTW program from federal laws and regulations permitting residents to have pets. This information would be used to educate the ASPCA’s supporters and the interested public about federal housing policies that impact the availability of pet-friendly

housing. Defendant HUD wrongly denied the ASPCA's request for a public-interest fee waiver under 5 U.S.C. § 552(a)(4)(A) on the ground that the ASPCA—one of the nation's largest animal welfare organizations—would be unable to disseminate the requested records to a “reasonably broad audience of persons interested in the subject.” Through this action, the ASPCA seeks a declaration that HUD has acted unlawfully by denying the fee-waiver request and an order requiring HUD to produce, at no cost to the ASPCA, all records responsive to the ASPCA's FOIA request.

PARTIES

2. Plaintiff ASPCA is a national not-for-profit animal-welfare organization with more than two million members. Incorporated in New York in 1866, the ASPCA's mission is to “provide effective means for the prevention of cruelty to animals throughout the United States,” with a focus on keeping pets in homes and out of shelters, while increasing the protections afforded to animals under the law. <http://www.aspca.org/about-us>.

3. Defendant HUD is an agency of the federal government and has possession of and control over the records Plaintiff seeks. A division of HUD, the Office of Public Housing Investments, oversees the MTW demonstration program.

JURISDICTION AND VENUE

4. This court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B) because the Defendant, a cabinet department of the United States government, resides in this district and a substantial part of the events and omissions that gave rise to this action occurred in this district.

FACTS

The Moving To Work Program

6. Moving to Work is a demonstration program overseen by the Office of Public Housing Investments, which is part of the Office of Public and Indian Housing, a division of HUD. According to HUD, MTW provides public housing authorities (PHAs) the opportunity to design and test locally-designed strategies that use federal dollars more efficiently, help residents find employment and become self-sufficient, and increase housing choices for low-income families. (*See* Moving to Work, Department of Housing and Urban Development, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw (last visited April 17, 2017)).

7. The Department has interpreted the exemptions created by the MTW program as giving authority to participating PHAs to waive certain protections for pet

ownership provided by existing federal laws and regulations, such as Section 31 of the Housing Act of 1937 (42 USC § 1437z-3) and 24 C.F.R. 960 subpart G (24 C.F.R. § 960.701-960.707). *See* MTW Standard Agreement, Attachment C, Statement of Authorizations, at pg. 7, ¶ 10, attached hereto as Exhibit A. (Noting that “[b]uildings or portions of buildings . . . may be designated as . . . Pet-Free,” and stating, “This authorization waives certain provisions of Sections 3, 6, 7, 16, and 31 of the 1937 Act and 24 C.F.R. 945 subpart C, 960 Subparts B, D, E and G as necessary to implement the Agency’s Annual MTW Plan.”).

8. The ASPCA supports housing policies that help keep people and pets together while protecting the safety of residents and the interests of landlords. The organization opposes housing laws and policies that ban pets or severely restrict pet ownership based on arbitrary factors such as size and breed, without regard to individual behavior and temperament, and thus seeks to educate its members and the interested public about the possibility of the MTW program allowing participating PHAs to implement such restrictions on a scale that could impact thousands of tenants nationwide.

The ASPCA’s FOIA Requests

The First Request

9. On October 19, 2015, the ASPCA submitted a FOIA request seeking the following records: (a) All documents and correspondence discussing HUD’s

decision to include Section 31 of the Housing Act of 1937 (42 USC § 1437z-3) and 24 C.F.R. 960 subpart G (24 C.F.R. § 960.701-960.707) for waiver in the standard Moving to Work Agreement put into use in 2006; (b) all documents and correspondence discussing any participating MTW agency's request for waiver from Section 31 of the Housing Act of 1937 (42 USC § 1437z-3) and/or 24 C.F.R. 960 subpart G (24 C.F.R. § 960.701-960.707) or urging HUD that these sections of law be exempted for MTW PHAs; (c) all documents and correspondence discussing which sections of the Housing Act of 1937 and its implementing regulations would be waived in the standard Moving to Work Agreement put into use in 2006; (d) all documents and correspondence discussing which sections of the Housing Act of 1937 and its implementing regulations would be waived in the standard Moving to Work Agreement currently being negotiated; and (e) all documents and correspondence discussing HUD's authority under the Omnibus Consolidated Rescissions and Appropriations Act of 1996 to waive sections of the Housing Act of 1937 and its implementing regulations as a part of the Moving to Work demonstration program. Ex. B.

10. The ASPCA's FOIA request included a paragraph noting that the ASPCA was entitled to a waiver of fees under FOIA's "public interest" provision. *Id.* at 1. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

11. The Department denied the waiver request on March 14, 2016, stating that the ASPCA, by asserting only “conclusory statements” as to the applicability of the waiver provision, had failed to meet its initial burden of identifying the public interest to be served by disclosure of the requested documents. Ex. C at 1-2.

12. The ASPCA administratively appealed the denial of the waiver on March 24, 2016. Its appeal explained over multiple pages why the FOIA request met each and every criterion for application of the public interest fee waiver. It detailed the size of the organization; the depth and breadth of its staff’s knowledge in the areas of pet retention and public education; and the ASPCA’s wide range of public outlets including its quarterly magazine, online advocacy program with regular email updates to supporters, substantial social media following, and daily coverage in major media outlets nationwide. Ex. D at 2-3.

13. The Department nonetheless denied the appeal on April 20, 2016, on the ground that the ASPCA’s request failed to show that “disclosure [would] contribute to an understanding of the subject by the public at large.” Ex. E at 2.

14. Specifically, HUD’s denial claimed that although the ASPCA had stated an intention to share information “with its own staff and network of supporters and through its own online publication or magazine,” such distribution did not “constitute an intent or ability to distribute this information to a reasonably broad

audience.” *Id.* This assessment ignored the ASPCA’s enumeration of the multiple other means by which it intended to share the information.

15. The Department later sent the ASPCA a letter estimating a fee of \$7,862.40 and requiring that the ASPCA submit this payment in order to receive responsive records. Ex. F.

16. The ASPCA sent an inquiry to FOIA officer William Smith on June 7, 2016, requesting further explanation of how this fee had been calculated and seeking information on how it might narrow or tailor its request. Ex. G. at 2. In response, the FOIA officer suggested, not for the first time, that the ASPCA withdraw its FOIA request. *Id.* at 1-2.

17. The Department informed the ASPCA via a July 7, 2016 email that the ASPCA’s FOIA request had been closed for nonpayment. Ex. H at 1.

The Second Request

18. Deborah Press, the ASPCA employee who had filed both the original FOIA request and the appeal of the fee-waiver denial, subsequently discussed the denial in a telephone conversation with Deborah Snowden, Chief of the Department’s FOIA Branch, and Sandra Wright, HUD Government Information Specialist, who subsequently invited the ASPCA to refile the FOIA request and waiver application with a different member of HUD’s FOIA staff.

19. Pursuant to this conversation, the ASPCA filed a new FOIA request on July 12, 2016. The request sought the same categories of documents as the original request. Ex. I.

20. The July 12 FOIA request was accompanied by a separate fee waiver request that included six numbered sections comprising fifteen paragraphs of explanation as to why the ASPCA's request satisfied each of the required criteria for a fee waiver. Ex. J.

21. HUD again issued a cursory denial of a fee waiver the following week, stating only that the ASPCA's request "does not specifically address how your request meets any of the criteria for determining whether a fee waiver is appropriate." Ex. K at 1. The denial did not address any of the specific contentions in the ASPCA's extensive fee-waiver request.

22. The ASPCA appealed this determination in a letter dated August 16, 2016. Ex. L. The appeal included a six-part legal analysis structured around HUD's own regulations interpreting the FOIA fee-waiver requirements, *see* 24 C.F.R. 15.106(k)(ii)). Specifically, the ASPCA demonstrated that (a) the subject of the requested records concerned identifiable operations or activities of the federal government; (b) the disclosable portions of the requested records were meaningfully informative about such operations or activities and were "likely to contribute" to an increased public understanding of those operations or activities; (c) the disclosure

would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to merely the individual understanding of the requester; (d) the public's understanding of the subject in question would be enhanced by the disclosure to a significant extent; (e) the ASPCA has no commercial interests in the disclosure of the requested records; and (f) the public interest is therefore greater than the ASPCA's nonexistent commercial interest. Ex. L at 3-9.

23. The appeal devoted particular attention to the third element listed above—that the disclosure should contribute to the understanding of a “reasonably broad audience of persons interested in the subject”—given that that criterion had been previously articulated as a basis for HUD's denials of the ASPCA's fee-waiver requests. *Id.* at 5-7.

24. The ASPCA explained that it sought the requested records in order to “contribute to a greater public understanding of why pets may be prohibited in housing authority properties participating in the MTW demonstration programs.” *Id.* at 5. It further noted that, “[a]mong the ASPCA's supporters are members who reside in properties managed by MTW housing authorities, members residing in public housing not participating in MTW, and others who reside in privately owned housing,” and that “[o]ur members are concerned about the availability of pet-friendly housing, and a number of them are directly affected by HUD's MTW policies.” *Id.*

25. Addressing its “expertise in the subject area,” *see* 24 C.F.R. § 15.106(k)(ii)(2)(3), the ASPCA explained that it has “a staff of attorneys, policy experts, veterinarians, animal behaviorists, and researchers with vast knowledge in the area of pet retention.” *Id.* at 5.

26. The ASPCA’s appeal also spoke to its “ability and intention to effectively convey information to the public.” *See* 24 C.F.R. § 15.106(k)(ii)(2)(3). The letter referenced the organization’s “staff of writers, editors, and communication professionals skilled at effectively conveying information to the public.” *Id.* at 5. Also noted were the ASPCA’s “multitude of publications,” including its quarterly magazine, *ASPCA Action*. *Id.* The letter also discussed the ASPCA’s online advocacy program, the Advocacy Brigade, which “provides supporters with regular updates via email and our website on animal-related bills, regulations, and policies.” The Advocacy Brigade, it noted, “has 1.3 million members who took online action through our email alerts and website resulting in approximately 460,000 messages to lawmakers in 2015 alone.” *Id.* The ASPCA explained that its “advocacy materials are available to the general public via our website and through social media,” and that the organization has “over 1.5 million followers on Facebook and 337,000 on Twitter.” *Id.* Finally, the letter appeal noted that “the ASPCA’s capacity to distribute information is not limited to its own member communication channels.” *Id.* at 6. To the contrary, “the organization receives daily coverage in television,

radio, and print media nationwide,” and is “able to consistently secure national broadcast, print, and online media coverage in top tier outlets such as the *New York Times*, the *Wall Street Journal*, *USA Today*, the *Los Angeles Times*, “Good Morning America,” “Today,” National Public Radio, and the *Huffington Post*. *Id.*

27. In addition to providing the factual basis to support its request for a fee waiver, the ASPCA’s appeal also contained extensive citations to case law contrary to HUD’s analysis of the fee-waiver issue. Included were numerous examples of courts holding that similarly situated organizations were entitled to fee waivers, as well as cases in which waivers were extended to entities or individuals with “markedly *less* capability than the ASPCA to disseminate the requested information.” *Id.* at 6, n.2.

28. Despite the ASPCA’s exhaustive demonstration of its eligibility for a fee waiver, HUD nonetheless denied the ASPCA’s second appeal on September 14, 2016. The denial, HUD explained, was based on the ASPCA’s supposed failure to demonstrate that it could “contribute to an understanding of the public at large.” Ex. M at 1.

29. The Department offered three justifications for its denial. First, it reasoned that even if the ASPCA routinely secures national media coverage, it is ultimately up to the media what it decides to report. Accordingly, HUD asserted that it would be “speculative to assume that the press would be interested in the requested information.” *Id.* at 2.

30. Second, HUD stated that that the “ASPCA’s intent to share information with its own staff and network of supporters . . . through its own on-line publication or magazine does not constitute an intent or ability to distribute this information to a reasonably broad audience.” *Id.*

31. Finally, HUD purported to distinguish a case cited by the ASPCA in its appeal, *Cnty. Legal Servs., Inc. v. United States HUD*, 405 F. Supp. 2d 553, 556 (E.D. Pa. 2005), on the ground that “the interested group, low- and moderate- income families impacted by the Moving to Work demonstration, in that case has a greater population than the targeted group, those interested in housing-related pet ownership prohibition, in this case.” *Id.* at 2. The Department offered no data or other evidence to support this claim, nor did it address any of the many other cases that the ASPCA relied upon in its appeal.

32. On September 27, 2016, HUD assessed a fee of \$5,662 for processing the ASPCA’s request, and noted that the Department would not take action on the request without receiving payment. Ex. N.

33. The ASPCA has exhausted its administrative remedies for securing a full public interest fee waiver under FOIA.

COUNT I
VIOLATION OF 5 U.S.C. § 552(a)(4)(A)

34. ASPCA realleges and incorporates by reference all previous paragraphs as if fully set forth herein.

35. Under 5 U.S.C. § 552(a)(4)(A)(iii), the ASPCA is entitled to a full public interest waiver of fees that otherwise would be assessed in conjunction with its request, and HUD has not provided a valid legal basis to deny the ASPCA's request for a fee waiver.

The denial of the ASPCA's request for a public interest fee waiver violates FOIA.

WHEREFORE, the ASPCA requests that this Court:

- A. Declare that the ASPCA is entitled to a full fee waiver under 5 U.S.C. § 554(a)(4)(A)(iii) in connection with its FOIA request;
- B. Order HUD to grant the ASPCA a fee waiver in full and to search for, copy, and produce all records responsive to the ASPCA's FOIA request at no cost to the ASPCA;
- C. Award the ASPCA its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E);
- D. Expedite this action in every way pursuant to 5 U.S.C. § 552 and 28 U.S.C. § 1657; and

E. Grant all other relief the Court deems appropriate.

Respectfully submitted,

/s/Grace L. Pan

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EXHIBIT G

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

PUBLIC CITIZEN, INC.,)	
1600 20th Street NW)	
Washington, DC 20009,)	
)	
Plaintiff,)	C.A. No. 17-2582
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
HOUSING AND URBAN)	
DEVELOPMENT,)	
451 7th Street SW)	
Washington, DC 20410,)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, arises from a FOIA request to the U.S. Department of Housing and Urban Development (HUD).

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Public Citizen, Inc. is a non-profit public-interest organization with members in all 50 states. Since its founding in 1971, Public Citizen has worked before Congress, regulatory agencies, and the courts to advance the interests of its members and to educate the public on a wide range of consumer protection issues. In particular, Public Citizen works to promote openness in government and collects and disseminates information related to governmental actions and practices.

4. Defendant HUD is an agency of the United States and has possession of and control over the records that Public Citizen seeks.

FACTS

5. The cost of travel and security for members of the Trump Administration has been a subject of considerable public attention and interest. *See, e.g.*, Aaron C. Davis, *HHS Inspector General Is Investigating Price's Travel on Private Charter Planes*, Wash. Post (Sept. 22, 2017), https://www.washingtonpost.com/investigations/investigation-launched-into-hhs-secretary-tom-prices-travel-on-charter-jets/2017/09/22/f7659a0c-9f9b-11e7-8ea1-ed975285475e_story.html; Donna Borak, *Inspector General Launches Second Review of Steven Mnuchin's Travels*, CNN Money (Oct. 11, 2017), <http://money.cnn.com/2017/10/10/news/economy/treasury-inspector-general-mnuchin-travel/index.html>; Matthew Daly, *Interior Watchdog Faults Zinke for Incomplete Travel Records*, U.S. News & World Report (Nov. 16, 2017), <https://www.usnews.com/news/politics/articles/2017-11-16/interior-watchdog-faults-zinke-for-incomplete-travel-records>.

6. On September 22, 2017, Public Citizen sent a FOIA request to HUD for two sets of records: (1) all documents related to the cost of travel and personal security for HUD Secretary Ben Carson from March 2, 2017, through the date of processing, and (2) all documents related to the cost of travel and personal security for former HUD Secretary Shaun Donovan from January 22, 2009, through January 22, 2010.

7. In its September 22, 2017 FOIA request, Public Citizen requested a full waiver of fees. In the space available on HUD's online form, the request stated that Public Citizen does not seek the records for a commercial purpose; that the requested records will contribute to the public's

understanding of government spending under the Trump Administration; and that Public Citizen has over 400,000 members and supporters.

8. By letter dated September 25, 2017, HUD denied Public Citizen’s request for a fee waiver on the basis that Public Citizen had not adequately shown that the public interest would be served by disclosure of the requested documents.

9. By letter dated October 20, 2017, Public Citizen appealed HUD’s denial of its fee waiver request. In its appeal, Public Citizen explained that HUD’s denial failed to comply with the law because it did not state a specific reason for denying the fee waiver and applied the wrong legal standard. Public Citizen also described how its request satisfies the four factors in HUD’s FOIA fee-waiver regulation for determining whether disclosure of records is in the public interest, *see* 24 C.F.R. § 15.106(k)(2). Public Citizen explained, among other things, that the requested records involve travel costs for two HUD secretaries, that they regard agency expenses borne by the public, that such information is not already in the public domain, that the particular issue has been a matter of public interest and concern in multiple administrations, that Public Citizen holds relevant expertise in matters of government ethics and accountability, and that Public Citizen intends to share the information received with the public for free and has a demonstrated ability to do so. Public Citizen noted that HUD had already properly concluded that Public Citizen has no commercial interest in the requested records.

10. By letter dated November 20, 2017, HUD affirmed its earlier denial of Public Citizen’s fee waiver request. In its November 20, 2017 letter, HUD specified that Public Citizen’s request failed to meet only the fourth public interest factor. Specifically, and without further explanation, the letter stated that Public Citizen’s “contention that the requested records will contribute

‘significantly’ to public understanding of HUD activities and how it spends money on Secretarial travel does not satisfy the criteria and is conclusory.”

11. Under 5 U.S.C. § 552(a)(6)(A)(i), HUD had 20 working days to respond to Public Citizen’s FOIA request. More than 20 working days have passed since Public Citizen’s September 22, 2017 request, and Public Citizen has received neither a denial of its request nor any records produced in response to its request.

12. Public Citizen has exhausted all administrative remedies with respect to its FOIA request to HUD and the denial of the fee waiver for that request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

13. Under 5 U.S.C. § 552(a)(4)(A)(iii), Public Citizen is entitled to a full waiver of fees that otherwise would be assessed in connection with its request, and HUD’s denial of Public Citizen’s request for a public interest fee waiver violates FOIA.

14. Public Citizen has a statutory right under FOIA to the records it seeks, and HUD has no legal basis for its failure to produce those records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Declare that HUD’s failure to grant Public Citizen’s request for a fee waiver is unlawful;
- B. Order HUD to make the requested records available to Public Citizen without delay and at no cost;
- C. Award Public Citizen its costs and reasonable attorneys’ fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

D. Grant such other and further relief as this Court may deem just and proper.

Dated: December 4, 2017

Respectfully submitted,

/s/ Rebecca Smullin

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