

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

**CITIZENS FOR RESPONSIBILITY AND ETHICS
IN WASHINGTON, et al.**

Plaintiffs,

v.

**UNITED STATES HOUSING AND URBAN
DEVELOPMENT,**

Defendant.

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) **Case No. 18-cv-0114 (KBJ)**
) **(consolidated with 18-2737)**
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DEFENDANT'S MOTION TO DISMISS

Defendant, United States Housing and Urban Development, through undersigned counsel, hereby moves to dismiss the Complaint in Case No. 18-0114 and Case No. 18-2737 pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). The grounds for this motion are set forth in the accompanying memorandum. A proposed order is attached.

Respectfully submitted,

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

**CITIZENS FOR RESPONSIBILITY AND ETHICS
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Plaintiffs,

v.

**UNITED STATES HOUSING AND URBAN
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Defendant.

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) **Civ. Act. No. 18-0114 (KBJ)**
) **(consolidated with 18-2737)**
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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendant United States Housing and Urban Development (“HUD”), by and through undersigned counsel, moves pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the above-captioned action.

The Complaint in 18-0114 contains four counts under the Freedom of Information Act (“FOIA”). Three of the counts (Counts II-IV) are moot and should be dismissed on that basis.¹ Those counts are limited to asserting a claim for improper denial of fee waiver requests (Counts II-III) and a claim for improper denial of media requester status (Count IV). These counts are now moot because, after the filing of this lawsuit, HUD has notified Plaintiffs that no fees will be charged for the processing of the underlying FOIA requests that are the subject of those counts. Accordingly, there is no case or controversy for the Court to resolve on the fee waiver issue or the related question of media requester status. The Complaint in 18-2737 asserts similar counts

¹ Motions to dismiss on grounds of mootness “are properly brought under Rule 12(b)(1) of the Federal Rules of Civil Procedure.” *La Botz v. FEC*, 2014 U.S. Dist. LEXIS 101445, at *8, *15 (D.D.C. July 25, 2014).

(denominated as “Claim II” and “Claim III”) regarding a subsequent FOIA request, which are moot for the same reason.

The remaining count (Count I) in 18-0114 purports to assert an “impermissible policy, pattern and practice” of denying fee waivers to public interest organizations. That count should be dismissed for failure to state a claim because Plaintiffs have failed to plausibly plead conduct that rises to the level necessary to assert such a claim. The similar claim asserted as “Claim I” in 18-2737 should be dismissed for the same reason.

STANDARD OF REVIEW

I. Rule 12(b)(1) Standard

When reviewing a Rule 12(b)(1) motion to dismiss, “the court must accept the complaint’s well-pled factual allegations as true and draw all reasonable inference in the plaintiffs favor.” *Thompson v. Capitol Police Bd.*, 120 F. Supp. 2d 78, 81 (D.D.C. 2001); *Vanover v. Hantman*, 77 F. Supp. 2d 91, 98 (D.D.C. 1999). At the same time, “[t]he court is not required, however, to accept inferences unsupported by the facts alleged or legal conclusions that are cast as factual allegations.” *Rann v. Chao*, 154 F. Supp. 2d 61, 64 (D.D.C. 2001), *aff’d*, 346 F.3d 192 (D.C. Cir. 2003). Plaintiff must carry the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Thompson*, 120 F. Supp. 2d at 81; *Vanover*, 77 F. Supp. 2d at 98. In determining whether jurisdiction exists, a court may look beyond the allegations of the complaint, consider affidavits and other extrinsic information, and ultimately weigh the conflicting evidence. *See Herbert v. Nat’l Acad. of Sci.*, 974 F.2d 192, 197 (D.C. Cir. 1992).

II. Rule 12(b)(6) Standard

A Rule 12(b)(6) motion tests the sufficiency of a complaint. In resolving a Rule 12(b)(6)

motion to dismiss for failure to state a claim, the court will treat the complaint's factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Sullivan-Obst v. Powell*, 300 F. Supp. 2d 85, 91 (D.D.C. 2004). However, the complaint must appear plausible on its face and raise a reasonable expectation that discovery will produce supporting evidence. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In *Twombly*, the Court stated that while there was no "probability requirement at the pleading stage," *id.* at 556, to survive a Rule 12(b)(6) motion to dismiss, the facts alleged in the complaint must be sufficient "to state a claim for relief that is plausible on its face." *Id.* at 570. The Court referred to this newly clarified standard as the "plausibility standard." *Id.* at 560-61 (abandoning the "no set of facts" language from *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

The Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), further clarified the plausibility pleading standard, explaining that it "demands more than an unadorned, the-defendant-unlawfully-harmed-me-accusation." *Id.* at 678. "Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" *Id.*

On a motion to dismiss under Rule 12(b)(6), the Court may consider, in addition to the facts alleged in the complaint, documents either attached to, or incorporated into the complaint by reference, as well as matters of which it may take judicial notice. *See EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624-25 (D.C. Cir. 1997); *see also Lipton v. MCI Worldcom, Inc.*, 135 F. Supp. 2d 182, 186 (D.D.C. 2001) ("[T]he court may consider the defendants supplementary material without converting the motion to dismiss into one for summary judgment. This Court has held that where a document is referred to in the complaint and is central to the plaintiff's claims,

such a document attached to the motion papers may be considered without converting the motion to one for summary judgment.”)

ARGUMENT

I. Counts II-IV And “Claim II” And “Claim III” Should Be Dismissed As Moot.

The plaintiffs in 18-0114, Citizens for Responsibility and Ethics in Washington (“CREW”) and Freedom from Religion Foundation (“FFRF”), submitted in total four distinct FOIA requests to HUD and in each of their requests sought a fee waiver. (Compl. (18-0114) ¶¶ 18-19, 27-28, 39-40, and 46-47). HUD denied Plaintiffs’ requests for fee waivers and upheld those decisions following administrative appeals by Plaintiffs. (*Id.* ¶¶ 21, 24, 30, 36, 41, 45, 48, 52)

In its two FOIA requests to HUD that are the subject of 18-0114, CREW also asked to be treated as a representative of the news media (*Id.* ¶¶ 20, 29). The Complaint in 18-0114 alleges that, as of the date of the filing of the lawsuit, HUD had not responded to CREW’s request to be treated as a representative of the news media. (*Id.* ¶¶ 26, 38)

Following the filing of case number 18-0114, HUD determined that no fee would be charged for any of the four underlying FOIA requests at issue in that case. In letters dated March 15, 2018 to FFRF and March 20, 2018 to CREW, HUD advised that “upon further review of your request, . . . [t]he 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.” (Ex. 1-4 attached hereto).

The FOIA request underlying Case No. 18-2737 was submitted by CREW to HUD on October 1, 2018, and also requested a fee waiver. (Compl. (18-2737) ¶¶ 14-15) CREW also asked in that request that it be treated as a member of the news media. (*Id.* ¶ 16) HUD denied CREW’s

request for a fee waiver, and that determination was upheld in an administrative appeal. (*Id.* ¶¶ 17-20) Following the filing of this lawsuit, HUD determined that no fee would be charged for this request because HUD determined that “[t]he 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.” (Ex. 20 hereto)

In light of the decision by HUD not to charge fees for any of the underlying FOIA requests, Counts II-IV in 18-0114, and Claims II-III in 18-2737, should be dismissed as moot. “The rule against deciding moot cases forbids federal courts from rendering advisory opinions or ‘deciding questions that cannot affect the rights of litigants in the case before them.’” *Hall v. CIA*, 437 F.3d 94, 99 (D.C. Cir. 2006) (citations omitted). In *Hall*, the Court dismissed as moot Hall’s challenge to the agency’s denial of his FOIA fee waiver request after the agency decided to release records to Hall without seeking payment from him. *Id.* Because Hall “already has ‘obtained everything that [he] could recover . . . by a judgment of this court in [his] favor,’” there was no case or controversy before the Court. Here, as in *Hall*, HUD has decided to release records to Plaintiffs without seeking payment from them. Accordingly, Counts II-III and “Claim II” – which assert claims for improper denial of a fee waiver request – are moot. *Id.* (“We find that the CIA’s decision to release documents to Hall without seeking payment from him moots Hall’s arguments that the district court’s denial of a fee waiver was substantively incorrect.”); *Houser v. Church*, 271 F. Supp. 3d 197, 204 (D.D.C. 2017) (dismissing as moot denial of fee waiver count based on *Hall*).

The Court in *Hall* also held that the requester’s media status claim was moot by virtue of the agency’s decision to release documents without payment. In *Hall*, the plaintiff had argued

that the media status claim fell within an exception to the mootness doctrine because it was capable of repetition were Hall to seek a fee waiver on that basis in the future. However, even “[a]ssuming in Hall’s favor that the matter is capable of repetition,” the Court “fail[ed] to see how the issue has any tendency to evade review” because “[d]enials of fee waivers do not seem inherently of such short duration that they cannot ordinarily be fully litigated before their cessation.” *Hall*, 437 F.3d at 99. The same analysis applies here to CREW’s claim that it was improperly denied media requester status (Count IV and “Claim III”).

Accordingly, Counts II-IV, and Claims II-III, are moot and should be dismissed because there is no actual controversy before the Court to adjudicate. *See also Davis v. FEC*, 554 U.S. 724, 732-33 (2008) (“To qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.”) (citation omitted); *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 461-62 (2007) (“Article III’s ‘case-or-controversy requirement subsists through all stages of federal judicial proceedings . . . [I]t is not enough that a dispute was very much alive when suit was filed.’”); *Nat’l Parks Conservation Ass’n v. Dep’t of Interior*, 794 F. Supp. 2d 39, 44 (D.D.C. 2011) (“If . . . an agency does respond to a petition, even after a suit to compel a response is filed, such a suit is rendered moot.”).

II. The “Policy, Pattern and Practice” Claims Should Be Dismissed For Failure To State A Claim

Plaintiffs allege in Count I of 18-0114 and in Claim I of 18-2737 that HUD has adopted and engaged in a policy and practice of violating FOIA’s fee waiver provisions by (1) refusing to grant fee waivers to non-profit, public interest organizations that allegedly satisfy all of the statutory and regulatory criteria for a public interest fee waiver; (2) allegedly making an initial decision to deny requested public interest fee waivers by using boilerplate language and failing to

address the showings made by the requester; and (3) allegedly affirming denials on appeal in broad conclusory terms. (Compl. (18-0114) ¶¶ 72-74; Compl. 18-2737) ¶¶ 82-92).

Because the allegations in 18-114 and 18-2737 largely overlap, HUD will address the “policy or practice” claim based on the allegations in both Complaints collectively. Although this claim is not subject to the same mootness considerations as Counts II-IV and Claims II-III, *Judicial Watch v. DHS*, 895 F.3d 770, 777 (D.C. Cir. 2018), it should be dismissed under Rule 12(b)(6) because Plaintiffs’ allegations do not rise to the level of abdication of duty required to assert a “policy, pattern and practice” claim.

A. Legal Standard For Policy or Practice Claim

The D.C. Circuit in *Payne Enterprises, Inc. v. United States*, 837 F.2d 486 (D.C. Cir. 1988), has recognized the possibility of a “policy or practice” claim for the violation of the procedural requirements of FOIA during the processing of requests. *Id.* at 491. Such claims, however, have been limited by courts to extreme situations in which an agency largely abdicates its obligations under FOIA. *See Del Monte Fresh Produce N.A. v. United States*, 706 F. Supp. 2d 116, 120 (D.D.C. 2010) (“*Payne Enterprises* regards the repeated denial of Freedom of Information requests based on invocation of inapplicable statutory exemptions rather than the delay of an action over which the agency had discretion.”). Such claims do not arise when, as here, Plaintiffs merely identify isolated instances in which an agency allegedly erred in making a discretionary determination under FOIA. *See Ctr. for Biological Diversity v. United States EPA*, 2017 U.S. Dist. LEXIS 159654, Case No. 16-175, at *61 (D.D.C. Sept. 28, 2017); *see also See, e.g., Cause of Action v. Eggleston*, 224 F. Supp. 3d 63, 71 (D.D.C. 2016) (finding allegations insufficient to state a policy or practice claim and that “the Court is not required to, and does not, accept Plaintiff’s

conclusory and unsupported allegation that its requests have been delayed for illicit purposes and not as a result of legitimate efforts to review requested records”).

The D.C. Circuit recently held that, for a complaint to assert a plausible policy or practice claim, the complaint must allege “prolonged, unexplained delays in producing non-exempt records that could signal the agency has a policy or practice of ignoring FOIA’s requirements. . . . [T]he plaintiff must allege a pattern of prolonged delay amounting to a persistent failure to adhere to FOIA’s requirements and that the pattern of delay will interfere with its right under FOIA to promptly obtain non-exempt records from the agency in the future.” *Judicial Watch*, 895 F.3d at 780. Most cases in which a policy or practice claim has been asserted involve an agency’s repeated failure to respond to multiple FOIA requests, thus resulting in alleged prolonged delay in obtaining documents. For instance, the complaint in *Judicial Watch* alleged that the plaintiff had “repeatedly been confronted with prolonged, unexplained delays by the same agency with regard to the same type of records.” *Id.* at 780; *see also Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 489-90 (D.C. Cir. 1988) (involving repeated denial of Freedom of Information requests based on invocation of inapplicable statutory exemptions).

Whether a policy or practice claim can be asserted for the denial of a fee waiver request has not been addressed in this Circuit.² However, to the extent such a claim might theoretically

² The few cases that have touched on the issue, have resolved the question on procedural deficiencies, and thus did not reach the question of whether such a claim was cognizable in the fee waiver denial context. For instance, in *Coleman v. DEA*, 134 F. Supp. 3d 294 (D.D.C. 2015), the plaintiff asserted a policy or practice claim with respect to a fee waiver denial, but the Court held that plaintiff lacked standing to assert such a claim on the basis that plaintiff’s allegations of potential future injury were speculative. *Id.* at 307. In *Muttitt v. Department of State*, 926 F. Supp. 2d 284 (D.D.C. 2013), the Court held that plaintiff had failed to assert a policy or practice claim for denial of fee waivers in its complaint and could not raise the issue belatedly at the summary judgment stage. *Id.* at 295.

exist, it would appear to fall outside the standard articulated in *Judicial Watch* absent plausible allegations that the agency engaged in a “pattern of prolonged delay” in responding to a fee waiver request in a manner that amounted to a “persistent failure to adhere to FOIA’s requirements” and that the pattern of delay “interfere[d]” with the requester’s “right under FOIA to promptly obtain non-exempt records from the agency in the future.” That standard has not been met here.

B. Plaintiffs Have Failed To Plausibly Plead A Policy or Practice Claim

1. A Policy or Practice Claim Is Not Viable In The Context At Issue Here

Before addressing the specific allegations in the two complaints, some context is appropriate.

First, of the fee waiver requests at issue, three are from CREW, which is a non-profit organization that, according to publicly available data, receives contributions of approximately \$2 million per year. See <https://projects.propublica.org/nonprofits/organizations/30445391> (reporting on data from 2011 to 2016). That judicially noticeable fact, in and of itself, renders implausible any contention by CREW that the denial of a handful of fee waiver requests has in any manner interfered with its ability to promptly obtain records from HUD under FOIA.

Second, HUD’s FY 2017 FOIA annual report indicates that, of the 117 fee waiver requests received in fiscal year 2017 (October 1 to September 30) for which a decision issued,³ approximately one-third of those requests were granted. See 2017 FOIA Report (available at: https://www.hud.gov/program_offices/administration/foia/foiarpts) Similarly, HUD’s FY 2018 FOIA annual report indicates that, of the 53 fee waiver requests received in fiscal year 2018 for

³ These statistics report on the number of fee waiver requests for which a decision issued, not necessarily the total number of fee waiver requests actually received.

which a decision issued, approximately one-third of those requests were granted. (*Id.*, 2018 FOIA Annual Report). Plaintiffs' small sample size, therefore, of five requests divided between two different fiscal years is not sufficient to raise an inference of a policy or practice of summarily denying fee waiver requests.

Finally, unlike other contexts in which policy or practice claims have been recognized, Plaintiffs' purported policy or practice claim is asserted in the context of a fee waiver analysis that involves the consideration of multiple factors as applied to the particular FOIA request at issue and the evidence (or lack thereof) submitted by the requester in support of the particular fee waiver request. Although FOIA requesters must ordinarily pay reasonable charges associated with processing their requests, FOIA requires that an agency waive fees for processing a FOIA request when "[1] 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 [2] is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *Research Air, Inc. v. Kempthorne*, 589 F. Supp. 2d 1, 8 (D.D.C. 2008) (citing *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988)); *VoteHemp, Inc. v. Drug Enforcement Admin.*, 237 F. Supp. 2d 55, 58-59 (D.D.C. 2002). The requester bears the burden of demonstrating that both requirements of this two-pronged analysis are satisfied. *Larson*, 843 F.2d at 1483; *Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 60 (D.D.C. 2002).

HUD's regulations identify four factors that HUD considers in evaluating whether the requester has met its burden of satisfying the first-prong of the analysis (*i.e.*, the public interest prong):

- (i) 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.

- (ii) 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. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such increased understanding, where nothing new would be added to the public's understanding.
- (iii) 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. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.
- (iv) 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. However, HUD will not make value judgments about whether information at issue is "important" enough to be made public.

See 24 C.F.R. §15.106(k)(2).

Case law, moreover, provides guidance in applying these factors. *See, e.g., Perkins v. United States Dep't of Veteran Affairs*, 754 F. Supp. 2d 1, 7 (D.D.C. 2010) ("The Court finds that while the ITC's training plan reports, training cost reports, and other training reports technically concern government operations, they do not, 'in any readily apparent way,' contribute to an understanding of government operations or activities.") Courts, for instance, require more than conclusory allegations by requesters to meet their burden. *Nat'l Security Counselors v. DOJ*, 848 F.3d 467, 474 (D.C. Cir. 2017) ("Here, while NSC provided some barebones indication of how it intended to use its requested information, it similarly failed to provide sufficiently specific and non-conclusory statements demonstrating its ability to disseminate the disclosures to a 'reasonably broad audience of persons interested in the subject.'"); *Perkins*, 754 F. Supp. 2d at 8 ("Merely stating one's intention to disseminate information does not satisfy this factor; instead, there must

be some showing of one's ability to actually disseminate the information.”).

Although an agency is required to consider a fee waiver request when made, the application of the four public interest factors involves agency decisionmaking. It is dependent on an assessment of the FOIA request, the basis asserted for the fee waiver in the request, and any supporting documentation. Although an agency may err in applying these factors to a particular set of circumstances, such an error does not give rise to a policy or practice claim. Only when an agency engages in a pattern of abdicating its responsibilities under FOIA can such a claim arise. *See Scudder v. CIA*, 281 F. Supp. 3d 124, 129 (D.D.C. 2017) (dismissing “pattern and practice” claim based on observation that “isolated mistakes by agency officials” are not sufficient and that “the type of conduct alleged by Plaintiffs is a far cry from the egregious and intentional conduct implicated in prior policy or practice claims”).

2. Within The Above-Described Context, The Specific Facts Pled In The Complaints Fail To Plausibly Plead A Policy or Practice Claim

It is within the above-described multi-faceted and case-specific framework that Plaintiffs purport to assert a “policy or practice” claim based on a sample size of five denials, all of which are incorporated by reference in the two Complaints and, therefore, can be considered by the Court in deciding a motion to dismiss under Rule 12(b)(6). *Lipton*, 135 F. Supp. 2d at 186. As a review of those requests and HUD's responses reflect, Plaintiffs have not plausibly pled that HUD has engaged in a policy or practice of abdicating its obligations in evaluating fee waiver requests.

Of the five fee waiver requests at issue, two were submitted by FFRA. Each of FFRA's fee waiver requests were limited to the following conclusory assertion: “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.” (Ex. 5-6 hereto) HUD properly responded to FFRF that its bare assertion of a public interest was too conclusory to satisfy the applicable criteria for a waiver. (Ex. 7-8)

Although FFRF provided more information in its appeal of these decisions, HUD provided a reasoned decision for denying those appeals. As to the first FOIA request, which sought information about a Cabinet bible study, HUD explained that the request did not relate to HUD operations or activities as would be required to warrant a fee waiver. (Ex. 9) As to the second request, which sought information about the “Revive Us 2” event and Secretary Carson’s daily schedule from October 24, 2017, HUD explained that the request failed to meet two of the four criteria under the public interest test. (Ex. 10) Specifically, HUD explained that FFRF failed to demonstrate how it would disseminate the information to a broad audience outside its organization and also relied on conclusory assertions to contend that the information would contribute significantly to public knowledge. (*Id.*) Although FFRF may disagree with HUD’s analysis, HUD’s decisions were tailored to the specific requests at issue and thus cannot be characterized as a policy or practice of abdicating its obligation to consider FFRF’s fee waiver requests.

Plaintiffs thus are left to support their claim based on HUD’s response to three fee waiver requests made by CREW, a sample size that is too small to allow for a plausible inference of an actionable policy or practice in violation of FOIA. CREW’s first request sought communications between Secretary Carson’s wife and son and certain HUD officials; the second request sought records regarding authorization for, and the cost of, Secretary Carson’s use of non-commercial aircraft for official travel since his confirmation; and the third request (the one at issue in Case No. 18-2737) sought copies of records sufficient to show Secretary Carson’s scheduled meetings, appointments, and scheduled events for a three day period of July 16, 2018 through July 18, 2018.

(Ex. 11-12; Ex. 17) In each instance, HUD denied the fee waiver requests on the basis that CREW's assertions of a public interest were too conclusory in nature. (Ex. 13, 14 and 18) Although CREW identifies similarities in the language of these letters (e.g., Compl. (18-2737) ¶ 30), such similarities on three isolated occasions do not raise a plausible inference of a policy or practice, and certainly not one that would have interfered with CREW's ability to promptly obtain the requested records.

Moreover, in affirming those decisions on appeal, HUD did not provide the same rationale for the denials, further rendering any such inference implausible. For instance, in upholding the denial of the fee waiver for CREW's first request, HUD explained that "you have only speculated that Secretary Carson's wife and son have an influence over agency matters" but 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." (Ex. 15) HUD explained that mere speculation was not sufficient to meet CREW's burden to show that the requested information "will contribute to a greater understanding on the part of the public at large." (*Id.*) In upholding the denial of the fee waiver in the second request, HUD stated that CREW's assertions were too conclusory. (Ex. 16) And, in upholding the denial of the fee waiver in the third request, HUD stated that "you have only speculated that the information contained in the requested documents may demonstrate similar patterns, as discovered with the Secretaries of Interior, Transportation, and Commerce, of obscuring their day to day activities from the public. However, you have provided no compelling facts to support your speculation that Secretary Carson also has taken measures to hide his activities from the public. Furthermore, you have not provided facts to demonstrate how release of this information will 'significantly' increase

public understanding of government activities.” (Ex. 19)

Plaintiffs’ allegations thus fall far below the threshold required for an alleged policy or practice violation of FOIA. Even if the Court were to assume that HUD erred in its determination as to any or all of the fee waiver requests at issue (which HUD denies), an alleged error in applying the four public interest criteria in a few discrete instances, on different records and based on different underlying facts, fails to plausibly plead an actionable claim.

Although Plaintiffs also allege a few examples in which two other public interest organizations requested fee waivers from HUD that were denied,⁴ an agency’s alleged treatment of other FOIA requesters is not relevant to assessing whether the Plaintiffs in this case were themselves subject to an impermissible policy, pattern or practice. *See, e.g., Cause of Action v. Eggleston*, 224 F. Supp. 3d 63, 71 (D.D.C. 2016) (proper focus is on the handling of FOIA requests “actually at issue in this case”). Accordingly, the proper focus is on the five denials at issue which, as explained above, constitute isolated instances based on different records that fail to raise an inference of an impermissible policy or practice.

Second, even if the denial of fee requests made by different public interest organizations not parties to this case could be relevant to the inquiry, those examples involve FOIA requests involving distinct subject matters, different submissions in support of the fee waiver, and different grounds asserted by HUD for denying the requested waivers.⁵ Ultimately, none involves a

⁴ The Complaints in 18-0114 and 18-2737 cite to the same two examples. *See* (Compl. (18-0114) ¶¶ 53-70); Compl. (18-2737) ¶¶ 64-81).

⁵ For instance, in *American Society for Prevention of Cruelty to Animals v. HUD* (“ASPCA”), Case No. 17-912 (RDM), the ASPCA sought information regarding HUD’s policy of exempting housing authorities participating in a particular program from federal laws and regulations permitting residents to have pets. HUD ultimately denied the fee waiver request on the basis that the plaintiff failed to substantiate its ability to disseminate the information such that the disclosure

situation in which HUD abdicated all responsibility in responding to a fee waiver request.

CONCLUSION

For the foregoing reasons, the Complaints in both 18-0114 and 18-2737 should be dismissed.

Respectfully submitted,

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could “contribute to an understanding of the public at large”, offering three justifications for that determination. (Case No. 17-912, Compl. ¶¶ 28-31 and Ex. M to the Compl.). In *Public Citizen, Inc. v. HUD* (“*Public Citizen*”), Case No. 17-2582 (RC), the plaintiff sought information about the travel costs of two HUD Secretaries (current Secretary Carson and former Secretary Donovan). HUD ultimately denied that request on the basis that plaintiff failed to demonstrate that the information would contribute significantly to the public’s understanding of HUD’s activities. (Case No. 17-2582, Compl. ¶ 10) In neither case, moreover, was there a judicial determination that HUD had erred in its analysis. In *ASPCA*, HUD itself determined that it should have granted ASPCA’s fee waiver request. (Case No. 17-912, ECF No. 6 ¶ 4) In *Public Citizen*, the parties also appeared to resolve the fee issue without court intervention. (Case No. 17-2582, ECF No. 10 ¶ 5)



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, 6th 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, 6th 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."¹ 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.²

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. Thank you for your time and attention to this matter.

Sincerely,



EXHIBIT 5

Andrew Seidel
Staff Attorney
ALS:rac

¹ <http://capmin.org/about/>.

² <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. 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.

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 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.

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



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).

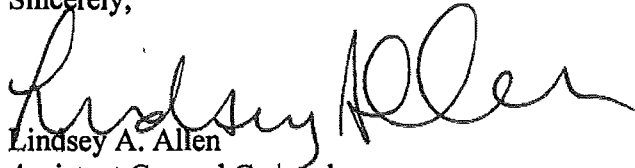
Your request fails to meet criterion (1): the request must concern the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii); see Brown v. U.S. Patent & Trademark Office, 226 F. App'x 866, 869 (11th Cir. 2007) (holding that requester failed to adequately explain how requested records 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
 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
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

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

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."¹ 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."² 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.³

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. 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").

¹ 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>

² *Id.*

³ *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. 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 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. 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

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. 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,



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.

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



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



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

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
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 6th 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:

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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", with a stylized flourish at the end.

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

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



October 1, 2018

BY ELECTRONIC MAIL: FOIARequests@hudoig.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 regulations.

CREW requests copies of records sufficient to show all of Secretary Carson’s scheduled meetings, appointments, and scheduled events for July 16 through 18, 2018, including but not limited to Outlook calendar entries and daily briefing books for Secretary Carson on those dates.

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 those who were cc’ed or bcc’ed on any emails.

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). 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 Housing and Urban Development 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

FOIA Officer
October 1, 2018
Page 2

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).

A recent and substantial decrease in the level of detail the Interior Department includes in Secretary Zinke's calendars raises concerns that other cabinet secretaries' calendars may be similarly lacking in information. A review of Secretary Zinke's calendars on the Interior Department's website reveals that the more recent entries contain far more general descriptions such as "external meeting" in lieu of identifying with whom the Secretary met. This lack of detail raises the concern that the Interior Department has altered its process for populating Secretary Zinke's calendars to avoid the full transparency that disclosure under the FOIA brings. The requested records would shed light on whether that or a similar practice extends to the Department of Housing and Urban Development and whether the Department is complying fully with the letter and spirit of the FOIA, which is one of the most effective tools Congress provided to make our government more accountable through increased transparency.

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 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 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.

FOIA Officer
October 1, 2018
Page 3

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 897-1845 or mlerner@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 mlerner@citizensforethics.org or Meredith Lerner, 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 cursive script that reads "Meredith Lerner".

Meredith Lerner
Research Associate



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

OFFICE OF ADMINISTRATION

October 2, 2018

Ms. Meredith Lerner
Citizens for Responsibility and
Ethics in Washington
455 Massachusetts Avenue, NW
Washington, DC 20001

RE: Freedom of Information Act Request
FOIA Control No.: 19-FI-HQ-00012

Dear Ms. Lerner:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated October 1, 2018. Your request was received on October 2, 2018, 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).

Exhibit 18

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



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

OFFICE OF GENERAL COUNSEL

NOV - 6 2018

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

RE: Freedom of Information Act Request
FOIA Control No.: 19-FI-HQ-00012
FOIA Appeal No.: 19-A-HQ-00001

Dear Ms. Weismann:

This letter responds to your Freedom of Information Act (FOIA) appeal received by our office on October 9, 2018. In your initial request sent on October 1, 2018, you requested copies of records sufficient to show all of Secretary Carson's scheduled meetings, appointments, and scheduled events from July 16 through 18, 2018, including but not limited to Outlook calendar entries and daily briefing books for Secretary Carson on those dates. 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 October 2, 2018, 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 would shed light on the process by which Secretary Carson's calendar is populated and maintained; (2) disclosure of the information is likely to contribute to either the public's understanding of Secretary Carson's activities during the requested period or the lengths to which he and HUD go to obscure his schedule from the public; and (3) 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 previously 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

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.*

HUD's determination that your request fails to meet the criteria stated above is affirmed. "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). Courts have held that requests such as yours are perfunctory assertions that are too "ephemeral" to satisfy the "reasonable specificity" standard. *See Judicial Watch v. DOJ*, 133 F. Supp. 2d 52 (D.C. Cir. 2000) (finding that a public interest argument based on "promoting accountable government" and "benefitting the public by identifying areas for future reform as well as deterring future abuses" did not satisfy the reasonable specificity standard). In this case, you have only speculated that the information contained in the requested documents may demonstrate similar patterns, as discovered with the Secretaries of Interior, Transportation, and Commerce, of obscuring their day to day activities from the public. However, you have provided no compelling facts to support your speculation that Secretary Carson has also taken measures to hide his activities from the public. 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" since it regularly publishes and disseminates information to the public in a variety of ways, including through its website, reports, and blog posts. 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.

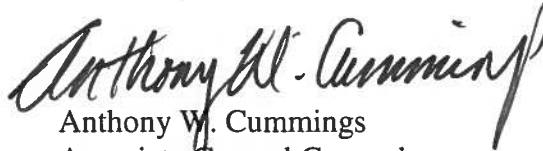
The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may 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
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, reading "Anthony W. Cummings". The signature is written in a cursive, flowing style with a large, stylized "C" at the end.

Anthony W. Cummings
Associate General Counsel
Office of Ethics, Appeals, and Personnel Law

cc: Amy Morath, Acting Executive Secretary
John Shumway, Assistant General Counsel, Administrative Law Division



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

OFFICE OF ADMINISTRATION

March 1, 2019

Ms. Anne L. Weismann
Chief FOIA Counsel
Citizens for Responsibility and
Ethics in Washington
455 Massachusetts Avenue, NW, 6th Floor
Washington, DC 20001

RE: Freedom of Information Act Request
FOIA Control No.: 19-FI-HQ-00012

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) request dated October 1, 2018. Your request was received on October 2, 2018, 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 20