

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

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|----------------------------|---|--------------------------|
| _____ |) | |
| LEGAL SERVICES OF EASTERN |) | |
| MISSOURI, |) | |
| 4232 Forest Park Avenue |) | |
| St. Louis, MO 63108, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 19-1367 |
| |) | |
| U.S. DEPARTMENT OF HOUSING |) | |
| AND URBAN DEVELOPMENT, |) | |
| 451 Seventh Street SW |) | |
| Washington, DC 20410, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Legal Services of Eastern Missouri (LSEM) brings this action to compel the U.S. Department of Housing and Urban Development (HUD) to produce records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The records at issue concern HUD’s involvement in public housing in Wellston, Missouri, including a plan to demolish or dispose of the City’s entire stock of public housing and displace more than a quarter of Wellston’s population.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff LSEM is a non-profit organization that provides free legal services to indigent residents of Eastern Missouri. LSEM represents the Wellston Tenant Association and a number of

individuals who reside in public housing in Wellston. LSEM made the FOIA request at issue in this action.

4. Defendant HUD is an agency of the United States. HUD has possession or control of records responsive to LSEM's FOIA request.

FACTS

5. On November 2, 2018, LSEM submitted a FOIA request to HUD.

6. LSEM sought records related to HUD's involvement in public housing in Wellston, including HUD communications with City officials and area housing authorities, and records regarding plans to demolish or dispose of public housing in Wellston.

7. LSEM requested that HUD waive any fees associated with responding to the FOIA request. LSEM explained that it is a non-profit organization that represents indigent people affected by decisions related to public housing in Wellston, and that the requested documents would contribute to the public's understanding of HUD's activities.

8. LSEM requested that HUD expedite processing of the FOIA request. LSEM stated that it is a legal services organization engaged in disseminating information to clients and community organizations, and noted the community's growing concern regarding the future of public housing in Wellston. LSEM explained that it has an urgent need to inform the public concerning the threatened loss of affordable housing in Wellston due to federal government activity.

9. Following receipt of LSEM's FOIA request on November 2, 2018, HUD engaged in written and verbal discussions with LSEM regarding the scope of the request. On November 14, 2018, LSEM agreed to modify the request to seek the following records dated from October 1, 2016, to November 2, 2018:

- 1) Any HUD communications with officials of the “City of Wellston” regarding the “public housing” in Wellston, Missouri or regarding the “Wellston Housing Authority” or “Wellston PHA.”
- 2) All documents or records related to a possible “demolition” or “disposition” of public housing in “Wellston.”

10. HUD acknowledged the modified request and assigned it tracking number 19-FI-RO7-00258.

11. On November 15, 2018, HUD denied LSEM’s request for expedited processing, but HUD stated that the request would “continue to be a top priority” and that HUD would “endeavor to deliver any responsive documents prior to 12/13/18 if possible.” HUD also denied LSEM’s request for a fee waiver.

12. On December 3, 2018, LSEM filed an administrative appeal of HUD’s denial of LSEM’s requests for expedited processing and a fee waiver. On December 21, HUD denied LSEM’s appeal.

13. On December 14, 2018, LSEM contacted HUD to ask when responsive records would be produced. HUD stated that LSEM would receive the records responsive to the second part of the request by December 21, and records responsive to the first part of the request by December 31.

14. On December 20, 2018, HUD released seventeen pages responsive to the first part of LSEM’s FOIA request. HUD redacted significant portions of those pages. HUD asserted that the redacted portions of the records contained material protected by the deliberative process privilege and were subject to withholding under FOIA exemption 5, 5 U.S.C. § 552(b)(5).

15. On December 21, 2018, the appropriations act funding HUD expired and appropriations to HUD lapsed. Funding was restored on January 25, 2019. During the period of the government shutdown, HUD did not communicate with LSEM regarding the FOIA request.

16. On January 30, 2019, HUD informed LSEM that its response to the FOIA request had been delayed because of the shutdown.

17. On February 13, 2019, HUD released 173 pages responsive to the second part of LSEM's request. HUD redacted significant portions of the records, again citing FOIA exemption 5. In a letter accompanying the release, HUD asserted that the redacted portions of the records include material subject to the deliberative process privilege or the attorney-client privilege. HUD further stated that it was "waiving the processing fees that would have been incurred for search, review and duplication despite the previous denial of [LSEM's] fee waiver request."

18. On March 5, 2019, LSEM submitted an administrative appeal challenging HUD's partial denial of LSEM's FOIA request. LSEM specifically challenged HUD's invocation of exemption 5 to withhold information, arguing that many of the communications at issue were not internal, pre-decisional, or deliberative, and also that the withheld or redacted records contained non-exempt factual information that should have been produced.

19. On April 2, 2019, HUD responded to LSEM's administrative appeal. HUD denied the appeal with respect to the withholdings under exemption 5. HUD granted the appeal in part with respect to HUD's withholding of segregable factual information, and HUD re-released two documents with fewer redactions.

20. LSEM has exhausted its administrative remedies with respect to FOIA request 19-FI-RO7-00258.

CLAIM FOR RELIEF

21. LSEM has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested.

22. HUD has failed to produce all the records LSEM requested.

23. HUD has no legal basis for refusing to produce the records responsive to LSEM's request.

PRAYER FOR RELIEF

LSEM requests that this Court:

- A. Declare that HUD's failure to provide the records responsive to LSEM's FOIA request is unlawful;
- B. Order HUD to make the requested records available to LSEM at no cost and without delay;
- C. Award LSEM its costs and reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E);
and
- D. Grant all other appropriate relief.

Dated: May 13, 2019

Respectfully submitted,

/s/ Michael T. Kirkpatrick

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* Active member in good standing of the State Bar of California and the Supreme Court of California, authorized to practice under the direct supervision of Michael T. Kirkpatrick pursuant to D.C. Court of Appeals Rule 49(c)(8) during the pendency of a first application to the District of Columbia Bar submitted within 90 days of commencing practice in the District of Columbia.