

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

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

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

JURISDICTION

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

PARTIES

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

CLAIMS FOR RELIEF

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

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

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

Dated: December 4, 2017

Respectfully submitted,

/s/ Rebecca Smullin

Rebecca Smullin (D.C. Bar No. 1017451)
Patrick D. Llewellyn (D.C. Bar No. 1033296)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
202-588-1000

Counsel for Plaintiff