

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

_____)	
LEGAL SERVICES OF EASTERN)	
MISSOURI,)	
4232 Forest Park Avenue)	
St. Louis, MO 63108,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-2782
)	
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 grant LSEM a public-interest fee waiver and 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 July 2, 2019, LSEM submitted a FOIA request to HUD.

6. LSEM sought records created or obtained by HUD after November 3, 2018, that related to HUD's involvement in public housing in Wellston, including HUD's assessment of the physical condition of and the cost of modernizing, rehabilitating, or repairing public housing units in Wellston. LSEM additionally sought records reflecting HUD's final determinations concerning several aspects of the disposition of public housing in Wellston, including the marketability of the public housing units, potential for redevelopment of other properties as low-income housing, and whether such disposition complied with the law.

7. On July 3, 2019, HUD acknowledged receipt of LSEM's FOIA request and assigned it tracking number 19-FI-RO7-01497.

8. In FOIA request 19-FI-RO7-01497, LSEM sought a full waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

9. In requesting a full waiver of fees, LSEM explained that the requested records would shed light on HUD's role in operating and managing public housing in Wellston and its decisionmaking about this housing, including the controversial and widely reported plan to demolish Wellston's public housing. LSEM further explained that it would disseminate the requested records to many interested parties, including the Wellston Tenant Association—represented by LSEM—Wellston local businesses, and Wellston community organizations.

10. On July 25, 2019, HUD denied LSEM's fee-waiver request.

11. In denying LSEM's fee-waiver request, HUD stated that it considered six fee-waiver criteria and determined that LSEM did not meet three. HUD stated that (1) disclosure of the records requested would not be meaningfully informative about federal government operations, (2) disclosure would not contribute to the understanding of a reasonably broad audience of persons, and (3) the public's understanding of federal operations would not be enhanced to a substantial degree.

12. That same day, HUD sent LSEM an invoice for a "down payment" of fees that HUD claimed was necessary to continue processing LSEM's request. HUD's invoice explained that it would send LSEM "electronic copies [of the requested records] for free and [LSEM] will be given the first two hours of search time at no charge" and stated that LSEM was required to pay \$2,366 within 10 business days or HUD would close its FOIA request.

13. On August 1, 2019, LSEM submitted an administrative appeal of HUD's denial of its request for a fee waiver with respect to its FOIA request.

14. In its administrative appeal, LSEM explained that its FOIA request satisfied the public-interest fee-waiver standard and provided further information supporting its position. LSEM specifically addressed each of the three factors on which HUD relied in denying LSEM's fee waiver and demonstrated that it satisfied all three.

15. With regard to the second factor on which HUD relied to deny a fee waiver—contribution to the understanding of a reasonably broad audience of persons—LSEM reiterated that local media and community groups had turned to LSEM for information about the proposed elimination of Wellston's public housing and provided several examples of how LSEM would disseminate the requested records:

- A. First, LSEM stated that one of its staff members had been invited to attend six local events to share information related to Wellston's public housing in the months of August, September, and October, at which LSEM intended to disseminate the information obtained through this FOIA request.
- B. Second, LSEM noted that it had been working closely with St. Louis County and Wellston City officials, Wellston public housing tenants, and business owners and homeowners in Wellston concerning the potential loss and possible preservation of the Wellston public housing units, and LSEM stated it would share the requested records with these entities.
- C. Third, LSEM explained that it had been working and was in regular contact with several community partners concerning Wellston public housing, including Young Voices with Action, the Wellston Community Coalition, Beyond Housing, Generate Health, Empower Missouri, and the St. Augustine Wellston Center, further pledging to share the requested records with these groups.
- D. Finally, LSEM pointed out that Wellston's public housing had attracted national attention, including the fact that HUD Secretary Ben Carson was questioned by the House Financial Services Committee regarding the proposed demolition of Wellston public housing. As a result, advocates across the country had sought out LSEM for information regarding HUD's role in the proposed demolition of Wellston public housing, given that these advocates were facing public housing conversion or repositioning in their own communities as a result of HUD policies. LSEM stated that, through the Housing Justice Network, it would disseminate the requested records to legal services organizations and affordable housing advocates across the county.

16. By letter dated August 16, 2019, HUD acknowledged LSEM's administrative appeal and stated that the appeal had been received by the Ethics and Appeals Division of HUD on August 2.

17. By undated letter postmarked September 3, 2019, and received by LSEM on September 6, 2019, HUD denied LSEM's administrative appeal.

18. In the letter denying LSEM's administrative appeal, HUD acknowledged that it had received LSEM's administrative appeal on August 1.

19. In denying LSEM's administrative appeal, HUD stated that LSEM's FOIA request failed to meet only one factor of HUD's fee-waiver test: whether disclosure would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.

20. HUD's denial of LSEM's administrative appeal acknowledged that LSEM had explained that it "is engaged in disseminating information to clients and community organizations and that it intends to disclose the requested information to those most concerned and affected by HUD's activities related to Wellston." HUD further recognized that LSEM would share the requested records with "local elected officials, tenants, business owners, and homeowners in Wellston," as well as "additional community partners" and "legal services organizations and affordable housing advocates nationwide."

21. Nevertheless, although LSEM had provided "several ways in which LSEM intends to disseminate the requested information," HUD determined such dissemination was "insufficient" to satisfy the fee-waiver standard. HUD asserted that the "several ways" LSEM would disseminate the records would not cover "a reasonably broad group of interested parties" because "[t]he

audience is limited to local community groups and other legal services organizations and housing advocates.”

22. On September 9, 2019, HUD sent LSEM another invoice, again stating that LSEM was required to pay \$2,366 as a “down payment” within 10 business days or HUD would close its FOIA request.

23. LSEM has exhausted its administrative remedies with respect to its FOIA request and HUD’s denial of the fee waiver for that request.

FIRST CLAIM FOR RELIEF
(Denial of fee-waiver request)

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

25. In addition, under 5 U.S.C. § 552(a)(4)(A)(viii)(I), LSEM is, in any event, entitled to a waiver of search fees that otherwise would be assessed in connection with its FOIA request because HUD failed to make a determination with respect to LSEM’s administrative appeal within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(ii).

SECOND CLAIM FOR RELIEF
(Denial of FOIA request)

26. LSEM has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested, and HUD has no legal basis for its failure to produce those records.

PRAYER FOR RELIEF

LSEM requests that this Court:

- A. Declare that HUD’s failure to grant LSEM’s request for a public-interest fee waiver is unlawful;

- B. Declare that HUD's failure to waive search fees related to LSEM's FOIA request, pursuant to 5 U.S.C. § 552(a)(4)(A)(viii)(I), is unlawful;
- C. Declare that HUD's failure to provide the records responsive to LSEM's FOIA request is unlawful;
- D. Order HUD to make the requested records available to LSEM at no cost and without delay;
- E. Issue a written finding that the circumstances surrounding HUD's withholding of records by virtue of its denial of LSEM's public interest fee waiver raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, pursuant to 5 U.S.C. § 552(a)(4)(F)(i);
- F. Award LSEM its costs and reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E); and
- G. Grant all other appropriate relief.

Dated: September 17, 2019

Respectfully submitted,

/s/ Patrick D. Llewellyn
Patrick D. Llewellyn (DC Bar No. 1033296)
Michael T. Kirkpatrick (DC Bar No. 486293)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Plaintiff