

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**)
1101 K Street, N.W., Suite 201)
Washington, D.C. 20005)

Plaintiff,)

v.)

Civil Action No.

U.S. DEPARTMENT OF EDUCATION,)
400 Maryland Avenue, S.W.)
Washington, D.C. 20202)

**U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,**)
451 7th Street, S.W.)
Washington, D.C. 20410)

Defendants.)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of the U.S. Department of Education (“Education”) and the U.S. Department of Housing and Urban Development (“HUD”) to disclose to CREW communications with the Urban Revitalization Coalition and concerning events hosted by the Urban Revitalization Coalition.

2. This case seeks declaratory relief that Education and HUD are in violation of the FOIA, 5 U.S.C. § 552(a)(6)(E)(i), for failing to provide CREW all responsive records, and

injunctive relief ordering defendants Education and HUD to process and release to CREW immediately the requested records in their entirety.

Jurisdiction and Venue

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

5. Defendant Education is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. Defendant has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

6. Defendant HUD is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. Defendant has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

Statutory and Regulatory Background

7. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

8. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

9. An agency's failure to make this determination within 20 days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

Factual Background

10. In December 2019, Pam Ashby, a Cleveland regional HUD official attended an event in her honor hosted by the Urban Revitalization Coalition ("URC"). Andrew J. Tobias, Charity founded by Trump allies plans follow-up cash giveaway events in Cleveland, elsewhere, Cleveland.com, Jan. 30, 2020, <https://www.cleveland.com/open/2020/01/charity-founded-by-trump-allies-plans-follow-up-cash-giveaway-events-in-cleveland-elsewhere.html>. The URC, which was founded by two political allies of President Donald Trump, is registered as a section 501(c)(3) charitable organization. Ben Schreckinger, Trump Allies are Handing Out Cash to Black Voters, *Politico*, Jan. 29, 2020, <https://www.politico.com/news/2020/01/29/trump-black-voters-cash-giveaways-108072>. Its CEO, Darrell Scott, has been described as "one of Trump's closest and most prominent black supporters." *Id.* He also co-chairs a "Black Voices for Trump" initiative. *Id.*

11. The December event was promoted as and included a \$25,000 cash giveaway directed at a predominantly African-American audience. Tobias, *Cleveland.com*, Jan. 30, 2020. Before giving away the \$25,000 in small cash increments to those in attendance, the URC presented awards to Ms. Ashby and Ja’Ron Smith, a White House official. *Id.*

12. The URC event was part of the organization’s strategy to offer cash giveaways to black voters while inviting them to listen to Trump supporters heaping “lavish” praise on the President and Trump administration policies. Schreckinger, *Politico*, Jan. 29, 2020.

13. In January 2020, Virginia Union University (“VUU”) cancelled an event planned by the URC to honor President Trump on Martin Luther King Jr. Day. NBC 12 Newsroom, [VUU cancels event that planned to honor President Trump on MLK Day](https://www.nbc12.com/2020/01/14/vuu-cancels-event-that-planned-honor-president-trump-mlk-day/), *NBC12*, Jan. 14, 2020, <https://www.nbc12.com/2020/01/14/vuu-cancels-event-that-planned-honor-president-trump-mlk-day/>. A promotional flier for the event posted on social media described the event as “invitation-only” and including a “\$30,000 cash giveaway.” *Id.* The scheduled guests to be honored by the URC included President Trump, White House Senior Advisor Jared Kushner, VUU President Hakim J. Lucas, and Executive Director of the White House Initiative on Historically Black Colleges and Universities Johnathan Holifield. *Id.*

14. In a statement regarding the cancellation, VUU stated that it “was not a part of the planning for this event” and that its campus “was not the appropriate space” for it. *Id.* According to VUU’s statement, the university officials were told that the event would be an “economic development discussion” that included cash giveaways for local residents. *Id.*

15. Despite the cancellation of the VUU event, the URC planned to hold more events in the future, including a \$50,000 cash giveaway in Cleveland in February 2020, where the group also planned to give a presentation on President Trump’s Opportunity Zones program,

implemented as part of the recent tax law. NBC 12 Newsroom, Jan. 14, 2020. The URC called off the Cleveland event less than a week after the Ohio Democratic Party asked the Cuyahoga County prosecutor to investigate the URC for possible election law violations. Seth A. Richardson, Trump allies indefinitely postpone planned \$50,000 cash giveaway in Cleveland, *Cleveland.com*, Feb. 29, 2020, <https://www.cleveland.com/open/2020/02/trump-allies-indefinitely-postpone-planned-50000-cash-giveaway-in-cleveland.html>.

16. The activities of the URC have raised significant legal and ethical questions, with campaign finance experts cautioning that when its events “veer[] into electioneering, issues with campaign finance law can arise[.]” Schreckinger, *Politico*, Jan. 29, 2020. Further, the attendance of administration officials at “cash giveaway” events by an organization seemingly promoting the President’s re-election raises concerns that they may be violating the Hatch Act, which prohibits the use of official authority for partisan politics. Tobias, *Cleveland.com*, Jan. 30, 2020.

17. On April 22, 2020, President Trump announced he was directing the White House Opportunity and Revitalization Council, led by HUD Secretary Ben Carson, “to focus its efforts on supporting underserved communities impacted by the coronavirus.” Robert Sollenberger, Trump delegates response to underserved communities impacted by the new coronavirus to Ben Carson, *Salon*, Apr. 25, 2020, <https://www.salon.com/2020/04/25/trump-delegates-response-to-underserved-communities-impacted-by-the-new-coronavirus-to-ben-carson/>. The President also said the council would seek input from community leaders and the private sector, such as the URC. *Id.* The URC’s two co-founders—Darrell Scott and Kareem Lanier—reportedly are “close with Carson[.]” *Id.*

CREW's FOIA Requests to Education

18. On February 10, 2020, CREW submitted by email a FOIA request to Education seeking: (1) all communications to or from Johnathan Holifield, Executive Director of the White House Initiative on Historically Black Colleges and Universities and Darrell Scott, Kareem Lanier, Chiquita D. Stephenson, or any employee or representative of the URC between November 1, 2019 and February 10, 2020; (2) all communications between Mr. Holifield regarding any event hosted by the URC between November 1, 2019 and February 10, 2020; and (3) all communications to or from Marcella Goodridge-Keiller, HUD's Designated Agency Ethics Official, regarding Mr. Holifield's attendance at any event hosted or sponsored by the URC between November 1, 2019 and February 10, 2020.

19. By email dated February 11, 2020, Education acknowledged receipt of CREW's request.

20. By letter dated March 20, 2020, Education advised CREW that it was unable to provide CREW with an estimated completion date, but indicated its intent to provide CREW with records on a rolling basis.

21. To date, CREW has received no other communications from Education.

22. CREW has now exhausted all applicable administrative remedies with respect to its request of Education.

23. On February 24, 2020, CREW submitted by email another FOIA request to Education seeking six categories of documents:

(1) all communications to or from Arthur McMahan, Senior Associate Director, White House Initiative on Historically Black Colleges and Universities, to or from Darrell Scott, Kareem Lanier, Chiquita D.

Stephenson, or any employee or representative of the URC between September 1, 2019 and February 24, 2020;

(2) all communications to or from Mr. McMahan regarding any event hosted by the URC between September 1, 2019 and February 24, 2020;

(3) all communications to or from Sedika Franklin, Associate Director, White House Initiative on Historically Black Colleges and Universities, and Mr. Scott, Mr. Lanier, Ms. Stephenson, or any employee or representative of the URC between September 1, 2019 and February 24, 2020;

(4) all communications to or from Ms. Franklin regarding any event hosted by the URC between September 1, 2019 and February 24, 2020;

(5) all communications to or from Tami Fergusson, Intergovernmental Affairs Coordinator, White House Initiative on Historically Black Colleges and Universities, regarding any event hosted by the URC between September 1, 2019 and February 24, 2020; and

(6) all communications to or from Elyse Jones, Operations and Program Analyst, White House Initiative on Historically Black Colleges and Universities, regarding any event hosted by the URC between September 1, 2019 and February 24, 2020.

24. By email dated February 25, 2020, Education acknowledged receipt of CREW's request.
25. To date, CREW has received no other communications from Education.

26. CREW has now exhausted all applicable administrative remedies with respect to its February 24, 2020 request of Education.

CREW's FOIA Request to HUD

27. On February 24, 2020, CREW submitted to HUD by facsimile a FOIA request seeking: (1) all communications to or from Lucy Miller, Senior Management Analyst in HUD's Cleveland Field Office, regarding any event hosted by the URC between September 1, 2019 and February 24, 2020; and (2) all communications to or from Barbara Dunlap, Management Analyst in the HUD Cleveland Field Office, regarding any event hosted by the URC between September 1, 2019 and February 24, 2020.

28. By email dated February 28, 2020, HUD acknowledged receipt of CREW's request.

29. To date, CREW has received no other communications from HUD.

30. CREW has now exhausted all applicable administrative remedies with respect to its request of HUD.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE

(Education's Wrongful Withholding of Agency Records)

31. Plaintiff repeats and re-alleges paragraphs 1-30.

32. Plaintiff properly asked for records within the custody and control of Education.

33. Defendant Education wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's requests, and by withholding from disclosure records responsive to plaintiff's requests.

34. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in CREW's February 10 and

February 24, 2020 FOIA requests.

CLAIM TWO
(HUD's Wrongful Withholding of Agency Records)

35. Plaintiff repeats and re-alleges paragraphs 1-34.

36. Plaintiff properly asked for records within the custody and control of HUD.

37. Defendant HUD wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request.

38. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Order defendant Education to immediately and fully process plaintiff's February 10 and February 24, 2020 FOIA requests to Education and disclose all non-exempt documents immediately to plaintiff;

(2) Order defendant HUD to immediately and fully process plaintiff's February 24, 2020 FOIA request to HUD and disclose all non-exempt documents immediately to plaintiff;

(3) Issue a declaration that plaintiff is entitled to immediate processing and disclosure of the requested records;

(4) Provide for expeditious proceedings in this action;

(5) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;

(6) Award plaintiff its costs and reasonable attorneys' fees in this action; and

(7) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Anne L. Weismann

Anne L. Weismann

(D.C. Bar No. 298190)

Adam J. Rappaport

(D.C. Bar No. 479866)

Citizens for Responsibility and Ethics
in Washington

1101 K Street, N.W., Suite 201

Washington, D.C. 20005

Phone: (202) 408-5565

Facsimile: (202) 588-5020

aweismann@citizensforethics.org

Dated: May 6, 2020

Attorneys for Plaintiff