



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

March 12, 2018

Ryan P. Mulvey, Counsel
Cause of Action Institute
1875 Eye Street, N.W.
Suite 800
Washington, D.C. 20006

Re: HUD OIG Final FOIA Rule – Your Comments

Dear Mr. Mulvey,

Thank you for your letter providing comments to our notice of a final rule at 24 C.F.R. part 2002. I found your comments and legal research to be helpful in a better understanding in this area. I apologize that we did not catch the outdated language in the Department's FOIA regulation defining a "representative of the news media." As you point out, it does not track the current statutory language. Obviously, the 2015 decision by the U.S. Court of Appeal for the District of Columbia Circuit, Cause of Action v. F.T.C., is a controlling case on this issue. In that case, the court said, there is no basis for the "news media" definition to include an "organized and operated" requirement. That this language is found in the Department's definition, which we adopt, is your primary objection.

If you review our notice and our final regulation, you may see that our FOIA office has adapted to the environment where many people get their news from the internet. Many of our FOIA requestors are bloggers or internet news sites. We currently categorize a blogger as a "representative of the news media," when they reasonably describe documents in their request and we can see that the blogger often uses editorial skills to create a distinct work from these documents for distribution to an audience. We believe that complies with both the statute and the 2015 decision.

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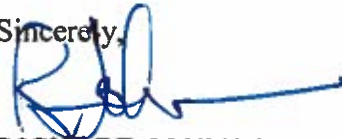


The "abuse" we usually see is the blogger who requests "all and any" documents over an extended period of time, and the blogger's website shows that it is simply a collection of documents without any editorializing, but with several advertisements and pop-ups. We recognize that someone may request information thinking there may be a story in it, but find nothing of interest. This "abusive" blogger, however, only wants our information to attract visitors to the website for the ad revenue.

You asked that we revise our final regulation to adopt a different definition from the one in the Department's regulations. This is much more difficult than you might envision. We will forward your letter to the Department and ask that they make your suggested change in their regulation. For practical reasons, we will wait until the Department decides to amend its regulations to adopt your revision.

Again, thank you for your useful comments. If you have any questions, you may contact me at 202-708-1613.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Johnson", with a long horizontal stroke extending to the right.

RICHARD JOHNSON
Senior Attorney Advisor