

November 23, 2020

VIA ELECTRONIC MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave., S.W.
LBJ 2E320
Washington, D.C. 20202
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the implementing regulations promulgated thereunder for the United States Department of Education (“ED” or the “Department”), 34 C.F.R. Part 5, the National Student Legal Defense Network (“Student Defense”) makes the following requests for records relating to the Department’s receipt and processing of requests submitted by one or more members of the public under FOIA.

As the Department knows, FOIA is “a tool of inquiry and information gathering for various sectors—including the media, businesses, scholars, attorneys, consumers, and activists.”¹ For that reason FOIA “allows any person—individual or corporate, citizen or not—to request and obtain, without explanation or justification, existing, identifiable, and unpublished agency records on any topic.”²

The Administrative Actions and Appeals Service Group (“AAASG”) is a subcomponent of the Enforcement Unit within Federal Student Aid at the Department. AAASG is responsible for developing, initiating, and imposing Emergency Action, Termination, Limitation, Suspension, and Fine actions (collectively, “Enforcement Actions”) against institutions of higher education.³ It also is responsible for participating and consulting “in the development/drafting of school revocations and school recertification denials.”⁴ In connection with these responsibilities, AAASG generates a monthly report. Based on documents previously released to the public, the Department sends these reports internally to relevant employees, as well as externally to non-employees.

Student Defense hereby requests that the Department produce the following documents within twenty business days:

¹ Wendy Ginsberg, Cong. Research Serv., R41933, *Summary of The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues* (2014), available at: <https://fas.org/sgp/crs/secrecy/R41933.pdf>.

² *Id.*

³ See Office of Fed. Student Aid, *U.S. Department of Education Principal Office Functional Statements*, https://www2.ed.gov/about/offices/list/om/fs_po/fsa/enforcement.html#ad (last modified Nov. 25, 2016).

⁴ *Id.*

1. All AAASG monthly reports from February 2020 to present.

FOIA presumes disclosure and the Department “bear[s] the burden of justifying withholding of any records.” *AP v. FBI*, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516, at *10 (D.D.C. Sept. 30, 2017) (quoting *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, *i.e.*, if disclosure would “harm an interest protected by an exemption” or is otherwise “prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i).

If ED takes the position that any portion of any requested record is exempt from disclosure, ED must “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Dep’t of Educ.*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, ED may provide Student Defense with a Vaughn Index, “which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption’s relevance.” *Id.* (citing *Johnson v. Exec. Office for U.S. Att’ys*, 310 F.3d 771, 774 (D.C. Cir. 2002)); *see also Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification that specifically identifies the reasons why the exemption is relevant. *See generally King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

To ensure that this request is properly construed and does not create any unnecessary burden, we welcome the opportunity to discuss this request, consistent with and without waiving the legal requirements for the timeframe for your response. We also ask that the Department provide responsive material in electronic format, if possible, and send any responsive material to Student Defense via email at robyn@defendstudents.org.

Request for Waiver of Fees

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33(a), Student Defense requests a waiver of fees associated with the processing of this request because disclosure of the requested information: (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; *and* (2) is not primarily in the commercial interest of the requester. The Department has previously granted Student Defense a fee waiver in response to similar requests.

- 1. The request specifically relates to the operations or activities of the government and disclosure of information is likely to contribute significantly to public understanding of such operations or activities.**

The documents requested herein relate directly to the Department’s management and operation of programs under Title IV of the Higher Education Act. Specifically, the documents relate to the Department’s use of its enforcement powers. This FOIA request is designed to increase the public’s understanding of the Department’s (and AAASG’s) use of those powers to hold institutions accountable in recent years. Student Defense has the ability to contribute to the public’s understanding by analyzing the requested records and broadcasting its analysis through the news, social media, and its website.

2. The disclosure of this information is not in the commercial interest of Student Defense.

This request is fundamentally non-commercial. Student Defense is a non-profit, non-partisan 501(c)(3) organization. Student Defense's mission is to work, through a variety of means, to advance students' rights to educational opportunity and ensure that higher education provides a launching point for economic mobility. We also believe that transparency is critical to fully understanding the government's role in student protections and promoting opportunity.

For these reasons, Student Defense qualifies for a fee waiver.

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Student Defense looks forward to working with you on this request. If you have any questions or concerns, or anticipate any problems in complying with this request, please contact me at robyn@defendstudents.org. If Student Defense's request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact me immediately.

Sincerely,

Abigail A. Moats
Intake and Digital Advocacy Manager
National Student Legal Defense Network