January 7, 2019

Alex Elson
National Student Legal Defense Network
1015 15th Street NW
Suite 600
Washington, DC 20005

Re: FOIA Appeal 18-00067-A (Appeal of FOIA 18-02184-F)

Dear Mr. Elson:

This letter is in response to your September 11, 2018 letter appealing the U.S. Department of Education's (Department's) August 27, 2018 Final Response to your June 15, 2018 request for records submitted pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Background

On June 15, 2018, you requested "all documents constituting or reflecting communications, regardless of the subject matter, between the Department and its employees or representatives, on the one hand, and of ACICS (including its representatives, counsel, and employees)." As part of your request, you asked that the Department include at least following when conducting its search:

- Betsy DeVos
- Josh Venable
- Bob Eitel
- James Manning
- Kathleen Smith
- Diane Auer Jones
- Carlos Muniz
- Steven Menashi
- Donna Mangold
- Jed Brinton
- Jeffrey (Justin) Riemer
- Sally Morgan
- Steven Finley
- Herman Bounds (and all staff in the OPE Accreditation Group)
- Beth Daggett
- Lynn Mahaffie
- Jennifer Hong
- Gail McLarnon

- Frank Brogan
- Phil Rosenfelt

In addition, you specifically requested that the Department include without limitation the following terms as search terms to enable the Department to identify relevant documents:

- ACICS
- Venable
- Michelle
- Edwards
- Allyson
- Baker
- Kenneth
- Ingram
- NACIQI
- Walton
- SDO
- Intervene
- Intervention
- SDNY
- S.D.N.Y.
- NSLDN
- Century
- TCF
- Elson
- Habash

You limited your request to communications that took place between April 27, 2018 and June 15, 2018.

By letter dated August 27, 2018, the Department provided a Final Response, in which it informed you that the Office of Postsecondary Education (OPE) and the Office of Planning, Evaluation and Policy Development (OPEPD) did not locate any documents that were responsive to your request. Your appeal ensued.

Determination on Appeal

Based on a careful review, the information at issue in your appeal, and applicable legal precedent, the Department is granting your appeal in full. The reasons for the decision are set forth below.

Discussion

In your appeal, you argue that the Department's search was inadequate because the request was not limited to records within OPE and OPEPD but sought communications from Department officials in multiple offices. You also argue that it appeared that the Department did not provide any information regarding the search that OPE and OPEPD staff conducted. You further argue that, although the Department asserted that it was unable to locate any responsive documents, it had released responsive records in a separate FOIA request submitted by an unrelated party.

FOIA requires that the Department search locations where records are reasonably likely to be found. *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA search is determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). The Department's August 27, 2018 response incorrectly stated that its search was limited to OPE and OPEPD. The Department's initial search included the following program offices: the Office of the Secretary (OS), the Office of the Undersecretary (OUS), Federal Student Aid (FSA), and the Office of the General Counsel (OGC), the Office of Special Education and Rehabilitative Services (OSERS), OPE and OPEPD and included an administrative search of the email boxes of the individuals named in the request for the time period specified in the request. Additionally, the administrative search included the list of search terms that was provided in the request. Based on the initial search, OPE found 11 pages of responsive records. However, it appears that OPE inadvertently issued a "no records" response to the FOIA Service Center. Those 11 pages are now being provided to you in full.

Additionally, to ensure that the Department's search encompassed all locations where responsive records were reasonably likely to be located, the Department conducted an additional administrative search for responsive documents based on the list of individuals and search terms provided in the FOIA request. This search also included the terms "Duane Morris" or "duanemorris.com," which were not listed as search terms in the FOIA request, but were added because Duane Morris is an entity that represents ACICS. Based on the additional search, OGC was able to identify an additional 46 pages of documents responsive to this request, which are being provided to you in full. The Department is not aware of any other location where responsive records are reasonably likely to be located.

Notice of Other Rights

If you have questions or concerns, the FOIA Public Liaison isavailable to assist. The Office of Government Information Services (OGIS), which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Chief Privacy Officer U.S. Department of Education 400 Maryland Ave., SW Washington, DC 20202-4536	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

As a last resort, you always have the right to seek judicial review in a court of law.

Sincerely,

Jessica Ramakis
Acting Chief Privacy Officer

Enclosure