

July 21, 2023

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 request for data regarding federal student loan borrowers who have been positively identified as eligible for total and permanent disability (“TPD”) discharges through the Department’s matching agreement with the Social Security Administration (“SSA”).

Background

Under the Higher Education Act (“HEA”), student loan borrowers who are “totally and permanently” disabled are entitled to a complete discharge of their federal student loans.¹

On April 12, 2016, the Department announced that it was working with the SSA to complete a data match to identify federal student loan borrowers who are eligible for a TPD discharge (“SSA Process”).² On August 19, 2021, the Department announced that it would provide automatic TPD discharges to those who match through the SSA Process.³ The Department stated that the change would “begin with the September [2021] quarterly match with SSA.”⁴ This FOIA relates only to relief provided pursuant to the regulation announced in August 2021 providing automatic relief to borrowers who match through the SSA process.

Requested Records

¹ HEA § 437(a); 20 U.S.C. § 1087(a).

² See Press Release, U.S. Dep’t of Educ., (April 12, 2016), available at: <https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities>.

³ See Press Release, U.S. Dep’t of Educ., (Aug. 19, 2021), available at: <https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges>

⁴ *Id.*

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

For borrowers who have been identified as eligible for an automatic TPD discharge through the SSA Process (i.e. borrowers who have “matched” through the SSA Process since the automatic TPD regulation went into effect in 2021), documents sufficient to show:

1. Since the automatic TPD regulation (announced in August 2021) went into effect, documents sufficient to show the total number of borrowers who have been positively identified as eligible for an automatic TPD discharge pursuant to the SSA Process.
2. Since the automatic TPD regulation (announced in August 2021) went into effect, documents sufficient to show the total number of borrowers who have received an automatic TPD discharge pursuant to the SSA Process, and the total dollar value of their discharged federal student loan debt.
3. Since the automatic TPD regulation (announced in August 2021) went into effect, documents sufficient to show the total number of borrowers who have been identified as eligible for an automatic TPD discharge pursuant to the SSA Process but who have not received an automatic TPD discharge, and the total dollar value of their outstanding federal student loan debt.

Note: For each of these requests, in lieu of documents Student Defense would accept a chart or description providing the requested information.

FOIA presumes disclosure. Indeed, “[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a ‘strong presumption in favor of disclosure.’” *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, Student Defense requests that you “demonstrate the validity of [each] exemption that [ED] 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, you 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 specifically identifying 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).

In addition to the records requested above, Student Defense also requests records describing the processing of this request, including records sufficient to identify search terms used (if any); the locations and custodians searched; and any tracking sheets, questionnaires, emails, or certifications completed by, or sent to, ED personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

Student Defense seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, ED has a duty to construe a FOIA request liberally.

In conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available. Recent technology advances may render ED’s prior FOIA practices unreasonable. Moreover, not only does this request require the agency to conduct a search, but individual custodians must conduct their own searches in order to make sure that documents are appropriately collected.

To ensure that this request is properly construed and does not create any unnecessary burden on ED, Student Defense welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material via email to sarai@defendstudents.org. We welcome any materials that can be provided on a rolling basis. Nevertheless, Student Defense fully intends to hold ED to the timeframe required by statute for a response to this request.

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: (1) disclosure of the requested information 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) disclosure of the information is not primarily in the commercial interest of the requester.

Disclosure of Information is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government

1. The FOIA request specifically relates to the operations or activities of the government. The documents requested herein relate directly to the Department's management and operation of the TPD program under Title IV of the Higher Education Act, and therefore relate specifically to the operations or activities of the government.

2. The requested documents will likely contribute to an understanding of those specific operations or activities. The requested documents are essential to understanding the current status of discharges under the TPD matching programs with the SSA. As such, they will contribute to a greater understanding of this central Department of Education function.

3. The disclosure will contribute to a greater understanding on the part of the public at large. Student Defense seeks this information to increase public understanding regarding the Department's implementation of the TPD program under the SSA Process. Student Defense has the capacity to analyze any documents provided and disseminate its analysis to the public through its website and other sources.

4. Disclosure will "significantly" contribute to the public's understanding of government activities. This request seeks information that will allow Student Defense to more completely understand the scale and status of the Department's implementation of the TPD regulation under the SSA Process.

Disclosure of 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 to 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. As noted above, Student Defense has the capacity to make the information it receives available to the public through reports, social media, press releases, litigation filings, and regulatory comments to government agencies. For these reasons, Student Defense qualifies for a fee waiver.

* * *

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 sarai@defendstudents.org. Also, if Student Defense's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Sarai Chaidez

U.S. Department of Education
FOIA Public Liaison
July 21, 2023
Page 5 of 5

Sarai Chaidez
National Student Legal Defense Network