

February 25, 2020

VIA ELECTRONIC MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4536
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 any records relating to financial audits of La’James International College (“LJIC”), including audited financial statements, communications about financial audits, and communications about letters of credit.

Background

As stated by the Department on its website (<https://studentaid.gov/data-center/school/composite-scores>):

Section 498(c) of the Higher Education Act of 1965, as amended, requires for-profit and non-profit institutions to annually submit audited financial statements to the Department to demonstrate they are maintaining the standards of financial responsibility necessary to participate in the Title IV programs. One of many standards, which the Department utilizes to gauge the financial responsibility of an institution, is a composite of three ratios derived from an institution's audited financial statements. The three ratios are a primary reserve ratio, an equity ratio, and a net income ratio. These ratios gauge the fundamental elements of the financial health of an institution, not the educational quality of an institution.

The Department’s website also explains when it requires an institution to remit a letter of credit based on the institution’s composite score (<https://studentaid.gov/data-center/school/loc>):

The most common reason why an institution is required to remit a letter of credit (LOC) to the Department is because they have a failing financial responsibility composite score (generally a score of 1.4 or less on a scale of -1.0 to +3.0) and are not deemed financially responsible. In accordance with 34 CFR 668.175, an institution with a composite score of 1.4 or less may continue to participate in the *Title IV* programs under the Provisional

certification alternative. Institutions participating under provisional certification are subject to [heightened cash monitoring](#), and may be required to submit an irrevocable LOC of not less than 10 percent of the *Title IV* aid the institution received during its most recently completed fiscal year. *Institutions that passed the score in the previous year may score from 1.0 to 1.4 for up to three consecutive years without providing a LOC, provided other reporting conditions are met. Institutions that score below a 1.0 are required to submit a LOC of not less than 10 percent of the Title IV aid the institution received during its most recently completed fiscal year.*

A LOC may also be required by institutions that are cited for failure of other portions of the financial responsibility standards noted under 34 CFR Part 668 Subpart L.

Several of LJIC's campuses have been Heightened Cash Monitoring 2 ("HCM2") status since August 28, 2017, and continue to be on HCM2 status due to "Program Review – Severe Findings" because "[s]chool is being reviewed by the Department as part of its normal oversight and monitoring responsibilities or as a result of concerns regarding the school's administrative capacity and financial responsibility."¹

Request

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

Any records relating to financial audits of La'James International College, including audited financial statements, communications about financial audits, and communications about letters of credit.

Without limiting the Department's obligations to conduct a reasonable search for responsive records, we specifically request that the Department search the following custodians' records (including, but not limited to, their emails):

- Employees in Federal Student Aid, including, but not limited to: Jenny Armontrout, Ron Bennett, Dvak Corwin, Ralph LoBosco, Robin Minor, Ingrid Valentine, Andrea Wise, and any employee that has interacted with LJIC.
- Diane Auer Jones, Robert Eitel, James Manning.
- All employees in the Office of General Counsel's Division of Postsecondary Education, including, but not limited to: Steve Finley, Donna Mangold, and Denise Morelli
- Other employees in the Office of the General Counsel: Jed Brinton, Steven Menashi, Carlos Muñiz, Justin Reimer, Philip Rosenfelt, Reed Rubinstein,,

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

¹ U.S. Department of Education, List of Institutions on HCM as of December 1, 2019, <https://studentaid.gov/data-center/school/hcm>.

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 alice@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.** This request seeks documents relating to the financial health of an institution as evidenced by documents submitted to ED, as well as any communications regarding those documents. This information is used by ED to make decisions about an institution's ongoing eligibility to participate in Title IV, HEA programs 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.** This request seeks documents that will contribute to the understanding of the circumstances under which the Department assesses the financial health of an institution and requires a letter of credit under Title IV, HEA and its implementing regulations.
- 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 of the process by which the government conducts financial oversight. 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 process by which the government conducts financial oversight, specifically with respect to institutions that have been placed on HCM2 status. Moreover, Student Defense's analysis of this information will inform the public about these processes, thereby enhancing the public's understanding of the Title IV program. Disclosure of this information will therefore significantly contribute to the public's understanding of this core Department of Education activity.

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 alice@defendstudents.org or 202-258-9088. 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,

/s/ Alice W. Yao

Alice W. Yao
Senior Counsel