

June 22, 2021

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 the Department’s decision to halt Title IV reimbursements for La’James International College (LJIC)’s Hybrid Cosmetology Program.

Background

Under the Title IV of the Higher Education Act of 1965 (“HEA”) (as amended), 20 U.S.C. §§ 1070 *et seq.*, and its implementing regulations, institutions of higher education must agree to administer Title IV programs in accordance with all statutory provisions of the HEA, *see* 34 C.F.R. § 668.16. According to Section 498 of the HEA, the Secretary of Education (Secretary) determines whether institutions of higher education are eligible to participate in the programs authorized pursuant to Title IV of the HEA. 20 U.S.C. § 1070 *et seq.*, and whether they meet, or continue to meet, the institutional eligibility, financial responsibility, and administrative capability requirements for participation in the Title IV, HEA programs.

The Secretary is mandated by law under Section 498A of the HEA, 20 U.S.C. §§ 1094(c) and 1099c, to conduct program reviews and audits of institutions of higher education participating in the Title IV, HEA programs. Depending on the findings of such a review or audit, the Department may determine that a particular program no longer meets eligibility requirements for Title IV. 34 CFR § 668.112, 20 U.S. Code § 1094.

On May 30, 2019, Mr. Dvak Corwin, ED Compliance Manager, sent a letter to Ms. Cynthia Becher, President of LJIC. In the letter, Mr. Corwin states that during ED’s program review of LJIC’s Davenport campus, “concerns were raised regarding the eligibility” of LJIC’s Hybrid Cosmetology Program due to inadequate monitoring procedures. ED informed LJIC that as a result, it would halt processing of HCM2 reimbursements for Hybrid Cosmetology students “until the eligibility can be determined.” LJIC continued to enroll Title IV students into the

program until November 2019. LJIC claimed in correspondence to the Iowa Attorney General that around May 2020 the Department and LJIC reached an agreement regarding funding Hybrid Cosmetology students and that the two parties continued to iron out details through June or July 2020.

Request

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

Any records relating to the Department's May 2019 decision to halt processing of HCM2 requests for students enrolled in La'James International College's Hybrid Cosmetology Program until the program's eligibility could be determined. This includes all correspondence between the Department and La'James regarding this decision, as well as any subsequent agreements and correspondence between La'James and the Department regarding funding for this program. This request includes all documentation related to program reviews of LJIC, any annual compliance audits, and any resulting final audit or program review determinations that pertain to the Hybrid Cosmetology Program.

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.
- Other employees in the Office of the General Counsel: Jed Brinton, Steven Menashi, Carlos Muñiz, Justin Reimer, Philip Rosenfelt, Reed Rubinstein.

Discussion

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 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 attachments 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 abigail@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 an institution’s compliance with Title IV of the HEA and its implementing regulations 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 liability under Title IV of the HEA 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 liability of an institution 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 oversight under Title IV of the HEA. 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 oversight of institutions that participate in Title IV, HEA programs. 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



1015 15th St. NW, Suite 600
Washington, DC 20005
www.defendstudents.org

abigail@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,

/s/ Abigail Moats

Abigail Moats
Intake & Digital Advocacy Manager
National Student Legal Defense Network