

December 17, 2019

VIA ED FOIA PORTAL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave, S.W.
LBJ 2E321
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 any records relating to ED’s program review of La’James International College (“LJIC”), its decision to place LJIC on Heightened Cash Monitoring II (“HCM2”) status, as well as LJIC’s compliance with its obligations while on HCM2 status.

Background

In 2015, ED conducted a program review of several of LJIC’s Iowa campuses, including Des Moines, Fort Dodge, and Cedar Falls. Beginning in September 2017, ED placed these three campuses on HCM2 status due to “Program Review – Severe Findings,” because the “[s]chool has potential of severe program review findings such as failure to make refunds or return of Title IV funds.” LJIC’s Iowa City and Davenport campuses were also placed on HCM2 status because of “Other (Common Ownership),” more specifically, “[t]he common ownership of certain institutions that had issues identified at some of their schools.”¹

On May 10, 2018, ED formally notified LJIC of LJIC’s failure to adhere to regulatory requirements for institutions that are placed on HCM2.² In reaching that determination, ED noted that it had reviewed “[d]ocumentation provided by LJIC as part of its HCM2 submissions, and LJIC student complaints received by the Department,” including complaints received from LJIC alumni.³ As a result of the issues identified, ED requested additional information as part of

¹ See U.S. Department of Education, List of Institutions on HCM as of September 1, 2017, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/SchoolsonHCM1orHCM209012017.xls>.

² Letter from U.S. Department of Education to Cynthia Becher (May 10, 2018) (attached).

³ *Id.*

its review. LJIC's Des Moines, Fort Dodge, Cedar Falls, Iowa City, and Davenport campuses have remained on HCM2 status ever since.⁴

Request

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

1. All records relating to ED's 2015 program review of LJIC's Des Moines, Fort Dodge, and Cedar Falls campuses.
2. All records regarding ED's determination to place LJIC on HCM2 status beginning on September 1, 2017.
3. Any supporting documentation provided by LJIC to ED from September 1, 2017, to the present as part of its HCM2 submissions, including but not limited to, "a list of all graduated and withdrawn students, organized by campus location for whom LJIC has not posted earned Title IV, HEA program funds."⁵
4. All records from September 1, 2017, to the present regarding the annual compliance audits conducted by an independent auditor regarding LJIC's compliance with the cash monitoring requirements, including any supporting documentation.
5. All records from January 1, 2017, to the present relating to any complaints received regarding LJIC, including complaints filed by Ashley Coers, Jenna (or Jeanna) Holmes, and Philip McFatridge.

⁴ See U.S. Department of Education, List of Institutions on HCM as of December 1, 2017, https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/SchoolsonHCM1orHCM2_12012017.xls; U.S. Department of Education, List of Institutions on HCM as of March 1, 2018, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/SchoolsonHCM1orHCM203012018.xls>; U.S. Department of Education, List of Institutions on HCM as of June 1, 2018, https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/HCM1orHCM2_2018_06_01.xls; U.S. Department of Education, List of Institutions on HCM as of September 1, 2018, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/SchoolsonHCM1orHCM209012018.xls>; U.S. Department of Education, List of Institutions on HCM as of December 1, 2018, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/SchoolsonHCM1orHCM212012018.xlsx>; U.S. Department of Education, List of Institutions on HCM as of March 1, 2019, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/schoolson-hcm-03012019.xls>; U.S. Department of Education, List of Institutions on HCM as of June 1, 2019, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/Schools-on-HCM-June-2019.xls>; U.S. Department of Education, List of Institutions on HCM as of September 1, 2019, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/HCM/Schools-on-HCM-Sept-2019.xls>.

⁵ Letter from U.S. Department of Education to Cynthia Becher (May 10, 2018).

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 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 a program review of an institution conducted by ED, as well as ED's determination to place, and then keep, that institution on HCM2 status in order to conduct additional oversight of its cash management. These determinations are 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 conducts a program review and initially determines, and then keeps, an institution on HCM2 status 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 provides financial oversight and ensures that taxpayer funds will be safeguarded if an institution does not comply with its obligations for fund disbursement. 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 provides financial oversight, specifically with respect to institutions that have been found out of compliance with Title IV, HEA requirements. 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