

February 28, 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](mailto: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 annual compliance audits of La’James International College.

**Background**

The implementing regulations for Title IV of the Higher Education Act require that “[a]n institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution’s general purpose financial statements.” 34 C.F.R. § 668.23(a)(2). Such institutions must submit its compliance audit and its audited financial statements to the Secretary annually, “no later than six months after the last day of the institution’s fiscal year.” *Id.* § 668.23(a)(4). The regulations also specify that the compliance audit “must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of the transactions that have occurred since the period covered by the institution’s last compliance audit.” *Id.* § 668.23(b)(1). The standards and procedures for conducting a compliance audit are also specified in the regulations. *See id.* § 668.23(b)(2). Following submission of the compliance audit and the institution’s audited financial statements, “the Secretary determines the amount of liability, if any, owed by the institution . . . and instructs the institution as to the manner of repayment.” This liability is based on the findings from the compliance audit and the institution’s response. *Id.* § 668.23(f).

**Request**

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

Any records from 2014 to the present relating to annual compliance audits of La’James International College, including the annual compliance audits submitted to the

Department, any final audit determinations related to those annual compliance audits, and any communications about the annual compliance audits or the final audit determinations.

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 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](mailto: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 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 [alice@defendstudents.org](mailto: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