

December 28, 2021

VIA ELECTRONIC MAIL

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
Phone: (202) 616-3837
E-mail: MRUFOIA.Requests@usdoj.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 of the United States Department of Justice (“Justice” or “the Department”), 28 C.F.R. Part 16, the National Student Legal Defense Network (“Student Defense”) makes the following request for records.

Background

Pursuant to the Debt Collection Improvement Act of 1996, federal agencies shall transfer non-tax debts delinquent for more than 180 days to the Department of the Treasury (“Treasury”) for collection. 31 U.S.C § 3711(g)(1). Treasury, through its Cross-Servicing Program, then takes appropriate action to collect, including referring the debt to Justice for collection through litigation. 31 C.F.R § 285.12(c)(2). *See also* 31 U.S.C. § 3711(g)(4)(C). Nevertheless, in certain cases, agencies can refer debts directly to Justice for collection. *See* 31 CFR § 285.12(d)(1)(i); 31 CFR § 285.12(d)(2)(i).

Department of Education (“Education”) regulations authorize Education to directly refer debts to Justice for “compromise, collection, or litigation.” 34 C.F.R. § 30.1(a)(3). Public reports indicate that Education refers thousands of debts to Justice every year for collection. In 2018, 75% of “all civil debts” referred to the Department came from Education.¹

Critical to this request, Education can refer debts that arise from different authorities and sources. Among these debts, Education can collect from institutions of higher

¹ Dep’t. of Justice, Debt Collection Recovery Activities of the Department of Justice for Civil Debts Referred for Collection Annual Report, FY 2018 at 8 (May 2019).

education with liabilities stemming from their participation in Title IV programs, 20 U.S.C. § 1070 *et seq.*

Requested Records

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

1. Documents sufficient to show *all* debts referred to Justice by the Department of Education for collection, litigation, or settlement, from January 1, 2017 through present, as well as the current status of each debt or collection effort. This request is limited to include *only* documents regarding referral of debts owed to Education and/or the U.S. Government by institutions of higher education, their affiliates, owners, shareholders, or executives, for actions stemming from an institution's participation in the Title IV student aid programs. This request *excludes* records reflecting individual student borrower debts.
2. Documents sufficient to show *all* debts referred to Justice by Treasury for collection, litigation, or settlement, from January 1, 2017 through present, as well as the current status of each debt or collection effort. This request is limited to include only those debts that have been referred to Justice that stem from an institution of higher education's participation in one or more programs authorized by Title IV of the Higher Education Act. This request *includes* records related to debts owed by institutions of higher education (including their affiliates, owners, shareholders, or executives) for actions stemming from an institution's Title IV participation, but *excludes* records related to individual student loans.

In lieu of documents, Student Defense would accept a chart or description providing the requested information.

Request for Waiver of Fees

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, Student Defense requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

Student Defense requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to

public understanding of operations or activities of the government.”² The public has a significant interest in the extent to which the U.S. Government is collecting on debts owed by institutions of higher education and their owners and executives. The documents sought by this request will shed light on how the Department of Education prioritizes which debts to collect and would contribute significantly to public understanding of how Education and Justice hold institutions accountable for their liabilities. The issue of “recoupment” of debts owed to the government by institutions has been raised in recent months by members of Congress in numerous settings. Student Defense has the capacity to analyze records and to use the sought records to inform public discourse regarding the Department’s enforcement practices. Student Defense also has the capacity to broadcast its analysis through the news, its website, and via social media—thus “significantly” contributing to the public understanding of issues present at the Department, including those raised by the Department’s processes for handling FOIA requests.

This request is primarily and fundamentally for non-commercial purposes.³ Student Defense is a non-profit, non-partisan 501(c)(3) organization.⁴ 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, in litigation filings, and regulatory comments to government agencies. For these reasons, Student Defense qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, Student Defense provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Student Defense does not object to the redaction from such records of any confidential information regarding individuals.
- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ See *About Us*, NATIONAL STUDENT LEGAL DEFENSE NETWORK, <https://www.defendstudents.org/about>.

- In conducting your search, please understand the terms “record” in its 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 and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.⁵ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; Student Defense has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.⁶
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,⁷ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

⁷ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://www.federalregister.gov/documents/2011/12/01/2011-31096/managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to Student Defense, please do not hesitate to contact Student Defense to discuss this request. We welcome any opportunities to discuss this request with you before you undertake your search or incur search or duplication costs. By working together at the outset, Student Defense and the Department can decrease the likelihood of costly and time-consuming litigation.

Where possible, please provide responsive material in an electronic format by email. Please send any responsive material being sent by email to info@defendstudents.org. If it will accelerate release of responsive records to Student Defense, please also provide responsive material on a rolling basis.

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Student Defense looks forward to working with the Department on this request. If you do not understand any part of this request, or anticipate any problems in complying with this request please contact me at isabel@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/ Isabel Tessier

Isabel Tessier
National Student Legal Defense Network