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responsible for the declassification of hundreds of thousands of pages  
released by the U.S. Government & Military.

**Discover the Truth** at: **<http://www.theblackvault.com>**

**From:** Darby, Linda  
**Sent:** 17 Aug 2010 16:43:09 +0000  
**To:** 'Esack, Steve'  
**Subject:** RE: Understanding

Thank you!

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**From:** Esack, Steve [mailto:(b)(6)@com]  
**Sent:** Tuesday, August 17, 2010 12:39 PM  
**To:** Darby, Linda  
**Subject:** RE: Understanding

Race to the Top is a federal initiative of President Obama. The time from would be from when he and his team took office in Jan. 2009 to the present. The topic is one U.S. Department of Education spending initiative, "Race to the Top." I hope that helps.

---

**From:** Darby, Linda [mailto:Linda.Darby@ed.gov]  
**Sent:** Tuesday, August 17, 2010 12:30 PM  
**To:** Esack, Steve  
**Subject:** RE: Understanding

Can I get a time frame and the topic areas?

Thanks,

Linda Darby

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**From:** Esack, Steve [mailto:(b)(6)@com]  
**Sent:** Tuesday, August 17, 2010 12:22 PM  
**To:** Darby, Linda  
**Subject:** RE: Understanding

No, Ms. Darby, that is not what I had requested. I had requested e-mails concerning "Race to the Top" written and received by the individuals I previously listed.

---

**From:** Darby, Linda [mailto:Linda.Darby@ed.gov]  
**Sent:** Tuesday, August 17, 2010 12:11 PM  
**To:** Esack, Steve  
**Subject:** Understanding

Hello Steve,

Per our telephone conversation this morning regarding your FOIA request with the U.S. Department of Education, are you looking for e-mails and correspondence regarding the Race To The Top between the individuals listed in your FOIA Request only?

Thanks,

*Linda Darby*

Management & Program Analyst

FOIA Public Liaison

FOIA Service Center, OM/RIMS

400 Maryland Ave. SW, Room 2W214

Washington, DC 20202

(202) 401-8365

**Casteel, Jasmine (Contractor)**

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**From:** EDFOIAManager@ed.gov  
**Sent:** Tuesday, July 20, 2010 12:43 PM  
**Subject:** FOIA Request Form Submission

(b)(6)

OS, ODS, OPEPD, OII, OESE

July 20, 2010

U.S. Department of Education  
Office of Management  
FOIA Service Center  
400 Maryland Ave, SW, Room 2W220  
Washington, DC 20202-4536

RECEIVED JUL 26 2010

10-01748-F

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me:

Email correspondence related to: 1. "Race to the Top Fund" initiative 2. "Race to the Top Assessment Program" 3. Among U.S. Department of education staff, including but not limited to: Education Secretary Arne Duncan, [arne.duncan@ed.gov](mailto:arne.duncan@ed.gov); Deputy Secretary Tony Miller; Assistant Secretary Carmel Martin, [carmel.martin@ed.gov](mailto:carmel.martin@ed.gov); Assistant Deputy Secretary Jim Shelton, [jim.shelton@ed.gov](mailto:jim.shelton@ed.gov); Interim Director Race to the Top Joe Conaty, [joe.conaty@ed.gov](mailto:joe.conaty@ed.gov); James Butler, Race to the Top fund, [james.butler@ed.gov](mailto:james.butler@ed.gov);

In order to help to determine my status to assess fees, you should know that I am a representative of the news media/press and this request is made as part of news gathering and not for commercial use.

The maximum dollar amount I am willing to pay for this request is \$0. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Specific explanation for waiver of fees: I am requesting a fee waiver as a member of the media and the information I am requesting pertains to how taxpayer money is being used in the U.S. Department of Education.

Thank you for your consideration of this request.

Sincerely,

Mr. Steve Esack

Phone: (b)(6)



Fax: (b)(6)  
Email: [REDACTED]



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF MANAGEMENT

August 19, 2010

Steve Esack

(b)(6)

RE: FOIA Request No. 10-01748-F

Dear Mr. Esack:

In response to your e-mail dated July 20, 2010, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your FOIA case regarding FOIA Request No. 10-017048-F has been assigned to the appropriate program offices within the Department to search for documents that may be responsive to your request.

You have asked for a waiver of all fees, including duplication fees, associated with processing your request based on your status as a member of the news organization, the Morning Call and the information requested will be disseminated to the public. That request is granted.

For your information, because the documents responsive to your request may be voluminous, they will be produced to you on an interim basis, as they come into the FOIA Service Center from the various program offices.

If you have any questions, or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Darby", is written over the word "Sincerely,".

Linda Darby  
FOIA Public Liaison, OM/RIMS

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-4500  
[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

**From:** 340-86195213@requests.muckrock.com  
**Sent:** 30 Aug 2013 22:31:38 +0000  
**To:** Hyler, James  
**Cc:** Wehausen, Robert  
**Subject:** Follow up to Freedom of Information Request #11-00590-F

August 30, 2013  
Department of Education

This is a follow up to request number 11-00590-F:

I confirm.

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On Aug. 29, 2013:

Dear Mr. Smathers:

Thank you for taking the time today to speak with James Hyler and I about your request. This email serves to confirm our conversation earlier today, in which you narrowed the scope of your FOIA request (Request No. 11-00590-F) as follows:

· You are seeking only emails between the Department of Education and Joshua DuBois or any member of his staff between February 1, 2012 and February 1, 2013.

Please confirm whether this accurately reflects our conversation.

Sincerely,

Robert Wehausen  
Management & Program Analyst  
FOIA Appeals Coordinator  
FOIA Service Center  
U.S. Dept. of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4510  
202.205.0733

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On Aug. 27, 2013:

Please provide a telephone number and we will contact you tomorrow or another day this week at your convenience to further discuss your FOIA request.

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On Aug. 27, 2013:

Since Joshua DuBois is no longer at the white house, you may amend my request to include his predecessor, Melissa Rogers. You may limit the searches for DuBois and Rogers to the periods of time in which they directed the Office of Faith Based and Neighborhood Partnerships. I am not interested in communication with DuBois after he left the White House.

You can further limit the volume of responsive records by eliminating duplicate records assuming many employees received the same email.

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On Aug. 27, 2013:

August 26, 2013

Mr. Jason Smathers  
MuckRock

(b)(6)

Email: requests@MuckRock.com

RE: FOIA Request No. 11-00590-F

Dear Mr. Jason Smathers:

This email is in regard to your FOIA request (11-00590-F) emailed to the U.S. Department of Education (Department) on January 2, 2013, and officially received by the Department's FOIA Service Center on January 3, 2013. We attempted to reach you by telephone on July 29, 2013, August 6, 2013, and August 19, 2013, regarding your FOIA request. To date, we have not been able to reach you directly to discuss your request. However, the Department is very much interested in responding to your request prior to the expiration of this fiscal year. Below please find the factors that you may consider relevant to any discussion of your request:

1. You specifically requested "All records of communication between your agency and the White House Office of Faith-based and Neighborhood Partnerships including but not limited to emails, letters or other communication to and from Joshua DuBois or any member of his staff."

Does the fact that Mr. DuBois is no longer employed at the White House in any way affect your request for "[a]ll records of communication[s] between your agency and the White House Office of Faith-based and Neighborhood Partnerships including but not limited to emails, letters or other communication[s] to and from Joshua DuBois or any member of his staff"?

2. In searching the Departmental files for records responsive to your request, we have determined that there are approximately 46,000 email messages that may be responsive.

In an effort to decrease substantially the time needed to complete our review of these communications and

to greatly expedite your receipt of records that would be satisfactory for your needs, would you be willing to specify that you are interested in receiving the following rather than what is in your original broader request?

- a. Only email messages from "Mr. DuBois or any member of his staff to the Department.
- b. All emails from Mr. DuBois only to the Department.

Moreover, if there is some other way that we can substantially reduce the scope of your request, assuming you still desire this information, please contact me directly or you may contact the FOIA Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) to discuss your request.

Please be advised that any scope reduction you are willing to provide us at this time will only expedite our response back to you. We would appreciate receiving a response from you by Tuesday, September 3, 2013, to assess what amount of resources to devote to your request. Should we not hear from you by the said time (September 3rd), we will assume you do not wish to narrow the scope of your request. Should you decide not to narrow the scope of your original request; we simply don't have the resources to complete your request within the fiscal year or soon thereafter given the sheer volume of documents involved with your request.

While we deeply regret our delay in responding, we will wait to hear from you before we take further action on your request. Should you choose not to respond within 30 calendar days, we will conclude you no longer wish to pursue this request and your file will be closed.

Sincere regards,

Gregory A. Smith

Director, FOIA Service Center

Privacy, Information & Records Management Services

Office of Management

US Department of Education

400 Maryland Avenue, SW, Room 2E305

Washington, DC 20202

Phone (202) 453-6362

Email: [Gregory.smith@ed.gov](mailto:Gregory.smith@ed.gov)

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On April 11, 2011:

Dear Mr. Smathers:

This is in response to your Freedom of Information Act (FOIA) request sent electronically to "FOIARequests" at the U.S. Department of Labor. In your request you asked for the following:

all records of communication between your agency and the White House Office of Faith-based and Neighborhood Partnerships including but not limited to emails, letters or other communication to and from Joshua Dubois or any member of his staff

The Women's Bureau, an agency component of the Department of Labor, has searched its files and found no records responsive to your request.

You may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statement or arguments. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal should include a copy of your initial request and a copy of this letter. The appeal must be addressed to: Solicitor of Labor, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue, NW, Washington, DC 20210. If mailed, both the envelope, and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal."

Cheryl D. Edwards  
FOIA Coordinator  
Women's Bureau, USDOL  
200 Constitution Avenue, NW  
Washington, DC 20210  
202-693-6735 (Phone)  
202-693-6746 (Fax)  
WBFOIA@dol.gov

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On Jan. 26, 2011:

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On Jan. 2, 2011:

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

All records of communication between your agency and the White House Office of Faith-based and Neighborhood Partnerships including but not limited to emails, letters or other communication to and from Joshua DuBois or any member of his staff.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Jason Smathers

Filed via MuckRock.com

E-mail (Preferred): requests@muckrock.com

Daytime: (b)(6)

For mailed responses, please address:

MuckRock

(b)(6)

Filed via MuckRock.com

E-mail (Preferred): 340-86195213@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News

DEPT MR 340

PO Box 55819

Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.



**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF MANAGEMENT**

**Regulatory Information Management Services**

January 13, 2011

Jason Smathers  
MuckRock

(b)(6)

RE: FOIA Request No. 11-00590-F

Dear Mr. Smathers:

This letter is in response to your e-mail dated January 2, 2011, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on January 3, 2011. Your request has been assigned case number 11-00590-F and forwarded to the appropriate office to search for documents that may be responsive to your request.

You have asked for a waiver of all fees, including duplication fees, associated with processing your request based on your status as representative of a news media, MuckRock and the information requested will be disseminated to the public. That request is granted.

If you have any questions, or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in black ink that reads "Linda Darby". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Darby".

Linda Darby  
FOIA Public Liaison, OM/RIMS

05

RECEIVED JAN 03 2011

**Devine, Eamon (Contractor)**

**From:** Requests Muckrock [requests@muckrock.com]  
**Sent:** Sunday, January 02, 2011 9:06 PM  
**To:** ED FOIA Manager  
**Subject:** Freedom of Information Request: Faith Based Czar Communication (ED)

11-00590-F

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

All records of communication between your agency and the White House Office of Faith-based and Neighborhood Partnerships including but not limited to emails, letters or other communication to and from Joshua DuBois or any member of his staff.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter.  
I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Jason Smathers  
Filed via MuckRock.com  
E-mail (Preferred): [requests@muckrock.com](mailto:requests@muckrock.com)  
Daytime: (b)(6)  
For mailed responses, please address:  
MuckRock

(b)(6)



**From:** ED FOIA Manager  
**To:** (b)(6) com  
**Subject:** FOIA Request Acknowledgement 12-01473-F



**UNITED STATES DEPARTMENT OF EDUCATION**  
**FOIA REQUEST ACKNOWLEDGEMENT**

**FOIA Tracking Number:** 12-01473-F  
**Name of Requester:** Alexandra Hootnick  
**E-mail Address:** (b)(6) com  
**Date of Request:** 06/06/2012  
**Date Request Received:** 06/06/2012

Your request (below) has been forwarded to the appropriate office within the Department to search for responsive documents. If you have any questions regarding the status of your request, please contact the FOIA Requester Service Center at (202) 401-8365 or by e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) (please include the case tracking number).

Thank you.

**From:** EDFOIAManager@ed.gov [mailto:EDFOIAManager@ed.gov]  
**Sent:** Wednesday, June 06, 2012 4:52 PM  
**Subject:** FOIA Request Form Submission

(b)(6)

June 06, 2012

U.S. Department of Education  
Office of Management  
FOIA Service Center  
400 Maryland Ave, SW, Room 2W220  
Washington, DC 20202-4536

Dear FOIA Officer:

This is a request under the Freedom of Information Act.



I request that a copy of the following documents [or documents containing the following information] be provided to me:

Dear Freedom of Information Officer: Pursuant to the Freedom of Information Act, I write to request access and a copy of the following documents written or received in 2010, 2011 and 2012: a) all draft memos or reports written by DOE; b) correspondence received or sent by DOE; c) interagency correspondence or memos written or received by DOE; d) comments on drafts or summaries of comments written by DOE; and e) additional documents related to: Teach For America. Additionally, seeking to learn about any contact between DOE and any other federal or state agencies, officials or outside individuals or groups regarding Teach For America, and would appreciate any other documents not specified above that will provide additional insight. To that end, for calendar years 2010, 2011, and 2012, would also like all schedules, records, notes, written presentations, agendas and any other documents showing or regarding any meetings, telephone calls or other communications between Department of Education's staff and the following groups or individuals regarding Teach for America: Organizations: Teach For America Inc., Teach For America (lobbying branch), Leadership for Educational Equity, The Gates Foundation, the Walton Family Foundation, the Broad Center, Bellwether Education, New Schools Venture Fund, the New York City Department of Education, the Rodel Foundation of Delaware, Community Coalition, New Leaders, the New Teacher Project, the National Association of Charter School Authorizers (NACSA), Democrats for Education Reform (DCER), ICFE, D.C. Public Schools, ! Revolution Foods, the University of Washington, Ohio Programs ! & Policy , the Thomas B. Fordham Institute for Advancing Educational Excellence, UrbanED, Great Oakland Public Schools, Education for Change, New Schools for New Orleans, Aspire Public Schools, KIPP Public Charter Schools, Diane Robinson Consulting, Rocketship Education, ROADS, the Aspen Institute, Kraft Foods, Inc., United Negro College Fund, InterMedia Partners, Wachovia Corporation, Stupski Foundation, The Keffi Grp., Ltd., First Manhattan Consulting Group, Hilton Hotels Corporation, Sony Corporation of America, Lone Pine Capital, LLC, Allen & Company, LLC, Coach Inc., Capital Research Company, The Sherry Lansing Foundation, Digitas, Symantec, Dynex Group, LLC, Amherst College, Gap Inc., Harvard University, DLJ Financial Services. People: Any members of Congress or their staffs, any state legislators or their staffs, any federal or state officials, any employee of another branch of federal government, any employee of a state government, and any other group or individual who c! ontacted the DOE regarding Teach For America, Wendy Kopp, Matthew Kramer, Susan Asiyanbi, Elisa Villanueva Beard, Garrett Bucks, Aimee Eubanks Davis, Josh Griggs, Elissa Kim, Eric Scroggins, Jeff Wetzler, Tracy-Elizabeth Clay, Steven Farr, Miguel Rossi, Joel Klein, Michael Bloomberg, Vincent Gray, Geoffrey Canada, Michelle Rhee, Charles Brown, Sandy Brown, Meghan Curran, Brittany Packnett, Roger Austin, Michael Lomax, John Deasy, Becca Bracey, Andrew Rotherham, Yulia Frid, Cami Anderson, Jemina Bernard, Tim Daly, Jean Desravines, Maria Goodloe-Johnson OR Maria Goodloe Johnson, Paul Herdman, John King, Shivam Mallick Shah OR Shivam Mallick-Shah, Jordan Meranus, Rebecca Huffman, Mike Piscal OR Michael Piscal, Victor Reinoso, Kristin Richmond, Marguerite Roza, Terry Ryan, Hae-Sin Thomas OR Hae Sin Thomas, Sarah Usdin, James Wilcox, Diane Robinson, Kim Smith, Peter Reilig, David Gergen, Anthony Marx, Walter Isaacson, Lawrence Summers, Ify Ofor, Mike Johnston, Beverly Tatum, S! ara Martinez Tucker OR Sara Tucker OR Sara Martinez-Tucker, To! m Stritkus. I am a student at the Columbia Graduate School of Journalism. This is an educational request. If there are any fees charged for searching or copying the records, please supply the records without informing me of the cost if the fees do not exceed \$25, which I agree

to pay. If possible, I would like to request digital copies. If the amount of information sent in the response exceeds the amount that can be sent digitally, please mail a CD-ROM to the mailing address indicated above. If you deny any part of this request, please cite each specific reason that you think justifies your refusal to release the information. Please notify me of appeal procedures available under the law. If you have any questions processing this request, you may contact me at the following telephone number: (b)(6) or by email at (b)(6) Please fulfill the FOIA request to the address above. Thank you for your assistance, Alexandra Hootnick

In order to help to determine my status to assess fees, you should know that I am affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly purpose.

The maximum dollar amount I am willing to pay for this request is \$25. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

Thank you for your consideration of this request.

Sincerely,

Ms. Alexandra Hootnick

Phone: (b)(6)

Email: [\(b\)\(6\).com](#)

**From:** Alexandra Hootnick  
**Sent:** 20 Jun 2012 16:10:00 -0400  
**To:** Wehausen, Robert  
**Subject:** 6/20/12 FOIA request update 12-01473-F and 12-01478-F

Hi Bobby,

In regards to my FOIA requests 12-01473-F and 12-01478-F, I would like to add the following criteria:

1. To the section

*"Additionally, seeking to learn about any contact between DOE and any other federal or state agencies, officials or outside individuals or groups regarding Teach For America, and would appreciate any other documents not specified above that will provide additional insight."*

Please make sure to collect any and all correspondence between DOE and the Health, Education, Labor and Pensions Committee, and Sen. Michael Bennet, regarding Teach For America. However, this is not a request to limit the search to correspondences between DOE and the Health, Education, Labor and Pensions Committee and Sen. Bennet's office.

2. To the sections

*"I write to request access and a copy of the following documents written or received in 2010, 2011 and 2012: a) all draft memos or reports written by DOE; b) correspondence received or sent by DOE; c) interagency correspondence or memos written or received by DOE; d) comments on drafts or summaries of comments written by DOE; and e) additional documents related to: Teach For America"*

AND

*"To that end, for calendar years 2010, 2011, and 2012, would also like all schedules, records, notes, written presentations, agendas and any other documents showing or regarding any meetings, telephone calls or other communications between Department of Education's staff and the following groups or individuals regarding Teach for America"*

Please be sure to search for and include email correspondences if they weren't already being searched for/included.

3. While I listed important individuals and organizations, please make sure not to limit the search to the individuals/organizations listed.

Thank you for your time, and please feel free to call or email me with any questions you might have.

Allie Hootnick

--

Alexandra Hootnick

M.S. Candidate in Digital Media, Columbia Journalism School  
Freelance Photography/Multimedia Journalism

(c) (b)(6)

(e) .com

<http://alexandrahootnick.wordpress.com/>

**From:** Alexandra Hootnick  
**Sent:** 12 Jun 2012 14:04:54 -0400  
**To:** Wehausen, Robert  
**Subject:** Re: FOIA Requests - 12-01471-F, 12-01473-F, 12-01478-F

Hi Bobby,  
Yes, the changes below accurately represent my updated FOIA request as per our discussion on Thursday.  
Thanks for your help--  
Best,  
Alexandra

Sent from my iPhone

On Jun 12, 2012, at 11:42 AM, "Wehausen, Robert" <[Robert.Wehausen@ed.gov](mailto:Robert.Wehausen@ed.gov)> wrote:

Good morning, Ms. Hootnick;

This email is to memorialize the telephone conversation that took place Thursday, June 7 between James Hylar, myself and you regarding the scope of the three FOIA requests you submitted to the Department. I apologize for the delay as I've been out of the office since we last communicated.

In summary, you agreed to the following changes in your requests:

- 12-01471-F – the search for responsive records should be limited to those only listed on your request;
- 12-01473-F – section a) changed to “all FINAL memos or reports written by DOE; and section d) can be removed altogether from request;

Please let me know if this accurately represents our conversation.

Thanks-  
Bobby

Robert Wehausen  
Management & Program Analyst  
FOIA Appeals Coordinator  
FOIA Service Center  
U.S. Dept. of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4510  
202.205.0733



01165  
**Ross, Doritha (Contractor)**

**From:** EDOIAManager@ed.gov  
**Sent:** Wednesday, June 06, 2012 4:52 PM  
**Subject:** FOIA Request Form Submission

(b)(6)

RECEIVED JUN 06 2012

12-01473-F

June 06, 2012

U.S. Department of Education  
Office of Management  
FOIA Service Center  
400 Maryland Ave, SW, Room 2W220  
Washington, DC 20202-4536

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me:

Dear Freedom of Information Officer: Pursuant to the Freedom of Information Act, I write to request access and a copy of the following documents written or received in 2010, 2011 and 2012: a) all draft memos or reports written by DOE; b) correspondence received or sent by DOE; c) interagency correspondence or memos written or received by DOE; d) comments on drafts or summaries of comments written by DOE; and e) additional documents related to: Teach For America Additionally, seeking to learn about any contact between DOE and any other federal or state agencies, officials or outside individuals or groups regarding Teach For America, and would appreciate any other documents not specified above that will provide additional insight. To that end, for calendar years 2010, 2011, and 2012, would also like all schedules, records, notes, written presentations, agendas and any other documents showing or regarding any meetings, telephone calls or other communications between Department of Education's staff and the following groups or individuals regarding Teach for America: Organizations: Teach For America Inc., Teach For America (lobbying branch), Leadership for Educational Equity, The Gates Foundation, the Walton Family Foundation, the Broad Center, Bellwether Education, New Schools Venture Fund, the New York City Department of Education, the Rodel Foundation of Delaware, Community Coalition, New Leaders, the New Teacher Project, the National Association of Charter School Authorizers (NACSA), Democrats for Education Reform (DCER), ICEF, D.C. Public Schools, ! Revolution Foods, the University of Washington, Ohio Programs ! & Policy , the Thomas B. Fordham Institute for Advancing Educational Excellence, UrbanED, Great Oakland Public Schools, Education for Change, New Schools for New Orleans, Aspire Public Schools, KIPP Public Charter Schools, Diane Robinson Consulting, Rocketship Education, ROADS, the Aspen Institute, Kraft Foods, Inc., United Negro College Fund, InterMedia Partners, Wachovia Corporation, Stupski Foundation, The Keffi Grp., Ltd., First Manhattan Consulting Group, Hilton Hotels Corporation, Sony Corporation of America, Lone Pine Capital, LLC, Allen & Company, LLC, Coach Inc., Capital Research Company, The Sherry Lansing Foundation, Digitas, Symantec, Dynex Group, LLC, Amherst College, Gap Inc., Harvard University, DLJ Financial Services. People: Any members of Congress or their staffs, any state legislators or their staffs, any federal or state officials, any employee of another branch of federal government, any employee of a state government, and any other group or individual who c! ontacted the DOE regarding Teach For America, Wendy Kopp, Matthew Kramer, Susan Asiyanbi, Elisa

Villanueva Beard, Garrett Bucks, Aimee Eubanks Davis, Josh Griggs, Elissa Kim, Eric Scroggins, Jeff Wetzler, Tracy-Elizabeth Clay, Steven Farr, Miguel Rossi, Joel Klein, Michael Bloomberg, Vincent Gray, Geoffrey Canada, Michelle Rhee, Charles Brown, Sandy Brown, Meghan Curran, Brittany Packnett, Roger Austin, Michael Lomax, John Deasy, Becca Bracey, Andrew Rotherham, Yulia Frid, Cami Anderson, Jemina Bernard, Tim Daly, Jean Desravines, Maria Goodloe-Johnson OR Maria Goodloe Johnson, Paul Herdman, John King, Shivam Mallick Shah OR Shivam Mallick-Shah, Jordan Meranus, Rebecca Huffman, Mike Piscal OR Michael Piscal, Victor Reinoso, Kristin Richmond, Marguerite Roza, Terry Ryan, Hae-Sin Thomas OR Hae Sin Thomas, Sarah Usdin, James Wilcox, Diane Robinson, Kim Smith, Peter Reilig, David Gergen, Anthony Marx, Walter Isaacson, Lawrence Summers, Ify Ofor, Mike Johnston, Beverly Tatum, Sara Martinez Tucker OR Sara Tucker OR Sara Martinez-Tucker, To! m Striti kus. I am a student at the Columbia Graduate School of Journalism. This is an educational request. If there are any fees charged for searching or copying the records, please supply the records without informing me of the cost if the fees do not exceed \$25, which I agree to pay. If possible, I would like to request digital copies. If the amount of information sent in the response exceeds the amount that can be sent digitally, please mail a CD-ROM to the mailing address indicated above. If you deny any part of this request, please cite each specific reason that you think justifies your refusal to release the information. Please notify me of appeal procedures available under the law. If you have any questions processing this request, you may contact me at the following telephone number: (b)(6) or by email at (b)(6). Please fulfill the FOIA request to the address above. Thank you for your assistance, Alexandra Hootnick

In order to help to determine my status to assess fees, you should know that I am affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly purpose.

The maximum dollar amount I am willing to pay for this request is \$25. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

Thank you for your consideration of this request.

Sincerely,

Ms. Alexandra Hootnick

Phone: (b)(6)

Email: (b)(6)@com



**From:** Ross, Doritha (Contractor)  
**Sent:** 8 Jun 2012 17:57:37 +0000  
**To:** (b)(6) com'  
**Subject:** FOIA Acknowledgement



**UNITED STATES DEPARTMENT OF EDUCATION**

**FOIA REQUEST ACKNOWLEDGEMENT**

**FOIA Tracking Number: 12-01478-F**

**Name of Requester: Alexandra Hootnick**

**E-mail Address: (b)(6) com**

**Date of Request: 06/06/2012**

**Date Request Received: 06/06/2012**

Your request has been forwarded to the appropriate office within the Department to search for responsive documents. If you have any questions regarding the status of your request, please contact the FOIA Requester Service Center at (202) 401-8365 or by e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) (please include the case tracking number).

Thank you.

011,05

12-01478-F

**Ross, Doritha (Contractor)**

**From:** EDFOIAManager@ed.gov  
**Sent:** Wednesday, June 06, 2012 4:54 PM  
**Subject:** FOIA Request Form Submission

JUN 07 2012

(b)(6)

June 06, 2012

U.S. Department of Education  
Office of Management  
FOIA Service Center  
400 Maryland Ave, SW, Room 2W220  
Washington, DC 20202-4536

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me:

Dear Freedom of Information Officer: Pursuant to the Freedom of Information Act, I write to request access and a copy of all schedules, records, notes, written presentations, agendas and any other documents showing or regarding any meetings, telephone calls or other communications between Department of Education's staff and the following universities and presidents/chancellors/deans regarding Teach for America from 2006-2012:

Universities: Alliant International University, American College of Education, Arizona State University, Association Montessori International USA (AMI/USA), Boston College, Lynch School of Education, Brown University, Columbia University Teachers College, Delta State University College of Education, Fordham University Graduate School of Education, George Washington University Graduate School of Education and Human Development, Georgetown University, Harvard University Graduate School of Education, Lewis and Clark College Graduate School of Education and Counseling, Mills College School of Education, New York University Steinhardt School of Culture, Education and Human Development, St. Louis Department of Educational Leadership, Seton Hall University School of Education and Human Services, Syracuse University David B. Falk College of Sport and Human Dynamics, Thomas Edison State College Graduate School of Education, University of Colorado at Boulder School of Education, University of North Carolina, Chapel Hill School of Education, University of Oklahoma Jeannine Rainbolt College of Education, University of Pittsburgh School of Education, University of Tulsa School of Urban Education, University of Virginia Curry School of Education, University of Washington, Vanderbilt University Peabody College, Western State College of Colorado School of Education, the University of California-Berkeley, Duke University, The College of Wooster, the University of Pennsylvania, Wellesley College, Tulane University, Louisiana State University, Franklin & Marshall College, Princeton University, Spelman College, University of Maryland-Baltimore.

Chancellors/Presidents/Deans: Bruce Benson, Robert Birgeneau, Kim Bottomly, Richard Brodhead, Grant Cornwell, Scott Cowen, Michael Crow, Amy Gutmann, Freeman Hrabowski, Michael Martin, Daniel Porterfield, Beverly Tatum, Holden Thorp, Shirley Tilghman, Tom Stritikus. If there are any fees charged for searching or copying the records, please supply the records without informing me of the cost if the fees do not exceed \$25, which I agree to pay. If possible, I would like to request digital copies. If the amount of information sent in the response exceeds the amount that can be sent digitally, please mail a CD-ROM to the mailing

address indicated above. If you deny any part of this request, please cite each specific reason that you think justifies your refusal to release the information. Please notify me of appeal procedures available under the law. If you have any questions processing this request, you may contact me at the following telephone number: (b)(6) or by email at (b)(6). Please fulfill the FOIA request to the address above. Thank you for your assistance, Alexandra Hootnick

In order to help to determine my status to assess fees, you should know that I am affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly purpose.

The maximum dollar amount I am willing to pay for this request is \$25. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

Thank you for your consideration of this request.

Sincerely,

Ms. Alexandra Hootnick

Phone: (b)(6)

Email: (b)(6)@com

**Doritha N. Ross**

Management Analyst- FOIA

AECOM

Site-Dept of Ed-Office of Management- PIRMS/OM (FOIA)

400 Maryland Avenue, SW-LBJ RM 2E337

Washington, DC 20202-4537

Tel: 202.401.0499 Fax: 202.401.0920



011,05

12-01478-F

**Ross, Doritha (Contractor)**

**From:** EDOIAManager@ed.gov  
**Sent:** Wednesday, June 06, 2012 4:54 PM  
**Subject:** FOIA Request Form Submission

JUN 07 2012

(b)(6)

June 06, 2012

U.S. Department of Education  
Office of Management  
FOIA Service Center  
400 Maryland Ave, SW, Room 2W220  
Washington, DC 20202-4536

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me:

Dear Freedom of Information Officer: Pursuant to the Freedom of Information Act, I write to request access and a copy of all schedules, records, notes, written presentations, agendas and any other documents showing or regarding any meetings, telephone calls or other communications between Department of Education's staff and the following universities and presidents/chancellors/deans regarding Teach for America from 2006-2012: Universities: Alliant International University, American College of Education, Arizona State University, Association Montessori International USA (AMI/USA, Boston College, Lynch School of Education, Brown University, Columbia University Teachers College, Delta State University College of Education, Fordham University Graduate School of Education, George Washington University Graduate School of Education and Human Development, Georgetown University, Harvard University Graduate School of Education, Lewis and Clark College Graduate School of Education and Counseling, Mills College School of Education, New York University Steinhardt School of Culture, Education and Human Development, St. Louis Department of Educational Leadership, Seton Hall University School of Education and Human Services, Syracuse University David B. Falk College of Sport and Human Dynamics, Thomas Edison State College Graduate School of Education, University of Colorado at Boulder School of Education, University of North Carolina, Chapel Hill School of Education, University of Oklahoma Jeannine Rainbolt College of Education, University of Pittsburgh School of Education, University of Tulsa School of Urban Education, University of Virginia Curry School of Education, University of Washington, Vanderbilt University Peabody College, Western State College of Colorado School of Education, the University of California-Berkeley, Duke University, The College of Wooster, the University of Pennsylvania, Wellesley College, Tulane University, Louisiana State University, Franklin & Marshall College, Princeton University, Spelman College, University of Maryland-Baltimore. Chancellors/Presidents/Deans: Bruce Benson, Robert Birgeneau, Kim Bottomly, Richard Brodhead, Grant Cornwell, Scott Cowen, Michael Crow, Amy Gutmann, Freeman Hrabowski, Michael Martin, Daniel Porterfield, Beverly Tatum, Holden Thorp, Shirley Tilghman, Tom Stritikus. If there are any fees charged for searching or copying the records, please supply the records without informing me of the cost if the fees do not exceed \$25, which I agree to pay. If possible, I would like to request digital copies. If the amount of information sent in the response exceeds the amount that can be sent digitally, please mail a CD-ROM to the mailing

address indicated above. If you deny any part of this request, please cite each specific reason that you think justifies your refusal to release the information. Please notify me of appeal procedures available under the law. If you have any questions processing this request, you may contact me at the following telephone number: (b)(6) or by email at (b)(6). Please fulfill the FOIA request to the address above. Thank you for your assistance, Alexandra Hootnick

In order to help to determine my status to assess fees, you should know that I am affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly purpose.

The maximum dollar amount I am willing to pay for this request is \$25. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

Thank you for your consideration of this request.

Sincerely,

Ms. Alexandra Hootnick

Phone: (b)(6)

Email: (b)(6)@com

**From:** Darby, Linda  
**Sent:** 18 Jul 2012 09:03:42 -0500  
**To:** ED FOIA Manager  
**Subject:** FW: FOIA Request No. 12-01519

I have taken care of this.

---

**From:** Smith, Nia  
**Sent:** Tuesday, July 17, 2012 3:44 PM  
**To:** ED FOIA Manager  
**Cc:** Darby, Linda  
**Subject:** FW: FOIA Request No. 12-01519

Hello:

Please see the clarification of this request below and circulate to the offices assigned.

Thanks,  
Nia

---

**From:** Smith, Nia  
**Sent:** Tuesday, July 17, 2012 4:43 PM  
**To:** 'Sean Dunagan'  
**Subject:** RE: FOIA Request No. 12-01519

Thanks, Sean!

---

**From:** Sean Dunagan [<mailto:SDunagan@JUDICIALWATCH.ORG>]  
**Sent:** Tuesday, July 17, 2012 4:45 PM  
**To:** Smith, Nia  
**Subject:** RE: FOIA Request No. 12-01519

Thank you, Nia. Yes, that summary is accurate. If you have any other questions or concerns, just let me know.

Thanks very much for your time and assistance.

Sean

---

**From:** Smith, Nia [<mailto:Nia.Smith@ed.gov>]  
**Sent:** Tuesday, July 17, 2012 4:41 PM  
**To:** Sean Dunagan  
**Subject:** FOIA Request No. 12-01519

Hi Sean,

Thanks for meeting with me today regarding this June 14, 2012 FOIA request. As discussed, here is a summary of two issues we resolved. First, the Department will provide rolling releases of records responsive to this request. The first release will be provided on or before August 15,

2012. The next releases will be provided on or before October 15, 2012 and December 15, 2012. Second, the FOIA request has been modified to narrow the third category of records requested. The category of records now sought is: "Any and all records of communication between any official, employee, or representative of the Department of Education and any officer, employee, or representative of Shepardson, Stern and Kaminsky between January 1, 2010 to present related to contract solicitation ED-OII-0078 and contract award number ED-OII-10-C-0052."

Please let me know as soon as possible if this summary is accurate or needs to be revised.

Thanks,  
Nia

Nia Fripp Smith  
Attorney  
Division of Business and Administrative Law  
Office of the General Counsel  
U.S. Department of Education  
Room 6C105  
400 Maryland Avenue, SW  
Washington, DC 20202

Phone: (202) 401-6610  
Facsimile: (202) 401-9528





**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF MANAGEMENT**

**Privacy, Information, and Records Management Services**

June 20, 2012

Sean Dunagan  
Judicial Watch  
425 Third St. SW, Ste. 800  
Washington, DC 20024

RE: FOIA Request No. 12-01519-F

Dear Mr. Dunagan:

This letter is in response to your letter dated June 14, 2012, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on June 14, 2012. Your request has been assigned case number 12-01519-F. Your request was assigned to the appropriate office within the Department to search for documents that may be responsive to your request.

You have asked for a waiver of all fees, including duplication fees, associated with processing your request based on your status as a member of Judicial Watch and the information requested will be disseminated to the public. That request is granted.

If you have any questions, or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in black ink, reading "Linda Darby", is positioned above the typed name.

Linda Darby  
FOIA Public Liaison, OM/PIRMS





## UNITED STATES DEPARTMENT OF EDUCATION

### OFFICE OF MANAGEMENT

#### Privacy, Information, and Records Management Services

March 26, 2013

Sean Dunagan  
Judicial Watch  
425 Third Street, SW, Suite 800  
Washington, DC 20024

RE: FOIA Request No. 12-01519-F

Dear Mr. Dunagan:

This is a second interim response to your letter dated June 14, 2012, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on June 14, 2012. Your request was assigned to the appropriate offices to search for documents that may be responsive to your request. You requested the following:

- 1) Any and all records regarding, concerning, or related to all contracts between the Department of Education and Shepardson, Stern and Kaminsky (SS&K), and advertising agency located at 88 Pine St., 30<sup>th</sup> Floor, New York, NY and identified with DUNS Number 803091362.
- 2) Any and all records regarding, concerning, or related to Department of Education contract solicitation ED-OII-0078 and contract award number ED-OII-10-C-0052.
- 3) Any and all records of communication between any official, employee, or representative of the Department of Education and any officer, employee, or representative of Shepardson, Stern and Kaminsky between January 1, 2010 and the present.

On July 17, 2012, you clarified your request and agreed to accept responsive documents from the Department on a rolling basis.

On July 23, 2012, the Department provided Web links for public information that was responsive to item number 2 of your request:

Enclosed is a CD containing 1,070 pages of documents responsive to your request. The documents provided are:

- Duporte6b – 4 pages;
- Duporte7b – 7 pages;
- Duporte8 – 108 pages;
- Duporte9b – 10 pages;
- Tech Proposal – 51 pages;
- Emails Hopkins – 133 pages;
- Missy Emails – 101 pages;
- Contract Info – 58 pages;
- Invoices – 352 pages; and
- Support Docs – 246 pages

However, certain information has been withheld according to the FOIA exemption specified below:

1. Proprietary information has been withheld under exemption (b)(4) of the FOIA, 5 U.S.C. § 552 and Departmental regulation 34 CFR § 5.71(b). These provisions require us to withhold proprietary information, which, if disclosed, is likely to cause substantial competitive harm.
2. Records or portions of records relating to certain intra-agency information exempt from disclosure pursuant FOIA 5 U.S.C. §552(b)(5) and Departmental regulation 34 CFR § 5.73(a). This exemption authorizes an agency to withhold documents in accordance with the deliberative process and allow Department employees to engage in frank and open discussion of issues, and to express their views, opinions, and recommendations without fear of outside pressure. Moreover, deliberative materials are released as a matter of administrative discretion to the extent the release of such information would not have a foreseeable chilling effect on the Department's ability to obtain frank commentary and cooperation from advisors to Department decision-makers.
3. Records or portions of records relating to personal information is exempt pursuant to 5 U.S.C. §552 (b)(6) of the FOIA and Departmental regulation 34 CFR § 5.71(a). Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

At this time, the Department is continuing to process your request and your FOIA request case file remains open. It will not close until the Department provides you with a response regarding outstanding responsive documents. Our final release letter will contain information related to your appeal rights of the agency's decisions.

If you have any questions, please contact the FOIA Service Center (FSC) at (202) 401.8365 or [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Darby". The signature is fluid and cursive, with the first name "Linda" written in a larger, more prominent script than the last name "Darby".

Linda Darby  
FOIA Public Liaison, OM/PIRMS

Enclosure





**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF MANAGEMENT**

**Privacy, Information, and Records Management Services**

December 6, 2016

Sean Dunagan  
Judicial Watch  
425 Third St. SW, Ste. 800  
Washington, DC 20024

RE: FOIA Request No. 12-01614-F

Dear Mr. Dunagan:

This letter is an interim response to your letter dated June 14, 2012, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on June 14, 2012. Your request was forwarded to the appropriate office to search for documents that may be responsive to your request. You requested the following:

- 1) Any and all records regarding, concerning, or related to all contracts between the Department of Education and Shepardson, Stern and Kaminsky (SS&K), and advertising agency located at 88 Pine St., 30<sup>th</sup> Floor, New York, NY and identified with DUNS Number 803091362.
- 2) Any and all records regarding, concerning, or related to Department of Education contract solicitation ED-OII-0078 and contract award number ED-OII-10-C-0052.
- 3) Any and all records of communication between any official, employee, or representative of the Department of Education and any officer, employee, or representative of Shepardson, Stern and Kaminsky between January 1, 2010 and the present.

On July 17, 2012, you clarified your request and agreed to accept responsive documents from the Department on a rolling basis.

The Department is providing the following links for public information that are responsive to item number 2 of your request:

[http://www.usaspending.gov/search?form\\_fields=%7B%22search\\_term%22%3A%22EDOII10C0052%22%7D](http://www.usaspending.gov/search?form_fields=%7B%22search_term%22%3A%22EDOII10C0052%22%7D)

<https://www.fpds.gov/dbsight/search.do?indexName=awardfull&templateName=1.4.3&s=FPDSNG.COM&q=EDOII10C0052>

<https://www.fbo.gov/spg/ED/OCFO/CPO/Awards/ED-OII-10-C-0052.html>.

At this time, the Department is continuing to process your request and your FOIA request case file remains open. Our final release letter will contain information related to your appeal rights of the agency's decisions.

Page 2 – Sean Dunagan  
FOIA Request 12-01614-F

If you have any questions, please contact the FOIA Service Center (FSC) at (202) 401.8365 or  
EDFOIAManager@ed.gov.

Sincerely,

A handwritten signature in black ink, reading "Linda Darby". The signature is fluid and cursive, with the first name "Linda" and last name "Darby" clearly distinguishable.

Linda Darby  
FOIA Public Liaison, OM/PIRMS



## UNITED STATES DEPARTMENT OF EDUCATION

### OFFICE OF MANAGEMENT

#### Privacy, Information, and Records Management Services

February 11, 2013

Ms. Christina Papale  
Shepardson, Stern & Kaminsky  
88 Pine St., 30<sup>th</sup> Floor  
New York, NY 10005

RE: FOIA Request No. 12-01519-F

Dear Ms. Papale:

This letter is to inform you that the Department has carefully reviewed your application, with particular focus upon identifying any information covered by exemption (b)(4) of the FOIA, 5 U.S.C. 522 (b)(4), which states:

Proprietary information has been withheld under exemption (b)(4) of the FOIA, 5 U.S.C. § 552 and Departmental regulation 34 CFR § 5.71(b). These provisions require us to withhold proprietary information, which, if disclosed, is likely to cause substantial competitive harm.

The Department has made repeated efforts to work with the SS+K to determine the bases for the exemption (b)(4) redactions you proposed as per the following:

- 1) On 04 Oct. 2012, the Department (Mr. Eugene Hopkins) contacted Ms. Gewertz, who originally submitted the redacted proposal in 2010, in order to gain a more detailed explanation of how the declared redactions apply to available FOIA exemptions;
- 2) On 04 Oct. 2012, a system generated email advised that Ms. Gewertz was no longer employed with SS+K and that contact should be made with Ms. Papale;
- 3) On 04 Oct. 2012, the Department forwarded the same email to Ms. Papale that was sent to Ms. Gewertz;
- 4) On 06 Nov. 2012, the Department sent another email to Ms. Papale due to the lack of response from SS+K of the 04 Oct 2012 email;
- 5) On 08 Nov. 2012, Mr. Dave Ebert emailed Mr. Hopkins to advise him that he was SS+K's legal representation. Mr. Hopkins spoke to Mr. Ebert that day and advised him that the Department would need written confirmation from SS+K confirming that he represented the Department. Confirmation was received that day;
- 6) On 13 Nov. 2012, the Department requested a status on the input from Mr. Ebert;
- 7) On 15 Nov. 2012, Mr. Ebert and Mr. Hopkins discussed the requested information and Mr. Hopkins advised of the redactions that he would recommend. Mr. Ebert took note and advised that he would discuss it with his client and get back to the Department within a few days; and
- 8) On 26 Nov. 2012, Mr. Hopkins called Mr. Ebert's direct line number (212.907.9603) and spoke to his secretary. He gave her his name and number and she said that she would have Mr. Ebert call Mr. Hopkins back. She called back a few minutes later and advised Mr. Hopkins that Mr. Ebert was out of the office not to return until November 27<sup>th</sup>.



Page 2 – Ms. Christina Papale  
FOIA Request No. 12-01519-F

To date, Mr. Ebert hasn't contacted the Department. Therefore, after reviewing the extensive redactions proposed by SS+K, the Department has determined that portions of the applications you identified as exempt from disclosure under exemption (b)(4) do not, in fact, qualify for protection under that exemption. The Department has enclosed a CD containing the 51 pages of the proposal, including the Department's redactions under exemption (b)(4), which shall be released to the requester on February 21, 2013.

If you have any questions, please contact the FOIA Service Center (FSC) at (202) 401.8365 or [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in black ink, reading "Linda Darby". The signature is fluid and cursive, with the first name "Linda" written in a larger, more prominent script than the last name "Darby".

Linda Darby  
FOIA Public Liaison, OM/PIRMS

Enclosure



**Judicial  
Watch®**  
*Because no one  
is above the law!*

CAM

JUN 14 2012

12-01519-1F

June 14, 2012

**VIA CERTIFIED MAIL & E-MAIL (EDFOIAManager@ed.gov)**

U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
ATTN: FOIA Public Liaison  
400 Maryland Avenue, SW, LBJ 2W220  
Washington, DC 20202-4536

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Department of Education produce the following within twenty (20) business days:

- 1. Any and all records regarding, concerning, or related to all contracts between the Department of Education and Shepardson, Stern and Kaminsky (SS&K), and advertising agency located at 88 Pine St, 30<sup>th</sup> Floor, New York, NY and identified with DUNS Number 803091362.**
- 2. Any and all records regarding, concerning, or related to Department of Education contract solicitation ED-OII-0078 and contract award number ED-OII-10-C-0052.**
- 3. Any and all records of communication between any official, employee, or representative of the Department of Education and any officer, employee, or representative of Shepardson, Stern and Kaminsky between January 1, 2010 and the present.**

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving



Department of Education

June 14, 2012

Page 2 of 4

FOIA.<sup>1</sup>

The memo further provides that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, \*1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and

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<sup>1</sup> Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

**Department of Education**

**June 14, 2012**

**Page 3 of 4**

duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § (a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you



**Department of Education**

**June 14, 2012**

**Page 4 of 4**

require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or [sdunagan@judicialwatch.org](mailto:sdunagan@judicialwatch.org). We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,  
(b)(6)

Sean Dunagan  
Judicial Watch



## Rogers, Melvin

---

**From:** Cueva, Maria-Teresa  
**Sent:** Tuesday, November 16, 2010 9:08 AM  
**To:** Christine.Ely@wilmerhale.com  
**Cc:** Rogers, Melvin  
**Subject:** FOIA Request No. 09-01532-F/Appeal No. 11-00005-A

*Ms. Ely,*

*This is in response to your e-mail message below addressed to Mr. Rogers. I would like to inform you that your appeal was forwarded to the program office, (for processing) which issued the denial determination.*

*At this time, we cannot provide an estimate timeframe when you might receive a decision in regards to your appeal because the Department receives hundreds of requests/appeals and we handle all requests as first come first serve. As soon as we receive information from the program office regarding the status of your appeal, we'll let you know.*

*Sincerely,*

Maria-Teresa Cueva  
U.S. Department of Education  
FOIA Public Liaison, OM/RIMS  
Tel: 202-401-0536  
Fax: 202-401-0920

---

**From:** Rogers, Melvin  
**Sent:** Tuesday, November 16, 2010 7:52 AM  
**To:** Cueva, Maria-Teresa  
**Subject:** FW: FOIA Request No. 09-01532-F/Appeal No. 11-00005-A

---

**From:** Ely, Christine [<mailto:Christine.Ely@wilmerhale.com>]  
**Sent:** Monday, November 15, 2010 3:35 PM  
**To:** Rogers, Melvin  
**Subject:** FOIA Request No. 09-01532-F/Appeal No. 11-00005-A

Melvin,

Thank you for speaking with me today over the phone. I am emailing to follow-up on our conversation. On September 15, 2010, we submitted an appeal letter in the above matter, FOIA Request No. 09-01531-F/Appeal No. 11-00005-A, appealing the Department's decision to withhold certain documents in response to our FOIA request. I have attached to this email the letter indicating that administrative review is underway.

I write here to ask whether you are able to provide an estimated timeframe within which we might receive a decision on our appeal. We are interested in all the documents which were withheld. It is our understanding that 34 C.F.R § 5.40 provides 20 working days within which the Department will issue a determination. Is this understanding correct? Any information at all that you could provide regarding the status of our appeal would be greatly appreciated. Feel free to give me a call at the number below if you have any questions or require any additional information.

Many Thanks,

Christine Ely

**Christine Ely | WilmerHale**  
1875 Pennsylvania Avenue NW  
Washington, DC 20006 USA  
+1 202 663 6521 (t)  
+1 202 663 6363 (f)  
[christine.ely@wilmerhale.com](mailto:christine.ely@wilmerhale.com)

\*Admitted only in NY.

Supervised by members of the firm who are members of the DC Bar.

**Please consider the environment before printing this email.**

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This email message and any attachments are being sent by Wilmer Cutler Pickering Hale and Dorr LLP, are confidential, and may be privileged. If you are not the intended recipient, please notify us immediately—by replying to this message or by sending an email to [postmaster@wilmerhale.com](mailto:postmaster@wilmerhale.com)—and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.

**From:** Wehausen, Robert  
**Sent:** 14 Mar 2013 14:53:45 +0000  
**To:** reginald.brown@wilmerhale.com  
**Subject:** U.S. Department of Education FOIA Appeal 11-00005-A

Good morning, Mr. Brown;

As the new FOIA Appeals Coordinator here at the Department of Education ("Department"), I've been tasked with performing an analysis of the agency's FOIA appeal backlog. On the behalf of the Department, please accept my apology for the delay in the processing of your appeal which you submitted to the Department on September 15, 2010.

I'm contacting you today to conclude if you are still interested in pursuing your appeal with the Department. If the interest is still there than I will contact the responsible program office(s) to determine what's the status of your pending appeal. If not, than I will withdraw your appeal and document it as such.

If at all possible, please notify me of your decision by Friday, April, 19, 2013.

Thank you,  
Robert Wehausen  
Management & Program Analyst  
FOIA Appeals Coordinator  
FOIA Service Center  
U.S. Dept. of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4510  
202.205.0733

September 15, 2010

Reginald J. Brown

Appeals Officer  
U.S. Department of Education  
Office of Management  
400 Maryland Avenue, SW, LBJ 2W311  
ATTN: Appeals Office  
Washington, DC 20202-4500

+1 202 663 6430(t)  
+1 202 663 6363(f)  
reginald.brown@wilmerhale.com

Re: *Freedom of Information Act Request Log No. 09-01531-F*

Dear Appeals Officer:

This is an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 ("FOIA") and 34 C.F.R. § 5.40.

#### I. Background

On July 1, 2009, we submitted a written request for documents under the FOIA on behalf of our clients, (b)(6) parents of children affected by the U.S. Department of Education's ("DOE") decisions regarding the D.C. Opportunity Scholarship Program. See Exhibit A. The D.C. Opportunity Scholarship Program provides low-income parents in the District of Columbia with scholarship money to enable their children to attend private school. In March, 2009, Congress passed an appropriations law providing that no funds would be available for opportunity scholarships after the 2009-2010 school year unless it voted to reauthorize the Program and the District of Columbia passed legislation approving such reauthorization. Omnibus Appropriations Act, Pub. L. No. 111-8, 123 Stat. 524, 653 (2009). In April, 2009, the Administration withdrew 216 scholarship offers under the Program for the 2009-2010 school year. Our clients were among those families affected by the abrupt revocation of scholarship offers for the 2009-2010 school year.

As filed, our request identified three specific categories of responsive materials and limited the scope of each category to defined time periods. *Id.* at 1-2. In our request, we asked that if the DOE determined that any portion of the requested material was exempt from mandatory disclosure, it provide to us "a log stating with specificity the legal and factual basis for withholding each such portion." *Id.* at 2.

On August 25, 2009, we wrote to Mr. Greg Quinion, asking him to confirm that our request had been distributed to all requested offices and asking that our request be expedited due to the significant public interest in the information we requested. See Exhibit B.

On September 18, 2009, we received from Ms. Elise Cook an interim response consisting of a CD containing 806 pages of documents responsive to our request. See Exhibit C. This response stated that the DOE was continuing to process our request. *Id.*



Appeals Officer  
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On August 10, 2010, we received a Past Due Status Check Email from Ms. Bennie Jessup. The email stated that we would receive the final release of documents responsive to our request within 3 business days. *See* Exhibit D. The email also stated that certain information was being withheld according to FOIA exemptions. *Id.* We responded to Ms. Jessup's email, asking that the response specifically detail what FOIA exemptions the DOE was relying on for particular documents or portions of documents, in order to facilitate our timely appeal of withholding decisions, should our clients choose to appeal. *See* Exhibit E.

On August 16, 2010, we received from Ms. Cook a final response to our request. *See* Exhibit F. This response states that the DOE withheld 47 pages of email communications pursuant to subsection (b)(5) of the FOIA and DOE regulation 34 C.F.R. § 5.73(a). *Id.* at 2. The response also states that these provisions "require [it] to withhold the government's deliberative process privilege, inter alia, protecting records of pre-decisional internal communications reflecting the views or recommendations of agency employees in connection with the government policy or legal matters that are pre-decisional and deliberative in nature." *Id.* (first emphasis added).

The DOE's response states that we have the right to appeal the FOIA exemption decision. This letter constitutes an appeal of the DOE's decision to withhold 47 pages of email communication in their entirety, as stated in its August 16, 2010 final response to our request.

## **II. The DOE Improperly Withheld Entire Documents Under The FOIA Exemptions**

As set forth above, the DOE's most recent letter states that 47 pages of email communication are being withheld in their entirety on the basis of Exemption 5 of the FOIA. It is well established that an agency may not withhold entire documents simply because the document contains exempt information; rather, "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt[.]" 5 U.S.C. § 552(b); *see also, e.g., Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995) (agency is not entitled to withhold an entire document if only portions contain exempt information); *Perry-Torres v. Dep't of State*, 404 F. Supp. 2d 140, 144-45 (D.D.C. 2005) (agency must release any information that can reasonably be segregated). The Attorney General recently instructed each agency that it "*must* consider whether it can make a partial disclosure" of non-exempt information, whenever some information is subject to withholding. Attorney General's Memorandum for Heads of Executive Departments and Agencies, Mar. 19, 2009 (emphasis added). The entire record may be withheld only when the exempt information is so "inextricably intertwined" with non-exempt material that disclosure would leave only essentially meaningless words and phrases. *Neufeld v. IRS*, 646 F.2d 661, 666 (D.C. Cir. 1981), *overruled on other grounds by Church of Scientology of California v. IRS*, 792 F.2d 153 (D.C. Cir. 1986) (en banc), *aff'd* 484 U.S. 9 (1987); *see also Mays v. Drug Enforcement Admin.*, 234 F.3d 1324, 1327 (D.C. Cir. 2000).

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Because the DOE has provided no information about the 47 pages of email communications, we have no basis for concluding that they are properly withheld in their entirety. We therefore repeat our request for a detailed descriptive log of the documents being withheld and the basis for their withholding. The DOE has given us no basis to determine that these email communications contain no reasonably segregable, non-exempt information. In the absence of such information, we are left to surmise that the materials include segregable responsive information. Therefore, these and any other materials that are not properly within a FOIA exemption should be produced.

### **III. The DOE Has Failed To Provide The Information Necessary To Challenge the Agency's Decision**

The DOE has frustrated our efforts to receive proper administrative review by failing to provide us a descriptive log or any information about the subject matter of and participants to the 47 pages of withheld email communications.

We note that FOIA provides for administrative review of agency decisions so as to "allow[] the top managers of an agency to correct mistakes made at lower levels and thereby obviate[] unnecessary judicial review." *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 61 (D.C. Cir. 1990) (citations omitted). By failing to provide any information about the withheld documents, the DOE has withheld information necessary to challenge incorrect agency decisions and thereby avoid unnecessary litigation. Although we acknowledge that courts have held that an agency is not required to produce a "Vaughn index" at the administrative appeals stage, see *Bangoura v. U.S. Dep't of the Army*, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009), we nonetheless note that the DOE's failure to produce even the most elementary log will lengthen the administrative review process and further add to the agency's costs.

Such refusal to cooperatively engage with FOIA requesters is particularly counter-productive in light of recent changes to law in the OPEN Government Act of 2007, which now provides for attorney's fees to a FOIA plaintiff who achieves "a voluntary or unilateral change in position by the agency." See 5 U.S.C. § 552(a)(4)(E)(ii). As recently explained by the D.C. Circuit, the OPEN Government Act requires an agency to pay attorney's fees regardless of whether the agency voluntarily reverses position or is compelled to do so by court order. See *Summers v. Dep't of Justice*, 569 F.3d 500, 503 (D.C. Cir. 2009). By facilitating effective administrative review, the agency could potentially avoid not only the time and expense of litigation, but also the expense of plaintiff's attorney's fees if it were to reverse position later. With this in mind, we therefore renew our request for a descriptive log of withheld records.

### **IV. The DOE Improperly Withheld Information Under The FOIA Exemption 5**

Exemption 5 covers "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). To qualify for this exemption, "information must be both 'pre-decisional' and



Appeals Officer  
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'deliberative.'" *Petroleum Info. Corp. v. U.S. Dep't of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992). A document is pre-decisional only if it was "'prepared in order to assist an agency decisionmaker in arriving at his decision,' rather than to support a decision already made." *Id.* (quoting *Renegotiation Bd. v. Grumman Aircraft*, 421 U.S. 168, 184 (1975)). Further, a document is not "deliberative" if it "merely state[s] or explain[s] agency decisions." *Judicial Watch, Inc. v. HHS*, 27 F. Supp. 2d 240, 245 (D.D.C. 1998). To invoke Exemption 5, the agency must be able to "pinpoint an agency decision or policy to which the document contributed." *Senate of P.R. v. U.S. Dep't of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987) (internal quotation marks omitted); *Judicial Watch v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 259 (D.D.C. 2004).

The DOE has invoked Exemption 5 to withhold all information in 47 pages of email communications. The DOE has not provided, however, any information at all concerning the subject matter of these email communications or their senders and recipients. Because the DOE has not provided even basic information detailing the substance of these communications, we cannot determine whether they were properly withheld under Exemption 5. Moreover, because the DOE has failed to "pinpoint an agency decision or policy to which the document contributed," we cannot conclude that the withheld documents supported particular agency decisions and therefore properly fell within Exemption 5. *See Senate of P.R.*, 823 F.2d at 585 (internal quotation marks omitted).

Finally, the Attorney General recently instructed that "an agency may not withhold information simply because it may do so legally." Attorney General's Memorandum for Heads of Executive Departments and Agencies, Mar. 19, 2009. Rather, the Attorney General has "strongly encourage[d] agencies to make discretionary disclosures." *Id.* In light of these instructions, the DOE is not, as it states in its final response, "required" to withhold documents pursuant to Exemption 5. *See Exhibit F* at 2. The DOE should follow the Attorney General's guidance and use its discretion to produce the withheld documents. Alternatively, the DOE should provide us with the requested log detailing why it is withholding each specific email communication pursuant to Exemption 5. We further request that the DOE provide the "Subject," "To," "From," "CC" and "BCC" lines of each withheld email communication.

\*\*\*\*\*

We made our request on behalf of low-income families whose only motivation is to seek out the best education possible for their children. They have now waited an entire school year for documents detailing why they will no longer receive the scholarships they were originally promised. It is imperative that these families receive the responsive material they seek before another school year passes by. As President Obama has said, "[w]e have an obligation and a responsibility to be investing in our students and our schools. We must make sure that people who have the grades, the desire and the will, but not the money, can still get the best education possible." Charlie Boss, *Schools to Seek Tax Again Aug. 4; South-Western Hopes to Avoid Some*

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Appeals Officer  
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*of \$8 million In Cuts*, The Columbus Dispatch, May 15, 2009, at 01B. Our clients have the will and desire to guarantee the best education for their children, and their long pending request necessitates a prompt and complete response.

With these principles and the President's and Attorney General's recent commitment to open government in mind, we respectfully request that the DOE immediately release all non-exempt information. As more than a year has passed since this request was filed, and in light of our clients' strong interest in obtaining the information sought in this request, we ask that you expedite the response. We look forward to a more forthcoming response to this appeal.

Sincerely,

Reginald J. Brown / CDE

Reginald J. Brown

Rachel L. Brand

cc: Christine D. Ely, WilmerHale

Enclosures



# EXHIBIT A

July 1, 2009

Reginald J. Brown

United States Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, S.W.  
LBJ 2W220  
Washington, D.C. 20202-4536  
ATTN: JoAnn Ryan, Chief FOIA Officer

+1 202 663 6430 (t)  
+1 202 663 6363 (f)  
reginald.brown@wilmerhale.com

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the U.S. Department of Education's implementing regulations, 34 C.F.R. § 5 *et seq.* This request is submitted by Wilmer Cutler Pickering Hale and Dorr LLP on behalf of (b)(6) parents of children affected by the Department of Education's decisions regarding the D.C. Opportunity Scholarship Program. Please contact the undersigned if the applicable fees will exceed \$1,000.

We request the following records from the U.S. Department of Education ("Department"):

1. Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Executive Office of the President or any of its components; members or staff of the Obama-Biden Transition Project; members or staff of the D.C. City Council; Members of Congress or congressional staff; members of the news media; or staff or representatives of the National Education Association, the American Federation of Teachers, or the Washington Teachers' Union, since November 5, 2008, regarding:
  - a) the D.C. Opportunity Scholarship Program, the potential statutory reauthorization of that program; the inclusion of language about that program in the Omnibus Appropriations Act of 2009; or the rescinding, retraction, or withdrawal of scholarship letters sent to families in 2009 regarding the D.C. Opportunity Scholarship Program;
  - b) the D.C. School Choice Incentive Act of 2003; or
  - c) the completion or release, including the timing of the release, of the report entitled *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After Three Years*.

United States Department of Education  
July 1, 2009  
Page 2

2. Internal Records of the Department created by its officers, employees, or representatives, since November 5, 2008, concerning the subject matters listed in Request 1.
3. Internal Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Washington Scholarship Fund, since January 1, 2008.

The term "Record" shall mean, but is not limited to, originals and copies of any and all writings and recordings of whatever nature, however produced or stored or reproduced (e.g., on paper, computer disk, computer hard drive, computer tape, microfiche, or microfilm), including e-mail, in your possession or under your control, or in the possession or under the control of any of your representatives, agents, or attorneys.

Pursuant to 5 U.S.C. § 552(a)(6) and 34 C.F.R. § 5.51, we ask that a response to this request be provided within twenty working days. We also understand that the Department will apply a clear presumption of disclosure to information requests under FOIA, as provided for by the *Memorandum for Heads of Executive Departments and Agencies* issued by Attorney General Holder on March 19, 2009.

In the event that individual records become available while a portion of our request is still pending, we request that you provide to us the records as they become available, rather than sending all the requested records only after the Department has completed its entire search.

If you determine that any portion of the requested material is exempt from mandatory disclosure, we request that you discretionarily disclose that portion in accordance with Administration policy as outlined in the memorandum discussed above. In the event any of the material we have requested is not disclosable in its entirety, we request that you release all non-exempt portions of the material. As to any portions of the material that you would withhold, please provide a log stating with specificity the legal and factual basis for withholding each such portion.

\*

\*

\*

WILMERHALE

United States Department of Education  
July 1, 2009  
Page 3

Should you have any questions concerning our request, please contact the undersigned by telephone at (202) 663-6000.

Thank you for your prompt attention to this matter.

Best regards,

(b)(6)

Reginald J. Brown

Rachel Brand

Jessica L. Keefe

Caitlin McCusker\*

---

\* Summer associate, not admitted to practice law.



## EXHIBIT B

WILMERHALE

Reginald J. Brown

+1 202 663 6430(t)

+1 202 663 6363(f)

reginald.brown@wilmerhale.com

August 25, 2009

Greg Quinion  
U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, S.W.  
LBJ 2W311  
Washington, D.C. 20202-4536

Re: July 1, 2009 Freedom of Information Act Request (#09-01531-F)

Dear Mr. Quinion:

Thank you for your continuing engagement regarding our request for records concerning the D.C. Opportunity Scholarship Program under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). We are writing to confirm that our request has been distributed to all requested offices and to ask that our request be expedited due to the significant public interest in this information.

On August 5, 2009 we were informed that our broad request had been distributed on its arrival only to the Office of Innovation and Improvement instead of the full range of offices likely to have responsive information. We appreciate your engagement and assistance in arranging for the request to be distributed to additional offices that we believe are likely to have responsive records, including: the Office of the Secretary, the Office of the Deputy Secretary, the Office of Legislation and Congressional Affairs, the Office of Communications and Outreach, and the Institute of Education Sciences.

We also ask that our request be expedited. We represent two parents of school-aged children in the District of Columbia who have a pressing need to understand this issue. It is therefore of particular importance that we receive these records prior to the start of the school year. Due to the importance of our request to the education of these children and the imminence of the start of the 2009-2010 school year, we request that you immediately expedite the production of these records. In the event that individual records become available while a portion of our request is still pending, we request that you provide to us the records as they become available, rather than sending all the requested records only after the Department has completed its entire search. To date, we have received no information from any Department

WILMERHALE

Greg Quinion  
August 25, 2009  
Page 2

offices – including the Office of Innovation and Improvement – nearly two months after our initial request.

Thank you for your time in this matter. If you have any questions, please contact the undersigned.

Best regards,

(b)(6)

Reginald J. Brown

Jessica Keefe

cc: JoAnn Ryan, Chief FOIA Officer

## EXHIBIT C





UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Regulatory Information Management Services

September 18, 2009

Mr. Reginald J. Brown  
Ms. Jessica L. Keefe  
Wilmer Cutler Pickering Hale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

RE: FOIA Request No. (09-01531-F)

Dear Mr. Brown and Ms. Keefe:

This is an interim response to your letter dated July 1, 2009 requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in the FOIA Service Center (FSC) on July 13, 2009. Your request was forwarded to the appropriate offices within the Department of Education (the Department) for any responsive documents they may have.

You requested:

- Records pertaining to the D.C. Opportunity Scholarship Program

Enclosed is a CD containing 806 pages of documents responsive to your request.

At this time, the Department is continuing to process your request and your FOIA request case file remains open. It will not close until the Department provides you with a response regarding outstanding responsive documents. Our final release letter will contain information related to your appeal rights of agency decisions and any charges that may apply.

If you have any questions, please contact the FSC at (202) 401-8365 or [EDFOIAMANAGER@ed.gov](mailto:EDFOIAMANAGER@ed.gov).

Sincerely,

Elise Cook  
FOIA Public Liaison

## EXHIBIT D

**Past Due Status Check E-mail**

August 10, 2010

Jessica L. Keefe  
Wilmer Cutler Pickering Hale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

Your inquiry regarding the status of FOIA Case No. 09-01531-F has been reviewed with Elise Cook, FOIA Public liaison, to whom this case was assigned, and the one with whom you have communicated.

We are pleased to inform you that responsive documents were received from multiple offices within the Department of which it was referred; therefore, you should receive the final release of documents within 3 business days.

The release of the remainder of the responsive records will fulfill and complete this request. However, certain information has been withheld according to the FOIA exemption(s).

Thank you for your cooperation and patience.

Bennie Jessup, FOIA Public Liaison  
OM/RIMS

## EXHIBIT E



**Keefe, Jessica L**

---

**From:** Brown, Reginald  
**Sent:** Tuesday, August 10, 2010 7:33 PM  
**To:** 'Bennie.Jessup@ed.gov'; Keefe, Jessica L  
**Cc:** 'Elise.Cook@ed.gov'; 'Angela.Arrington@ed.gov'; Brand, Rachel  
**Subject:** Re: Status Check for FOIA Case No. 09-01531-F

Thanks very much. Given the length of time this matter has been pending we very much hope that the response will specifically detail what FOIA exemptions are being relied on for what specific documents or portions of documents to facilitate a timely appeal of withholding decisions if our client chooses to pursue that option.

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**From:** Jessup, Bennie <Bennie.Jessup@ed.gov>  
**To:** Brown, Reginald; Keefe, Jessica L  
**Cc:** Cook, Elise <Elise.Cook@ed.gov>; Arrington, Angela <Angela.Arrington@ed.gov>  
**Sent:** Tue Aug 10 19:25:49 2010  
**Subject:** Re: Status Check for FOIA Case No. 09-01531-F

## EXHIBIT F



# UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF MANAGEMENT

### Regulatory Information Management Services

August 16, 2010

Reginald J. Brown  
WilmerHale  
1875 Pennsylvania Ave, NW  
Washington, DC 20006

RE: FOIA Request No. (09-01531-F)

Dear Mr. Brown:

This is the final response to your letter dated July 1, 2009 requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in the FOIA Service Center (FSC) on July 13, 2009. Your request was forwarded to the appropriate office within the Department of Education (the Department) for any responsive documents they may have.

You requested:

1. Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Executive Office of the President or any of its components; members or staff of the Obama-Biden Transition Project; members or staff of the D.C. City Council; Members of Congress or congressional staff; members of the news media; or staff or representatives of the National Education Association, the American Federation of Teachers, or the Washington Teachers' Union, since November 5, 2008, regarding:
  - a) The D.C. Opportunity Scholarship Program, the potential statutory reauthorization of that program; the inclusion of language about that program in the Omnibus Appropriations Act of 2009; or the rescinding, retraction, or withdrawal of scholarship letters sent to families in 2009 regarding the D.C. Opportunity Scholarship Program;
  - b) the D.C. School Choice Incentive Act of 2003 ; or
  - c) the completion or release, including the timing of the release, of the report entitled *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After Three Years*.
2. Internal Records of the Department created by its officers, employees, or representatives, since November 5, 2008, concerning the subject matters listed in Request 1.
3. Internal Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Washington Scholarship Fund, since January 1, 2008.

You have previously received an interim response containing 806 pages of information that in responsive to this request.

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-4500  
[www.ed.gov](http://www.ed.gov)

*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

However, 47 pages of email communication have been withheld according to the FOIA exemptions specified below:

- Records or portions of records relating to pre-decisional internal communications have been withheld pursuant to 5 U.S.C. § 552 (b)(5) of the FOIA and Departmental regulation 34 CFR §5.73(a). These provisions require us to withhold the government's deliberative process privilege, *inter alia*, protecting records of pre-decisional internal communications reflecting the views or recommendations of agency employees in connection with the government policy or legal matters that are both pre-decisional and deliberative in nature. This also includes documents that are protected under the attorney work-product privilege, protects documents and other memoranda prepared by an attorney in contemplation of litigation.

Provisions of the FOIA allow us to recover the costs pertaining to your request. The Department has concluded that you fall within the category of "commercial use requester". However, the Department has provided you with this information at no charge. The Department's release of this information at no cost does not constitute the grant of a fee waiver, and does not infer or imply that you will be granted a fee waiver for future requests made under FOIA to the Department. Because we were able to locate and process these documents at minimal costs, they are provided to you at no cost.

You have the right to appeal the FOIA exemption decision by writing to the address below, 30 days from the date of this letter. Your appeal should be accompanied by a copy of your initial letter of request and this denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

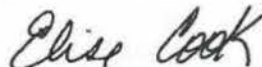
**Appeal Address:**

U.S. Department of Education  
Office of Management  
400 Maryland Avenue, SW, LBJ 2W311  
ATTN: Appeals Office  
Washington, DC 20202-4500

Or, you may complete the online FOIA appeal form, located at:  
[http://www.ed.gov/policy/gen/leg/foia/foia\\_appeal\\_form\\_1.html](http://www.ed.gov/policy/gen/leg/foia/foia_appeal_form_1.html).

If you have any questions, please contact the FSC at (202) 401-8365 or EDFOIAMANAGER@ed.gov.

Sincerely,



Elise Cook  
FOIA Public Liaison  
FOIA Service Center



WILMERHALE 

FACSIMILE

Date September 15, 2010

+1 202 663 6521 (t)  
+1 202 663 6363 (f)

To Appeals Officer  
U.S. Department of Education  
Office of Management

Fax 202-401-0920  
Tel 202-401-8365

cc Reginald J. Brown  
Rachel L. Brand

From Christine D. Ely

Pages 22 (including cover)

Re FOIA Request No. 09-01531-F

Dear Appeals Officer,

Please see the attached letter appeal for FOIA Request No. 09-01531-F. This letter will be delivered to you by courier today, 9/15/10. The letter was also emailed to your office today at the email address [edfoiamanager@ed.gov](mailto:edfoiamanager@ed.gov). If you have any questions, please contact me at 202-663-6521 or [christine.ely@wilmerhale.com](mailto:christine.ely@wilmerhale.com).

Sincerely,

Christine Ely

Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006  
Beijing Berlin Boston Brussels Frankfurt London Los Angeles New York Oxford Palo Alto Waltham Washington

This facsimile transmission is confidential and may be privileged. If you are not the intended recipient, please immediately call the sender or, if the sender is not available, call +1 202 663 6712 and destroy all copies of this transmission. If the transmission is incomplete or illegible, please call the sender or, if the sender is not available, call +1 202 663 6712. Thank you.

USIDOC5 7658161v1

## WILMERHALE

September 15, 2010

Reginald J. Brown

Appeals Officer  
U.S. Department of Education  
Office of Management  
400 Maryland Avenue, SW, LBJ 2W311  
ATTN: Appeals Office  
Washington, DC 20202-4500

+1 202 663 6430 (t)  
+1 202 663 6363 (f)  
reginald.brown@wilmerhale.com

Re: *Freedom of Information Act Request Log No. 09-01531-F*

Dear Appeals Officer:

This is an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 ("FOIA") and 34 C.F.R. § 5.40.

**I. Background**

On July 1, 2009, we submitted a written request for documents under the FOIA on behalf of our clients, (b)(6) parents of children affected by the U.S. Department of Education's ("DOE") decisions regarding the D.C. Opportunity Scholarship Program. *See* Exhibit A. The D.C. Opportunity Scholarship Program provides low-income parents in the District of Columbia with scholarship money to enable their children to attend private school. In March, 2009, Congress passed an appropriations law providing that no funds would be available for opportunity scholarships after the 2009-2010 school year unless it voted to reauthorize the Program and the District of Columbia passed legislation approving such reauthorization. Omnibus Appropriations Act, Pub. L. No. 111-8, 123 Stat. 524, 653 (2009). In April, 2009, the Administration withdrew 216 scholarship offers under the Program for the 2009-2010 school year. Our clients were among those families affected by the abrupt revocation of scholarship offers for the 2009-2010 school year.

As filed, our request identified three specific categories of responsive materials and limited the scope of each category to defined time periods. *Id.* at 1-2. In our request, we asked that if the DOE determined that any portion of the requested material was exempt from mandatory disclosure, it provide to us "a log stating with specificity the legal and factual basis for withholding each such portion." *Id.* at 2.

On August 25, 2009, we wrote to Mr. Greg Quinion, asking him to confirm that our request had been distributed to all requested offices and asking that our request be expedited due to the significant public interest in the information we requested. *See* Exhibit B.

On September 18, 2009, we received from Ms. Elise Cook an interim response consisting of a CD containing 806 pages of documents responsive to our request. *See* Exhibit C. This response stated that the DOE was continuing to process our request. *Id.*



## WILMERHALE

Appeals Officer  
September 15, 2010  
Page 2

On August 10, 2010, we received a Past Due Status Check Email from Ms. Bennie Jessup. The email stated that we would receive the final release of documents responsive to our request within 3 business days. *See* Exhibit D. The email also stated that certain information was being withheld according to FOIA exemptions. *Id.* We responded to Ms. Jessup's email, asking that the response specifically detail what FOIA exemptions the DOE was relying on for particular documents or portions of documents, in order to facilitate our timely appeal of withholding decisions, should our clients choose to appeal. *See* Exhibit E.

On August 16, 2010, we received from Ms. Cook a final response to our request. *See* Exhibit F. This response states that the DOE withheld 47 pages of email communications pursuant to subsection (b)(5) of the FOIA and DOE regulation 34 C.F.R. § 5.73(a). *Id.* at 2. The response also states that these provisions "require [it] to withhold the government's deliberative process privilege, inter alia, protecting records of pre-decisional internal communications reflecting the views or recommendations of agency employees in connection with the government policy or legal matters that are pre-decisional and deliberative in nature." *Id.* (first emphasis added).

The DOE's response states that we have the right to appeal the FOIA exemption decision. This letter constitutes an appeal of the DOE's decision to withhold 47 pages of email communication in their entirety, as stated in its August 16, 2010 final response to our request.

## II. The DOE Improperly Withheld Entire Documents Under The FOIA Exemptions

As set forth above, the DOE's most recent letter states that 47 pages of email communication are being withheld in their entirety on the basis of Exemption 5 of the FOIA. It is well established that an agency may not withhold entire documents simply because the document contains exempt information; rather, "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt[.]" 5 U.S.C. § 552(b); *see also, e.g., Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995) (agency is not entitled to withhold an entire document if only portions contain exempt information); *Perry-Torres v. Dep't of State*, 404 F. Supp. 2d 140, 144-45 (D.D.C. 2005) (agency must release any information that can reasonably be segregated). The Attorney General recently instructed each agency that it "*must* consider whether it can make a partial disclosure" of non-exempt information, whenever some information is subject to withholding. Attorney General's Memorandum for Heads of Executive Departments and Agencies, Mar. 19, 2009 (emphasis added). The entire record may be withheld only when the exempt information is so "inextricably intertwined" with non-exempt material that disclosure would leave only essentially meaningless words and phrases. *Neufeld v. IRS*, 646 F.2d 661, 666 (D.C. Cir. 1981), *overruled on other grounds by Church of Scientology of California v. IRS*, 792 F.2d 153 (D.C. Cir. 1986) (en banc), *aff'd* 484 U.S. 9 (1987); *see also Mays v. Drug Enforcement Admin.*, 234 F.3d 1324, 1327 (D.C. Cir. 2000).

WILMERHALE

Appeals Officer  
September 15, 2010  
Page 3

Because the DOE has provided no information about the 47 pages of email communications, we have no basis for concluding that they are properly withheld in their entirety. We therefore repeat our request for a detailed descriptive log of the documents being withheld and the basis for their withholding. The DOE has given us no basis to determine that these email communications contain no reasonably segregable, non-exempt information. In the absence of such information, we are left to surmise that the materials include segregable responsive information. Therefore, these and any other materials that are not properly within a FOIA exemption should be produced.

### **III. The DOE Has Failed To Provide The Information Necessary To Challenge the Agency's Decision**

The DOE has frustrated our efforts to receive proper administrative review by failing to provide us a descriptive log or any information about the subject matter of and participants to the 47 pages of withheld email communications.

We note that FOIA provides for administrative review of agency decisions so as to "allow[] the top managers of an agency to correct mistakes made at lower levels and thereby obviate[] unnecessary judicial review." *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 61 (D.C. Cir. 1990) (citations omitted). By failing to provide any information about the withheld documents, the DOE has withheld information necessary to challenge incorrect agency decisions and thereby avoid unnecessary litigation. Although we acknowledge that courts have held that an agency is not required to produce a "Vaughn index" at the administrative appeals stage, *see Bangoura v. U.S. Dep't of the Army*, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009), we nonetheless note that the DOE's failure to produce even the most elementary log will lengthen the administrative review process and further add to the agency's costs.

Such refusal to cooperatively engage with FOIA requesters is particularly counter-productive in light of recent changes to law in the OPEN Government Act of 2007, which now provides for attorney's fees to a FOIA plaintiff who achieves "a voluntary or unilateral change in position by the agency." *See* 5 U.S.C. § 552(a)(4)(E)(ii). As recently explained by the D.C. Circuit, the OPEN Government Act requires an agency to pay attorney's fees regardless of whether the agency voluntarily reverses position or is compelled to do so by court order. *See Summers v. Dep't of Justice*, 569 F.3d 500, 503 (D.C. Cir. 2009). By facilitating effective administrative review, the agency could potentially avoid not only the time and expense of litigation, but also the expense of plaintiff's attorney's fees if it were to reverse position later. With this in mind, we therefore renew our request for a descriptive log of withheld records.

### **IV. The DOE Improperly Withheld Information Under The FOIA Exemption 5**

Exemption 5 covers "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). To qualify for this exemption, "information must be both 'pre-decisional' and



WILMERHALE

Appeals Officer  
September 15, 2010  
Page 4

'deliberative.'" *Petroleum Info. Corp. v. U.S. Dep't of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992). A document is pre-decisional only if it was "'prepared in order to assist an agency decisionmaker in arriving at his decision,' rather than to support a decision already made." *Id.* (quoting *Renegotiation Bd. v. Grumman Aircraft*, 421 U.S. 168, 184 (1975)). Further, a document is not "deliberative" if it "merely state[s] or explain[s] agency decisions." *Judicial Watch, Inc. v. HHS*, 27 F. Supp. 2d 240, 245 (D.D.C. 1998). To invoke Exemption 5, the agency must be able to "pinpoint an agency decision or policy to which the document contributed." *Senate of P.R. v. U.S. Dep't of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987) (internal quotation marks omitted); *Judicial Watch v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 259 (D.D.C. 2004).

The DOE has invoked Exemption 5 to withhold all information in 47 pages of email communications. The DOE has not provided, however, any information at all concerning the subject matter of these email communications or their senders and recipients. Because the DOE has not provided even basic information detailing the substance of these communications, we cannot determine whether they were properly withheld under Exemption 5. Moreover, because the DOE has failed to "pinpoint an agency decision or policy to which the document contributed," we cannot conclude that the withheld documents supported particular agency decisions and therefore properly fell within Exemption 5. *See Senate of P.R.*, 823 F.2d at 585 (internal quotation marks omitted).

Finally, the Attorney General recently instructed that "an agency may not withhold information simply because it may do so legally." Attorney General's Memorandum for Heads of Executive Departments and Agencies, Mar. 19, 2009. Rather, the Attorney General has "strongly encourage[d] agencies to make discretionary disclosures." *Id.* In light of these instructions, the DOE is not, as it states in its final response, "required" to withhold documents pursuant to Exemption 5. *See Exhibit F* at 2. The DOE should follow the Attorney General's guidance and use its discretion to produce the withheld documents. Alternatively, the DOE should provide us with the requested log detailing why it is withholding each specific email communication pursuant to Exemption 5. We further request that the DOE provide the "Subject," "To," "From," "CC" and "BCC" lines of each withheld email communication.

\*\*\*\*\*

We made our request on behalf of low-income families whose only motivation is to seek out the best education possible for their children. They have now waited an entire school year for documents detailing why they will no longer receive the scholarships they were originally promised. It is imperative that these families receive the responsive material they seek before another school year passes by. As President Obama has said, "[w]e have an obligation and a responsibility to be investing in our students and our schools. We must make sure that people who have the grades, the desire and the will, but not the money, can still get the best education possible." Charlie Boss, *Schools to Seek Tax Again Aug. 4; South-Western Hopes to Avoid Some*

WILMERHALE

Appeals Officer  
September 15, 2010  
Page 5

of \$8 million *In Cuts*, The Columbus Dispatch, May 15, 2009, at 01B. Our clients have the will and desire to guarantee the best education for their children, and their long pending request necessitates a prompt and complete response.

With these principles and the President's and Attorney General's recent commitment to open government in mind, we respectfully request that the DOE immediately release all non-exempt information. As more than a year has passed since this request was filed, and in light of our clients' strong interest in obtaining the information sought in this request, we ask that you expedite the response. We look forward to a more forthcoming response to this appeal.

Sincerely,

Reginald J. Brown / CDE

Reginald J. Brown

Rachel L. Brand

cc: Christine D. Ely, WilmerHale

Enclosures

# EXHIBIT A



## WILMERHALE

July 1, 2009

Reginald J. Brown

United States Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, S.W.  
LBJ 2W220  
Washington, D.C. 20202-4536  
ATTN: JoAnn Ryan, Chief FOIA Officer

+1 202 663 6430 (t)  
+1 202 663 6363 (f)  
reginald.brown@wilmerhale.com

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the U.S. Department of Education's implementing regulations, 34 C.F.R. § 5 *et seq.* This request is submitted by Wilmer Cutler Pickering Hale and Dorr LLP on behalf of (b)(6) parents of children affected by the Department of Education's decisions regarding the D.C. Opportunity Scholarship Program. Please contact the undersigned if the applicable fees will exceed \$1,000.

We request the following records from the U.S. Department of Education ("Department"):

1. Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Executive Office of the President or any of its components; members or staff of the Obama-Biden Transition Project; members or staff of the D.C. City Council; Members of Congress or congressional staff; members of the news media; or staff or representatives of the National Education Association, the American Federation of Teachers, or the Washington Teachers' Union, since November 5, 2008, regarding:
  - a) the D.C. Opportunity Scholarship Program, the potential statutory reauthorization of that program; the inclusion of language about that program in the Omnibus Appropriations Act of 2009; or the rescinding, retraction, or withdrawal of scholarship letters sent to families in 2009 regarding the D.C. Opportunity Scholarship Program;
  - b) the D.C. School Choice Incentive Act of 2003; or
  - c) the completion or release, including the timing of the release, of the report entitled *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After Three Years*.



WILMERHALE

United States Department of Education  
July 1, 2009  
Page 2

2. Internal Records of the Department created by its officers, employees, or representatives, since November 5, 2008, concerning the subject matters listed in Request 1.
3. Internal Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Washington Scholarship Fund, since January 1, 2008.

The term "Record" shall mean, but is not limited to, originals and copies of any and all writings and recordings of whatever nature, however produced or stored or reproduced (*e.g.*, on paper, computer disk, computer hard drive, computer tape, microfiche, or microfilm), including e-mail, in your possession or under your control, or in the possession or under the control of any of your representatives, agents, or attorneys.

Pursuant to 5 U.S.C. § 552(a)(6) and 34 C.F.R. § 5.51, we ask that a response to this request be provided within twenty working days. We also understand that the Department will apply a clear presumption of disclosure to information requests under FOIA, as provided for by the *Memorandum for Heads of Executive Departments and Agencies* issued by Attorney General Holder on March 19, 2009.

In the event that individual records become available while a portion of our request is still pending, we request that you provide to us the records as they become available, rather than sending all the requested records only after the Department has completed its entire search.

If you determine that any portion of the requested material is exempt from mandatory disclosure, we request that you discretionarily disclose that portion in accordance with Administration policy as outlined in the memorandum discussed above. In the event any of the material we have requested is not disclosable in its entirety, we request that you release all non-exempt portions of the material. As to any portions of the material that you would withhold, please provide a log stating with specificity the legal and factual basis for withholding each such portion.

\*

\*

\*

WILMERHALE

United States Department of Education  
July 1, 2009  
Page 3

Should you have any questions concerning our request, please contact the undersigned by telephone at (202) 663-6000.

Thank you for your prompt attention to this matter.

Best regards,

(b)(6)

Reginald J. Brown

Rachel Brand

Jessica L. Keefe

Caitlin McCusker\*

---

\* Summer associate, not admitted to practice law.

## EXHIBIT B

WILMERHALE

Reginald J. Brown

+1 202 663 6430(I)

+1 202 663 6363(I)

reginald.brown@wilmerhale.com

August 25, 2009

Greg Quinion  
U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, S.W.  
LBJ 2W311  
Washington, D.C. 20202-4536

Re: July 1, 2009 Freedom of Information Act Request (#09-01531-F)

Dear Mr. Quinion:

Thank you for your continuing engagement regarding our request for records concerning the D.C. Opportunity Scholarship Program under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). We are writing to confirm that our request has been distributed to all requested offices and to ask that our request be expedited due to the significant public interest in this information.

On August 5, 2009 we were informed that our broad request had been distributed on its arrival only to the Office of Innovation and Improvement instead of the full range of offices likely to have responsive information. We appreciate your engagement and assistance in arranging for the request to be distributed to additional offices that we believe are likely to have responsive records, including: the Office of the Secretary, the Office of the Deputy Secretary, the Office of Legislation and Congressional Affairs, the Office of Communications and Outreach, and the Institute of Education Sciences.

We also ask that our request be expedited. We represent two parents of school-aged children in the District of Columbia who have a pressing need to understand this issue. It is therefore of particular importance that we receive these records prior to the start of the school year. Due to the importance of our request to the education of these children and the imminence of the start of the 2009-2010 school year, we request that you immediately expedite the production of these records. In the event that individual records become available while a portion of our request is still pending, we request that you provide to us the records as they become available, rather than sending all the requested records only after the Department has completed its entire search. To date, we have received no information from any Department



WILMERHALE

Greg Quinion  
August 25, 2009  
Page 2

offices – including the Office of Innovation and Improvement – nearly two months after our initial request.

Thank you for your time in this matter. If you have any questions, please contact the undersigned.

Best regards,

(b)(6)

Reginald J. Brown

Jessica Keefe

cc: JoAnn Ryan, Chief FOIA Officer

# EXHIBIT C



## UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF MANAGEMENT

Regulatory Information Management Services

September 18, 2009

Mr. Reginald J. Brown  
Ms. Jessica L. Keefe  
Wilmer Cutler Pickering Hale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

RE: FOIA Request No. (09-01531-F)

Dear Mr. Brown and Ms. Keefe:

This is an interim response to your letter dated July 1, 2009 requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in the FOIA Service Center (FSC) on July 13, 2009. Your request was forwarded to the appropriate offices within the Department of Education (the Department) for any responsive documents they may have.

You requested:

- Records pertaining to the D.C. Opportunity Scholarship Program

Enclosed is a CD containing 806 pages of documents responsive to your request.

At this time, the Department is continuing to process your request and your FOIA request case file remains open. It will not close until the Department provides you with a response regarding outstanding responsive documents. Our final release letter will contain information related to your appeal rights of agency decisions and any charges that may apply.

If you have any questions, please contact the FSC at (202) 401-8365 or [EDFOIAMANAGER@ed.gov](mailto:EDFOIAMANAGER@ed.gov).

Sincerely,

A handwritten signature in cursive script that reads "Elise Cook".

Elise Cook  
FOIA Public Liaison

## EXHIBIT D



Past Due Status Check E-mail

August 10, 2010

Jessica L. Keefe  
Wilmer Cutler Pickering Hale  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

Your inquiry regarding the status of FOIA Case No. 09-01531-F has been reviewed with Elise Cook, FOIA Public liaison, to whom this case was assigned, and the one with whom you have communicated.

We are pleased to inform you that responsive documents were received from multiple offices within the Department of which it was referred; therefore, you should receive the final release of documents within 3 business days.

The release of the remainder of the responsive records will fulfill and complete this request. However, certain information has been withheld according to the FOIA exemption(s).

Thank you for your cooperation and patience.

Bennie Jessup, FOIA Public Liaison  
OM/RIMS

# EXHIBIT E

**Keefe, Jessica L**

---

**From:** Brown, Reginald  
**Sent:** Tuesday, August 10, 2010 7:33 PM  
**To:** 'Bennie.Jessup@ed.gov'; Keefe, Jessica L  
**Cc:** 'Elise.Cook@ed.gov'; 'Angela.Arrington@ed.gov'; Brand, Rachel  
**Subject:** Re: Status Check for FOIA Case No. 09-01531-F

Thanks very much. Given the length of time this matter has been pending we very much hope that the response will specifically detail what FOIA exemptions are being relied on for what specific documents or portions of documents to facilitate a timely appeal of withholding decisions if our client chooses to pursue that option.

---

**From:** Jessup, Bennie <Bennie.Jessup@ed.gov>  
**To:** Brown, Reginald; Keefe, Jessica L  
**Cc:** Cook, Elise <Elise.Cook@ed.gov>; Arrington, Angela <Angela.Arrington@ed.gov>  
**Sent:** Tue Aug 10 19:25:49 2010  
**Subject:** Re: Status Check for FOIA Case No. 09-01531-F

# EXHIBIT F





## UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF MANAGEMENT

## Regulatory Information Management Services

August 16, 2010

Reginald J. Brown  
WilmerHale  
1875 Pennsylvania Ave, NW  
Washington, DC 20006

RE: FOIA Request No. (09-01531-F)

Dear Mr. Brown:

This is the final response to your letter dated July 1, 2009 requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in the FOIA Service Center (FSC) on July 13, 2009. Your request was forwarded to the appropriate office within the Department of Education (the Department) for any responsive documents they may have.

You requested:

1. Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Executive Office of the President or any of its components; members or staff of the Obama-Biden Transition Project; members or staff of the D.C. City Council; Members of Congress or congressional staff; members of the news media; or staff or representatives of the National Education Association, the American Federation of Teachers, or the Washington Teachers' Union, since November 5, 2008, regarding:
  - a) The D.C. Opportunity Scholarship Program, the potential statutory reauthorization of that program; the inclusion of language about that program in the Omnibus Appropriations Act of 2009; or the rescinding, retraction, or withdrawal of scholarship letters sent to families in 2009 regarding the D.C. Opportunity Scholarship Program;
  - b) the D.C. School Choice Incentive Act of 2003; or
  - c) the completion or release, including the timing of the release, of the report entitled *Evaluation of the D.C. Opportunity Scholarship Program: Impacts After Three Years*.
2. Internal Records of the Department created by its officers, employees, or representatives, since November 5, 2008, concerning the subject matters listed in Request 1.
3. Internal Records concerning any communications between officers, employees, or representatives of the Department and officers, employees, or representatives of the Washington Scholarship Fund, since January 1, 2008.

You have previously received an interim response containing 806 pages of information that in responsive to this request.

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-4500  
www.ed.gov

*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

Page 2 – Reginald J. Brown  
09-01531-F

However, 47 pages of email communication have been withheld according to the FOIA exemptions specified below:

- Records or portions of records relating to pre-decisional internal communications have been withheld pursuant to 5 U.S.C. § 552 (b)(5) of the FOIA and Departmental regulation 34 CFR §5.73(a). These provisions require us to withhold the government's deliberative process privilege, *inter alia*, protecting records of pre-decisional internal communications reflecting the views or recommendations of agency employees in connection with the government policy or legal matters that are both pre-decisional and deliberative in nature. This also includes documents that are protected under the attorney work-product privilege, protects documents and other memoranda prepared by an attorney in contemplation of litigation.

Provisions of the FOIA allow us to recover the costs pertaining to your request. The Department has concluded that you fall within the category of "commercial use requester". However, the Department has provided you with this information at no charge. The Department's release of this information at no cost does not constitute the grant of a fee waiver, and does not infer or imply that you will be granted a fee waiver for future requests made under FOIA to the Department. Because we were able to locate and process these documents at minimal costs, they are provided to you at no cost.

You have the right to appeal the FOIA exemption decision by writing to the address below, 30 days from the date of this letter. Your appeal should be accompanied by a copy of your initial letter of request and this denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

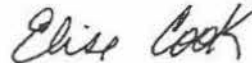
Appeal Address:

U.S. Department of Education  
Office of Management  
400 Maryland Avenue, SW, LBJ 2W311  
ATTN: Appeals Office  
Washington, DC 20202-4500

Or, you may complete the online FOIA appeal form, located at:  
[http://www.ed.gov/policy/gen/leg/foia/foia\\_appeal\\_form\\_1.html](http://www.ed.gov/policy/gen/leg/foia/foia_appeal_form_1.html).

If you have any questions, please contact the FSC at (202) 401-8365 or EDFOIAMANAGER@ed.gov.

Sincerely,



Elise Cook  
FOIA Public Liaison  
FOIA Service Center

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-4500  
[www.ed.gov](http://www.ed.gov)

*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Regulatory Information Management Services

November 1, 2010

Mr. Reginald J. Brown  
Wilmer Cutler Pickering Hale and Dorr, LLP  
1875 Pennsylvania Ave, NW  
Washington, DC 20006

RE: FOIA Request No. 09-01531-F/ Appeal No. 11-00005-A

Dear Mr. Brown:

This is to acknowledge receipt of your 09/15/10 letter appealing the Department's decision to deny your request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, which was received by this office on 10/28/10.

An administrative review of our response is underway, and the Department's Assistant Secretary for Management will issue a determination on the appeal once it is completed. In the meantime, if you have a question or concern, please feel free to call the FOIA Hotline at (202) 401-8365.

Sincerely,

A handwritten signature in black ink, reading "Angela Arrington", is positioned above the printed name.

Angela Arrington  
Director  
Regulatory Information Management Services

**From:** Brown, Reginald  
**Sent:** 10 Jun 2013 17:07:36 +0000  
**To:** Wehausen, Robert  
**Subject:** FOIA Appeal

Dear Mr. Wehausen,

I am in receipt of your letter dated June 6, 2013, regarding a FOIA Appeal filed by me on behalf of a client in 2010. I object to the appeal being administratively closed without a ruling and would appreciate you expediting the resolution given the extraordinary amount of time the appeal has been pending. I know of no legal basis for the Department to proceed on an alternative basis unilaterally when a party has taken the time and effort to file a formal appeal as we have obviously done.

Sincerely,

Reginald J. Brown





UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Regulatory Information Management Services

November 29, 2010

Mr. Scott A. Hodes  
Attorney at Law  
Post Office Box 42002  
Washington, DC 20015

RE: FOIA Request No. 09-01575-F/ Appeal No. 11-00008-A

Dear Mr. Hodes:

This is to acknowledge receipt of your 11/10/10 letter appealing the Department's decision to deny your request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, which was received by this office on 11/26/10.

An administrative review of our response is underway, and the Department's Assistant Secretary for Management will issue a determination on the appeal once it is completed. In the meantime, if you have a question or concern, please feel free to call the FOIA Hotline at (202) 401-8365.

Sincerely,

A handwritten signature in black ink that reads "Angela Arrington".

Angela Arrington  
Director  
Regulatory Information Management Services

**SCOTT A. HODES, ATTORNEY AT LAW**

POST OFFICE BOX 42002  
WASHINGTON, DC 20015  
WWW.INFOPRIVACYLAW.COM

MEMBER DC AND MD BARS

(301) 404-0502

FSA - A

11-00008-A

INFOPRIVACYLAW@YAHOO.COM

November 10, 2010

U.S. Department of Education  
Assistant Secretary for Management  
Office of Management  
ATTN: FOIA Appeals Office  
400 Maryland Avenue, SW, LBJ, 2W311  
Washington, D.C. 20202-4500

RE: FOIA No. 10-01575-F

Dear FOIA Appeals Officer:

This is an administrative appeal of the Freedom of Information Act ("FOIA") determination dated November 2, 2010 of Robert Wehausen, FOIA Public Liaison on the above-captioned FOIA request.

By letter dated June 29, 2010, I submitted a FOIA request for certain information pertaining to the Department of Education's Federal Student Aid's Debt Collection contract awarded in 2009 through GSA Schedule 520-4.

By letter dated November 2, 2010, the Department of Education released a CD containing 58 pages of documents responsive to my request. However, the certain information was withheld from me pursuant to FOIA Exemption 4.

I appeal the withholding of the material responsive to my request. FOIA Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). I do not believe that this information is either privileged or confidential and does not fit within the framework of this exemption.

Further, I made a previous request for similar documents concerning the award of the Department of Education's Federal Student Aid's Debt Collection contracted awarded in **2004**. This was assigned FOIA Request number 08-00578-F. While some material was redacted from me, it was done pursuant to FOIA Exemption 6, not Exemption 4.

Further, a comparison of the two requests demonstrates that material that appears to have been withheld in my current request was released previously. As an example, this was released in my prior request:

We have rated the offerors' past performance as follows:

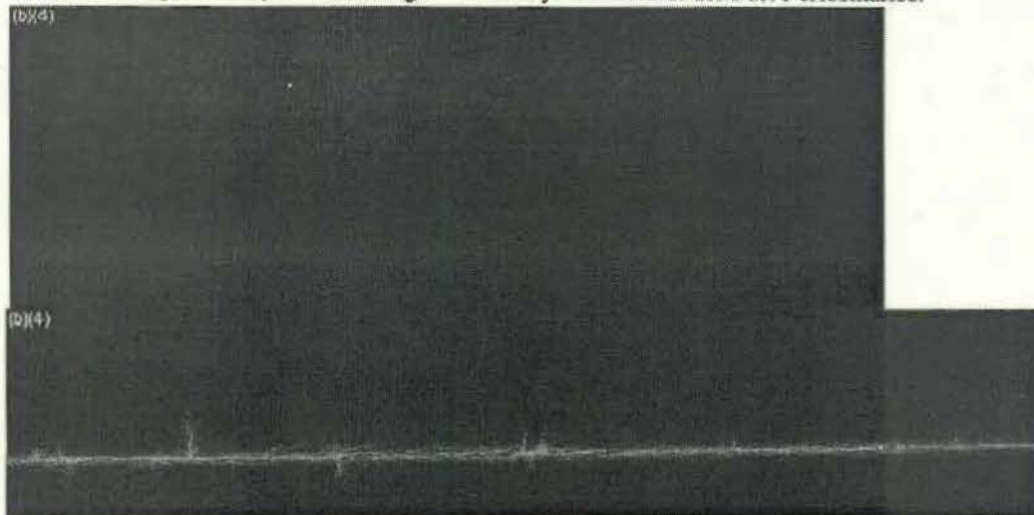
	Offeror #	Offeror Name	PP Total
1	1	Account Control Technology	80
2	31	Premiere Credit of North America	80
3	9	Collection Technology, Inc	70
4	11	Continental Service Groups, Inc	70
5	16	Financial Management Systems	60
6	25	NCC Business Services, Inc	60
7	36	United Credit Systems, Inc	50
8	20	LDG Financial Services, LLC	40
9	2	The Affiliated Group	40
10	18	FMS, Inc.	30
11	35	Stephens & Michaels Associates Inc	10

Additional detail supporting these ratings is provided in the individual evaluation summaries for each offeror.

However, this material was redacted on the 2008 evaluation document-

Example 2 is from the 2008 evaluation doc.

The following chart depicts the ratings received by each offeror for Past Performance:



Thus, I asked that you review the use of Exemption 4 in the responsive materials. Further, any document that was released pursuant to my previous request for the 2004 document should be released in this instance as well.

If you have any questions concerning this matter, feel free to contact me at your convenience.

Sincerely,

(b)(6)

A yellow rectangular box redacting the signature of Scott A. Hodes.

Scott A. Hodes





UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Regulatory Information Management Services

November 2, 2010

Mr. Scott Hodes  
PO Box 42002  
Washington DC 20015  
RE: FOIA Request No. 10-01575-F

Dear Mr. Hodes,

This is a final response to your June 29, 2010 request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested that a copy of the following documents or documents containing the following information be provided to you:

... seeking the following information concerning the Department of Education's Federal Student Aid's Debt Collection contract awarded in 2009 through GSA Schedule 520-4, Debt Collection:

1. Documents including but not limited to spreadsheets and e-mails showing how prospective vendors were short-listed for the invitation to bid, based on the ED/FSA PCA Solicitation Questionnaire.
2. Documents including but not limited to e-mails showing how and why selected vendors for the unrestricted and restricted contracts were awarded; and
3. Any rankings showing how the Department of Education ranked various interested parties to the contract.

The request was forwarded to FSA's Acquisitions Group (FSAAG) for research and response. The requested information was provided after a search of the Department's Contract Authoring and Procurement (EDCAPS) system, as well as personnel files.

Enclosed is a CD containing 58 pages of documents responsive to your request. The following documents are being provided to you:

- PNM Small Business pool
- Solicitation Invitation Recommendations
- Source Selection Plan

However, certain information has been withheld according to the FOIA exemptions specified below:

- Exemption (b)(4) of the FOIA, 5 U.S.C. § 552: This provision exempts from disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

Provisions of the FOIA allow the recovery of costs pertaining to your request. However, the Department has provided you with the previously released documents at no cost. The release of information at no cost does not constitute a fee waiver, nor does it infer or imply that you will be granted a fee waiver for future FOIA requests to the Department.

You have the right to appeal this decision by writing to the address below, within 35 days from the date of this letter. Your appeal should be accompanied by a copy of your initial letter of request, this denial letter, and any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

**Appeal Address:**  
U.S. Department of Education  
Assistant Secretary for Management  
Office of Management  
400 Maryland Avenue, SW, LBJ, 2W311  
ATTN: FOIA Appeals Office  
Washington, DC 20202-4500

Or, you may complete the online FOIA appeal form, located at:  
[http://www.ed.gov/policy/gen/leg/foia/foia\\_appeal\\_form\\_1.html](http://www.ed.gov/policy/gen/leg/foia/foia_appeal_form_1.html).

If you have any questions, please contact the FOIA Service Center at (202) 401-8365 or [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,



Robert Wehausen  
FOIA Public Liaison, OM/RIMS

ENCLOSURE: One (1) CD-Rom

**SCOTT A. HODES, ATTORNEY AT LAW**

POST OFFICE BOX 42002  
WASHINGTON, DC 20015  
WWW.INFOPRIVACYLAW.COM

INFOPRIVACYLAW@YAHOO.COM

MEMBER DC AND MD BARS

(301) 404-0502

June 29, 2010

U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, SW, LBJ 2W220  
Washington, D.C. 20202-4536  
Attn: FOIA Liaison

FSA  
10-01575-F  
RECEIVED JUN 29 2010

VIA E-mail (EDFOIAManager@ed.gov)

FOIA Request

Dear FOIA Officer:

This is a Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking the following information concerning the Department of Education's Federal Student Aid's Debt Collection contract awarded in 2009 through GSA Schedule 520-4, Debt Collection:

- 1.) Documents including but not limited to spreadsheets and e-mails showing how prospective vendors were short-listed for the invitation to bid, based on the ED/FSA PCA Solicitation Questionnaire.
- 2.) Documents including but not limited to e-mails showing how and why selected vendors for the unrestricted and restricted contracts were awarded; and
- 3.) Any rankings showing how the Department of Education ranked various interested parties to the contract.

For your information, I recently received similar information from your office concerning an earlier awarded (2004) Debt Collection contract. This was FOIA Request No. 08-00578-F and I received the PCA Acquisition Plan, PCA Competitive Range and PCA Source Selection Authority. I would like to receive this information for the 2009 contract as well as any other documents your agency maintains responsive to my request.

I would like to receive this information in electronic format if possible.

I agree to pay reasonable search, review and duplication costs up to \$25. If estimated fees are above this amount, please contact me concerning the request.



June 29, 2010

Please acknowledge that you have received this letter. If you need any further information pertaining to this request, please contact me at your convenience.

Thank you for your time and consideration in this matter.

Sincerely,

(b)(6)

Scott A. Hodes



**Casteel, Jasmine (Contractor)**

---

**From:** Scott Hodes [infoprivacylaw@yahoo.com]  
**Sent:** Tuesday, June 29, 2010 2:49 PM  
**To:** ED FOIA Manager  
**Subject:** FOIA Request  
**Attachments:** Education062910.pdf

Please see the attached request and acknowledge receipt.

Scott Hodes

Scott's Website: [www.infoprivacylaw.com](http://www.infoprivacylaw.com)  
Scott's blog: <http://thefoiablog.typepad.com>

FSA  
10-01575-F  
RECEIVED JUN 29 2010



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

July 10, 2012

Mr. Douglas Cox  
Gibson Dunn  
1050 Connecticut Avenue, NW  
Washington DC 20036-5306

RE: FOIA Request No. 10-01723-F/ Appeal – 12-00019-A

Dear Mr. Cox:

This is to acknowledge receipt of your June 25, 2012 letter appealing the Department's May 23, 2012 decision to deny your request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which was received by this office on July 10, 2012.

An administrative review of our response is underway, and the Department's Assistant Secretary for Management will issue a determination on the appeal once it is completed. In the meantime, if you have a question or concern, please feel free to call the FOIA Hotline at (202) 401-8365.

Sincerely,

A handwritten signature in black ink, reading "Angela Arrington", is positioned above the typed name.

Angela Arrington  
Deputy Director  
Privacy, Information and Records Management Services

**From:** Cox, Douglas  
**Sent:** 17 Nov 2015 17:14:52 +0000  
**To:** Caliguiran, Arthur  
**Subject:** RE: FOIA Appeal 12-00019-A

Dear Mr. Caliguiran:

I am writing in response to your email of November 3, 2015, below, regarding FOIA Appeal 12-00019-A. I write to inform you that notwithstanding the Department's delay, I wish to pursue my appeal.

Thank you for your prompt attention to this matter.

**Douglas R. Cox**

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306  
Tel +1 202.887.3531 • Fax +1 202.530.9539  
[DCox@gibsondunn.com](mailto:DCox@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

---

**From:** Caliguiran, Arthur [<mailto:Arthur.Caliguiran@ed.gov>]  
**Sent:** Tuesday, November 03, 2015 8:08 AM  
**To:** Cox, Douglas  
**Subject:** FOIA Appeal 12-00019-A

Dear Mr. Cox,

As the new FOIA Appeals Coordinator here at the Department of Education (Department), I've been tasked with performing an analysis of the Department's appeal backlog. On the behalf of the Department, please accept my apology for the delay in the processing of your appeal which you submitted to the Department on July 10, 2010.

I'm contacting you today to conclude if you are still interested in pursuing your appeal with the Department. If the interest is still there than I will contact the responsible program office to determine what's the status of pending appeal. If not, than I will withdraw your appeal and document it as such.

Please provide me with your response by COB, November 18, 2015. A lack of response on your part will be interpreted that there is no longer an interest in these case, therefore resulting in an administrative closure.

**Art C. Caliguiran, CIPP/G**  
FOIA Appeals Coordinator  
FOIA Public Liaison  
FOIA Service Center, OM/OCPO  
U.S. Department of Education  
400 Maryland Ave. SW, Room 2E319  
Washington, DC 20202-4510  
FOIA Hotline (202) 401-8365

---

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

November 19, 2012

Ms. Alexandra Hootnick

(b)(6)

RE: FOIA Request No. 12-01471-F/Appeal – 13-00006-A

Dear Ms. Hootnick:

This is to acknowledge receipt of your November 6, 2012 letter appealing the Department's October 1, 2012 decision to deny your request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which was received by this office on 11/12/2012.

An administrative review of our response is underway, and the Department's Assistant Secretary for Management will issue a determination on the appeal once it is completed. In the meantime, if you have a question or concern, please feel free to call the FOIA Hotline at (202) 401-8365.

Sincerely,

A handwritten signature in dark ink, reading "Angela Arrington", is positioned above the typed name.

Angela Arrington  
Deputy Director  
Privacy, Information and Records Management Services

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-4500  
[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

**From:** Alexandra Hootnick  
**Sent:** 12 May 2015 22:53:11 -0400  
**To:** Wehausen, Robert  
**Subject:** Re: U.S. Department of Education FOIAs

Hi Robert,

Thank you for your email. I would indeed like to find out about the status of the pending cases. Please let me know what you find out.

Best,

Alexandra

On Mon, May 11, 2015 at 4:07 PM, Wehausen, Robert <[Robert.Wehausen@ed.gov](mailto:Robert.Wehausen@ed.gov)> wrote:

Good afternoon, Ms. Hootnick:

This email is regarding the two FOIA requests (12-01473-F & 12-01478-F), and FOIA appeal (13-00006-A) you currently have open with the Department of Education.

I'm contacting you today to conclude if you are still interested in the Department fulfilling these requests. If the interest is still there, I will contact the responsible program offices to determine what's the status of the pending cases. If not, I will withdraw them and document them as such.

Please notify me of your decision by COB Monday, May, 18, 2014.

Thank you, and I look forward to hearing from you.

Robert Wehausen

FOIA Team Lead

FOIA Appeals Coordinator

FOIA Service Center

U.S. Dept. of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4510

[202.205.0733](https://www.ed.gov/202.205.0733)

--

Alexandra Hootnick

Freelance Photography/Multimedia Journalism

(b)(6)

<http://alexandrahootnick.com>

Alexandra Hootnick

(b)(6)



U.S. Department of Education  
Assistant Secretary for Management  
Office of Management  
400 Maryland Avenue, SW, LBJ, 2W311  
ATTN: FOIA Appeals Office  
Washington, DC 20202-4500

November 6, 2012

Dear Freedom of Information Officer:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552.

On June 6, 2012 I made a FOIA request to your agency for all annual grant performance reports submitted by Teach for America or its independent evaluators to the Department of Education. On October 5, 2012, your agency denied part of my request on the grounds that (b)(4): proprietary information that could cause substantial competitive harm. The third was exempted under (b)(6): unwarranted invasion of personal privacy.

Copies of my request and the denial are enclosed.

Specifically,

1. In the 2010 i3 Year 1 APR (U396A100015), I would like to appeal the denial of the ED 524B Project Status chart, section B--Budget Information and Match Report
2. In the 2010 FIE Final Report (U215Z100001), I would like to appeal the denial of the ED 524B Project Status chart, section A-Performance Objective Information and Related Performance Measures Data and section B-Budget Information

I am appealing the above denials because disclosure of this information is vital to the public interest, especially because the cited budgetary information pertain to the appropriation and contingency of public funds. Public interest should outweigh hypothetical competitive harm—especially because there are no educational nonprofits that receive government funding and match the power, influence, and resources of Teach for America.

3. I would like to appeal the denial to disclose of the names of the grant reviewers for all of the grants provided in 12-01471-F.



Grant reviewers are required to sign a document declaring they have no conflict of interest with the organization they are reviewing. In the 2009 FIE App Attach PreAward, Ann Duffy is mentioned as one of the reviewers. Duffy began her career with Teach For America, serving as the first Regional Director in the Mississippi Delta and Executive Director for Louisiana. She then became a founding partner of the New Teacher Project. It is in the public interest to know the identities of the other reviewers to determine if there were further conflicts of interest among reviewers.

As I have made this request in the capacity of a journalist and this information is of timely value, I would appreciate your expediting the consideration of my appeal in every way possible. In any case, I will expect to receive your decision within 20 business days, as required by the statute.

Thank you for your assistance.

Alexandra Hootnick

(b)(6)



ROPES & GRAY LLP  
ONE METRO CENTER  
700 12<sup>TH</sup> STREET, NW, SUITE 900  
WASHINGTON, DC 20005-3948  
WWW.ROPESGRAY.COM

March 18, 2013

Douglas H. Hallward-Driemeier  
T +1 202 508 4776  
F +1 202 383 8354  
douglas.hallward-driemeier@ropesgray.com

**VIA FEDEX**

Inspector General  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
ATTN: FOIA Appeal  
Washington, D.C. 20202-1500

Re: Freedom of Information Act Appeal – FOIA Request No. 13-00520-F

Dear Sir or Madam:

I am writing to appeal the United States Department of Education, Office of the Inspector General's ("DOE-OIG") response to the Freedom of Information Act ("FOIA") request submitted on December 19, 2012, FOIA Request No. 13-00520-F. This appeal is filed pursuant to 5 U.S.C. § 552(a)(6) and 34 CFR §§ 5.40(a)-(b).

**Factual Background**

On December 19, 2012, I submitted a FOIA request to the Department of Education (the "Department") pursuant to 5 U.S.C. § 552 (attached hereto as Exhibit A). The letter included 17 requests for documents and communications relating to: (a) the Department's decision to remove 34 CFR § 668.14(b)(22)(ii)(L) from its regulations implementing section 487(a)(20) of the Higher Education Act in 2010; (b) certain statements in the Department's March 17, 2011 "Dear Colleague Letter" relating to incentive compensation and third-party service providers, specifically Example-2B; and (c) certain exchanges between the Department, Congress and the Apollo Group regarding the same.<sup>1</sup>

---

<sup>1</sup> Following a call with the Department on January 23, 2013, it was agreed that the timeframe for our requests, with the exception of requests 1, 6, and 17 should be January 1, 2011 to December 31, 2012. It was also agreed that requests 1, 4, 6, and 17 are lower priority items and could therefore be processed by the Department after addressing the other items. An email from the Department summarizing this call is attached hereto as Exhibit C.

In accordance with 5 U.S.C. § 552(b), I requested that the Department provide all “reasonably segregable” non-exempt portions of any purportedly exempt documents. Consistent with relevant case law, I also requested that, if the Department determined that part or all of any requested documents are exempt from release, the Department provide an index that: (a) adequately describes each withheld document and/or redaction from a released document; (b) identifies the exemption claimed for each document withheld and/or redaction; (c) explains in detail why the exemption is relevant; and (d) is specific enough to permit a reasoned judgment as to whether the material is actually exempt under FOIA.

DOE-OIG provided a response (addressing only records of that component) in a letter dated February 12, 2013 (attached hereto as Exhibit B). DOE-OIG provided responses with regard to those records in its office that were responsive to requests 4, 7 and 8. In its response, DOE-OIG indicated that it is withholding 97 pages of documents responsive to request 7 pursuant to 5 U.S.C § 552(b)(5), which protects from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”<sup>2</sup> Beyond noting the statutory provision, DOE-OIG provided no additional explanation or documentation regarding its claim that the withheld documents were subject to an exemption from disclosure.

#### **DOE-OIG Failed to Provide a Vaughn Index**

DOE-OIG’s response is insufficient because it failed to provide reasonably segregable non-exempt portions of purportedly exempt documents, and/or a *Vaughn* Index. While FOIA provides for certain exemptions, it also makes clear that “any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b). Specifically, “[w]hen an agency refuses to disclose certain documents pursuant to a FOIA exemption, it must ordinarily produce a ‘*Vaughn* Index,’ a description of each document withheld or redacted and an explanation of the reasons for non-disclosure.” *Judicial Watch, Inc. v. United States Postal Service*, 297 F. Supp. 2d 252, 257 (D.D.C. 2004) (citing *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1975)).

An agency’s explanation regarding exemption must include “a relatively detailed analysis” of the withheld material without resort to “conclusory and generalized allegations of exemptions.” *Vaughn*, 484 F.2d at 827. The *Vaughn* Index “must be sufficiently detailed such that the court and [the requestor] can conduct their own reviews of the applicability of the privileges to specific documents.” *Id.* at 270; see also *Public Employees for Envtl. Responsibility v. Office of Sci. and Tech. Policy*, 881 F.Supp. 2d 8, 13 (D.D.C.2012) (*Vaughn* index including details about each document’s sender, recipient, data and time, subject, descriptions of redacted portions of the documents, explanations regarding how the information is exempted from FOIA, and relevant FOIA exemptions for each piece of withheld information was sufficiently detailed).

---

<sup>2</sup> DOE-OIG also provided links to certain publicly available documents in response to requests 4 and 8.



March 18, 2013

DOE-OIG failed to provide a *Vaughn* Index in its response to the December 19, 2012 request or to provide any reasonably segregable portions of the withheld records. In its February 12, 2013 response letter, DOE-OIG merely stated that it is "withholding 97 pages of documents responsive to item 7 pursuant to Exemption (b)(5) of FOIA. Exemption (b)(5) protects inter- and intra-agency communications that are predecisional and deliberative." Such "conclusory and generalized allegations of exemptions" cannot suffice as a *Vaughn* Index. *Vaughn*, 484 F.2d at 827. DOE-OIG failure to provide a *Vaughn* Index or any description of the withheld 97 pages of documents precludes me from conducting a review of the adequacy of the claimed basis for withholding the materials in question.

### **Conclusion**

Accordingly, I appeal DOE-OIG's decision to withhold all 97 pages of documents referenced in its response letter and request that DOE-OIG be directed to release any and all portions of the withheld documents that are not covered under Exemption (b)(5). With respect to any of the 97 pages of documents, or portions thereof, that DOE-OIG continues to withhold, I request that it be required to provide a *Vaughn* Index including sufficient detail to satisfy DOE-OIG's obligation to describe the withheld documents and basis for withholding.

Because DOE-OIG's response was only with regard to records within its office, and did not constitute a full response by the Department as to all documents and communications requested, I do not consider the Department's response to FOIA Request No. 13-00520-F to be complete at this time and will file any further appeals that might be necessary from additional responses of Departmental components as they are received or, as appropriate, from the failure of the Department to timely respond. If the Department deems DOE-OIG's response to be the Department's full response, then I further appeal the Department's failure to provide any responsive documents from any component other than DOE-OIG.

Sincerely,

(b)(6)

Douglas H. Hallward-Driemeier

Enclosures



# EXHIBIT A



ROPES & GRAY LLP  
ONE METRO CENTER  
700 12<sup>TH</sup> STREET, NW, SUITE 900  
WASHINGTON, DC 20005-3948  
WWW.ROPESGRAY.COM

December 19, 2012

Douglas H. Hallward-Driemeier  
T +1 202 508 4776  
F +1 202 383 8354  
douglas.hallward-driemeier@ropesgray.com

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, SW, LBJ 2W220  
Washington, DC 20202-4536  
ATTN: FOIA Public Liaison

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, we request the following records in the possession, custody or control of the United States Department of Education.

1. All documents relating to the Department's decision to propose and finalize the removal of 34 CFR § 668.14(b)(22)(ii)(L) in 2010 from its regulations relating to section 487(a)(20) of the Higher Education Act through its notice of proposed rulemaking for the Program Integrity Issues rule, published at 75 Fed. Reg. 34806 (proposed Jun. 18, 2010), and its final regulations, published at 75 Fed. Reg. 66832 (Oct. 29, 2010). (For purposes of these FOIA requests, we refer to this portion of the proposed and final regulations as "Safe Harbor L"). This request includes, without limitation, documents relating to sessions held between the Department and non-Federal negotiators as part of the negotiated rulemaking process and letters from commenters in which Safe Harbor L was discussed.
2. All documents relating to the portion of in the Department of Education's March 17, 2011 "Dear Colleague Letter" (the "Dear Colleague Letter") (attached hereto as Ex. 1) which states that "[t]he Department does not consider payment based on the amount of tuition generated by an institution to violate the incentive compensation ban if the payment compensates an unaffiliated third party that provides a set of services that may include recruitment services." (For purposes of these FOIA requests, we refer to this statement as the "Third-Party Service Provider Safe Harbor"). This request includes, without limitation, documents relating to the formulation of, and decision to include, the Third-Party Service Provider Safe Harbor in the Dear Colleague Letter.
3. All documents relating to Example 2-B in the Dear Colleague Letter. (For purposes of these FOIA requests, we refer to this example as "Example 2-B"). This request includes, without

limitation, documents relating to the formulation of, and decision to include, Example 2-B in the Dear Colleague Letter.

4. All documents relating to the practice of revenue sharing between educational institutions and third-party educational services providers, including the Institute for Professional Development and Apollo Educational Services.
5. All guidance from the Department of Education regarding incentive compensation and/or revenue sharing, including, but not limited to, any private letter guidance or private letter rulings sent to an educational institution or third-party educational services provider.
6. All communications between the Department of Education and the Government Accountability Office ("GAO") regarding, and all documents forming the basis of, relating to, or referring to, GAO's report on "Higher Education: Information on Incentive Compensation Violations Substantiated by the U.S. Department of Education" (GAO-10-370R, Feb. 23, 2010) that address revenue or tuition sharing arrangements between institutions and third parties.
7. All communications between the Department of Education, Office of Inspector General and other Department of Education officials regarding the Third-Party Service Provider Safe Harbor or Example 2-B. This request includes, without limitation, documents relating to the formulation of, and decision to include, the Third-Party Service Provider Safe Harbor or Example 2-B in the Dear Colleague Letter.
8. All documents relating to any communications between the Department of Education and any members of Congress (or their staff) regarding the Third-Party Service Safe Harbor or Example 2-B. This request includes, without limitation, documents relating to the formulation of, and decision to include, the Third-Party Service Provider Safe Harbor or Example 2-B in the Dear Colleague Letter.
9. All documents relating to any communications between the Department of Education and any educational institution regarding the Third-Party Service Provider Safe Harbor or Example 2-B. This request includes, without limitation, documents relating to the formulation of, and decision to include, the Third-Party Service Provider Safe Harbor or Example 2-B in the Dear Colleague Letter.
10. All documents relating to any communications between the Department of Education and any third-party service provider regarding the Third-Party Service Provider Safe Harbor or Example 2-B. This request includes, without limitation, documents relating to the formulation of, and decision to include, the Third-Party Service Provider Safe Harbor or Example 2-B in the Dear Colleague Letter.



11. All documents that provide a basis for, or otherwise relate to, Secretary Duncan's statement in his October 31, 2011 letter to Representative Jeff Flake (attached hereto as Ex. 2) that "[t]he Department's historical experience with such entities led it to present [Example 2-B] as it did . . ."
12. All documents relating to the June 4, 2012 letter from Representatives John Kline and George Miller to Secretary Duncan (attached hereto as Ex. 3) regarding Example 2-B, including any documents discussing whether, when or how to respond to that letter.
13. All documents that provide the basis for, or otherwise relate to, Secretary Duncan's statement in his December 7, 2012 letter to Representative George Miller (attached hereto as Ex. 4) that changes to regulations governing incentive compensation, specifically Example 2-B, "can only be made in the context of negotiated rulemaking."
14. All documents related to any communication relating to Secretary Duncan's statement in his December 7, 2012 letter to Representative George Miller (attached hereto as Ex. 4) that "We are examining whether it is appropriate to pursue this course of action [negotiated rulemaking] as a way to further address this issue."
15. All documents relating to any meetings between representatives of Apollo Group, Inc. and representatives from the Department of Education regarding the Third-Party Service Provider Safe Harbor or Example 2-B.
16. All documents regarding the possibility of third-party education service providers using a compensation structure other than a revenue sharing model, as discussed, for example, with Deputy Under Secretary Georgia Yuan and Acting Assistant Secretary of the Office of Post Secondary Education (OPE) David Bergeron at a meeting with Apollo Group, Inc. on December 12, 2011.<sup>1</sup>
17. All documents related to any proposals to amend Section 487(a)(20) of the Higher Education Act since November 1, 2012.

We request that the Department of Education produce responsive documents in their entirety, including all attachments on a rolling basis. In the event that the Department of Education determines that a document contains material or information that falls within a statutory exemption to mandatory disclosure, please review such material or information for possible discretionary disclosure. Furthermore, 5 U.S.C. § 552(b) of the Act provides that if some parts of a file are exempt from release, "reasonably segregable" portions of the nonexempt material should be provided. Therefore, should the Department of Education determine that some of the information requested is exempt from disclosure, please provide a copy of each of the nonexempt documents and portions of documents.

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<sup>1</sup> Mr. Bergeron and Ms. Yuan's titles have changed over time. Regardless of their specific titles, we request that any documents related to the December 12, 2011 meeting be produced.



December 19, 2012

We respectfully request that the Department of Education confirm in writing when it has determined that all documents responsive to this request, or portions thereof, have been furnished or specifically identified and denied under claim of authority pursuant to 5 U.S.C. § 552(b). In the event the Department of Education determines that it does not have any documents, or portions thereof, responsive to this request, we request that the Department of Education please confirm this fact in writing as well.

Should the Department of Education determine that part or all of any document requested under the FOIA request is exempt from release, please provide an index of the documents withheld that: (a) adequately describes each withheld document and/or redaction from a released document; (b) identifies the exemption claimed for each document withheld and/or redaction; (c) explains in detail why the exemption is relevant; and (d) is specific enough to permit a reasoned judgment as to whether the material is actually exempt under FOIA. In addition, for any document withheld or redacted, we respectfully request that you as the Department of Education's FOIA Officer, separately state the reasons for not exercising the FOIA Officer's discretionary powers under the FOIA to release in the public interest any material deemed to be exempt.

We anticipate that the Department of Education will comply with the time limitations set forth in 5 U.S.C. § 552(a)(6)(A) and we will accept a rolling production, as batches of documents become available. In the event the Department of Education would be willing to comply with this request quickly and on an informal basis, we would agree to withdraw, limit, or modify this request to make it easier for the Department of Education to comply.

Please contact me as soon as possible if you have any questions about this request or need further information in order to provide a timely response. In the event that this request should be directed to another office, please forward it to the proper office and notify me of such transfer.

This letter will confirm our agreement to pay any and all fees reasonably incurred by the Department of Education in the fulfillment of this request up to an amount of \$2500.00. If you anticipate that such costs will exceed \$2500.00, please contact us prior to incurring said additional charges so that we may explore with you the possibility of reviewing the responsive records in advance of their production pursuant to this request.

Sincerely,

(b)(6)

Douglas H. Hallward-Driemeier

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

APR 12 2013

Mr. Douglas H. Hallward-Driemeier  
Ropes & Gray LLP  
700 12<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20005-3948  
douglas.hallward-driemeier@ropesgray.com

RE: FOIA Appeal No. 13-00016-A relating to Request No. 13-00520-F

Dear Mr. Hallward-Driemeier:

We received your March 18, 2013, letter appealing the U.S. Department of Education Office of Inspector General's February 12, 2013, decision to deny in part your December 19, 2012, Freedom of Information Act (FOIA) request for Department records. The Office of Inspector General's decision did not constitute a full response by the Department, which is still processing your request. We recently learned from the Department's FOIA office that you and Department FOIA officials agreed to a rolling production of responsive records. Consistent with the Department's standard practice when parties have agreed to a rolling production of responsive records, your appeal will be held in abeyance pending completion of production by the Department, at which time the Department will provide you notice of appeal rights.

Should you have questions, please contact me at (202) 245-7001.

Sincerely,

Chaun Eason  
FOIA and Privacy Act Coordinator

cc: Department's FOIA Office



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL

MAR 19 2013

Mr. Douglas H. Hallward-Driemeier  
Ropes & Gray LLP  
700 12<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20005-3948  
douglas.hallward-driemeier@ropesgray.com

RE: FOIA Request No. 13-00016-A

Dear Mr. Hallward-Driemeier:

This letter is to acknowledge receipt of your March 18, 2013, Freedom of Information Act (FOIA), 5 U.S.C. § 552 request appeal received in this office on March 19, 2013. You are appealing your request regarding FOIA Request No. 13-00520-F.

Your request is being processed. If you have any questions regarding the status, you may contact me at 202-245-7001.

Sincerely,

Chaun Eason  
Office of Inspector General  
FOIA Coordinator

cc: Department's FOIA Office