



UNITED STATES DEPARTMENT OF EDUCATION

May 28, 2019

Ms. Robyn K. Bitner
National Student Legal Defense Network
1015 15th Street NW, Suite 600
Washington, DC 20005

Re: Appeal 19-00021-A; FOIA Request No. 19-00550-F

Dear Ms. Bitner,

I am writing in response to your letter dated January 10, 2019, appealing the U.S. Department of Education's (Department's) January 9, 2019, response to your December 18, 2018, request for records submitted pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulation at 34 CFR Part 5.

Background

Your FOIA request sought access to the following records from 2012 to the present:

1. All Notices of Proposed Debarments issued or provided to any individual or entity relating to, or arising out of, that individual's or entity's participation or involvement in Title IV, HEA programs; and
2. All Notices of Proposed Suspensions issued or provided to any individual or entity relating to, or arising out of, that individual's or entity's participation or involvement in Title IV, HEA programs.

Your request was forwarded to the Office of the Deputy Secretary (ODS) to search for documents responsive to your request. By letter dated January 9, 2019, the Department advised you that, after a thorough search, ODS was unable to locate any documents responsive to your request.

Your appeal, challenging the adequacy of the search, ensued.

Determination on Appeal

Based on a careful review of the information at issue in your appeal and applicable legal precedent, I have determined that the Department did not conduct an adequate search for records. Therefore, I am granting your appeal. The reasons for my decision are set forth below.

Discussion

FOIA requires that the Department search locations where records are reasonably likely to be found. *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA search is determined not by the fruits of the search but by the appropriateness of the methods used to carry out the search. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). ODS' initial search did not produce any responsive documents. To ensure that the Department's search encompassed all locations where responsive records were reasonably likely to be located, the Department remanded this request to ODS and Federal Student Aid (FSA) to conduct an additional search for documents responsive to your request. FSA was able to locate 244 pages of notices of government-wide suspensions and debarments from Federal procurement and non-procurement transactions. Portions of these documents have been withheld under FOIA exemption 6, 5 U.S.C. § 552(b)(6), to protect the names, personal addresses, and other identifying information concerning individuals who have been suspended or debarred from participating in Title IV, HEA transactions.¹

For this reason, I am granting your appeal.

Notice of Further Rights

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Executive Secretariat U.S. Department of Education 400 Maryland Ave., SW LBJ 7W104 Washington, DC 20202-4536	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	202-741-5770; toll free at 1-877-684-6448
Fax	202-401-0920	202-741-5769

You have the right to appeal the denial of any portions of the 244 additional pages that are being provided to you. You must submit any appeal within 90 calendar days from the date of this letter. Using the services described above does not affect your right or the deadline to file an

¹ Exemption 6 protects information about individuals contained in records which, if released, would constitute a clearly unwarranted invasion of the personal privacy.

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appeal. Your appeal must be in writing and must include detailed statement of all legal and factual bases for the appeal; it should be accompanied by this letter, a copy of your initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in making an administrative determination on your appeal.

Appeals may be submitted using the on-line form available at www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf.

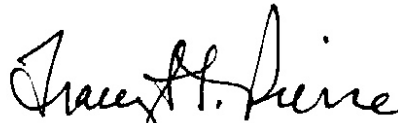
E-mail: EDFOIAappeals@ed.gov

Fax: 202-401-0920

Mail: Appeals Office
Office of the Executive Secretariat
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4536

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Tracey St. Pierre
Chief FOIA Officer

Enclosure