



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

FOIA Service Center

June 2, 2021

Gene P. Hamilton
America First Legal
600 14th Street NW, 5th Floor
Washington, DC 20005

RE: FOIA Request No. 21-01761-F

This letter is in response to your request dated May 28, 2021, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on June 1, 2021. Your request has been assigned to the Multiple Offices within the Department to search for documents that may be responsive to your request.

In your request, you have asked for a waiver of all fees associated with the processing of your request. After reviewing your fee waiver request, your request for a fee waiver is denied.

The Department has concluded that you have failed to provide sufficient information to demonstrate your entitlement to a waiver of processing fees. More specifically, justification has not been provided to explain how the requested records would contribute significant information to the public's understanding of the Department's operations. You have also not provided any evidence demonstrating public interest in the documents.

Accordingly, your requester category is determined to be an "all other use" requester and, therefore, subject to search fees after the first 2 hours, and duplication fees after the first 100 pages or \$3.00 per CD.

You did not indicate that you are willing to pay for fees associated with processing your request. Until a search is completed and the number of pages is established, a firm estimate of potential fees cannot be provided. You will be notified if the fees associated with your request will exceed \$25.00.

Attached is general information of the FOIA Fees and Waivers. Should you still wish to claim that the Department's processing fees should be waived, you must provide more specific and detailed evidence to support your claims under each statutory requirement described in the FOIA, available on the internet at: www.usdoj.gov/foia and outlined in the attachment to this letter.

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 appeals or 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 7C132 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal; it should be accompanied by a copy of this letter, the initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in resolving your appeal.

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

Appeals can also be submitted by:

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 7W106A
Washington, DC 20202-4500

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 (please include the case number).

Sincerely,

Elise Cook
Government Information Specialist
Office of the Executive Secretariat

Enclosure

**Freedom of Information Act FEES AND FEE Waivers
(General Information)**

The FOIA authorizes agencies to recover from requesters certain costs associated with processing requests made under the Act. 5 U.S.C. § 552 (a)(4)(A)(i) and (ii). The statute further provides for such fees to be waived in whole or in part where “disclosure of the information [requested] 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 the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii)(2000); 34 C.F.R. § 5.64.

To qualify for a fee waiver, requesters must meet two statutory requirements. First, the requester must support the request with evidence that establishes that disclosure of the information sought is in the public interest. In order to determine this, the Department must consider the following four factors in order:

1. The subject matter of the requested records themselves must specifically concern identifiable “operations or activities of the government”;
2. In order for the disclosure to “likely contribute” to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request;
3. The disclosure must contribute to the “understanding of the public at large,” as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester’s subject matter expertise and intentions, ability, and methods of disseminating information to the public; and
4. The disclosure must “contribute significantly” to public understanding of government operations or activities.

Requesters must meet all four elements of the public interest test outlined above to satisfy this first statutory requirement for a fee waiver. See Judicial Watch, Inc. v. Department of Justice, No. 03-5093, 2004 WL 980826 (D.C. Cir. May 7, 2004).

If the first statutory requirement is met, the Department will then also determine whether the “disclosure of the information...is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). To determine whether this second requirement has been satisfied, the Department must consider the following two factors in order:

5. Does the request involve any “commercial interest of the requester” (if not, the requester satisfies the second prong of the statutory fee waiver test); and
6. If so, the agency must balance the requester’s commercial interest against the identified public interest in disclosure for the purpose of ascertaining which is the “primary interest;” a fee waiver or reduction may granted only where the public interest in disclosure is greater in magnitude than the requester’s commercial interest.