

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

)	
NATIONAL CONSUMER LAW)	
CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
Defendant.)	
)	

COMPLAINT

1. Plaintiff National Consumer Law Center brings this action against Defendant the United States Department of Education to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and alleges as follows:

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff National Consumer Law Center (NCLC), a non-profit corporation founded in 1969, assists consumers, advocates, and public policymakers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability. NCLC regularly issues reports, books, and newsletters on consumer issues, including student loan law,

which are distributed to consumers, lawyers, academics, and other interested parties. NCLC also houses the Student Loan Borrower Assistance Project (SLBA), which focuses on providing information about student loan rights and responsibilities for borrowers and advocates. SLBA also seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. NCLC's principal place of business is located at 7 Winthrop Square, Boston, Massachusetts 02110-1245.

5. Defendant United States Department of Education (ED) is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and has possession of and control over the records Plaintiff seeks.

FACTS

NCLC's FOIA Request

6. On October 10, 2017, Plaintiff submitted a FOIA request (Request) to ED seeking the release of records associated with ED's arrangements with Maximus Federal Services, Inc., or any other party operating in whole or in part under the name Default Resolution Group.

7. In connection with this Request, NCLC requested that all fees be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and section 4-6.3 of the USPS Handbook AS-353, because disclosure of the requested information would be in the public interest. Specifically, the Request explained that the requested information would contribute to public understanding of the operations of the government, and in particular, ED's servicing of federal student loans in default.

8. On October 16, 2017, ED acknowledged the Request via electronic mail and assigned the tracking number 18-00149-F.

9. On November 14, 2017, ED transmitted a letter via electronic mail to NCLC relating to its Request. The letter acknowledged that “FOIA requires that an agency make a determination on a FOIA request within 20 working days of receipt of the request,” but notified NCLC that ED would be unable to meet this deadline “due to the backlog of requests and the competing demands for the time of staff that are working to respond to [NCLC’s] request.” The letter further instructed NCLC to “check on the status of [its] request on the Department’s FOIA Web page” if NCLC did not receive responsive documents within 30 days from receipt of its letter.

10. As acknowledged in its letter, ED was required to make and communicate to NCLC its determination as to NCLC’s Request within 20 working days of receiving the Request. 5 U.S.C. § 552(a)(6)(A)(i). If “unusual circumstances” applied, ED would have had 30 working days to make and communicate this determination. *Id.* § 552(a)(6)(B). ED was then required to make the records “promptly available.” *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

11. On August 24, 2018, NCLC called the FOIA Service Center at the telephone number provided in ED’s letter, to inquire about the Request’s status. The representative informed NCLC that ED had yet to determine whether ED possessed any of the documents NCLC had requested. The representative was unable or unwilling to provide an estimated date on which ED would complete NCLC’s Request. Exh. A (Girón Vives Decl.).

12. For several months, the status of NCLC’s Request, according to ED’s FOIA Web page, read “conducting search.” At present, the status is “reviewing records.” Yet the Web page provides no estimated date on which ED will complete the Request.

13. To date, thirteen months after receipt of NCLC's Request, ED has not communicated to NCLC its determination as to NCLC's Request, nor provided NCLC with any responsive documents.

NCLC's Fee Waiver Petition

14. On November 14, 2017, the same day that ED notified NCLC that it would not meet FOIA's 20-day determination deadline, ED transmitted a separate letter to NCLC via electronic mail denying its fee waiver petition. The letter instructed NCLC to submit any appeal of this denial to ED's Appeals Office within 90 calendar days of the denial.

15. On January 19, 2018, NCLC appealed the fee waiver denial to ED's Appeals Office, as instructed. In its appeal, NCLC elaborated on the grounds that disclosure of the requested information would be in the public interest, thereby meriting a full fee waiver. *See* 5 U.S.C. § 552 (a)(4)(A)(iii); 34 C.F.R. § 5.33 (setting forth ED fee waiver requirements).

16. On February 15, 2018, ED notified NCLC via electronic mail that, because ED had not completed NCLC's Request "within the required 20 business day timeframe," it would not charge NCLC for the processing of its Request and therefore there was "no need [for NCLC] to file an appeal" of the fee waiver denial.

**FIRST CAUSE OF ACTION
(Violation of FOIA, 5 U.S.C. § 552)**

17. Plaintiff repeats and incorporates by reference each of the foregoing allegations as if fully set forth herein.

18. Because ED has failed to comply with the time limit allotted by statute and regulation, Plaintiff is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i); 34 C.F.R. § 5.4(c)(1).

19. By failing to respond to Plaintiff's Request within the statutorily prescribed time

limit, Defendant has violated its duties under FOIA, including but not limited to its duties to communicate to Plaintiff its determination as to Plaintiff's Request, and to promptly produce all responsive, reasonably segregable, non-exempt information. 5 U.S.C. § 552.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- (1) Declare that ED has violated FOIA, by its failure to timely respond to NCLC's Request and its failure to make the requested records promptly available;
- (2) Order ED to make a determination regarding NCLC's Request;
- (3) Order ED to make the requested records available to NCLC at no cost and without delay;
- (4) Retain jurisdiction over this case to rule on any assertions by ED that any responsive records held by ED are, in whole or in part, exempt from disclosure;
- (5) Award NCLC its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant such other and further relief as this Court may deem just and proper.

Dated: November 16, 2018

Respectfully submitted,

/s/ Persis Yu

Persis Yu, BBO No. 685951
Stuart Rossman, BBO No. 430640
Joanna K. Darcus, BBO No. 601146*
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245
(617) 542-8010
pyu@nclc.org

* *Application to appear pro hac vice forthcoming.*

EXHIBIT A

I, Ana N. Girón Vives, being duly sworn, hereby depose and say:

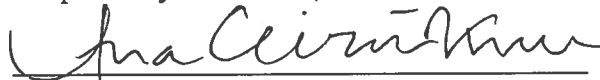
1. I am a research assistant with the National Consumer Law Center (NCLC), a nonprofit law firm with offices in Boston, Massachusetts, and Washington, D.C.
2. NCLC, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability.
3. NCLC regularly issues reports, books, and newsletters on consumer issues, including student loan law, which are distributed to consumers, lawyers, academics, and other interested parties.
4. Within NCLC, I support the Student Loan Borrower Assistance Project (SLBA).
5. SLBA provides information about student rights and responsibilities for borrowers and advocates and provides direct legal representation to student loan borrowers. Most of the clients are low-income borrowers living in Massachusetts. The team also works with other advocates across the country representing low-income clients. In addition, the team seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable.
6. On October 10, 2017, I sent a request to the Department of Education (ED), via electronic mail to EDFOIAManager@ed.gov, seeking information pursuant to the Freedom of Information Act (FOIA). I requested that ED disclose certain information regarding its arrangement with Maximus Federal Services, Inc., or any other party operating in whole or in part under the name Default Resolution Group (October 10 request).

7. A true and accurate copy of the October 10 request appears in Attachment 1.
8. On October 16, 2017, I received an email from Kim Jones at ED. That email contained an attached document acknowledging receipt of the October 10 request.
9. A true and accurate copy of the email and attachment I received from ED on October 16, 2017, is located at Attachment 2.
10. On November 14, 2017, I received two separate emails from Elise Cook at ED. The first email contained an attached status notification document acknowledging that ED would not be able to make a final determination of my initial request within 20 working days of receiving the October 10 request. The second email contained an attached letter denying the fee waiver requested in the October 10 request (November 14 fee waiver determination).
11. True and accurate copies of these emails and attachments from ED on November 14, 2017, are at Attachment 3.
12. On January 19, 2018, I emailed an appeal of the November 14 fee waiver determination to ED at EDFOIAappeals@ed.gov (hereafter January 19 appeal).
13. A true and accurate copy of the January 19 appeal appears as Attachment 4.
14. On February 15, 2018, I received an email from Elise Cook at ED. The email stated that because ED failed to complete our October 10 request within the required 20 business days they would not charge for processing the October 10 request.
15. A true and accurate copy of the email from ED on February 15, 2018, is in Attachment 5.
16. On August 24, 2018, I contacted ED's FOIA Service Center via telephone at (202) 401-8365. I spoke to an ED representative regarding the status of the October 10 request. The ED representative stated that ED had yet to determine whether they possessed the

requested documents of the October 10 request, and did not have an estimated date as to when ED would respond the request.

17. To date, I have not received a final determination of the request I submitted on October 10, 2017.

Respectfully Submitted,



Ana N. Girón Vives

Date: 11-16-2018

ATTACHMENT 1



Ana Giron Vives <agironvives@nclc.org>

FOIA Request

Ana Giron Vives <agironvives@nclc.org>
To: EDFOIManager@ed.gov

Tue, Oct 10, 2017 at 8:54 AM

Dear Chief Privacy Officer,

Attached to this email please find a Freedom of Information Act request by the National Consumer Law Center.

Please feel free to contact me if you have any questions or need more information.

Sincerely,

Ana Girón Vives

--

Ana Girón Vives
Research Assistant
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
617/542-8010 || www.nclc.org

 **NCLC FOIA Request (Final).docx**
138K



BOSTON HEADQUARTERS
7 Winthrop Square, Boston, MA 02110-1245
Phone: 617-542-8010 • Fax: 617-542-8028

WASHINGTON OFFICE
1001 Connecticut Avenue NW, Suite 510, Washington, DC 20036
Phone: 202-452-6265 • Fax: 202-463-9462

www.nclc.org

October 10, 2017

SENT VIA EMAIL

U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 2E320
Washington, DC 20202-4536
ATTN: FOIA Public Liaison

Re: Freedom of Information Act Request

Dear Chief Privacy Officer:

On behalf of the National Consumer Law Center, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I hereby request the following records:

1. Documents, records, and data sufficient to show what companies, contractors, or subcontractors work whole or in part with or under the name Default Resolution Group from October 1, 2012, to the date of the response, and in what capacity.
2. All documents (including memorandums, letters, communications, forms, reports, and other data), dating from October 1, 2012, to the date of the response, pertaining to the arrangement between the Department of Education (hereafter "ED") and Maximus Federal Services, Inc. (hereafter "Maximus") or any other party operating in whole or in part under the name Default Resolution Group, including but not limited to:
 - a. All contracts including modifications;
 - b. All solicitation material, including but not limited to Requests for Proposals, Request for Quotes, and Statement of Works;
 - c. All instructions provided by ED to Maximus related to Default Resolution Group and the Debt Management Collections System (hereafter "DMCS");
 - d. All policies, procedures, guidelines, or similar documents that describe how Maximus maintains, operates, and supervises ED's portfolio of defaulted student loans and grant overpayment debts; and
 - e. All policies, procedures, guidelines, and other related documents indicating how Maximus and any other party operating in whole or in part under the name Default

Resolution Group oversees the operation and maintenance of ED's portfolio management database and the DMCS.

3. All documents, dating from October 1, 2012 to the date of the response, reflecting any complaints, analysis, investigation, or evaluation of Maximus and any other party operating in whole or in part under the name Default Resolution Group and its work for ED's Default Resolution Group.

If producing all of the requested documents simultaneously delays the release of information, we respectfully request that the documents be released as they become available. In your response to this request, please specify whether: (1) you are providing all documents responsive to the request; (2) no documents exist that are responsive to the request; or (3) documents exist that are responsive to the request, but you are claiming that some or all of those documents are exempt from disclosure.

If it is your position that some of the requested documents or some portion of any of the requested documents are exempt from disclosure, please provide the nonexempt portions of those records. In addition, if it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each document being withheld. Also, please identify the person making the decision to deny the request.

The National Consumer Law Center requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and section 4-6.3 of the USPS Handbook AS-353, because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. NCLC, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policymakers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability.

The National Consumer Law Center regularly publishes reports, books, and newsletters on consumer issues. At the core of its mission, NCLC uses its materials and trainings to inform advocates, organizations, and policymakers about pressing issues affecting consumers. Attorneys (including legal services offices representing low-income individuals), consumer and employee advocates and state and federal policymakers rely on NCLC's expertise to assist their own work to protect consumers and employees. We have limited funds and every expense that we pay limits our ability to fulfill our mission of protecting low-income consumers.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please notify us of the amount of any proposed search and reproduction charges before those activities are carried out.

We will expect a response within 20 working days as provided by law. If you have any questions or would need more information, please feel free to contact me at (617) 542-8010.

Thank you for your consideration of this request.

Sincerely,

/s/ Ms. Ana Girón Vives
Research Assistant

ATTACHMENT 2



Ana Giron Vives <agironvives@nclc.org>

Department of Education FOIA Acknowledgment Letter - 18-00149-F

Jones, Kim <EDFOIAManager@ed.gov>
To: agironvives@nclc.org

Mon, Oct 16, 2017 at 11:43 AM

This is the Department's acknowledgment of your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the primary responsible office(s) for action.

Any future correspondence or questions regarding your request, please contact the FOIA Public Liaison at 202-401-8365 or EDFOIAManager@ed.gov

 **Department of Education FOIA Acknowledgment Letter - 18-00149-F.docx**
94K



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Office of the Chief Privacy Officer

October 16, 2017

Anna Giron Vives
Research Assistant
National Consumer Law Center
7 Winthrop Square
4th Floor
Boston, MA 02110

RE: FOIA Request No. 18-00149-F

Dear: Anna Giron Vives

This is in response to your letter dated October 10, 2017, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on October 16, 2017, and forwarded to the primary responsible office(s) for action.

You requested: 1. Documents, records, and data sufficient to show what companies, contractors, or subcontractors work whole or in part with or under the name Default Resolution Group from October 1, 2012, to the date of the response, and in what capacity. 2. All documents (including memorandums, letters, communications, forms, reports, and other data), dating from October 1, 2012, to the date of the response, pertaining to the arrangement between the Department of Education (hereafter "ED") and Maximus Federal Services, Inc. (hereafter "Maximus") or any other party operating in whole or in part under the name Default Resolution Group, including but not limited to: SEE REQUEST FOR DETAILS 3. All documents, dating from October 1, 2012 to the date of the response, reflecting any complaints, analysis, investigation, or evaluation of Maximus and any other party operating in whole or in part under the name Default Resolution Group and its work for ED's Default Resolution Group.

Please refer to the FOIA tracking number to check the status of your FOIA request at the link provided below:

<http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html>

Any future correspondence or questions regarding your request, please contact the FOIA Public Liaison at 202-401-8365 or EDFOIAManager@ed.gov

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 of 2 – Anna Giron Vives
No. 18-00149-F

Sincerely,

ED FOIA Manager

ATTACHMENT 3



Ana Giron Vives <agironvives@nclc.org>

FOIA Request 18-00149-F 20 day notification

Cook, Elise <Elise.Cook@ed.gov>
To: "agironvives@nclc.org" <agironvives@nclc.org>

Tue, Nov 14, 2017 at 9:57 AM

Dear Ms. Vives,

Please find attached above, a 20 day status notification of your FOIA request.

Thank you,

Elise Cook
Government Information Specialist
FOIA Service Center
Office of The Chief Privacy Officer
US Department of Education
(202) 401-8365

 18-00149-F 20 day notification.pdf
52K



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Office of the Chief Privacy Officer

November 14, 2017

Ana Girón Vives
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110

RE: FOIA Request No. 18-00149-F

Dear Ms. Vives:

This is a 20 day notification in response to your request dated October 10, 2017, 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 October 16, 2017, and was forwarded to the Office of Federal Student Aid within the Department of Education (the Department) for any responsive documents they may have.

The FOIA requires that an agency make a determination on a FOIA request within 20 working days of receipt of the request in the appropriate office.

This letter is to inform you that the Department is currently processing your request, but due to the backlog of requests and the competing demands for the time of staff that are working to respond to your request, we will be unable to respond within 20 working days of having received the request.

At this time, the Federal Student Aid office is continuing to search and review any responsive documents that they may have.

If you haven't received your responsive documents within 30 days from receipt of this letter, please check on the status of your request on the Department's FOIA Web page at <http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html> and click on the **Requests Status Log** link under "**More Resources**."

If you have any questions, please contact the FOIA Service Center at (202) 401-8365 or via e-mail at EDFOIAManager@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Elise Cook".

Elise Cook
Government Information Specialist
FOIA Service Center



Ana Giron Vives <agironvives@nclc.org>

FOIA Request 18-00149-F Fee Waiver Determination

Cook, Elise <Elise.Cook@ed.gov>
To: "agironvives@nclc.org" <agironvives@nclc.org>

Tue, Nov 14, 2017 at 3:11 PM

Dear Ms. Vives,

Please find attached above, the final response to your fee waiver request.

Thank you,

Elise Cook
Government Information Specialist
FOIA Service Center
Office of The Chief Privacy Officer
US Department of Education
(202) 401-8365

2 attachments

 **18-00149-F Fee Waiver Determination.pdf**
59K

 **FOIA Fee Waiver General Information.pdf**
15K



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Office of the Chief Privacy Officer

November 14, 2017

Ana Girón Vives
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110

RE: FOIA Request No. 18-00149-F

This letter is in response to your request dated October 10, 2017, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on October 16, 2017. Your request has been assigned to the Office of Federal Student Aid 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. You will receive the records that you requested, if they exist, but, 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 a "commercial use" requester and, therefore, subject to all fees incurred for search, review, duplication of pages or \$3.00 per CD and a 16% administrative fee.

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.

Page 2 - Ana Girón Vives
FOIA Request 18-00149-F

They can be contacted by:

Mail	FOIA Public Liaison Office of the Chief Privacy Officer U.S. Department of Education 400 Maryland Ave., SW, LBJ 2E321 Washington, DC 20202-4536	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 Chief Privacy Officer
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 2E320
Washington, DC 20202-4536

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
FOIA Service Center

Enclosure

ATTACHMENT 4



Ana Giron Vives <agironvives@nclc.org>

FOIA Request 18-00149-F Fee Waiver Appeal

Ana Giron Vives <agironvives@nclc.org>
To: EDFOIAappeals@ed.gov
Bcc: Persis Yu <pyu@nclc.org>

Fri, Jan 19, 2018 at 2:42 PM

Dear Chief Privacy Officer,

Please find attached to this email a petition appealing the fee waiver denial of FOIA Request No. 18-00149-F by the National Consumer Law Center, along with a copy of the initial request and fee waiver determination letter.

Please feel free to contact me if you have any questions or need more information.

Sincerely,

Ana Girón Vives

--

Ana Girón Vives
Research Assistant
National Consumer Law Center®
7 Winthrop Square, 4th Floor
Boston, MA 02110
617/542-8010 || www.nclc.org

3 attachments



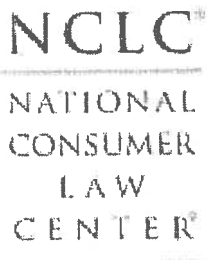
Fee Request Appeal.docx
142K



NCLC FOIA Request (Final).docx
138K



18-00149-F Fee Waiver Determination.pdf
59K



BOSTON HEADQUARTERS
7 Winthrop Square, Boston, MA 02110-1245
Phone: 617-542-8010 • Fax: 617-542-8028

WASHINGTON OFFICE
1001 Connecticut Avenue NW, Suite 510, Washington, DC 20036
Phone: 202-452-6265 • Fax: 202-463-9462

www.nclc.org

January 19, 2018

SENT VIA EMAIL

Appeals Office
Office of the Chief Privacy Officer
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 2E320
Washington, DC 20202-4536

Re: Appeal of Fee Waiver Denial, FOIA Request No. 18-00149-F

Dear Sir or Madam:

This appeal of a fee waiver denial is submitted pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(4)(A), and the Department of Education's implementing regulations, 34 C.F.R. §§ 5.33 and 5.4. For the reasons that follow, the National Consumer Law Center respectfully submits that its fee waiver Request be granted in full.

I. Background

On October 10, 2017, the National Consumer Law Center ("NCLC") submitted a FOIA request to the Department of Education ("Department"), seeking the release of records associated with the Department's arrangements with Maximus Federal Services, Inc., or any other party operating in whole or in part under the name Default Resolution Group. In connection with this Request, NCLC submitted a fee waiver petition on the grounds that disclosure of the requested information would be in the public interest. Specifically, the Request would contribute to public understanding of the operations of the government, and in particular, the Department's servicing of federal student loans in default.

The Request explained that NCLC is a national nonprofit corporation that assists consumers, advocates, and public policymakers who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose impoverishment renders them powerless to demand accountability. Accordingly, NCLC plans to use the records obtained from this Request for non-commercial purposes in accordance with its organizational mission.

The Department acknowledged the Request via electronic mail on October 16, 2017, and subsequently assigned the tracking number 18-00149-F. On November 14, 2017, the Department transmitted a letter via electronic mail to the NCLC, denying its fee waiver petition. According to the denial, “justification has not been provided to explain how copies of the Requested records would contribute any new significant information to the public’s understanding of the Department’s operations.” The denial also stated: “You have also not provided any evidence demonstrating public interest in the documents.” NCLC promptly submits this petition¹ and respectfully requests the Department grant its fee waiver application because the records sought will contribute considerably to public understanding of a matter of great concern and public interest, and because the records sought will serve no commercial interest.

II. NCLC’s Request

NCLC seeks the release of records relating to the Department’s connection with Maximus Federal Services, Inc., or any other party operating in whole or in part under the name of Default Resolution Group. Specifically, the National Consumer Law Center seeks the following information:

1. Documents, records, and data sufficient to show what companies, contractors, or subcontractors work whole or in part with or under the name Default Resolution Group (DRG) from October 1, 2012, and in what capacity.
2. All documents (including memorandums, letters, communications, forms, reports, and other data) pertaining to the arrangement between the Department of Education’s Default Resolution Group and Maximus Federal Services, Inc., including but not limited to:
 - a. All contracts including modifications.
 - b. All solicitation material, including requests for Proposals, request for Quotes, and Statement of Works.
 - c. All instructions provided by ED to Maximus related to Default Resolution Group and the Debt Management Collections System (DMCS).
 - d. All policies, procedures, guidelines, or similar documents that describe how Maximus maintains, operates, and supervises FSA’s portfolio of defaulted student loans and grant overpayment debts.
 - e. All policies, procedures, guidelines, and other related documents indicating how Maximus oversees the operation and maintenance of FSA’s portfolio management database and the Debt Management Collections System (DMCS).
3. All documents reflecting any complaints, analysis, investigation, or evaluation of Maximus Federal Services and its work for the Department of Education’s Default Resolution Group.

¹ The Department’s November 14, 2017 letter triggered a 90 calendar day deadline for submitting this appeal.

III. NCLC's Request Merits a Full Fee Waiver

NCLC's Request merits a full fee waiver. The Department's regulations provide for a fee waiver when "(1) [d]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) [d]isclosure of the information is not primarily in the commercial interest of the requester."² NCLC's Request satisfies both elements.

A. *The Public Has a Compelling Interest in the Requested Information*

The Department of Education's contract and relationship with Maximus Federal Services, Inc. or Default Resolution Group potentially impacts millions of student loan borrowers, particularly those in default. Disclosure of the requested documents is in the interest of the general public as Americans collectively owe over \$1.3 trillion in federal student loans, of which nearly 11 percent is in default.³

The Default Resolution Group is a component of the Department's Federal Student Aid programs. Its function is "the servicing of defaulted student loans that are administered under the Federal Family Education Loans (FFEL) program, which include Federal Stafford and Federal PLUS loans, and Federal Direct Loans Program."⁴ This component of the Department manages \$119.7 billion dollars of defaulted federal loans owed by 6.7 million borrowers.⁵

In 2014, NCLC released a report documenting many of the abusive practices borrowers in default experience.⁶ Using information known about the Department's contract with the private collection agencies, NCLC found that many of the abuses stemmed from structural problems with the contract.⁷ Given this finding, all of the Department's contracts should be available for public scrutiny. As such, a disclosure of the requested documents is likely to contribute significantly to public understanding of the operations and activities of the government and, therefore, in the public interest.

² 34 C.F.R. §5.33(a)

³ U.S. Dep't of Educ., Portfolio by Loan Status (DL, FFEL, ED-Held FFEL, ED-Owned) (Sept. 2017) available at: <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls>.

⁴ U.S. Dep't of Educ., Federal Student Aid, "About Us", <https://myeddebt.ed.gov/borrower/aboutusSubLinks.action> (last visited Jan. 17, 2018).

⁵ U.S. Dep't of Educ., Federally Managed Portfolio by Loan Status (Sept. 2017) available at: <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls>

⁶ National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies (Sept. 2014), available at <https://www.nclc.org/issues/pounding-student-loan-borrowers.html>.

⁷ *Id.*

B. The NCLC Has No Commercial Interest

NCLC has no commercial interest in the subject matter of this request, the organization's intended purpose for soliciting the information is not to "further [our] commercial, trade, or profit interests," as defined by the Department's Guide to Requesting ED Records under FOIA.⁸

NCLC, established in 1969, is a 501(c)(3) non-profit organization that seeks to advance the rights of underrepresented low-income people through advocacy and policy analysis. NCLC regularly publishes reports, books, and newsletters on consumer law and rights subjects. At the core of its mission, is NCLC's creation and usage of materials and trainings is to inform advocates, organizations, and policymakers about pressing issues affecting consumers. Attorneys (including legal services offices representing low-income individuals), consumer and employee advocates, and state and federal policymakers rely on NCLC's expertise to assist their own work in defending consumers and employees. NCLC has limited funds and every expense paid limits the organization's ability to fulfill its mission of protecting low-income consumers.

Accordingly, NCLC requests that the ED reconsider the fee waiver petition and waive all fees associated with locating and duplicating the requested records in FOIA Request 18-00149-F.

Thank you for your consideration of this request.

Sincerely,

/s/ Ms. Ana Girón Vives
Research Assistant
National Consumer Law Center®
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Boston, MA 02110
(617) 542-8010
agironvives@nclc.org

⁸ Guide to Requesting ED Records Under FOIA available at : <https://ed.gov/policy/gen/leg/foia/guide-to-request-record.pdf> (last visited on December 19, 2017)

ATTACHMENT 5



Ana Giron Vives <agironvives@nclc.org>

FOIA Request 18-00149-F FOIA Fee Waiver Appeal

Cook, Elise <Elise.Cook@ed.gov>
To: "agironvives@nclc.org" <agironvives@nclc.org>

Thu, Feb 15, 2018 at 9:38 AM

Dear Ms. Vives,

Due to the fact that the Department has not completed your request within the required 20 business day timeframe, we will not be charging you for the processing of your request. Therefore, there is no need to file an appeal for your fee waiver denial. Your request for a fee waiver appeal is moot.

Thank you,

Elise Cook
Government Information Specialist
FOIA Service Center
Office of The Chief Privacy Officer
US Department of Education
(202) 401-8365