



OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 19, 2015—Sent via email

[REDACTED]

Re: Case No.: 201500828
JH: NG: CM

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

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e-mail: ogis@nara.gov
phone: 202-741-5770
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Dear [REDACTED]:

This responds to your June 8, 2015, request for assistance from the Office of Government Information Services (OGIS), which we received by email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the U.S. Department of Education.

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. The goal is for OGIS to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

I understand that you made a request for single audits of all not for profit universities in the United States. You explained in your submission to OGIS that you collaborated on this request with [REDACTED], a colleague from the University of California at Berkeley, and you asked for a waiver of fees. I understand that Education responded to your request by sending you an estimate of the many hours required to fulfill it. The agency asked that you consider narrowing the scope of your request. You dispute the agency's apparent disregard of your request for a waiver of fees and ask for OGIS's assistance with this matter.

In response to your request, we contacted Education to learn more about how the agency analyzed your submission. Education provided OGIS with a copy of its May 4, 2015 correspondence to you (attached) that denies your request for a waiver of fees and informs you that you were placed in the "all other" fee category. The letter also provides you with the right to appeal this decision within 35 days; Education informed OGIS that it did not receive an appeal from you.



It is helpful to understand the difference between a request for a waiver of fees and the concept of a requester category. All FOIA requests are considered for placement in one of three requester categories, and there are different fee structures—and different requirements—associated with each. When Education denied your fee waiver request, it placed you in the “all other” category. Please see the attached chart for more information on requester categories.

Fee waivers (which you requested, asserting that the records you seek are important for educational purposes) are different from requester categories and demand a much higher threshold for consideration than a requester category. According to the Department of Justice’s guidance on fee waivers (available at http://www.justice.gov/oip/foia_guide09/fee-waivers.pdf), the standard for fee waivers is that disclosure of the information (1) 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) is not primarily in the commercial interest of the requester. Further, the guidance states that six analytical factors *must* be considered in applying the statutory fee waiver standard. If you wish to pursue a fee waiver, you will need to supply the agency with information to show how your request meets each of these analytical factors (which primarily relate to your ability to increase the public’s understanding of an important topic). Please know that unless a representative of an academic institution meets the standards for a fee waiver, one’s status as a member of academia alone would not generally qualify a requester for a waiver of FOIA processing fees.

Considering how challenging it can be to meet the threshold for fee waivers, you may instead wish to request placement in a more favorable *requester category*. For instance, if you can show that your research will lead to a publication by a news media entity, you may be considered a freelance journalist and qualify for news media status. Regarding ██████████ request to have his academic position taken into consideration, Education’s FOIA regulations (<http://www2.ed.gov/policy/gen/leg/foia/foiatoc.html>) specify that a requester qualifying for the “educational institution” preferred requester category must demonstrate that an educational institution authorized the request and that the agency records are not sought for individual or commercial use, but are instead sought to further scholarly research. In the case of ██████████, the Department of Education determined that he plans to use the records sought for his own dissertation research, which Education considers an individual—rather than institutional—goal. Please note that requesters whose requests are placed in the news media or educational institution requester category may still be charged fees for duplicating records.

I understand that you are concerned about Education’s decision to provide you with a breakdown of hours required to process your request rather than total cost. We discussed your concern with Education, and the agency informed us that because of the large volume of records responsive to your request as it is currently written, Education will be better able to provide you with a cost estimate once you confirm the scope of your request (or inform the agency whether or how you wish to narrow it).

August 19, 2015

Page 2 of 3

If you would like to provide additional information about your fee category for the agency to consider, or if you would like to narrow the scope of the records you seek, Education informed OGIS that you should file a new request.

I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

James Holzer, Director
Office of Government Information Services (OGIS)

cc: Gregory Smith, U.S. Department of Education FOIA

Attachments

We appreciate your feedback. Please visit [REDACTED] to take a brief anonymous survey on the service you received from OGIS.