



NATIONAL ARCHIVES *and* RECORDS ADMINISTRATION
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February 6, 2020 — sent via email

Tracey St. Pierre
Director, Office of the Executive Secretariat
Office of the Secretary
U.S. Department of Education
Tracey.StPierre@ed.gov

Re: Follow-up to Office of Government Information Services (OGIS) Compliance Assessment Report, *Review of U.S. Department of Education Freedom of Information Act (FOIA) Program* (Published: September 25, 2019)

Dear Ms. St. Pierre:

This letter follows up on our compliance assessment of the FOIA program at the U.S. Department of Education (Education) which we published on September 25, 2019. As part of our assessment process, we are following up with you approximately 120 days after publishing our report to inquire about the actions that the agency has already taken or plans to take to address our seven recommendations for improving FOIA administration. We are cognizant of the fact that from the time OGIS began its assessment of the Education FOIA program to the time OGIS completed its assessment, you may have addressed many of our recommendations.

Please review and complete the attached form that lists OGIS findings and recommendations to Education. We welcome your comments. Please send us your response by April 6, 2020, which we will then post on the OGIS website alongside the assessment report.

Thank you again for the cooperation and assistance that you and your FOIA staff provided during the assessment process. If you have any questions, please contact Kirsten Mitchell at 202-741-5775 or kirsten.mitchell@nara.gov.

Sincerely,

ALINA M. SEMO
Director

Enclosure

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



**Follow-up to Compliance Assessment of the Freedom of Information Act (FOIA) Program
at the
U.S. Department of Education**

Date OGIS Report Issued: September 25, 2019

Date of OGIS 120-day Follow-up Package: February 6, 2020

Date of Education Response:

The Freedom of Information Act (FOIA), which established the Office of Government Information Services (OGIS), 5 U.S.C. § 552(h), mandates that the office review agencies' FOIA policies, procedures and compliance. We assessed the FOIA program at the U.S. Department of Education (Education) and issued a report of our findings and recommendations on September 25, 2019. As part of our compliance assessment, we follow up with agencies 120 days later to understand the actions that the agency took and/or plans to take to address our recommendations for improving the administration of FOIA.

Finding 1: Education's FOIA Regulation is Out of Compliance

Education's FOIA regulation has not been updated since 2010 and is out of compliance with changes to the law and related guidance that have occurred since then. The regulation, which governs how the Department administers FOIA, provides an incorrect deadline for filing an administrative appeal, provides incorrect information regarding certain fee assessments, and does not provide procedures for engaging in dispute resolution

Recommendation 1: Education must update its FOIA regulation to reflect the amendments to FOIA as well as the Department's processes for implementing the substantive and procedural changes it has made. We recommend using the OIP regulation template.

Agency Response:

Finding 2: Communication with Requesters Not in Compliance and Could Be Clearer.

There is a lack of consistency in providing estimated dates of completion and in response letters issued by the FOIA Service Center and the regional Office for Civil Rights (OCR) offices. Lack of consistency also exists regarding notifying requesters about services offered by the FOIA Public Liaison and OGIS. Requesters seeking records from the 12 regional OCR offices are not consistently directed to the same office when seeking information about the FOIA process. FOIA jargon, legal citations and a lack of explanation of the FOIA process in some response letters may confuse requesters.

Recommendation 2: Education must comply with FOIA's statutory mandate by providing estimated dates of completion to requesters who seek such information.

Agency Response:

Recommendation 3: Education must update its template letters to comply with the statute. OGIS recommends that Education write its template letters in plain language so that requesters can more easily understand the Department's FOIA process and actions

Agency Response:

Finding 3: Technology Not Seamless or Being Used to its Fullest Extent

Education has several technology platforms at its disposal to help administer the FOIA process. In some cases, the platforms cannot operate in tandem with other platforms, creating inefficiencies. In other cases, a platform is not being used to its fullest extent.

Recommendation 4: The FOIA Service Center should partner with the Department's Customer Service and Technology Team to analyze the costs and benefits of moving to a Department-wide system and leverage technology to improve and streamline Education's FOIA process.

Agency Response:

Finding 4: Finding 4: Management Controls & Decentralized FOIA Program Challenge Effectiveness & Efficiency

Education tracks data related to its FOIA program, but, at the time of our assessment, lacked performance metrics and goals for program offices tasked with responding to searches, and individual employees with FOIA responsibilities. The decentralized nature of the Department's FOIA program creates inefficiencies in the process including untimely search results, in some cases, inconsistencies in program offices' recommended redactions.

Recommendation 5: The FOIA Service Center should track the time it takes Department program offices to respond to search requests, and establish performance standards and protocols for handling overdue search responses.

Agency Response:

Recommendation 6: The FOIA Service Center should work with human capital staff to use data to develop individual performance metrics and goals for each processor (e.g., numbers of cases closed and pages reviewed) to reduce the backlog and improve timeliness.

Agency Response:

Recommendation 7: The FOIA Service Center should work with human capital staff to incorporate FOIA performance standards into performance plans for all employees with FOIA responsibilities

Agency Response: