



OFFICE of GOVERNMENT INFORMATION SERVICES

December 12, 2014— Sent via U.S. mail

[REDACTED]
[REDACTED]

Re: Case No.: 201400566
NG: KM

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

toll-free: 1-877-684-6448

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Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on May 20, 2014 via U.S. mail. Your request for assistance pertains to your records requests, No. [REDACTED]-PA and No. [REDACTED]-PA, to the U.S. Department of Education (Education) seeking access to student loan records pertaining to yourself.

Congress created OGIS to serve as the Federal Freedom of Information Act (FOIA) Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

OGIS:

- Advocates for neither the requester nor the agency, but for the FOIA process to work as intended
- Provides mediation services to help resolve disputes between FOIA requesters and Federal agencies
- Strives to work in conjunction with the existing request and appeal process
- May become involved at any point in the FOIA administrative process

OGIS does not:

- Compel agencies to release documents
- Enforce FOIA
- Process requests or review appeals
- Provide assistance outside the realm of FOIA
- Make determinations or dictate resolutions to disputes

Please know that when an individual requests access to his or her own records as you have, it is most often, but not always, considered a Privacy Act, or first-party, request. Federal agencies will process requests under both FOIA and the Privacy Act of 1974 in order to provide requesters with the fullest degree of access available.

Privacy Act matters fall outside the scope of our office's mission as the FOIA Ombudsman. However, OGIS provides information about the process and the status of requests to individuals requesting their own records. We do not have a statutory role in reviewing policies, procedures and compliance with the Privacy Act as we do with FOIA.

We carefully reviewed your request for assistance and the correspondence you submitted to us. I understand that with regard to Request No. [REDACTED]-PA, you are concerned about Education informing you that it cannot process your records request



December 12, 2014
Page 2 of 2

until you submit your notarized signature or a certification of your identity under penalty of perjury. Education's FOIA regulation states that whenever you seek access to information about yourself, the agency requires proof that you are who you say you are. Specifically, the regulation says that in "compliance with the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, FOIA requests for agency records pertaining to the requester ... must include verification of the requester's identity" Attached is the pertinent language in the regulation, 34 C.F.R. Part 5.20(d).

I note that in the August 8, 2013 response to No. [REDACTED]-PA, the agency provided certification of identity language that along with your written signature would satisfy the agency's requirement. Please know that this requirement exists at *all* Federal agencies to protect your privacy as well as the privacy of others and helps to ensure that private information about you will not be inappropriately disclosed to anyone else.

I also note that after you provided Education with a signed certificate of identity on August 14, 2014, the agency processed Request No. [REDACTED]-PA and informed you that it searched its National Student Loan Database Systems (NSLDS) and located no records responsive to your request.

In response to your request for assistance from our office, we contacted the Education's FOIA Unit and inquired about your case. As the result of our discussion, the agency conducted another search and located records responsive to your request. The agency estimates to complete processing your request by February 6, 2015.

Finally, I understand you are frustrated with the Federal Student Aid process. OGIS cannot assist you with that matter, which is outside our jurisdiction. However, if you have not already done so, you may wish to contact the Federal Student Aid Ombudsman Group, a neutral, informal and confidential resource help resolve disputes about federal student loans. You can learn more by visiting <https://studentaid.ed.gov/repay-loans/disputes> or by calling 1-877-557-2575.

I hope you find this information about the FOIA process useful. At this time, there is no further assistance OGIS can offer and we will close your case.

Thank you for bringing this matter to OGIS.

Sincerely,



Nikki Gramian, Acting Director
Office of Government Information Services (OGIS)

Enclosure

cc: Elise Cook, FOIA Public Liaison, Department of Education, via email

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.

§ 5.21

FOIA request to meet the requirements of this section.

(d) *Verification of identity.* In compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, FOIA requests for agency records pertaining to the requester, a minor, or an individual who is legally incompetent must include verification of the requester's identity pursuant to 34 CFR 5b.5.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

§ 5.21 Procedures for processing FOIA requests.

(a) *Acknowledgements of FOIA requests.* The Department promptly notifies the requester when it receives a FOIA request.

(b) *Consultation and referrals.* When the Department receives a FOIA request for a record or records created by or otherwise received from another agency of the Federal Government, it either responds to the FOIA request after consultation with the other agency, or refers the FOIA request to the other agency for processing. When the Department refers a FOIA request to another agency for processing, the Department will so notify the requester.

(c) *Decisions on FOIA requests.* The Department determines whether to comply with a FOIA request within 20 working days after the appropriate component of the Department first receives the request. This time period commences on the date that the request is received by the appropriate component of the Department, but commences no later than 10 calendar days after the request is received by the component of the Department designated pursuant to § 5.20(a) to receive FOIA requests for agency records. The Department's failure to comply with these time limits constitutes exhaustion of the requester's administrative remedies for the purposes of judicial action to compel disclosure.

(d) *Requests for additional information.* The Department may make one request for additional information from the requester and toll the 20-day period while awaiting receipt of the additional information.

(e) *Extension of time period for processing a FOIA request.* The Department may extend the time period for processing a FOIA request only in unusual

34 CFR Subtitle A (7-1-14 Edition)

circumstances, as described in paragraphs (e)(1) through (e)(3) of this section, in which case the Department notifies the requester of the extension in writing. A notice of extension affords the requester the opportunity either to modify its FOIA request so that it may be processed within the 20-day time limit, or to arrange with the Department an alternative time period within which the FOIA request will be processed. For the purposes of this section, unusual circumstances include:

(1) The need to search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and review and process voluminous agency records responsive to the FOIA request.

(3) The need to consult with another agency or two or more agency components having a substantial interest in the determination on the FOIA request.

(f) *FOIA Public Liaison and FOIA Requester Service Center.* The Department's FOIA Public Liaison assists in the resolution of disputes between the requester and the Department. The Department provides information about the status of a FOIA request to the requester through the Department's FOIA Requester Service Center. Contact information for the Department's FOIA Public Liaison and FOIA Requester Service Center may be found at <http://www.ed.gov/policy/gen/leg/foia/contacts.html>.

(g) *Notification of determination.* Once the Department makes a determination to grant a FOIA request in whole or in part, it notifies the requester in writing of its decision.

(h) *Denials of FOIA requests.*

(1) Only Departmental officers or employees delegated the authority to deny a FOIA request may deny a FOIA request on behalf of the Department.

(2)(i) The Department notifies the requester in writing of any decision to deny a FOIA request in whole or in part. Denials under this paragraph can include the following: A determination to deny access in whole or in part to