



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Office of the Executive Secretariat

July 14, 2021

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

Re: Appeal No. 21-00040-A - FOIA Request No. 21-01761-F

Dear Gene Hamilton:

I am writing in response to your email dated June 29, 2021, appealing the U.S. Department of Education's (Department's) June 2, 2021 decision to deny your May 28, 2021 request for a fee waiver pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Background

You requested the Department to waive all fees because “First, AFL is a qualified non-commercial public education and news media requester. AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.””

Determination on Appeal

Based on a careful review of the correspondence, the information at issue in your appeal, and applicable legal precedent, I have decided to grant your appeal in full. The reasons for my determination are discussed below.

Discussion

Your appeal challenges the Department’s improper denial of your fee waiver request. In your appeal, you state “In determining what requestors qualify as a representative of the news media, the federal courts and the text of the Freedom of Information Act state that a representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” This is precisely what AFL does. Upon receiving the relevant documents, AFL will post these documents for the public to view, will use them to further shape the debate in the media about the Department’s policies, and to further the discussion regarding education policy more broadly through both written material like press releases and opinion

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pieces, and potentially through other media appearances on news programs or other media outlets.

Thus, under the standards, as articulated by the D.C. Circuit and the text of the Freedom of Information Act (as amended), AFL is a representative of the news media, and is entitled to a waiver of fees under FOIA.

AFL's second claim for a fee waiver was based on disclosure being in the public interest. Disclosure of the information is likely to be meaningfully informative because the public is largely in the dark about the Department's policies and how it makes certain decisions. Accordingly, AFL has sought emails, email attachments, transcripts of meetings and phone conversations, and agency notes (among other things) that relate to the implementation of CRT type curriculum and training. This information is not currently public, and thus will meaningfully inform the public about these decisions upon publication."

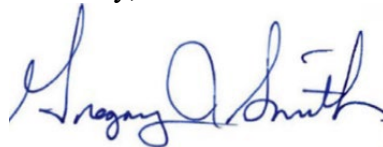
Your appeal argues that the Department improperly denied your request for a fee waiver. I agree. More specifically, you have provided justification to explain how copies of the requested records would contribute significant information to the public's understanding of the Department's operations. You have also provided evidence demonstrating public interest in the documents.

Notice of Other Rights

You have the right to seek further assistance from the Department's FOIA Public Liaison, Robert Wehausen. The Department's FOIA Public Liaison can be reached by e-mail at robert.wehausen@ed.gov; by phone at 202-205-0733; by fax at 202-401-0920; or by mail at Office of the Executive Secretariat, U.S. Department of Education, 400 Maryland Ave., SW, 7C132, Washington, DC 20202-4500, Attn: FOIA Public Liaison.

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Gregory Smith
Director, FOIA Service Center
Signed on behalf of
Tracey St. Pierre
Chief FOIA Officer