

**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.*