

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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THE TRUSTEES OF PRINCETON  
UNIVERSITY,  
Princeton, New Jersey 08544  
Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
EDUCATION,  
400 Maryland Avenue, SW  
Washington, DC 20202,

and

UNITED STATES DEPARTMENT OF  
EDUCATION, OFFICE FOR CIVIL RIGHTS,  
32 Old Slip, 26th Floor  
New York, NY 10005,  
Defendants.

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Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff The Trustees of Princeton University (the “University”), by and through its attorneys, hereby complains against Defendants United States Department of Education (the “Department”), and its sub-agency the United States Department of Education, Office for Civil Rights (“OCR”), as follows:

**INTRODUCTION**

1. The University brings this “reverse FOIA” action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706, the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Trade Secrets Act, 18 U.S.C. § 1905, to prevent the disclosure of certain confidential and

commercially sensitive documents and information relating to the University's undergraduate admissions program submitted to OCR in the course of an OCR compliance review. These materials fall generally into two categories: (1) documents and information about undergraduate applicants to the University ("Applicant Documents and Information"), and (2) documents and information about the University's proprietary admissions processes ("Admissions Documents and Information"). The University does not object to OCR producing documents that OCR itself generated in the course of its compliance review, to the extent OCR generated documents do not incorporate or quote those documents the University is seeking to protect.

2. The materials at issue are the subject of a pending FOIA request, Department of Education FOIA Request Number 16-00645-F (the "FOIA Request"), and accompanying suit to compel disclosure, *Students for Fair Admissions, Inc. v. U.S. Department of Education*, No. 1:16-cv-02154-TSC (D.D.C.) (the "FOIA Action"). In that case, the plaintiff is seeking an order directing the Department to produce "all documents concerning the investigation of Princeton University in [OCR] Case Number 02-08-6002," which includes the Applicant Documents and Information and Admissions Documents and Information.

3. The Applicant Documents and Information and Admissions Documents and Information are composed of sensitive applicant and admissions information and data that the University disclosed to OCR in response to specific requests by OCR during the compliance review, in good faith and in a spirit of voluntary cooperation to assist OCR. These materials include, but are not limited to, specific applicants' admission files, highly sensitive data about applicants that was requested by OCR (and assembled by the University solely for the purpose of responding to OCR's request), information about how the University evaluates applicants for admission, and information about how the University conducts its admissions program. Moreover,

before providing any materials to OCR in the compliance review, the University specifically asked OCR how OCR would respond to a FOIA request for these materials, and received assurance from OCR that it would adequately protect the rights and interests of both the applicants and the University.

4. The University has at all times maintained that the Applicant Documents and Information and Admissions Documents and Information are exempt from disclosure pursuant to FOIA Exemption 4, which exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). To that end, each of the documents the University seeks to withhold from release was designated and marked, “*Confidential, Private, Personal and Proprietary – Exempt from Mandatory Disclosure Under FOIA*” at the time it was produced to OCR. At no time during the compliance review did OCR object to or question these designations.

5. For purposes of FOIA, the activities disclosed by these materials are “commercial” pursuant to the term’s ordinary meaning. These materials contain confidential information concerning the University’s consideration of admissions applications, the structure of the University’s admissions program, its process and criteria for making admissions decisions, and the nature and relative success of its recruiting initiatives. If disclosed, these materials would reveal core aspects of the University’s applicant pool, admissions, and recruiting programs, all of which are evaluated and conducted within a highly competitive market for applications and enrollments. As explained below, disclosure of the materials would put the University at a substantial competitive disadvantage to identify, evaluate, and enroll prospective students, as well as potentially discourage applicants from applying to the University in the future if they have concerns about the confidentiality of the materials they submit.

6. Information exempt from disclosure under FOIA Exemption 4 generally is also protected from disclosure by the Trade Secrets Act, 18 U.S.C. § 1905. *See, e.g., Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 281 (D.C. Cir. 1997). The Applicant Documents and Information and Admissions Documents and Information fall within the protections of the Trade Secrets Act for the same reasons the material is exempt from disclosure under FOIA Exemption 4.

7. The Department has represented to the University that it will redact some but not all categories of applicant-specific information contained in the Applicant Documents and Information. As such, the Department's proposed disclosure would reveal personally identifiable applicant information. The University has maintained that *all* personally identifying information contained in its Applicant Documents and Information and Admissions Documents and Information is exempt from disclosure under FOIA Exemptions 6 and 7(C), which exempt from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(6), and "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(7)(C). The "law enforcement purposes" referenced by Exemption 7 include administrative or regulatory proceedings such as those conducted by OCR. Accordingly, consistent with FOIA Exemptions 6 and 7(C), the Applicant Documents and Information containing personally identifiable information must be fully redacted before any disclosure.

8. The Applicant Documents and Information also contain personal information about individual applicants to the University the disclosure of which would violate the Privacy Act of 1974, 5 U.S.C. § 552a.

9. The University brings this action for permanent injunctive and declaratory relief under the Administrative Procedure Act to set aside the Department's and OCR's final decision to disclose the Applicant Documents and Information and Admissions Documents and Information as arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. In the alternative, the Court should remand the matter to the Department and OCR for further agency proceedings.

### **VENUE AND JURISDICTION**

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the laws of the United States, including the Freedom of Information Act, 5 U.S.C. § 552; the judicial review provisions of the Administrative Procedures Act, 5 U.S.C. §§ 701-706; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

11. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(e).

### **PARTIES**

12. The University is a private, non-profit educational institution with its principal place of business at Princeton University, Princeton, New Jersey 08544. The University is a "person" within the meaning of 5 U.S.C. § 551(2).

13. The Department of Education is an "agency" within the meaning of 5 U.S.C. § 552(f). The Department of Education has possession and control over the University's Applicant Documents and Information and Admissions Documents and Information as identified in this Complaint.

14. The Department of Education, Office for Civil Rights is a sub-agency of the Department of Education. OCR has possession and control over the University's Applicant

Documents and Information and Admissions Documents and Information as identified in this Complaint.

### **FACTUAL ALLEGATIONS**

15. The University is a private, non-profit educational institution that advances learning through scholarship, research, and teaching, with an emphasis on undergraduate and doctoral education, and with a commitment to serve the nation and the world.

16. Every year, the University accepts applications for admission to its undergraduate program from both domestic and international students who have completed or are soon to complete secondary education programs. Applicants to the University's undergraduate program submit a packet of application materials including, but not limited to, information about their academic and nonacademic performance in high school and personal essays. Submitted separately, and also included in candidates' application files, are standardized test scores, recommendations from high school teachers and guidance counselors, and evaluations by University alumni who interview candidates for admission.

17. Every year, the University expends considerable time and resources recruiting a varied mix of high-achieving students from diverse backgrounds to create an exceptional learning community for the incoming undergraduate class. The University works both nationally and internationally to invite students to apply for admission to the University and, if accepted for admission, to matriculate with that year's incoming undergraduate class. Such recruitment is a highly competitive endeavor; specifically, the University competes against the world's most selective colleges and universities to attract applications from, and to enroll, the highest-performing and most talented students. Success in such recruiting is critical to the University's core academic mission.

18. Undergraduate admission to the University is highly competitive. For the University's graduating class of 2020 (matriculating in the fall of 2016), 1,911 applicants were admitted out of 29,303 total applicants, for an admissions rate of 6.5 percent.<sup>1</sup>

19. The University competes with other highly selective colleges and universities to obtain an applicant's enrollment at the school. *See, e.g., Lee v. Life Ins. Co. of N. Am.*, 23 F.3d 14, 17 (1st Cir. 1994) ("[A university] competes for new undergraduate and graduate students on a regional and national level with dozens of universities and colleges."). For the graduating class of 2020, 1,312 of the 1,911 admitted applicants enrolled in the University in the fall of 2016, for an applicant yield rate of 68.6%.<sup>2</sup>

20. In 2015-16, the University had a total operating budget of \$1.78 billion dollars, and in 2016-17 is projected to have a total operating budget of \$1.91 billion dollars. An undergraduate who did not receive financial aid paid approximately \$63,690 to study at the University in 2016-17, of which \$45,320 constituted tuition; approximately sixty percent of undergraduates received some amount of financial aid to assist them in meeting these costs.

OCR Case Number 02-08-6002 & the Materials at Issue

21. On January 22, 2008, OCR began a compliance review of the University's consideration of race and national origin in the admissions process. The review began after OCR received a complaint against the University alleging that the University had discriminated against the complainant on the basis of race and national origin in the admissions process. The individual complaint and the compliance review were investigated by OCR in tandem in OCR Case Number 02-08-6002.

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<sup>1</sup> See Princeton University, Statistics for Applicants to the Class of 2020, *available at* <https://admission.princeton.edu/how-apply/admission-statistics> (last visited Mar. 16, 2017).

<sup>2</sup> See *supra* n.1.

22. On September 9, 2015, OCR concluded its investigation of Case Number 02-08-6002, finding that there was no evidence that the University engaged in discrimination against the complainant specifically, or Asian applicants generally.

23. In connection with its investigation of Case Number 02-08-6002, OCR submitted to the University a number of requests for documents and information about the University's admissions program and activities, demographic and descriptive information about applicants to and students at the University, and narrative responses about the University's admissions program.

24. In response to OCR's document and information requests, the University submitted to OCR a number of documents detailing the University's proprietary admissions policies and practices (the "Admissions Documents and Information"). These materials included admissions application evaluation materials and guidance, internal guidebooks and file preparation materials, and other documents typically subject to confidentiality restrictions within the University's Admission Office. The University also created and submitted to OCR certain narrative responses to questions posed by OCR concerning its admissions program. Those responses included detailed information about specific applicants and their families.

25. In response to OCR's document and information requests, the University also voluntarily compiled and produced to OCR information about individual applicants to the University (the "Applicant Documents and Information"). These productions included certain individuals' application packets for admission, and data produced in forms in which it would not have otherwise existed, for example, spreadsheets containing information requested by OCR about individual applicants to the University. This information was compiled for no other reason than to respond to OCR's specific inquiries.



26. The University's document and information productions, and narrative responses to OCR questions, as described in Paragraphs 23-25 (collectively, the Applicant Documents and Information and Admissions Documents and Information), are all of a type that the University keeps highly confidential. Indeed, there are only certain designated individuals within the Admission Office with access to these materials, and each and every such individual is required to sign a non-disclosure agreement. In addition to the information generated directly by prospective students, who expect the University to hold their information in strict confidence, the relevant data and information—including historical data—is used continuously by the University to assess the effectiveness of its admissions program and the need for adjustments to enhance the University's admissions program, including its competitive position in the admissions market.

27. Taken separately and together, the Applicant Documents and Information and Admissions Documents and Information reveal commercially sensitive information that is kept highly confidential by the University, and would cause substantial competitive harm to the University if disclosed. Specifically, disclosure of these materials would:

- a. Permit applicants and their advisers who become aware of these materials to tailor applications to what they would perceive to be the admissions priorities and preferences of the University. These applicants (as distinct from other applicants) would use the disclosed materials to create applications that they believed fit what the University was looking for in admitted students. The University's ability to see applicants' true records and promise and make fair comparisons would be substantially hampered by this tailoring of applications to the University's perceived criteria for admissions. This, in turn, would substantially impair the University's ability to identify, recruit, admit, and enroll the strongest candidates

each year, to its competitive disadvantage as compared with other colleges and universities.

- b. Permit other colleges and universities with which the University competes to admit and enroll students to utilize the University's confidential admissions information and processes. The Applicant Documents and Information and the Admissions Documents and Information reveal the University's strategies and methods to identify, recruit, and enroll the strongest candidates for admission. Disclosure of this information would allow colleges and universities with whom the University competes for students to utilize these materials to place the University at a substantial competitive disadvantage.
- c. Undermine the University's ability to attract and enroll the strongest applicants. Applicants reasonably expect that their admissions materials and personal information will be kept in strict confidence by the University. Top-tier students confronted with the potential release of the information that they include in an application could be deterred from applying, and could be less likely to be forthcoming in their applications, inhibiting the University's ability to identify, recruit, and enroll such students. Other colleges and universities that have not been in the position of cooperating in good faith with an OCR investigation would not be placed at a similar competitive disadvantage.

28. On September 9, 2015, Timothy C.J. Blanchard of OCR sent a letter to University President Christopher Eisgruber detailing OCR's conclusion that there was insufficient evidence to support the allegations of racial and national origin discrimination made by the complainant in Case No. 02-08-6002. The September 9, 2015 letter concluded OCR's compliance review.

FOIA Request Number 16-00645-F

29. On January 13, 2016, OCR received a request under the Freedom of Information Act for “all documents concerning the investigation” of the University in connection with OCR Case Number 02-08-6002, which was numbered FOIA Request No. 16-00645-F (the FOIA Request). The documents requested included the Applicant Documents and Information and Admissions Documents and Information.

30. On October 27, 2016, the Requestor filed a lawsuit in the United States District Court for the District of Columbia seeking to compel disclosure of the materials identified in its FOIA request. That case has been docketed as *Students for Fair Admissions, Inc. v. U.S. Department of Education*, No. 1:16-cv-02154-TSC (D.D.C.) (the FOIA Action). A copy of the operative complaint obtained from the Court’s CM/ECF system is attached as Exhibit A.

31. On December 1, 2016, John F. Carroll, Program Manager, OCR, sent a letter to University President Christopher Eisgruber, copying University Counsel Sankar Suryanarayan and Requestor’s Counsel John Michael Connelly, informing the University that OCR had received the FOIA Request and that the FOIA Action had been filed. The December 1, 2016 letter further informed the University that OCR was providing the University with an opportunity to object to the disclosure of the documents submitted to OCR in the course of its investigation of Case No. 02-08-6002, and identifying the documents at issue. A copy of the December 1, 2016 letter is attached as Exhibit B.

32. On December 10, 2016, OCR set a December 23, 2016 deadline for the University to submit a written statement detailing its objections to disclosure.

33. On December 23, 2016, University Counsel Sankar Suryanarayan submitted via email, on behalf of the University, a letter response addressed to OCR Program Manager John F.

Carroll, detailing the University's objections to the Department's disclosure pursuant to FOIA of certain documents that the University submitted to OCR in the course of OCR Case Number 02-08-6002. The December 23, 2016 letter included objections to the Department's release of certain documents identified in its December 1, 2016 letter on the basis of FOIA Exemptions 4, 6, and 7(C). *See* 5 U.S.C. § 552(b)(4), (b)(6), & (b)(7)(C).

34. On March 1, 2017, OCR Program Manager John F. Carroll sent a response to the University's December 23, 2016 letter to University Counsel Sankar Suryanarayan by email. The Department's March 1, 2017 letter stated that, upon consideration of the University's December 23, 2016 letter, OCR "has determined that Exemption 4 does not apply to any of the materials that the University has produced to OCR in Case Number 02-08-6002." The letter provided no substantive reasons for this determination. For instance, it did not explain what factors were considered, did not dispute the University's position regarding the confidentiality of the information at issue, nor did it include any findings at all regarding the likely harm to the University from disclosure. The Department solely recounted the procedural history and stated in a single sentence that after considering the University's arguments, it did not consider Exemption 4 to apply. With respect to the University's request that certain information be withheld pursuant to FOIA Exemptions 6 and 7(C), the Department stated that it would redact applicants' personally identifying information and thus did not need to apply those exemptions. A copy of the March 1, 2017 letter is attached as Exhibit C. The University subsequently learned that the Department will redact substantial but not all categories of applicant-specific information. On information and belief, the Department and OCR have not obtained the prior written consent of the individuals to whom the Applicant Documents and Information pertain to release any applicant-specific information.

35. OCR's March 1, 2017 letter constituted a "final agency action" within the meaning of 5 U.S.C. § 704.

**COUNT I – VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

36. The University repeats and incorporates herein by reference the allegations of Paragraphs 1 through 35.

37. The Applicant Documents and Information and Admissions Documents and Information that the Department intends to disclose in connection with FOIA Request Number 16-00645-F and Case Number No. 1:16-cv-02154-TSC (D.D.C.) constitute "commercial . . . information obtained from a person [that is] privileged or confidential" within the meaning of FOIA Exemption 4, and therefore exempt from disclosure.

38. The Applicant Documents and Information and Admissions Documents and Information that the Department and OCR intend to disclose are highly confidential to the University.

39. Disclosure of the Applicant Documents and Information and Admissions Documents and Information would cause substantial competitive harm to the University.

40. Disclosure of the materials would violate the Trade Secrets Act, 18 U.S.C. § 1905.

41. The Applicant Documents also contain private information about individual applicants to the University the disclosure of which would violate the Privacy Act of 1974, 5 U.S.C. § 552a and for which disclosure is not authorized pursuant to FOIA Exemptions 6 and 7(c)

42. The Department's and OCR's conclusion that the documents and information are not exempt from disclosure is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2).

**REQUEST FOR DECLARATORY JUDGMENT**

43. The University repeats and incorporates herein by reference the allegations of Paragraphs 1 through 35.

44. Because the Applicant Documents and Information and Admissions Documents and Information are exempt from disclosure under FOIA Exemption 4, such disclosure would violate the Trade Secrets Act. Likewise, the Applicant Documents and Information are exempt from disclosure under FOIA Exemptions 6 and 7(C), and such disclosure would violate the Privacy Act. Accordingly, the Department's decision to disclose the material is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2), the Court should declare that:

- a. The Applicant Documents and Information and Admissions Documents and Information are exempted from Disclosure under FOIA Exemption 4;
- b. The Applicant Documents and Information are exempted from Disclosure under FOIA Exemptions 6 and 7(C); and
- c. The Department's and OCR's decision to disclose the Applicant Documents and Information and Admissions Documents and Information was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

**REQUEST FOR A PERMANENT INJUNCTION**<sup>3</sup>

45. The University repeats and incorporates herein by reference the allegations of Paragraphs 1 through 35.

46. The Applicant Documents and Information and Admissions Documents and Information are exempt from disclosure under FOIA Exemption 4 and the Trade Secrets Act, FOIA Exemptions 6 and 7(C) and the Privacy Act, and the Department's and OCR's decision to disclose these materials was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. Therefore, the University will prevail on the merits of this action.

47. Release of the Applicant Documents and Information and Admissions Documents and Information will irreparably injure the University by causing it to suffer substantial competitive harm compared to its competitors.

48. The Department, OCR, the FOIA Requestor, and the public at large will not be harmed by withholding the Applicant Documents and Information and Admissions Documents and Information, and any such harm they would suffer is substantially outweighed by the irreparable injury certain to occur to the University.

49. The public interest is served by ensuring that the University, and other similarly situated highly competitive universities that are involved in similar investigations, are not subject to having their confidential admissions information and materials disclosed, and are able to cooperate fully with OCR investigations without fear of such disclosure.

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<sup>3</sup> The Department's regulations provide that disclosure of the subject documents will be held in abeyance during the pendency of a reverse FOIA action. 34 C.F.R. § 5.11(j). Should the Department decide that it will disclose the Applicant Documents and Information and/or the Admissions Documents and Information before this lawsuit is resolved, the University reserves the right to request a preliminary injunction and other appropriate equitable relief.

50. Therefore, the Court should permanently enjoin the Department and OCR from disclosing the Applicant Documents and Information and Admissions Documents and Information.

**PRAYER FOR RELIEF**

WHEREFORE, Princeton University respectfully requests that judgment be entered against the Defendants United States Department of Education and United States Department of Education, Office for Civil Rights, and that this Court:

- A. Set aside the Department's and OCR's decision to disclose the Applicant Documents and Information and Admissions Documents and Information as arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;
- B. Declare that the Department's and OCR's decision that the Applicant Documents and Information and Admissions Documents and Information do not fall within FOIA Exemptions 4, 6, and/or 7(C), and are not protected from disclosure by the Trade Secrets Act or Privacy Act, was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;
- C. In the alternative, remand the action to the Department and OCR for reconsideration;
- D. Permanently enjoin the Department and OCR from disclosing the Applicant Documents and Information and Admissions Documents and Information; and
- E. Grant such other and further relief as may be just and proper.



Dated: March 17, 2017

Respectfully submitted,

THE TRUSTEES OF  
PRINCETON UNIVERSITY

By: /s/ Lindsay C. Harrison

Thomas J. Perrelli  
D.C. Bar No. 438929  
Lindsay C. Harrison  
D.C. Bar No. 977407  
Jessica R. Hertz  
D.C. Bar No. 989589  
JENNER & BLOCK LLP  
1099 New York Avenue, NW  
Suite 900  
Washington, DC 20001-4412  
Phone 202 639-6000  
Fax 202 639-6066  
Email: tperrelli@jenner.com  
lharrison@jenner.com  
jhertz@jenner.com

*Attorneys for The Trustees of  
Princeton University*

## Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

STUDENTS FOR FAIR ADMISSIONS,	)	
INC.,	)	
2200 Wilson Blvd, Suite 102-13	)	
Arlington, VA 22201,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
U.S. DEPARTMENT OF EDUCATION,	)	
400 Maryland Avenue, SW,	)	
Washington, D.C. 20202,	)	
	)	
Defendant.	)	
	)	

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**COMPLAINT**

Plaintiff Students for Fair Admissions, Inc. brings this action against Defendant U.S. Department of Education to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

3. Plaintiff Students for Fair Admissions, Inc. (“SFFA”) is an Internal Revenue Code Section 501(c)(3), voluntary membership organization formed for the purpose of defending human and civil rights secured by law, including the right of individuals to equal protection under the law, through litigation and any other lawful means.

4. Defendant U.S. Department of Education (“the Department”) is an agency of the United States government. The Department has possession, custody, and control of records to which SFFA seeks access. The Department is headquartered at 400 Maryland Avenue, SW, Washington, D.C. 20202.

### **STATEMENT OF FACTS**

5. On January 11, 2016, SFFA submitted a request under the Freedom of Information Act (“FOIA”) to the Department, seeking the following:

All documents concerning the investigation of Princeton University in Case Number 02-08-6002, which is referenced in the September 9, 2015 letter from Timothy C.J. Blanchard to Christopher L. Eisgruber. *See* <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/02086002-a.pdf>.

6. By letter dated January 13, 2016, the Department acknowledged receiving SFFA’s request on January 11, 2016 and advised that it had assigned SFFA’s request as FOIA Request No. 16-00645-F.

7. On February 22, 2016, six weeks after SFFA submitted its FOIA request, SFFA’s counsel emailed the Department’s FOIA Office to determine when the Department would produce the documents responsive to SFFA’s FOIA request.

8. The next day, Kim Jones, the Department’s FOIA Manager, replied that the Department was “conducting [a] search for responsive records,” but did “not have a specific completion time available.”

9. On April 14, 2016, more than three months after SFFA submitted its FOIA request, SFFA’s counsel again emailed the Department’s FOIA Office to determine when the Department would produce the documents responsive to SFFA’s FOIA request.

10. Later that day, Ms. Jones sent SFFA's counsel the same email from two months earlier, informing SFFA that the Department was "conducting [a] search for responsive records," but did "not have a specific completion time available."

11. On April 18, 2016, John Carroll, an officer of the U.S. Department of Education, New York Office for Civil Rights, had a telephone conversation with Edward Blum, the President of SFFA, and SFFA's counsel about SFFA's FOIA request. Later that afternoon, Mr. Carroll sent Mr. Blum an email purporting to summarize the conversation:

"[Y]ou confirmed that you are making this request on behalf of Students for Fair Admission. You also confirmed that you agree to the redaction of personally identifiable information. You also confirmed that you would like the documents to be provided in digital format on a CD. Finally, you confirmed that you would like the entire case file. After receiving our response, if you disagree with any of our redactions you can file an appeal in writing, within 35 days of your receipt of our response[.]"

12. A few months later, SFFA received a letter from the U.S. Department of Education, New York Office for Civil Rights dated June 10, 2016. In that letter, the agency said that it was "currently processing the documents that are responsive to your request," but needed "additional time ... due to the volume of documents requested," which it estimated to "exceed 1,500 pages."

13. On July 18, 2016, more than seven months after SFFA submitted its FOIA request, SFFA's counsel emailed Mr. Carroll to determine when the Department would produce the documents responsive to SFFA's FOIA request.

14. The following day, Mr. Carroll responded to SFFA via email. Mr. Carroll "apologize[d] for the delay," but said the request was "being processed as expeditiously as possible but due to the size and complexity of the request, it [would] require additional processing time." Mr. Carroll declined to provide an estimated time for completion.

15. On August 31, 2016, more than seven months after SFFA submitted its FOIA request, SFFA's counsel again emailed Mr. Carroll to determine when the Department would produce the documents responsive to SFFA's FOIA request. SFFA's counsel received no reply.

16. On September 7, 2016, almost eight months after SFFA submitted its FOIA request, SFFA's counsel again emailed Mr. Carroll to determine when the Department would produce the documents responsive to SFFA's FOIA request.

17. The following day Mr. Carroll responded to SFFA via email. Similar to his response in July, Mr. Carroll "apologize[d] for the delay in responding to your messages," but could not "provide ... a completion date at this time." Mr. Carroll stated that "due to the large number of documents, the complexity of the case, and the large number of FOIA requests we are currently processing in addition to our investigations, the documents are still being reviewed and redacted."

18. As of October 27, 2016, more than nine months after SFFA submitted its FOIA request, the Department's website still identifies SFFA's FOIA request status as "conducting search." See U.S. Department of Education, *Status of All FY2016 FOIA Requests and All Open Requests for Prior Years as of 8/5/16*, <http://www2.ed.gov/policy/gen/leg/foia/request-status-log.pdf>.

19. As of October 27, 2016, the Department has failed to "gather and review the documents" SFFA has requested and "determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents." *Citizens for Responsibility & Ethics in Washington ("CREW") v. Federal Election Commission*, 711 F.3d 180, 188 (D.C. Cir. 2013).

20. As of October 27, 2016, SFFA has not received any documents from the Department in response to its January 11, 2016, FOIA request.

**COUNT I**  
**(Violation of FOIA, 5 U.S.C. § 552)**

21. SFFA realleges paragraphs 1 through 20 as if fully stated herein.

22. FOIA provides that, subject to certain statutory exemptions, federal agencies shall “upon any request for records which reasonably describes such records ... make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

23. Under FOIA, a federal agency must make and communicate a “determination” whether to comply with a FOIA request—and communicate “the reasons therefor”—within 20 working days of receiving the request, or within 30 working days in “unusual circumstances.” 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(6)(B)(i).

24. To make such a determination, the agency must “(i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reason for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.” *CREW*, 711 F.3d at 188.

25. If the agency does not issue a “determination” within the required time period, “the requester may bring suit directly in federal district court without exhausting administrative appeal remedies.” *CREW*, 711 F.3d at 182.

26. FOIA gives federal courts jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

27. The Department of Education is a federal agency subject to FOIA’s requirements. *See* 5 U.S.C. § 552(f)(1).

28. The Department has made no “determination” as to SFFA’s FOIA request, made no reasonable effort to search for responsive documents, and produced no documents responsive to SFFA’s FOIA request.

29. The Department’s failure to make a “determination” as to SFFA’s FOIA request within the required time period violates FOIA and the Department’s corresponding regulations and relieves SFFA of any obligation to exhaust administrative appeal remedies before filing its FOIA lawsuit. *See* 5 U.S.C. § 552(a)(6); 34 C.F.R. § 5.1 *et seq.*

30. The Department’s failure to make a reasonable effort to search for records in electronic form or a format responsive to SFFA’s FOIA request violates FOIA and the Department’s corresponding regulations. *See* 5 U.S.C. § 552(a)(3)(C); 34 C.F.R. § 5.1 *et seq.*

31. The Department’s failure to make promptly available the records sought by SFFA violates FOIA and the Department’s corresponding regulations. *See* 5 U.S.C. § 552(a)(3)(A); 34 C.F.R. § 5.1 *et seq.*

**WHEREFORE**, SFFA respectfully requests that the Court:

(1) order the Department to conduct searches for any and all records responsive to SFFA’s FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to SFFA’s FOIA request;

(2) order the Department to produce, by a date certain, any and all non-exempt records to SFFA’s FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;

(3) enjoin the Department from continuing to withhold any and all non-exempt records responsive to SFFA’s FOIA request;



(4) grant SFFA an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

(5) grant SFFA such other relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ J. Michael Connolly

J. Michael Connolly  
D.C. Bar No. 995815  
CONSOVOY MCCARTHY PARK PLLC  
3033 Wilson Boulevard, Suite 700  
Arlington, VA 22201  
Tel: (703) 243-9423  
Email: mike@consovoymccarthy.com

Dated: October 27, 2016

*Counsel for Plaintiff Students for Fair  
Admissions, Inc.*

## Exhibit B



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
32 OLD SLIP, 26<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD  
DIRECTOR  
NEW YORK OFFICE

December 1, 2016

Christopher L. Eisgruber  
President  
Princeton University  
1 Nassau Hall  
Princeton, New Jersey 08544

Re: Freedom of Information Act Request No. 16-00645-F

Dear President Eisgruber:

During the investigation of Princeton University (the University) by the U.S. Department of Education's Office for Civil Rights (OCR) in Case Number 02-08-6002, the University provided documents and files to OCR. Consistent with Section 5.11(c) of title 34 of the Code of Federal Regulations, the University identified certain documents and files as "Confidential, Private, Personal and Proprietary: Exempt from Mandatory Disclosure FOIA" and claimed that this information was subject to Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4).

Pursuant to Section 5.11(d) of the Department's regulations (34 C.F.R. 5.11(d)), I write to inform you that on January 13, 2016, OCR received a request under FOIA for "all documents concerning the investigation" of the University in OCR Case Number 02-08-6002, including various admission materials that the University provided to OCR. A copy of the FOIA request is enclosed. OCR has not yet released any records responsive to that request.

Further, pursuant to Section 5.11(h) of the Department's regulations, (34 C.F.R. 5.11(h)) I write to notify you that on October 27, 2016, the same requestor filed a lawsuit in federal District Court for the District of Columbia seeking to compel the disclosure of the materials identified in its FOIA request. That lawsuit has been docketed as *Students for Fair Admissions, Inc. v. U.S. Department of Education*, No. 1:16-cv-02154-TSC (D.D.C).

Consistent with Section 5.11(i) of the Department's regulations (34 C.F.R. 5.11(i)), I am sharing this notification letter with the requester's counsel as well.

The requested information must be released unless it is exempt from release under the FOIA. Because the University submitted certain records to OCR with designations that it

considers the records to be protected under Exemption 4, the Department's regulations require the Department to provide the University an opportunity to object to the disclosure of such records by submitting a detailed written statement. 34 C.F.R. 5.11(e). The University's initial designations of records as commercial or financial information protected from disclosure under FOIA Exemption 4 is not binding on the Department. 34 C.F.R. 5.11(c)(2). Instead, OCR will consider the University's objections and submissions in deciding whether the records are exempt from disclosure under Exemption 4, and provide the University advance written notice if it decides to disclose information over its objection. 34 C.F.R. 5.11(f).

In a letter to OCR, dated April 30, 2008, the University claimed that certain information it provided to OCR was subject to 5 U.S.C. § 552(b)(4) and (6). During the investigation of OCR Case Number 02-08-6002, the University identified the documents and files below as "Confidential, Private, Personal and Proprietary: Exempt from Mandatory Disclosure FOIA." For each of the pages below, please identify which portion(s) of the page the University still claims is subject to 5 U.S.C. § 552(b)(4) and a detailed statement specifying all the reason(s) why. The University's claims of exemption must be as narrow as possible because the FOIA requires release of reasonably segregable portions of the records after deletion of the exempt segments. Therefore, the University's response should avoid broad claims of exemption that would cover nonexempt information. 34 C.F.R. 5.11(c)(3). In addition, the University's responses may themselves be subjected to disclosure under FOIA. 34 C.F.R. 5.11(e)(3).

In providing your objections and submission, we hope the following will be helpful. Exemption 4 covers, in part, "commercial or financial information obtained from a person and privileged or confidential." For records to be exempt from release as commercial or financial information under FOIA Exemption 4, the records must first (a) have been obtained from a person, and (b) be commercial or financial in nature. Further, in order to withhold such records under FOIA Exemption 4 that were required to be submitted to the Department, the records must (1) have been furnished and accepted in confidence, and (2) be such that their disclosure would either, (a) impair the Government's ability to obtain necessary information in the future, or (b) cause substantial harm to the competitive position of the person from whom it was obtained or its current owner. These standards were set by the court in National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Circuit 1974), and continue to govern the analysis when the information was not voluntarily submitted to the Department.

On the first issue, the Department needs an explanation of the commercial sensitivity, if any, of the material requested. On the second issue, if the University believes that the release of the requested information would cause substantial competitive harm, the University should provide appropriate evidence to support its position. In this regard, please provide this office with a specific description concerning how disclosure of any or all of the material identified below would cause substantial harm to the University's present or future competitive position, complete with any and all legal justifications which would permit the Department to invoke FOIA Exemption 4. Some factors the



University may wish to describe are: the general custom or usage in the University's business regarding this type of information, the number and position of persons who have, or have had access to the information, the type and degrees of commercial injury that disclosure would cause, and the length of time the University believes confidential treatment is warranted.

The relevant documents that the University previously designated under section 5.11(c) of the Department's regulations:<sup>1</sup>

1-551  
553-560  
847-862  
869-904  
926-943  
959-984  
991  
1150-A  
1152-1200  
1204-1215

- CDs Bates Stamped:

552  
1129  
1130  
1201  
1202  
1203  
1216

- The following letters from the University to OCR dated:

January 22, 2009  
September 16, 2010  
June 13, 2011  
September 30, 2014  
July 24, 2015

- An email from Sankar Suryanarayan, University Counsel, to Coleen Chin, OCR Senior Attorney; dated February 3, 2011, 12:33 p.m; titled, "RE: admission data for classes of 1999-2013; Princeton Univ., OCR case no. 02-08-6002"

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<sup>1</sup> As discussed during a telephone conversation today between OCR staff and University Counsel, Sankar Suryanarayan, OCR has made available a copy of these materials to the University. The University will inform OCR whether it prefers OCR to mail these materials to it or whether it will retrieve these materials from OCR's office.

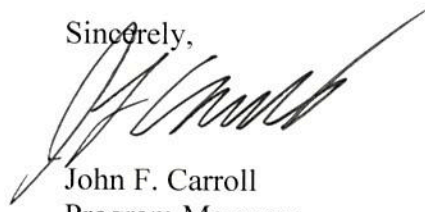
- The copy of the admission file (39 pages) attached to a letter from Sankar Suryanarayan, University Counsel, to Ramona Nicholson, OCR Compliance Team Attorney, dated May 6, 2008

Due to the response time limits imposed on the government in these FOIA cases, the Department requests that the University provide its response by December 15, 2016. If received by that date, the University's objections will be given due consideration before the Department makes a decision. If the University does not submit a response by that date, the Department will assume that the University has no objection to disclosure of the information requested. 34 C.F.R. 5.11(e)(2).

The Department will carefully consider any justification the University provides and will endeavor to protect any commercial or financial information to the extent permitted under law. Should the Department disagree with the University's position regarding some or all of the information requested, and determine it to be releasable, the Department will provide the University with advance written notice of its decision so that it may take whatever steps it considers appropriate to protect its interests. 34 C.F.R. 5.11(f).

Thank you for your attention to this matter. If you have questions, please contact Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or [logan.gerrity@ed.gov](mailto:logan.gerrity@ed.gov); or Coleen Chin, Senior Attorney, at (646) 428-3809 or [coleen.chin@ed.gov](mailto:coleen.chin@ed.gov).

Sincerely,



John F. Carroll  
Program Manager

cc: Sankar Suryanarayan, Esq., Counsel for the University  
John Michael Connolly, Esq., Counsel for the Requestor (w/o attachments)

## Exhibit C



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
32 OLD SLIP, 26<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD  
DIRECTOR  
NEW YORK OFFICE

March 1, 2017

Sankar Suryanarayan, Esq.  
University Counsel  
Office of the General Counsel  
Princeton University  
New South Building, Fourth Floor  
Princeton, New Jersey 08544

Re: Freedom of Information Act Request No. 16-00645-F

Dear Mr. Suryanarayan:

I write in response to your letter, dated December 23, 2016, regarding the applicability of 5 U.S.C. § 552(b)(4) (Exemption 4), (6) (Exemption 6), and 7(c) (Exemption 7(c)) to the materials that Princeton University (the University) submitted to the U.S. Department of Education's Office for Civil Rights (OCR) in Case Number 02-08-6002. As OCR stated in its letter, dated December 1, 2016, to President Eisgruber, because the University submitted certain records to OCR with designations that it considers the records to be protected under Exemption 4, the U.S. Department of Education's (the Department) regulations require the Department to provide the University an opportunity to object to the disclosure of such records by submitting a detailed written statement. 34 C.F.R. 5.11(e). As OCR also stated in this letter to President Eisgruber, the University's initial designations of records as commercial or financial information protected from disclosure under FOIA Exemption 4 are not binding on the Department; instead, OCR stated in the letter that it would consider the University's objections and submissions in deciding whether the records are exempt from disclosure under Exemption 4, and provide the University advance written notice if it decides to disclose information over its objection. 34 C.F.R. 5.11(c)(2) & (f). Your letter to OCR, dated December 23, 2016, provided the University's objections regarding disclosure of the records referenced in OCR's letter to President Eisgruber.

OCR has carefully considered the University's arguments with respect to withholding the release of certain materials under Exemption 4, and has determined that Exemption 4 does not apply to any of the materials that the University has produced to OCR in Case Number 02-08-6002.

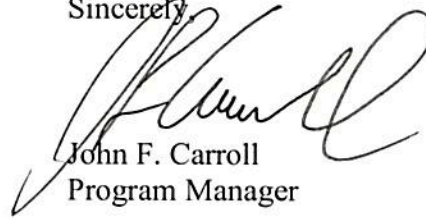
As to your inquiry concerning Exemptions 6 and 7(c), the requestor has agreed to the redaction of personally identifiable information and OCR will therefore redact personally identifiable information from the materials that the University has produced to OCR in Case Number 02-08-6002. Because the requestor agreed to the redaction of personally identifiable information, OCR



will not need to invoke Exemptions 6 or 7(c) for its redaction of personally identifiable information. In ten business days, OCR will release these materials to the requestor of the above-referenced FOIA request; OCR will redact personally identifiable information, but will not redact information pursuant to Exemption 4.

If you have questions, please contact Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or [logan.gerrity@ed.gov](mailto:logan.gerrity@ed.gov); or Coleen Chin, Senior Attorney, at (646) 428-3809 or [coleen.chin@ed.gov](mailto:coleen.chin@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'John F. Carroll', is written over the typed name and title.

John F. Carroll  
Program Manager

cc: John Michael Connolly, Esq.

## CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

<b>I. (a) PLAINTIFFS</b> The Trustees of Princeton University  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Mercer, NJ</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> United States Department of Education United States Department of Education, Office for Civil Rights  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																												
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Jenner & Block LLP 1099 New York Avenue NW, Suite 900 Washington, DC 20001	ATTORNEYS (IF KNOWN)																												
<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b>																												
<table style="width: 100%;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input checked="" type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width: 100%;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Administrative Procedure Act, 5 U.S.C. §§ 701-706 -- Review of final agency action

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	<b>DEMAND \$</b>	<b>JURY DEMAND:</b>
			Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form
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DATE: 3-17-17	SIGNATURE OF ATTORNEY OF RECORD: /s Lindsay Harrison
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

for the

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V.

Civil Action No.

Defendant(s)

To: *(Defendant's name and address)*

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
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)  
)  
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)

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

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Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

District of \_\_\_\_\_

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*Plaintiff(s)*

V.

Civil Action No.

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*Defendant(s)*

To: *(Defendant's name and address)*

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: