

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

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AMERICAN OVERSIGHT,  
1030 15th Street NW, B255  
Washington, DC 20005

*Plaintiff,*

v.

U.S. DEPARTMENT OF EDUCATION,  
400 Maryland Avenue SW  
Washington, DC 20202

*Defendant.*

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Case No. 17-1247

**COMPLAINT**

1. Plaintiff American Oversight brings this action against the U.S. Department of Education under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**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, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff American Oversight is a nonpartisan organization committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight will use the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia, and its application for section 501(c)(3) status is pending with the Internal Revenue Service.

6. Defendant U.S. Department of Education (Education) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). Education has possession, custody, and control of the records that American Oversight seeks.

### **STATEMENT OF FACTS**

7. As described below, American Oversight filed two FOIA requests seeking documents that would shed light on a matter of significant public concern: potential conflicts of interest affecting higher education policymaking at Education.

8. Betsy DeVos was confirmed as U.S. Secretary of Education in February 2017.

9. Since Secretary DeVos's confirmation, Education has made several major policy changes affecting higher education, especially for-profit institutions. Examples include delaying the gainful employment rule, which requires institutions to provide data on graduates' debt

relative to their earnings; guidance barring debt collectors from charging past-due loans; and a rule covering borrower defense to repaying debts when schools defraud students.

10. Two former advocates for for-profit institutions, Taylor Hansen and Robert Eitel, reportedly joined the Department with Secretary DeVos, though Mr. Hansen resigned in March.

11. The for-profit educational institutions to which Messrs. Eitel and Hansen have ties stand to benefit from the policy and regulatory changes Education has made and continues to make under Secretary DeVos.

*DeVos Calendars & Logs FOIA*

12. On April 11, 2017, American Oversight submitted a FOIA request (“DeVos FOIA”) to Education seeking access to the following records:

- 1) All calendars or calendar entries for Betsy DeVos or any other political or SES appointees in the Office of the Secretary, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant). For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
- 2) Any logs or other records tracking incoming and outgoing telephone calls made or received by Betsy DeVos or any other political or SES appointees in the Office of the Secretary, or anyone placing or receiving telephone calls on behalf of those individuals.

The request sought records from February 7, 2017, to the date of the search. A copy of the DeVos FOIA request is attached hereto as Exhibit A and incorporated herein.

13. Education assigned the DeVos FOIA request the tracking number 17-01479-F.

14. On April 21, 2017, Education sent American Oversight a letter requesting clarification of a portion of the DeVos FOIA request. American Oversight responded with the requested clarification the same day that Education requested it.

15. On May 1, 2017, counsel for American Oversight contacted Education by phone to follow-up and was informed by the Education FOIA officer that Education had not received the clarification. American Oversight re-sent the clarification and confirmed that Education received it on that same day.

16. On May 12, 2017, Education sent American Oversight an email indicating that Education was conducting a search for responsive records.

17. American Oversight has received no further communication from Education regarding the processing of the DeVos FOIA request.

*Hansen/Eitel FOIA*

18. On April 11, 2017, American Oversight submitted a FOIA request (“Hansen/Eitel FOIA”) to Education seeking access to the following records:

- 1) All calendars or calendar entries for Taylor Hansen or Robert Eitel, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant). For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
- 2) Any logs or other records tracking incoming and outgoing telephone calls made or received by Taylor Hansen, Robert Eitel, or anyone placing or receiving telephone calls on behalf of those individuals.
- 3) Records reflecting any recusals or disqualifications for Taylor Hansen or Robert Eitel.

- 4) Any conflicts or ethics waivers or authorizations issued for Taylor Hansen, including authorizations pursuant to 5 C.F.R. § 2635.502.
- 5) Any conflicts or ethics waivers or authorizations issued for Robert Eitel, including authorizations pursuant to 5 C.F.R. § 2635.502.
- 6) All communications involving Taylor Hansen, Robert Eitel, or anyone acting on behalf of those individuals, relating to the decision to extend the deadline for appealing data determinations under the gainful employment rule.
- 7) All communications involving Taylor Hansen or anyone acting on his behalf relating to the decision to revoke guidance barring debt collectors from charging high fees for past-due loans.

The request sought records from February 7, 2017, to the date of the search. A copy of the Hansen/Eitel request is attached hereto as Exhibit B and incorporated herein.

19. Education assigned the Hansen/Eitel FOIA request the tracking number 2017-01480-F.

20. On May 2, 2017, Education granted American Oversight's request for waiver of fees associated with processing the Hansen/Eitel FOIA request.

21. American Oversight has received no further communication from Education regarding the processing of the Hansen/Eitel FOIA request.

*Exhaustion of Administrative Remedies*

22. Education has not responded to American Oversight's FOIA requests described in paragraphs 12 and 18, notwithstanding the obligation of the agency under FOIA to respond within twenty working days.

23. Through Education's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Search for Records Responsive to DeVos FOIA**

24. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

25. American Oversight properly requested records within the possession, custody, and control of Defendant.

26. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

27. Defendant has failed to review promptly agency records for the purpose of locating those records which are responsive to American Oversight's DeVos FOIA request.

28. Defendant's failure to conduct an adequate search for responsive records violates FOIA.

29. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's DeVos FOIA request.

**COUNT II**

**Violation of FOIA, 5 U.S.C. § 552**

**Wrongful Withholding of Non-Exempt Records Responsive to DeVos FOIA**

30. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

31. American Oversight properly requested records within the possession, custody, and control of Defendant.

32. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

33. Defendant is wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its DeVos FOIA request.

34. Defendant's failure to provide all responsive records violates FOIA.

35. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its DeVos FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

### **COUNT III**

#### **Violation of FOIA, 5 U.S.C. § 552**

#### **Failure to Conduct Adequate Search for Records Responsive to Hansen/Eitel FOIA**

36. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

37. American Oversight properly requested records within the possession, custody, and control of Defendant.

38. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

39. Defendant has failed to review promptly agency records for the purpose of locating those records which are responsive to American Oversight's Hansen/Eitel FOIA request.

40. Defendant's failure to conduct an adequate search for responsive records violates FOIA.

41. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's Hansen/Eitel FOIA request.

**COUNT IV**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Records Responsive to Hansen/Eitel FOIA**

42. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

43. American Oversight properly requested records within the possession, custody, and control of Defendant.

44. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

45. Defendant is wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its Hansen/Eitel FOIA request.

46. Defendant's failure to provide all responsive records violates FOIA.

47. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its Hansen/Eitel FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.



**REQUESTED RELIEF**

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search reasonably calculated to uncover all records responsive to American Oversight's FOIA requests submitted to Education on April 11, 2017;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: June 26, 2017

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

Elizabeth France

D.C. Bar No. 999851

John E. Bies

D.C. Bar No. 483730

AMERICAN OVERSIGHT

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Washington, DC 20005

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beth.france@americanoversight.org  
john.bies@americanoversight.org  
*Counsel for Plaintiff*

# Exhibit A



April 11, 2017

**VIA ELECTRONIC MAIL**

FOIA Public Liaison  
U.S. Department of Education  
Office of Management  
Office of the Chief Privacy Officer  
400 Maryland Avenue SW, LBJ 2E320  
Washington, DC 20202-4536  
[EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov)

**Re: Freedom of Information Act Request**

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations for the Department of Education (Education), 34 C.F.R. Part 5, American Oversight makes the following request for records.

Since Betsy DeVos took office as Secretary of Education, the Department has taken at least two actions that raise potential conflict of interest questions. First, the Department extended the deadline for appealing data determinations under the gainful employment rule, which requires institutions to provide data on the debt of their graduates relative to the graduates' earnings.<sup>1</sup> Second, the Department revoked guidance barring debt collectors from charging high fees for past-due loans.<sup>2</sup> Two former for-profit institution advocates, Taylor Hansen and Robert Eitel, reportedly joined the Department with the new Secretary.<sup>3</sup> Mr. Hansen has since resigned.<sup>4</sup> Notably, his father heads Strada Education Network, an entity that collects education debt and

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<sup>1</sup> Nick DeSantis, *U.S. Gives Colleges More Time for Appeals Under Gainful-Employment Rule*, CHRONICLE OF HIGHER ED., Mar. 6, 2017, <http://www.chronicle.com/blogs/ticker/u-s-gives-colleges-more-time-for-appeals-under-gainful-employment-rule/>.

<sup>2</sup> Danielle Douglas-Gabriel, *Trump Administration Rolls Back Protections for People in Default on Loans*, WASH. POST, Mar. 17, 2017, [https://www.washingtonpost.com/news/grade-point/wp/2017/03/17/trump-administration-rolls-back-protections-for-people-in-default-on-student-loans/?tid=a\\_inl&utm\\_term=.ecfe8a3b846a](https://www.washingtonpost.com/news/grade-point/wp/2017/03/17/trump-administration-rolls-back-protections-for-people-in-default-on-student-loans/?tid=a_inl&utm_term=.ecfe8a3b846a).

<sup>3</sup> Danielle Douglas-Gabriel, *Elizabeth Warren Questions the Hiring of For-Profit-College Officials at the Education Department*, WASH. POST, Mar. 20, 2017, [https://www.washingtonpost.com/news/grade-point/wp/2017/03/20/elizabeth-warren-questions-the-hiring-of-for-profit-college-officials-at-the-education-department/?utm\\_term=.5b1a1f8e337c](https://www.washingtonpost.com/news/grade-point/wp/2017/03/20/elizabeth-warren-questions-the-hiring-of-for-profit-college-officials-at-the-education-department/?utm_term=.5b1a1f8e337c).

<sup>4</sup> Annie Waldman, *Former Lobbying with For-Profit Colleges Quits the Department of Education*, PACIFIC STANDARD, Mar. 22, 2017, <https://psmag.com/former-lobbyist-with-for-profit-colleges-quits-the-department-of-education-ef3f33ec4135>.



whose lawsuit against the department was arguably rendered moot by the revocation of the debt collection guidance.<sup>5</sup>

Given these high-profile conflict of interest questions, American Oversight is seeking information to determine the scope of access Ms. DeVos and the Department may have provided to industry groups and others with a stake in educational regulation.

### Requested Records

American Oversight requests that Education produce the following within twenty business days:

1. All calendars or calendar entries for Betsy DeVos or any other political or SES appointees in the Office of the Secretary, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant). For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
2. Any logs or other records tracking incoming and outgoing telephone calls made or received by Betsy DeVos or any other political or SES appointees in the Office of the Secretary, or anyone placing or receiving telephone calls on behalf of those individuals.

Please provide all responsive records from February 7, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

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<sup>5</sup> See Douglas-Gabriel, *supra* note 3.

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>6</sup> **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>7</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered Education’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**<sup>8</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but Education’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that Education use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption”

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<sup>6</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>7</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>8</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

or “disclosure is prohibited by law.”<sup>9</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>10</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>11</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>12</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>13</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, Education is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and Education can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33(a), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this

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<sup>9</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>10</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>11</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>12</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>13</sup> *Mead Data Central*, 566 F.2d at 261.

request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>14</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>15</sup>

Disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>16</sup> The public interest in how Ms. DeVos is running the Department is plentiful.<sup>17</sup> The American people deserve to know how the Department is handling potential conflicts of interests and whether any outside individuals or groups have had an outsized influence on our educational policy.

This request is primarily and fundamentally for non-commercial purposes.<sup>18</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>19</sup> One example of American Oversight’s demonstrated public disclosure of documents and creation of editorial content is in its recently launched “Audit the Wall” effort, where the organization is gathering and analyzing information and commenting on public releases of information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border.<sup>20</sup>

Accordingly, American Oversight qualifies for a fee waiver.

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<sup>14</sup> 34 C.F.R. § 5.33(a).

<sup>15</sup> 34 C.F.R. § 5.33(a).

<sup>16</sup> 34 C.F.R. § 5.33(a)(1), (b)(1)-(4).

<sup>17</sup> See, e.g., *supra* notes 1-3; Erica L. Green, *Betsy DeVos Calls for More School Choice, Saying Money Isn’t the Answer*, N.Y. TIMES, Mar. 29, 2017, <https://www.nytimes.com/2017/03/29/us/politics/betsy-devos-education-school-choice-voucher.html>; Patrick Wall, *How Betsy DeVos Could End the School-Integration Comeback*, THE ATLANTIC, Mar. 20, 2017, <https://www.theatlantic.com/education/archive/2017/03/how-betsy-devos-could-end-the-school-integration-comeback/520113/>; Valerie Strauss, *Did Betsy DeVos Just Ask States to Ignore Part of Federal Education Law?*, WASH. POST, Mar. 14, 2017, [https://www.washingtonpost.com/news/answer-sheet/wp/2017/03/14/did-betsy-devos-just-ask-states-to-ignore-part-of-federal-education-law/?utm\\_term=.02171e242f01](https://www.washingtonpost.com/news/answer-sheet/wp/2017/03/14/did-betsy-devos-just-ask-states-to-ignore-part-of-federal-education-law/?utm_term=.02171e242f01).

<sup>18</sup> 34 C.F.R. § 5.33(c)(1)-(2).

<sup>19</sup> American Oversight currently has over 10,400 page likes on Facebook, and over 13,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 11, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 11, 2017).

<sup>20</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).



Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, reading "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers  
Executive Director  
American Oversight

# Exhibit B



April 11, 2017

**VIA ELECTRONIC MAIL**

FOIA Public Liaison  
U.S. Department of Education  
Office of Management  
Office of the Chief Privacy Officer  
400 Maryland Avenue SW, LBJ 2E320  
Washington, DC 20202-4536  
[EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov)

**Re: Freedom of Information Act Request**

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations for the Department of Education (Education), 34 C.F.R. Part 5, American Oversight makes the following request for records.

Since Betsy DeVos took office as Secretary of Education, the Department has taken at least two actions that raise potential conflict of interest questions. First, the Department extended the deadline for appealing data determinations under the gainful employment rule, which requires institutions to provide data on the debt of their graduates relative to the graduates' earnings.<sup>1</sup> Second, the Department revoked guidance barring debt collectors from charging high fees for past-due loans.<sup>2</sup> Two former for-profit institution advocates, Taylor Hansen and Robert Eitel, reportedly joined the Department with the new Secretary.<sup>3</sup> Mr. Hansen has since resigned.<sup>4</sup> Notably, his father heads Strada Education Network, an entity that collects education debt and

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<sup>1</sup> Nick DeSantis, *U.S. Gives Colleges More Time for Appeals Under Gainful-Employment Rule*, CHRONICLE OF HIGHER ED., Mar. 6, 2017, <http://www.chronicle.com/blogs/ticker/u-s-gives-colleges-more-time-for-appeals-under-gainful-employment-rule/>.

<sup>2</sup> Danielle Douglas-Gabriel, *Trump Administration Rolls Back Protections for People in Default on Loans*, WASH. POST, Mar. 17, 2017, [https://www.washingtonpost.com/news/grade-point/wp/2017/03/17/trump-administration-rolls-back-protections-for-people-in-default-on-student-loans/?tid=a\\_inl&utm\\_term=.ecfe8a3b846a](https://www.washingtonpost.com/news/grade-point/wp/2017/03/17/trump-administration-rolls-back-protections-for-people-in-default-on-student-loans/?tid=a_inl&utm_term=.ecfe8a3b846a).

<sup>3</sup> Danielle Douglas-Gabriel, *Elizabeth Warren Questions the Hiring of For-Profit-College Officials at the Education Department*, WASH. POST, Mar. 20, 2017, [https://www.washingtonpost.com/news/grade-point/wp/2017/03/20/elizabeth-warren-questions-the-hiring-of-for-profit-college-officials-at-the-education-department/?utm\\_term=.5b1a1f8e337c](https://www.washingtonpost.com/news/grade-point/wp/2017/03/20/elizabeth-warren-questions-the-hiring-of-for-profit-college-officials-at-the-education-department/?utm_term=.5b1a1f8e337c).

<sup>4</sup> Annie Waldman, *Former Lobbying with For-Profit Colleges Quits the Department of Education*, PACIFIC STANDARD, Mar. 22, 2017, <https://psmag.com/former-lobbyist-with-for-profit-colleges-quits-the-department-of-education-ef3f33ec4135>.



whose lawsuit against the department was arguably rendered moot by the revocation of the debt collection guidance.<sup>5</sup>

Given these high-profile conflict of interest questions, American Oversight is seeking information to determine the scope of access Ms. DeVos and the Department may have provided to industry groups and others with a stake in educational regulation.

### **Requested Records**

American Oversight requests that Education produce the following within twenty business days:

1. All calendars or calendar entries for Taylor Hansen or Robert Eitel, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant). For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
2. Any logs or other records tracking incoming and outgoing telephone calls made or received by Taylor Hansen, Robert Eitel, or anyone placing or receiving telephone calls on behalf of those individuals.
3. Records reflecting any recusals or disqualifications for Taylor Hansen or Robert Eitel.
4. Any conflicts or ethics waivers or authorizations issued for Taylor Hansen, including authorizations pursuant to 5 C.F.R. § 2635.502.
5. Any conflicts or ethics waivers or authorizations issued for Robert Eitel, including authorizations pursuant to 5 C.F.R. § 2635.502.
6. All communications involving Taylor Hansen, Robert Eitel, or anyone acting on behalf of those individuals, relating to the decision to extend the deadline for appealing data determinations under the gainful employment rule.
7. All communications involving Taylor Hansen or anyone acting on his behalf relating to the decision to revoke guidance barring debt collectors from charging high fees for past-due loans.

Please provide all responsive records from February 7, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this

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<sup>5</sup> See Douglas-Gabriel, *supra* note 3.

request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>6</sup> **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>7</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered Education’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**<sup>8</sup> Furthermore, agencies that have adopted the National Archives and

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<sup>6</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>7</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>8</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies,

**Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files.** For example, a custodian may have deleted a responsive email from his or her email program, but Education's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that Education use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>9</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>10</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>11</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>12</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>13</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, Education is on notice that litigation is reasonably foreseeable.

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“Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>9</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>10</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>11</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>12</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>13</sup> *Mead Data Central*, 566 F.2d at 261.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and Education can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33(a), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>14</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>15</sup>

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>16</sup> The public interest in how Ms. DeVos is running the Department is plentiful.<sup>17</sup> The American people deserve to know how the Department is handling potential conflicts of interests and whether any outside individuals or groups have had an outsized influence on our educational policy.

This request is primarily and fundamentally for non-commercial purposes.<sup>18</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the

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<sup>14</sup> 34 C.F.R. § 5.33(a).

<sup>15</sup> 34 C.F.R. § 5.33(a).

<sup>16</sup> 34 C.F.R. § 5.33(a)(1), (b)(1)-(4).

<sup>17</sup> See, e.g., *supra* notes 1-3; Erica L. Green, *Betsy DeVos Calls for More School Choice, Saying Money Isn’t the Answer*, N.Y. TIMES, Mar. 29, 2017, <https://www.nytimes.com/2017/03/29/us/politics/betsy-devos-education-school-choice-voucher.html>; Patrick Wall, *How Besty DeVos Could End the School-Integration Comeback*, THE ATLANTIC, Mar. 20, 2017, <https://www.theatlantic.com/education/archive/2017/03/how-betsy-devos-could-end-the-school-integration-comeback/520113/>; Valerie Strauss, *Did Betsy DeVos Just Ask States to Ignore Part of Federal Education Law?*, WASH. POST, Mar. 14, 2017, [https://www.washingtonpost.com/news/answer-sheet/wp/2017/03/14/did-betsy-devos-just-ask-states-to-ignore-part-of-federal-education-law/?utm\\_term=.02171e242f01](https://www.washingtonpost.com/news/answer-sheet/wp/2017/03/14/did-betsy-devos-just-ask-states-to-ignore-part-of-federal-education-law/?utm_term=.02171e242f01).

<sup>18</sup> 34 C.F.R. § 5.33(c)(1)-(2).

information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>19</sup> One example of American Oversight's demonstrated public disclosure of documents and creation of editorial content is in its recently launched "Audit the Wall" effort, where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>20</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight

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<sup>19</sup> American Oversight currently has over 10,400 page likes on Facebook, and over 13,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 11, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 11, 2017).

<sup>20</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).



**ATTACHMENT E****CIVIL COVER SHEET**

JS-44 (Rev. 3/16 DC)

<b>I. (a) PLAINTIFFS</b> American Oversight  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> U.S. Department of Education  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) Sara Kaiser Creighton American Oversight, 1030 15th Street NW, B255 Washington, DC 20005 202.869.5246	<b>ATTORNEYS (IF KNOWN)</b>  

<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div>	<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%; border: none;"> <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
	PTF	DFT		PTF	DFT																				
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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																				

**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 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 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)*
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<input type="radio"/> <b>E. General Civil (Other)</b>		<b>OR</b>	<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)  <i>*(If pro se, select this deck)*</i>	<input checked="" type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  <i>*(If pro se, select this deck)*</i>	<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)

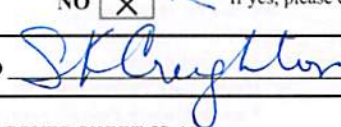
**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 5 U.S.C. 552. Defendant has failed to provide responsive records to a FOIA request.

<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> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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**VIII. RELATED CASE(S) IF ANY** (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE: 6/26/2017

SIGNATURE OF ATTORNEY OF RECORD: 

**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.

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

American Oversight

*Plaintiff*

v.

U.S. Department of Education

*Defendant*

)  
)  
)  
)  
)  
)  
)

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

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

Channing D. Phillips  
U.S. Attorney for the District of Columbia  
555 4th Street NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) 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:

American Oversight  
1030 15th Street NW, B255  
Washington, DC 20005

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

*ANGELA D. CAESAR, 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 \$ \_\_\_\_\_ 0.00.

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:

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

American Oversight

*Plaintiff*

v.

U.S. Department of Education

*Defendant*

)  
)  
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)

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

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

Jeff Sessions  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) 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:

American Oversight  
1030 15th Street NW, B255  
Washington, DC 20005

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

*ANGELA D. CAESAR, 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 \$ \_\_\_\_\_ 0.00.

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:

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

American Oversight

*Plaintiff*

v.

U.S. Department of Education

*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

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

U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) 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:

American Oversight  
1030 15th Street NW, B255  
Washington, DC 20005

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

*ANGELA D. CAESAR, 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 \$ \_\_\_\_\_ 0.00.

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: