

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CENTURY FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendant.

18 Civ. 3581 (NRB)

**NOTICE OF WITHDRAWAL OF
MOTION TO INTERVENE (Dkt. 9)**

Proposed Intervenor the Accrediting Council for Independent Colleges and Schools (“ACICS”), by and through its counsel of record, hereby provides notice to the Court and all interested parties of the voluntary withdrawal of the Letter Motion to Intervene [Dkt. 9], and by this notice withdraws its application for intervention.

During the telephonic hearing on May 24, 2018, the parties, and the Court, acknowledged that the Department of Education (“ED”) was uniquely positioned to assert the deliberative process privilege and protect the Draft Staff Analysis from improper disclosure. Notwithstanding, the Court determined that ED did not assert the privilege and that ACICS could not do so.¹

¹ ACICS maintains that the information Plaintiff seeks is protected against disclosure under the deliberative process privilege. The draft staff analysis is a preliminary report that was prepared solely for pre-decision deliberations, as contemplated under the process. *See* 34 CFR 602.32(c). Moreover, the report consists of confidential trade secret, commercial and/or financial information the ED staff obtained through visits and other investigatory means and was clearly stated to be exempt from disclosure on the ED’s own website. Indeed, the confidential ED portal through which ACICS was provided this information stated unambiguously that the Draft Staff Report, without ACICS’s response, is exempt from FOIA disclosure. *See* Decl. of M. Edwards, Dkt. 9-1. Furthermore, disclosure of such information risks public confusion and harm to institutions and students making significant decisions, including immigration decisions.

Although Proposed Intervenor appreciates Plaintiff and the Court's creative proposal for ACICS to prepare a line-by-line analysis with argument explaining why each line in the voluminous draft staff analysis and exhibits falls under one or more FOIA exemptions, ACICS must decline; such an effort would be exceedingly resource-intensive. Thus, ACICS has no option but to withdraw its application for intervention.

Nonetheless, we thank the Court for the time and opportunity to be heard on this matter.

Dated: June 5, 2018

By: /s/ Allyson B. Baker
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2018, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the counsel of record, all of whom are registered CM/ECF users.

Dated: June 5, 2018

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