

August 1, 2019

VIA ELECTRONIC MAIL

OSD/JS FOIA Requester Service Center  
Freedom of Information Division  
1155 Defense Pentagon  
Washington, DC 20301-1155  
Fax (571) 372-0500

*Re: Freedom of Information Act Request*

Dear OSD/JS FOIA Requester Service Center:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the implementing regulations promulgated thereunder for the United States Department of Defense (“the Department”), the National Student Legal Defense Network (“NSLDN”) makes the following request for information related to the Department’s My Career Advancement Account Scholarship Program (“MyCAA”) for military spouses.

**Background**

MyCAA is a federally funded “workforce development program that provides up to \$4,000 of tuition assistance to eligible military spouses.” See <https://mycaa.militaryonesource.mil/mycaa>. As the Department describes:

The scholarship assists military spouses in pursuing licenses, certificates, certifications or associate degrees necessary to gain employment in high-demand, high-growth portable career fields and occupations. Spouses may use their My Career Advancement Account Scholarship funds at any academic institution approved for participation in the scholarship.

*Id.*

In January 2014, the Department, in collaboration with the Departments of Veterans Affairs (“VA”) and Education (“ED”), launched the DoD Postsecondary Education Complaint System (“PECS”). While the Department has published reports reflective of complaint actions received in Fiscal Years 2014 and 2015, NSLDN is not aware of any subsequent reporting on complaints by the Department.

**Request**

NSLDN hereby requests that the Department produce the following within twenty business days:

1. Documents sufficient to show the total number of individuals that have used the MyCAA grant since its inception.
2. Documents sufficient to show the total number of individuals that used the MyCAA grant in each of the following years: 2016, 2017, 2018, and 2019.
3. Documents sufficient to identify the schools (top 10) that have enrolled the largest number of MyCAA grant students since the grants inception, including, for each school, the total number of students that have used financial assistance through MyCAA program.
4. Documents sufficient to identify the schools (top 10) that have enrolled the largest number of MyCAA grant students in each of the following years including, for each school, the total number of students that used financial assistance through the MyCAA program in each year: 2016, 2017, 2018, and 2019.
5. Documents sufficient to show the total number of complaints filed with the Department's Postsecondary Education Complaint System (PECS) in each of the following years: 2016, 2017, 2018, and 2019.
6. Documents sufficient to show the schools that received the most complaints (top ten) with the Department's Postsecondary Education Complaint System (PECS) in each of the following years, including the number of complaints received for each school in each year: 2016, 2017, 2018, and 2019.

***Note: For each of these requests, in lieu of documents NSLDN would accept charts providing the requested information.***

FOIA presumes disclosure. Indeed, “[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a ‘strong presumption in favor of disclosure.’” *AP v. FBI*, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516 at \*10 (D.D.C. Sept. 30, 2017) (quoting *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, *i.e.*, if disclosure would “harm an interest protected by an exemption” or is otherwise “prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). If the Department takes the position that any portion of any requested record is exempt from disclosure, NSLDN requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Dep’t of Educ.*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide NSLDN with a Vaughn Index “which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption’s relevance.” *Id.* (citing *Johnson v. Exec. Office for U.S. Att’ys*, 310 F.3d 771, 774 (D.C. Cir. 2002)). *See also Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification

specifically identifying the reasons why the exemption is relevant. *See generally King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In addition to the records requested above, NSLDN also requests records describing the processing of this request, including records sufficient to identify search terms used (if any); the locations and custodians searched; and any tracking sheets, questionnaires, emails, or certifications completed by, or sent to, Department personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

NSLDN 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, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, the Department has a duty to construe a FOIA request liberally.

In conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available. Recent technology advances may render the Department’s prior FOIA practices unreasonable. Moreover, not only does this request require the agency to conduct a search, but individual custodians must conduct their own searches in order to make sure that documents are appropriately collected.

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, NSLDN welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material via email to [alex@nsldn.org](mailto:alex@nsldn.org). We welcome any materials that can be provided on a rolling basis. Nevertheless, NSLDN fully intends to hold the Department to the timeframe required by statute for a response to this request.

### **Request for Waiver of Fees**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 32 CFR § 286.12(1), NSLDN requests a waiver of fees associated with the processing of this request because: (1) 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; *and* (2) disclosure of the information is not primarily in the commercial interest of the requester.

*Disclosure of Information is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government*

**1. The FOIA request specifically relates to the operations or activities of the government.** The documents requested herein relate directly to the Department's management and operation of the MYCAA program. The documents at issue therefore directly relate to the operations of the government.

**2. The requested documents will likely contribute to an understanding of those specific operations or activities.** The requested documents are essential to understanding the scope and scale of the MYCAA program generally, as well as how it applies to specific institutions. As such, they will contribute to a greater understanding of the Department's function as related to the MYCAA program.

**3. The disclosure will contribute to a greater understanding on the part of the public at large.** NSLDN seeks this information to increase public understanding of the scope and scale of MYCAA program generally, as well as how it is used by various institutions. NSLDN has the capacity to analyze any documents provided and disseminate its analysis to the public through its website and other sources.

**4. Disclosure will "significantly" contribute to the public's understanding of government activities.** This request seeks information that will allow NSLDN to more completely understand the nature and scope of the MYCAA program. Moreover, NSLDN's analysis of this information will inform the public about the program, thereby enhancing the public's understanding. Disclosure of this information will therefore significantly contribute to the public's understanding of this important Department program.

*Disclosure of Information is Not in the Commercial Interest of NSLDN*

This request is fundamentally non-commercial. NSLDN is a non-profit, non-partisan 501(c)(3) organization. NSLDN's mission is to work, through a variety of means, to advance students' rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. We also believe that transparency is critical to fully understanding the government's role in student protections and promoting opportunity. As noted above, NSLDN has the capacity to make the information it receives available to the public through reports, social media, press releases, litigation filings, and regulatory comments to government agencies. For these reasons, NSLDN qualifies for a fee waiver.

\* \* \*

NSLDN looks forward to working with you on this request. If you have any questions or concerns, or anticipate any problems in complying with this request, please contact me at [alex@nslldn.org](mailto:alex@nslldn.org). If NSLDN's request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact me immediately.

U.S. Department of Defense  
OSD/JS FOIA Requester Service Center  
August 1, 2019  
Page 5 of 5

Sincerely,

/s/ Alexander Elson

Alexander Elson  
Senior Counsel  
National Student Legal Defense Network  
1015 15<sup>th</sup> St NW, Suite 600  
Washington DC, 20005  
[alex@nsldn.org](mailto:alex@nsldn.org)