

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

ELECTRONIC PRIVACY INFORMATION CENTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 1:13-cv-0345 (GK)
	)	
U.S. DEPARTMENT OF EDUCATION,	)	
	)	
Defendant.	)	

**DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE**

Defendant, per Local Civil Rule 7(h), submits the following material facts not in genuine dispute.

**The Department’s Office for Federal Student Aid and Its Mission**

1. Federal Student Aid (“FSA”) is a principal office of the U.S. Department of Education (“Department”) devoted to insuring that all eligible students can benefit from federal financial assistance for education or training beyond high school. See Declaration of Ann Marie Pedersen, attached at Attachment 1 to Defendant’s Motion for Summary Judgment (hereafter, “Pedersen Decl.”) at ¶ 9.
2. Under the Higher Education Act Amendments of 1998, FSA became the government’s first Performance-Based Organization to enhance its services through increased flexibility and performance incentives in exchange for greater accountability and results. Id.
3. FSA provides student financial assistance in the form of grants, loans, and campus-based programs. Id. In FY 2012, FSA provided approximately \$142 billion in financial aid to 15

million students at 6,300 postsecondary institutions. Id. FSA's 1,200 employees operate out of offices in Washington, DC, and in ten regional offices across the United States. Id.

4. FSA has the responsibility to effect the repayment of these loans in order to recoup the taxpayers' substantial investment in the higher education of student loan borrowers. Id. at ¶ 10. Loans in repayment are handled by servicers incentivized to work with borrowers to keep them in a regular payment pattern and to prevent borrowers from going into default. Id. To this end, there are many Title IV benefits, flexibilities, and entitlements available to a borrower, such as deferments, forbearances, and a variety of repayment plans, including ones based on the borrower's income. Id.
5. For a borrower to default on a student loan, the borrower must be 360 days delinquent on the loan. Id. at ¶ 12. Once an account goes into default, it enters the default system for collections, the borrower loses all Title IV benefits and, pursuant to the terms of the promissory note signed by every borrower, the total amount of the loan, plus interest, becomes immediately due and payable. Id. All resolutions of defaulted student loan accounts other than immediate payment in full are compromise settlements agreed to at the discretion of FSA's Default Division. Id.
6. FSA's Default Division is responsible for FSA's student loan default portfolio which totals more than \$52 billion in loans made to more than four million borrowers. Id. at ¶ 14. The Default Division manages the Department's program to collect on defaulted student loans, and is responsible for review and oversight of FSA debt collection policies and procedures to ensure their compliance with applicable laws and regulations. Id. The Default Division also conducts required reviews to ensure that testing is completed on all new functions being added to the Debt Management and Collections System (DMCS). Id. The DCMS allows

FSA staff to manage more than four million borrower accounts through the default collection processes and to report out the status of a borrower based on federal regulations. Id.

7. In order to carry out its statutory and regulatory responsibilities to collect on defaulted student loans, FSA contracts with Private Collection Agencies (PCAs), operating under a performance-based contract that facilitates competition among PCAs and rewards those PCAs that can meet FSA priorities and goals (i.e., demonstration of respect for borrowers and achieving increased collection rates even as the default portfolio increases). Id. at ¶ 15. FSA's PCAs are only compensated on collections received.
8. FSA has worked over the past 15 years to develop procedures intended both to allow necessary FSA oversight of these contractors and to permit each PCA the flexibility needed to customize its collection work to achieve maximum recoupment of the defaulted loans owed to the taxpayers in accordance with all applicable laws. Id. These procedures and other PCA requirements are detailed in the PCA Procedures Manual. Id.

**Plaintiff's FOIA Request and the Department's Response**

9. By letter dated September 20, 2012, Plaintiff, the Electronic Privacy Information Center (Plaintiff or EPIC), submitted the FOIA request at issue in the litigation in which this Declaration is being filed. The Department administratively denominated EPIC's request FOIA Request No. 12-02019-F and assigned the request to the office Communications Office for the Office of Federal Student Aid for processing because it sought the following FSA records:

1. The most currently updated version of the "PCA Procedures Manual" that the Department publishes as guidance for its debt-collection contractors. The 2009 version of this manual was prepared by the Federal Student Aid Operation Services Processing Division.

2. All “Certification of Privacy Act Training” forms, “Quality Control Reports,” and “Security Awareness and Privacy Act Training Reports” submitted by private debt-collection firms to the Department of Education during the last three years.

See Pedersen Decl. at ¶ 4.

10. The Department identified a total of 2,832 pages of FSA records as responsive to EPIC’s FOIA request. Id. at ¶ 5. The scope of Plaintiff’s FOIA request is undisputed and Plaintiff does not challenge the adequacy of FSA’s search for records responsive to the request. Id. at ¶ 5; see also EPIC v. Dep’t of Educ., Civil Action No. 13-345-GK, ECF No. 17 (Status Report by the Parties) at 1.
11. By letter dated November 1, 2012, Plaintiff filed an administrative appeal under the FOIA for the Department’s failure to respond to EPIC’s FOIA request. See Pedersen Decl. at ¶ 6. On March 15, 2013, Plaintiff filed this FOIA lawsuit claiming that the Department had improperly denied access to the records responsive to its request. Id. at ¶ 7.
12. By letters dated May 1, 2013, May 31, 2013 and September 26, 2013, the Department released to Plaintiff a total of 2,832 pages of records responsive to EPIC’s FOIA request. However, the Department withheld 2,690 pages, or portions of pages, of responsive records, on the grounds that the information contained therein was exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(4) and/or (7)(E) (respectively, FOIA Exemptions 4 and 7(E)). Id. at ¶ 8.
13. After narrowing the issues for resolution, the parties proposed a briefing schedule for motions for summary judgment. EPIC v. Dep’t of Educ., Civil Action No. 13-345-GK, ECF No. 17 (Status Report by the Parties) at 2, which the Court adopted in an Order dated August 20, 2013. ECF No. 18.

14. The declaration of Ann Marie Pedersen and accompanying documents set forth the grounds for the Department's withholdings under the applicable FOIA exemptions. See Pedersen Decl. ¶¶ 17-39.

Dated: September 27, 2013

Respectfully submitted,

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