

March 14, 2017

Via U.S. Mail & FOIAonline

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

Re: Request for Records Under the Freedom of Information Act

Dear Freedom of Information Officer:

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the U.S. Department of Justice, 28 C.F.R. pt. 16, and the U.S. Department of Education, 34 C.F.R. pt. 5, (collectively, "the Departments"), on behalf of the Southern Poverty Law Center ("SPLC").

On February 22, 2017, the Departments withdrew guidance documents that advised schools to treat transgender students consistent with their gender identity because the prohibition of discrimination on the basis of sex in Title IX of the Education Amendments of 1972 and its implementing regulations includes discrimination based on a student's gender identity. *See* Letter

from Sandra Battle, Acting Assistant Sec'y for Civil Rights, U.S. Dep't of Educ., & T.E. Wheeler, II, Acting Assistant Attorney Gen. for Civil Rights, U.S. Dep't of Justice, to Colleagues (Feb. 22, 2017), <https://www.justice.gov/opa/press-release/file/941551/download>. SPLC seeks information about what individuals or groups of individuals, if any, attempted to influence the Departments' decision to withdraw this guidance.

Pursuant to FOIA and the Departments' implementing regulations, I request, on behalf of SPLC, that the Departments* promptly make available in electronic format any and all records that refer or relate to the Departments' decision to withdraw this guidance. This request includes any and all records received from or sent to persons outside the Departments—including individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, White House officials, and government officers or entities such as state attorneys general and their offices—that refer or relate to whether the Departments should withdraw this guidance.

SPLC requests a fee waiver or reduction pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 28 C.F.R. § 16.10(k), and 34 C.F.R. § 5.33. First, disclosure of this information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The Departments' decision to withdraw this guidance has already affected a case of national importance before the U.S. Supreme Court. The Court had agreed to decide not only whether courts owe deference to the guidance, but also whether the guidance correctly interpreted Title IX and its implementing regulations to protect transgender students. But because the Departments withdrew the guidance, the Court vacated the lower court's decision and remanded the case. *See Gloucester Cty. Sch. Bd. v. G.G.*, 580 U.S. ____ (2017) (No. 16-273), https://www.supremecourt.gov/orders/courtorders/030617zor_6j37.pdf. Although the Departments' decision to withdraw the guidance did not alter the effect or scope of Title IX's protections for transgender students, it did signal to the entire country that the Departments no longer are willing to defend or enforce these protections for transgender individuals. Further, news reports revealed that the Secretary of Education initially resisted withdrawing the guidance because of the potential harm that rescinding the protections could cause transgender students, until she was pressured to do so by the Attorney General and the President. *See, e.g.*, Jeremy W. Peters et al., *Trump Rescinds Rules on Bathrooms for Transgender Students*, N.Y. TIMES (Feb. 22, 2017), <https://nyti.ms/2lvj0XA>. The public has a significant interest in knowing whether hate groups, for example, which SPLC is known for tracking, exposing, and litigating against, helped influence or attempted to influence the Departments' new interpretation of Title IX. SPLC intends to disseminate this information to the public through, for example, its website, social media, email, and press releases.

Second, disclosure is not in SPLC's commercial interest. SPLC is a tax-exempt, charitable organization that monitors and reports on hate groups and other extremists and litigates pro bono to bring about systemic reforms.

* Including, but not limited to, the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Civil Division, the Civil Rights Division, the Office of Legal Counsel, the Office of Legal Policy, and the Office of the Solicitor General.

If any Department or component of a Department denies a fee waiver, then that Department or component should inform me if the fee will exceed \$1,000 before fees are incurred. SPLC nonetheless reserves the right to appeal.

Please feel free to contact me by phone or email if necessary to discuss this request.

Respectfully,



David C. Dinielli, *Deputy Legal Director*

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