

September 8, 2021

Paul Easton, Compliance Team Leader, included 600 plus pages of the complainant supplied evidence. Complainant did not request this evidence; however, "FOIA Exemption (b) (5) was cited, specifically as a reason documents were not included in FOIA request 21-00073-FP-A. The incomplete FOIA submission and cover letter were dated Friday, September 3, 2021; however, this information was not made available to Complainant until September 8, 2021. The reason cited was that the records were pre-decisional and deliberative of agency policy of legal matters." Since the appeal to Allegation # 1 01-21-1535 is due September 29, 2021, we respectfully request an expedited decision on the FOIA appeal.

According to the Department of Justice (<https://www.justice.gov/oip/foia-guide-2004-edition-exemption-5>)

In Tax Analysts, 117 F.3d at 617 (finding chief counsel's "nonbinding" Field Service Advice to field offices **to be not** pre-decisional because they "constitute agency law"). In addition, Mr. Easton and his agent Carol Kennedy-Merrill made a decision (post-decisional) not to accept **Allegation 1, Complaint 01-21-1535**, specifically citing **Section 106 and 107** of the case processing manual which the public relies upon as agency policy, and therefore all of Ms. Kennedy-Merrill files pertinent to this decision would not fall under FOIA Exemption (b)(5). Post-decisional documents such as the decision to not accept **Allegation 1, Complaint 01-21-1535** embody statements of policy and final opinions that have the force of law,<sup>(84)</sup> that implement an established policy of an agency,<sup>(85)</sup> or that explain actions that an agency has already taken.<sup>(86)</sup> *Exemption 5 does not apply to post-decisional documents, as "the public is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted."*<sup>(87)</sup> *I and other taxpayers rely on OCR's Case Processing Manual.*

84. See, e.g., Taxation With Representation Fund v. IRS, 646 F.2d 666, 677-78 (D.C. Cir. 1981).
85. See, e.g., Brinton v. Dep't of State, 636 F.2d 600, 605 (D.C. Cir. 1980); Nissei Sangyo Am., Ltd. v. IRS, No. 95-1019, 1997 U.S. Dist. LEXIS 22473, at \*\*23-24 (D.D.C. May 8, 1997) (magistrate's recommendation) (declining to apply deliberative process privilege to results of tax audit in which agency was merely "applying published tax laws to factual information regarding a taxpayer"), adopted (D.D.C. Jan. 28, 1998).
86. See, e.g., Sears, 421 U.S. at 153-54; Judicial Watch, Inc. v. HHS, 27 F. Supp. 2d 240, 245 (D.D.C. 1998) ("deliberative process privilege does not protect documents that merely state or explain agency decisions"); cf. Horowitz v. Peace Corps, No. 00-0848, slip op. at 9-10 (D.D.C. Oct. 12, 2001) (ordering parties to submit additional evidence of whether final decision had been made at time disputed memorandum was written). But cf. Murphy v. TVA, 571 F. Supp. 502, 505 (D.D.C. 1983) (protecting two "interim" decisions, which agency retains option of changing).
87. Sears, 421 U.S. at 152.

/s/

Joanne C Jewell, CPA

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Request #	Date Filed	Due date	Delay Letter	Date Appealed	Appeal #	Description
						<p>RE: Dismissal of complaint 01-21-1648</p> <p>1) Please provide all documents in the Case Planning file (description of the contents are from the Case Processing Manual – Office of Civil Rights) from U.S. Department of Education's Office of Civil Rights (OCR) on Complaints #'s 01-21-1648 filed by Joanne Jewell and Todd Jewell against Essex Westford School District. This information is post-decisional since OCR dismissed the retaliation complaint. In Tax Analysts, 117 F.3d at 617 (finding chief counsel's "nonbinding" Field Service Advice to field offices to be not pre-decisional because they "constitute agency law) Post-decisional documents such as the decision to not accept, Complaint 01-21-1648 embody statements of policy and final opinions that have the force of law, (84) that implement an established policy of an agency, (85) or that explain actions that an agency has already taken. (86) Exemption 5 does not apply to post-decisional documents, as "the public is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted." (87) and other taxpayers rely on OCR's Case Processing Manual.</p> <p>2) Provide all emails between OCR employees, Office of the Inspector General and FOIA office regarding this complaint and complainant regarding Complaint # 01-21-1648.</p> <p>84. See, e.g., Taxation With Representation Fund v. IRS, 646 F.2d 666, 677-78 (D.C. Cir. 1981).</p> <p>85. See, e.g., Brinton v. Dep't of State, 636 F.2d 600, 605 (D.C. Cir. 1980); Nissei Sangyo Am., Ltd. v. IRS, No. 95-1019, 1997 U.S. Dist. LEXIS 22473, at **23-24 (D.D.C. May 8, 1997) (magistrate's recommendation) (declining to apply deliberative process privilege to results of tax audit in which agency was merely "applying published tax laws to factual information regarding a taxpayer"), adopted (D.D.C. Jan. 28, 1998).</p> <p>86. See, e.g., Sears, 421 U.S. at 153-54; Judicial Watch, Inc. v. HHS, 27 F. Supp. 2d 240, 245 (D.D.C. 1998) ("deliberative process privilege does not protect documents that merely state or explain agency decisions"); cf. Horowitz v. Peace Corps, No. 00-0848, slip op. at 9-10 (D.D.C. Oct. 12, 2001) (ordering parties to submit additional evidence of whether final decision had been made at time disputed memorandum was written). But cf. Murphy v. TVA, 571 F. Supp. 502, 505 (D.D.C. 1983) (protecting two "interim" decisions, which agency retains option of changing).</p> <p>87. Sears, 421 U.S. at 152.</p>
22-01347-PA	2/22/22	3/22/22				
22-01988-F	2/22/22	3/22/22				<p>Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., and the Department of Education FOIA regulations at 34 C.F.R. Part 5</p> <p>The time period for this request is April 20, 2021, to the date the search is conducted.</p> <p>All communications including attachments that references Keegan Jewell, and or Saige Jewell, and or Joanne Jewell, and or Todd Jewell sent to or from EWSD employees, EWSD's Attorneys, OCR and FOIA employees to include but not limited to:</p> <p>I request that the Office of Civil Rights, Department of Education produce the following within twenty (20) business days:</p> <p>1)</p> <p>Paul Easton                      Kaleigh Hogan                      Carol Kennedy-Smith                      Benita Brambhatt                      Gregory Smith                      Arthur Caligurian                      Erin Maguire                      Beth Cobb                      Heather Lynn                      Pietro Lynn                      Dylan McNamara                      Andrew Roy                      Hollee Kennison                      Tamara Parks                      Jake Orr                      Patrick Merriam</p> <p>Employees of the Office of the Inspector General for Education</p> <p>Please search for records regardless of format, including paper records, electronic records, audio tapes, video tapes, data and graphical material. This request includes without limitation, all correspondence, letters, email, text messages, calendar entries, facsimiles, telephone messages, voicemail messages, and transcripts, notes, minutes, or audio or video recordings of any meeting, telephone conversations, or discussions.</p> <p>FOIA requires agencies to disclose information with only limited exceptions for information that would harm an interest protect by a specific exemption or where disclosure is prohibited by law. 5 USC 552 (a)(8)(A). In the event that any of the related requested documents cannot be withheld, we further request that you state with specificity the descript of the document to be withheld and the legal and factual ground for withholding any documents or portions thereof in an index as required by Vaughn c. Rose, 484 F.2d 820 (D.C. Cir 1973). Should any document include both disclosable and non-disclosable material that cannot be reasonable segregated, I request that you describe what proportion of the information is non-disclosable and how that information is dispersed throughout the document. Mean Data Cent., Inc. v. U.S. Dep't of Air Force, 556 F.2d 242, 261 (D.C. Cir 1977).</p>

22-019914 2/22/22 3/22/22

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., and the Department of Education FOIA regulations at 34 C.F.R. Part 5

The time period for this request is September 01, 2020, to the date, the search is conducted.

I request that the Office of Civil Rights, Department of Education produce the following within twenty (20) business days:

Complaint 01-22-1032, was the refiling of Complaint 01-21-1535 dated October 22, 2021. OCR advised complainant/whistleblower to refile per Case Processing Manual 108 i within sixty (60) days of the completion of an internal grievance procedure with the School District. The OCR Boston Field Office accepted the new thirty-three-page complaint **and** unilaterally edited the time frame of the complaint. Since the Boston field office of OCR decided to edit the complaint time frame which is not consistent with the dates in both complaints, I hereby request the following post decisional documentation:

- 1) Complete case file of both Complaint 01-22-1032 and 01-21-1535, this includes but not limited to:
  - a) All emails, to include but not limited to/from OCR, FOIA OIG, EWSD School district personnel and EWSD School Attorneys
  - b) Notes stored both inside and outside of OCR's electronic case management system (regardless of the name of the software)
  - c) All documentation inside of OCR case software
- 2) Complaint 01-22-1032:
  - a) Copy of Letter sent to School district opening the complaint
  - b) Copy of the document request of OCR made to the school district to investigation allegations

FOIA requires agencies to disclose information with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 USC 552 (a)(8)(A). In the event that any of the related requested documents cannot be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual ground for withholding any documents or portions thereof in an index as required by Vaughn v. Rose, 484 F.2d 820 (D.C. Cir 1973). Should any document include both disclosable and non-disclosable material that cannot be reasonably segregated, I request that you describe what proportion of the information is non-disclosable and how that information is dispersed throughout the document. Mean Data Cent., Inc. v. U.S. Dep't of Air Force, 556 F.2d 242, 261 (D.C. Cir 1977).

If requested records are located in, or originated in, another agency, department, office, installation, or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. §552(a)(6)(A)(i). If all of the requested documents are not available within that time period, I request that you provide all requested documents or portions of documents that are available within that time period and provide an alternate date when the remaining records will be available. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. §552(a)(4)(A)(viii)(I).