

## **EXHIBIT 3**

## Natalie Christmas

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**From:** Hubbard, Mormon <edfoiamanager@ed.gov>  
**Sent:** Monday, February 27, 2023 11:56 AM  
**To:** Natalie Christmas  
**Subject:** 23-01096-F Fee Waiver and Expedited Processing Determinations  
**Attachments:** Fee Waiver - Natalie Christmas.docx; Expedited Processing - Natalie Christmas.docx

Dear Natalie Paige Christmas,

Please find attached above, the final response to your Fee Waiver and Expedited Processing requests.

Sincerely,

FOIA Service Center

US Department of Education

(202) 401-8365



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF THE SECRETARY

FOIA Service Center

February 27, 2023

Natalie Paige Christmas  
Florida Attorney General's Office  
PL-01 The Capitol  
Tallahassee, 32399

RE: FOIA Request No. 23-01096-F

This letter is in response to your request dated February 23, 2023, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on February 24, 2023. Your request has been assigned to the appropriate office(s) within the Department to search for documents that may be responsive to your request.

In your request, you have asked for a waiver of all fees associated with the processing of your request. After reviewing your fee waiver request, your request for a fee waiver is denied.

The Department has concluded that you have failed to provide sufficient information to demonstrate your entitlement to a waiver of processing fees. More specifically, justification has not been provided to explain how the requested records would contribute significant information to the public's understanding of the Department's operations. You have also not provided any evidence demonstrating public interest in the documents.

Accordingly, your requester category is determined to be an "all other use" requester and, therefore, subject to search fees after the first 2 hours, and duplication fees after the first 100 pages or \$3.00 per CD.

You indicated that you are willing to pay \$25 for fees associated with processing your request. Until a search is completed and the number of pages is established, a firm estimate of potential fees cannot be provided. You will be notified if the fees associated with your request will exceed \$25.00.

Attached is general information of the FOIA Fees and Waivers. Should you still wish to claim that the Department's processing fees should be waived, you must provide more specific and detailed evidence to support your claims under each statutory requirement described in the FOIA, available on the internet at: [www.usdoj.gov/foia](http://www.usdoj.gov/foia) and outlined in the attachment to this letter.

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation.

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FOIA Request No. 23-01096-F

They can be contacted by:

Mail	FOIA Public Liaison Office of the Secretary U.S. Department of Education 400 Maryland Ave., SW LBJ 7W104 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	<a href="mailto:robert.wehausen@ed.gov">robert.wehausen@ed.gov</a>	<a href="mailto:OGIS@nara.gov">OGIS@nara.gov</a>
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal; it should be accompanied by a copy of this letter, the initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in resolving your appeal. Appeals may be submitted using the on-line form available at [www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf](http://www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf).

Appeals can also be submitted by:

E-mail: [EDFOIAappeals@ed.gov](mailto:EDFOIAappeals@ed.gov)  
Fax: 202-401-0920  
Mail: Appeals Office  
Office of the Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW, LBJ 7W104  
Washington, DC 20202-4500

If you have any questions, or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) (please include the case number).

Sincerely,

*Elise Cook*  
Government Information Specialist

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FOIA Request No. 23-01096-F

Enclosure

**Freedom of Information Act FEES AND FEE Waivers  
(General Information)**

The FOIA authorizes agencies to recover from requesters certain costs associated with processing requests made under the Act. 5 U.S.C. § 552 (a)(4)(A)(i) and (ii). The statute further provides for such fees to be waived in whole or in part where “disclosure of the 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 is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii)(2000); 34 C.F.R. § 5.64.

To qualify for a fee waiver, requesters must meet two statutory requirements. First, the requester must support the request with evidence that establishes that disclosure of the information sought is in the public interest. In order to determine this, the Department must consider the following four factors in order:

1. The subject matter of the requested records themselves must specifically concern identifiable “operations or activities of the government”;
2. In order for the disclosure to “likely contribute” to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request;
3. The disclosure must contribute to the “understanding of the public at large,” as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester’s subject matter expertise and intentions, ability, and methods of disseminating information to the public; and
4. The disclosure must “contribute significantly” to public understanding of government operations or activities.

Requesters must meet all four elements of the public interest test outlined above to satisfy this first statutory requirement for a fee waiver. See Judicial Watch, Inc. v. Department of Justice, No. 03-5093, 2004 WL 980826 (D.C. Cir. May 7, 2004).

If the first statutory requirement is met, the Department will then also determine whether the “disclosure of the information...is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). To determine whether this second requirement has been satisfied, the Department must consider the following two factors in order:

5. Does the request involve any “commercial interest of the requester” (if not, the requester satisfies the second prong of the statutory fee waiver test); and
6. If so, the agency must balance the requester’s commercial interest against the identified public interest in disclosure for the purpose of ascertaining which is the “primary interest;” a fee waiver or reduction may granted only where the public interest in disclosure is greater in magnitude than the requester’s commercial interest.



## UNITED STATES DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

#### FOIA Service Center

May 25, 2023

Natalie Paige Christmas  
 Florida Attorney General's Office  
 PL-01 The Capitol  
 Tallahassee, 32399

RE: FOIA Request No. 23-01096-F

Dear Natalie Paige Christmas:

This letter is in response to your request dated February 23, 2023, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on February 24, 2023. Your request has been assigned to the appropriate office(s) within the Department to search for documents that may be responsive to your request.

You have asked for expedited processing of your request. That request is denied. The Department has concluded that you have not demonstrated a compelling need for the information. In addition, you have not substantiated that there is an urgency to inform the public concerning any actual or alleged Federal Government activity.

Enclosed with this letter is a general informational sheet for Expedited Processing. Should you still wish to claim that your request should be granted expedited processing, you must provide more specific and detailed evidence to support your claims under each statutory requirement described in our FOIA regulations available on the internet at: <https://www2.ed.gov/policy/gen/leg/foia/foiatoc.html> and outlined in the attachment to this letter.

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Secretary U.S. Department of Education 400 Maryland Ave., SW LBJ 7W104 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road, Room 2510 College Park, MD 20740-6001
E-mail	<a href="mailto:robert.wehausen@ed.gov">robert.wehausen@ed.gov</a>	<a href="mailto:OGIS@nara.gov">OGIS@nara.gov</a>
Phone	202-205-0733	202-741-5770; toll free at 1-877-684-6448
Fax	202-401-0920	202-741-5769

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FOIA Request 23-01096-F

Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal; it should be accompanied by a copy of this letter, the initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in resolving your appeal.

Appeals may be submitted using the on-line form available at [www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf](http://www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf).

Appeals can also be submitted by:

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Fax: 202-401-0920  
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Office of the Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW, LBJ 7W104  
Washington, DC 20202-4500

If you have any questions, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) (please include the case number).

Sincerely,

*Elise Cook*  
Government Information Specialist

Enclosure

Freedom of Information Act  
**EXPEDITED PROCESSING CRITERIA**  
(Department of Justice General Information)

**Compelling Need**

Expedited processing is provided if the requester demonstrates a compelling need. A requester can show compelling need in one of two ways: by establishing that his or her failure to obtain the records quickly could reasonable be expected to pose an imminent threat to the life or physical safety of an individual; or, if the requester is a person primarily engaged in disseminating information, by demonstrating that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

**Loss of Substantial Due Process Rights**

As a general rule, a request also should be expedited if it is shown that substantial due process rights of the requester would be impaired by the failure to process immediately and that the information sought is not otherwise available. It is not sufficient, however, for a requester merely to allege that requested records are needed in connection with some judicial or administrative proceeding; rather, the immediate use of the FOIA must be shown to be critical to the preservation of a substantial right.

**Other Considerations**

Beyond these two categories, it is unclear to what extent agencies have the discretion to grant requests for expedition under any other circumstances. Moreover, agencies should not forget the interests of all requesters in having their requests treated equitably, as well as the public interest in the integrity of FOIA processing. Because a decision to take a FOIA request out of turn necessarily entails further delay for other requesters waiting patiently in line, simple fairness demands that it be made only upon careful scrutiny of truly exceptional circumstances.