

EXHIBIT 10

Seth Watkins

From: Seth Watkins
Sent: Friday, April 21, 2017 2:17 PM
To: 'EDFOIAappeals@ed.gov'
Subject: FOIA Appeal re Request No. 17-01296-F
Attachments: Exhibit B - 2017.04.11 Email and letter from ED with FOIA response.pdf; Exhibit A - 2017.03.22 FOIA request to ED re tracking no. 17-01296-F.PDF

To whom it may concern:

This will appeal the denial of information requested by Requester under FOIA, pursuant to 34 C.F.R. § 5.40.

Pending before the Department of Education (“ED”) is a request dated and emailed to ED on March 22, 2017. A copy of the request is attached hereto as **Exhibit A** (“FOIA Request”). Copies of an email and letter from ED with a “final response,” emailed by ED on April 11, 2017 but dated April 1, 2017, are attached hereto as **Exhibit B** (“Response”).

The Response is deficient, and deemed by Requester to be a denial of requested records, for at least the following reasons that are hereby administratively appealed.

The Response merely states that “the documents that you are requesting cannot be released” and that “[t]hey are totally withheld” under FOIA Exemption (b)(5).

The Response fails to meet the most basic requirement of ED under FOIA – the department must first “gather and review the documents” that would be responsive and then “determine and communicate the scope of the documents it intends to produce and withhold.” See, e.g., *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013). The Response does not indicate that any documents were actually gathered and reviewed. Moreover, the Response fails to indicate the number of pages or the number of documents that are being withheld. The Response therefore is deficient for these reasons.

Requester provided ED with a likely time frame for responsive records (2012-2013) and likely custodians of responsive records (Diana Yu; Akil Vohra; and/or Rebecca Lee). Records should have been gathered and reviewed from at least those three document custodians with respect to the requested time frame.

In addition, ED failed to produce any segregable, non-exempt information, such as portions of the withheld documents that are factual or non-deliberative in nature. Responsive but withheld documents such as emails surely contain factual information that is non-deliberative in nature such as the sender, recipient(s), date, and subject of an email. A mere mention of, or reference to, the report U.S. Army Recognition Program of Philippine Guerrillas, dated *circa* 1949, in such an email also would be non-deliberative (see the FOIA Request for the relevance of this document with respect to the FOIA Request).

Please respond to this appeal within 20 business days in accordance with 5 U.S.C. § 552(a)(6)(A)(ii) and 34 C.F.R. § 5.40(c).

If you have any questions regarding the FOIA Request or this administrative appeal, please contact the undersigned by email or by telephone.

Thank you for your attention to this matter.

Sincerely,

/s/

Seth A. Watkins

Seth A. Watkins, Ph.D.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, NW
Washington, DC 20036
Tel. 202-407-8647
Main FAX 202-466-2006
Email watkins@adduci.com

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From: Swafford, Christie [<mailto:Christie.Swafford@ed.gov>]
Sent: Tuesday, April 11, 2017 8:07 AM
To: Seth Watkins <watkins@adduci.com>
Subject: RE: 17-01296-F

Sorry about that; here it is.

Thanks!

Christie S.

From: Seth Watkins [<mailto:watkins@adduci.com>]
Sent: Tuesday, April 11, 2017 8:04 AM
To: Swafford, Christie
Subject: Re: 17-01296-F

Ms. Swafford,

There was no attachment to your email. Please re-send.

Thank you.

Seth

Seth A. Watkins, Ph.D.
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On Apr 11, 2017, at 7:47 AM, Swafford, Christie <Christie.Swafford@ed.gov> wrote:

Dear Mr. Watkins;

Enclosed is a final response letter for the above FOIA request.

Thanks!

Christie D. Swafford

Government Information Specialist

OM/OCPO/FSC

U.S. Department of Education

400 Maryland Avenue, 2W218-54

Washington, DC 20202

(202) 205-3691

(202) 401-0920-Fax

"Go where you are celebrated not where you are tolerated"-Author Unknown

Seth Watkins

From: Seth Watkins
Sent: Wednesday, March 22, 2017 11:39 PM
To: 'EDFOIAManager@ed.gov'
Cc: 'Diana.yu@ed.gov'; 'akil.vohra@ed.gov'; 'rebecca.lee@ed.gov'
Subject: FOIA Request (expedited processing) re "White House Initiative on Asian Americans and Pacific Islanders"
Attachments: Recognizing the Extraordinary Contribution of Filipino Veterans _ whitehouse.pdf

To whom it may concern:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. **Expedited processing is hereby requested.**

On behalf of our client, Ms. Feliciana Reyes, who is a WWII veteran, we hereby request copies of the following records under FOIA, preferably sent to requester by email in electronic format (pdf):

all Records in the possession, custody, or control of the **Department of Education** and/or the **White House Initiative on Asian Americans and Pacific Islanders** that **both (1) concern the Filipino Veterans Equity Compensation Fund (FVEC or FVECF) Interagency Working Group (IWG) and (2) reference, refer to, or relate to the report U.S. Army Recognition Program of Philippine Guerrillas, dated circa 1949.**

It is believed that the most relevant time frame of requested Records is 2012-2013.

It is believed that the following individuals at the Department of Education may provide information helpful to the Department's FOIA officials in identifying relevant Records: Diana Yu (Diana.yu@ed.gov); Akil Vohra (akil.vohra@ed.gov); and/or Rebecca Lee (rebecca.lee@ed.gov).

As used herein, the term "Records" includes but is not limited to meeting minutes of the IWG, memoranda involving the IWG, reports of the IWG, and instructions of the IWG. The term Records does not include an actual copy of the above-identified report.

For reference, information about the **White House Initiative on Asian Americans and Pacific Islanders** can be found at <https://sites.ed.gov/aapi/staff/>. Information about the FVECF IWG and the above-identified report can be found in the attached highlighted print of the web page <https://obamawhitehouse.archives.gov/blog/2013/07/09/recognizing-extraordinary-contribution-filipino-veterans>.

Expedited Processing is hereby requested. Our client, Ms. Feliciana Reyes, is involved in legal proceedings concerning the Filipino Veterans Equity Compensation Fund (the subject matter of the IWG) in which she has an **urgent need for the requested Records**. Ms.

Reyes will potentially suffer the loss of substantial due process rights if this FOIA request is not processed on an expedited basis. Moreover, the subject matter related to the FOIA request—benefits for Filipinos who served in WWII—has met widespread and exceptional media interest and the information sought involves possible questions about the government’s integrity that affect public confidence. The news media has widely reported issues with veterans being found ineligible for this benefit and Congress has held hearings on the subject. In addition, the records concern the government’s knowledge of the 1949 report and its importance with respect to the Filipino Veterans Equity Compensation Fund. The government recently questioned the “authenticity” of this report. These statements are true and correct to the best of the knowledge and belief of the undersigned.

We hereby consent to pay all costs incurred for search, duplication and review of materials up to \$250.00. If additional costs will be required, please contact me for my approval.

If you have any questions about this request, please contact me immediately by the means listed below.

Thank you for your assistance with this matter.

Sincerely,

/s/

Seth A. Watkins

Seth A. Watkins, Ph.D.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, NW
Washington, DC 20036
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This is historical material "frozen in time". The website is no longer updated and links to external websites and some internal pages may not work.



the WHITE HOUSE PRESIDENT BARACK OBAMA

Recognizing the Extraordinary Contribution of Filipino Veterans

JULY 9, 2013 AT 5:22 PM ET BY [ROSYE B. CLOUD](#)



Summary: Over the last seven months, the Filipino Veterans Equity Compensation Fund Interagency Working Group (IWG) has worked toward increased transparency and a thorough accounting of the process to verify valid military service for Filipino World War II veterans.

In 1941, more than 260,000 Filipino soldiers responded to President Roosevelt's call-to-arms and fought under the American flag during World War II. Many made the ultimate sacrifice as both soldiers in the U.S. Army Forces in the Far East, and as recognized guerrilla fighters during the Imperial Japanese occupation of the Philippines. Later, many of these brave individuals became proud United States citizens. However, because of the Rescission Acts of 1946, most Filipino World War II Veterans did not receive compensation on par with United States veterans for their service to the United States.

President Obama recognizes the extraordinary contribution made by Filipino veterans. The American Recovery and Reinvestment Act of 2009, which the President signed into law, included a provision creating the Filipino Veterans Equity Compensation Fund. Eligible veterans who are U.S. citizens receive a one-time payment of \$15,000; eligible veterans who are not U.S. citizens receive a one-time payment of \$9,000.

To date, we are pleased that [over 18,000 claims have been approved](#). However, many Filipino Veterans still believe that their claims were improperly denied, or that they did not receive a satisfactory explanation as to why their claims were denied. To address these concerns, in October 2012, [the White House Initiative on Asian Americans and Pacific Islanders](#), in collaboration with the [Office of Management and Budget](#) and the [Domestic Policy Council](#), created the [Filipino Veterans Equity Compensation Fund Interagency Working Group \(IWG\)](#) comprised of the [Department of Veterans Affairs](#), the [Department of Defense](#), and the [National Archives and Record Administration](#). The IWG was tasked with analyzing the process faced by these Filipino veterans in demonstrating eligibility for compensation in order to ensure that all applications receive thorough and fair review.

Over the last seven months, the IWG has worked toward increased transparency and a thorough accounting of the process to verify valid military service for Filipino World War II veterans. This effort culminates in the reports that follow from each member of the IWG. This effort represents the first time all organizations involved in the verification process were brought together to examine the process from start to finish, and publicly post a collaborative report explaining each organization's role in the verification process. In addition to clarifying the claims process, **the IWG digitized and made available online for the first time a report titled, "U.S. Army Recognition Program of Philippine Guerrillas." This crucial report explains how the recognition process was developed at the close of World War II. Most significantly, the Army publicly states their careful reasoning behind the current policies on service verification.**

Detailed information from each agency is provided below. The IWG's goal was to increase transparency and accelerate processing of claims within the existing framework. Some highlights:

- VA created a special team dedicated to FVEC appeals and will obtain copies of certain Philippine Army documents from the Adjutant General of the Philippines.
- The United States Army remains confident in the current process to determine valid service. The Army has developed more detailed response letters for requests for service determination that explain why an application was denied. These letters are already in use.
- NARA has decreased the response time for service determination requests to 10 days or less.

Though the IWG's work concludes here, we hope these reports provide the transparency needed to understand the service verification process for Filipino World War II veterans appealing their claims. This is part of the Obama Administration's ongoing efforts to honor the contributions of all veterans in their service to our country.

Rosye Cloud is the Director of Policy for Veterans, Wounded Warriors and Military Families at the White House.

UNITED STATES ARMY

In order to extend formal recognition to Philippine guerrilla units and individuals who contributed materially to the defeat of Japanese forces occupying the Philippines during World War II, the United States Army developed and administered a recognition program between late 1942 and June 30, 1948. Over 1.2 million individuals applied for recognition, and ultimately over 260,000 were recognized with positive service determinations for the Philippine Commonwealth Army. The recognition program ended on June 30, 1948, the date established by Congress for final liquidation of U.S. funds appropriated in 1946 to support the Philippine Army.

The Army's service determinations finalized in 1948 were made during a robust effort in the post-World War II era involving hundreds of Army officials working closely with Philippine authorities, guerrilla unit commanders, and individuals and will not be altered by the United States Army. The results of their work - the authenticated rosters of recognized guerrilla units and individual letters of recognition - remain the basis for all claims presented and adjudicated by various U.S. government agencies since 1948. The Army believes the decisions made 65 years ago were made by a competent authority that had the benefit of extensive post-war field work in conducting investigations with first-hand evidence to determine the validity of claims. The original and complete documentation of this effort consists of over 1,600 boxes of permanent historical value and are available to the public through the National Archives and Records Administration at its facility in College Park, Maryland. The official and now declassified report of this effort from the Headquarters, Philippines Command, United States Army report "U.S. Army Recognition Program of Philippine Guerrillas" can be found [here](#).

The United States Army transferred copies of unit and individual recognition documentation, finding aids, and individual post-World War II recognition claims folders to the National Personnel Records Center (NPRC). Today, on behalf of the United States Army, the NPRC retrieves and authenticates records of prior Army service determinations. The NPRC is responsible for retrieving claim folders and then validating service determinations after reviewing unit rosters and matching an individual's identity against an existing claims folder.

The procedures to retrieve and authenticate prior Army service determinations are based upon previous United States Army procedures and outlined in the [NPRC Standard Operating Procedures \(SOP\)](#). Over the past year, the United States Army has reviewed and revalidated the retrieval and authentication procedures used by the NPRC, and fully supports the public release of the procedures. Following its review, the United States Army recognized the need to provide more detailed responses to requests for service determinations. As a result, the Army has fielded several new and more specific response letters which state: the individual's service authentication, whether or not the individual's claims folder and/or corresponding unit rosters were located, and what the next appropriate steps are for individuals with questions regarding service authentication.

In addition to the current administrative procedures used to retrieve prior service determinations, the cataloged and archived records maintained by the National Archives and Records Administration are readily accessible by the public from its facility in College Park, Maryland. Included in that collection are approximately 25 boxes of historical administrative records which document the formal service verification program during, immediately after, and since World War II.

Over the past year, the Army has placed a priority on requests for service determinations received from the Department of Veterans Affairs for Filipino veterans. As a result, today over 90 percent of requests are serviced within 10 days versus 43 percent a year ago, and NPRC is current with claims processing. As the NPRC authenticates prior Army service determinations on behalf of the Army on a reimbursable basis, the United States Army remains committed to providing NPRC with critical funding and/or staff augmentation as necessary to support the ongoing, vital efforts to ensure timely service authentication

for veterans. The Army is well-positioned, resourced, and committed to meet the claims processing needs for Filipino Veterans. The Army has a long-standing and close working relationship with both the NPRC and the VA, and together we will sustain an efficient claim processing time.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

The National Personnel Records Center (NPRC), a component of the National Archives and Records Administration (NARA), serves as an agent for the U.S. Army, providing storage and reference services for records of the U.S. Army. Among the Army records held by NPRC are claim folders pertaining to Filipino nationals, which were adjudicated by the U.S. Army after World War II, and unit rosters created by the U.S. Army in conjunction with its recognition program.

NPRC does not make service determinations but rather reviews the records described above to authenticate claims previously adjudicated by the U.S. Army. Most often, this is done in response to requests from the Department of Veterans Affairs regarding compensation claims. Recognizing the urgency of these requests, NPRC strives to respond to these requests in ten workdays or less. For more information concerning NPRC, see <http://www.archives.gov/st-louis/military-personnel/index.html>.

NARA has also preserved records of historical value documenting events that transpired in the Philippines during and after World War II. Included are records describing actions taken by the U.S. Army to recognize the service of Filipino nationals who supported the United States Army Forces in the Far East, including those who served in guerrilla units. The original records are available for public review at the [National Archives building](#) in College Park, Maryland.

In support of the IWG, NARA also clarified two common concerns relating to Philippine Army-related records which are needed to authenticate claims of service. The first involves references to the "Missouri List" or the "St. Louis List." NPRC does not have in its holdings a specific document titled the "Missouri List" or the "St. Louis List," nor does it have a single, comprehensive roster listing every Philippine Army veteran and recognized guerrilla. The NPRC does not hold a document called the "Roster of Troops," nor a uniform "Discharge List." NPRC authenticates prior service determinations by examining claim folders, finding aids, and a variety of rosters compiled by the Army during its post-war recognition program. Authentication does not require a claimant to be listed on multiple rosters.

The second concern involves the catastrophic 1973 fire at NPRC that destroyed 16-18 million military service records pertaining to veterans of the U.S. Army and U.S. Air Force. Additional information about the fire can be found at <http://www.archives.gov/st-louis/military-personnel/fire-1973.html>.

Except for the records of Philippine Scouts, Philippine Army and related records were not stored among these U.S. Army records and were not affected by the fire. Philippine Scouts were inducted into the U.S. Army, and their service records were stored among other members of the U.S. Army from that time period. The service records of some Philippine Scouts may have been damaged or destroyed in the 1973 fire, in which case NPRC technicians would respond to requests by attempting to reconstruct the basic service record using the same resources it uses to reconstruct records for other veterans whose records

were lost in the fire. However, records pertaining to the majority of Filipino veterans were not impacted by the fire.

DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs (VA) expeditiously developed a Filipino Veterans Equity Compensation Fund (FVEC) benefit application, an adjudication process for this benefit, and a payment and accounting system to facilitate timely and accurate FVEC payments. VA's Manila Regional Office (RO) is responsible for processing FVEC claims. The law requires VA to administer the benefit consistently with applicable provisions of title 38, U.S. Code. Applications requiring further development were processed under Veterans Claims Assistance Act procedures, as with claims for other VA benefits, and notification of claim decisions and appellate rights are provided in the same manner as for other benefit claims. RO decisions on FVEC claims are appealable to the Board of Veterans' Appeals and, ultimately, to the Court of Appeals for Veterans Claims, in the usual manner.

By statute, in order to qualify for an FVEC payment, an individual must have served before July 1, 1946, in the Philippine Commonwealth Army, including recognized guerrilla units, or in the New Philippine Scouts. In adjudicating claims for benefits, including FVEC, VA is legally bound by military service department determinations as to what service a claimant performed. Under VA regulations, in the absence of a suitable document issued by a U.S. service department containing the needed information, VA must seek verification of service from the appropriate service department, in this case, the U.S. Department of the Army. The NPRC in St. Louis, Missouri, acts as the custodian of the Army's records, and VA sends its requests for service verification to that entity. VA also forwards to the NPRC any evidence provided by claimants to establish qualifying service.

VA conducted extensive proactive outreach to ensure potentially eligible claimants were aware of the FVEC program and received assistance in applying. VA made the first payments within 40 days of the effective date of the program, and has paid out over \$224 million in FVEC benefits to Filipino Veterans.

All original claims for FVEC have received a decision, but there are currently 101 reopened claims for FVEC, 143 appeals pending, and 53 remanded appeals.

Appeals for entitlement to FVEC are processed on a priority basis. Appeals requiring service verification are immediately referred to the Appeals Veterans Service Representative for referral to the NPRC for service verification. Currently, the Manila RO regularly provides the NPRC a list of individuals with pending service-verification requests. The Manila RO then closely coordinates with other ROs for appellants who reside in the U.S. who require hearings, emphasizing that these hearings should be expedited. As of June 1, 2013, 460 appeals have been granted with a 10.16% grant rate based on total appeals received. In an effort to further expedite pending FVEC reopened claims, appeals, and remands, the Manila RO has taken the following additional steps:

1. Created a special team to work FVEC appeals consisting of two Decision Review Officers; two Veterans Service Representatives; and one Claims Assistant.

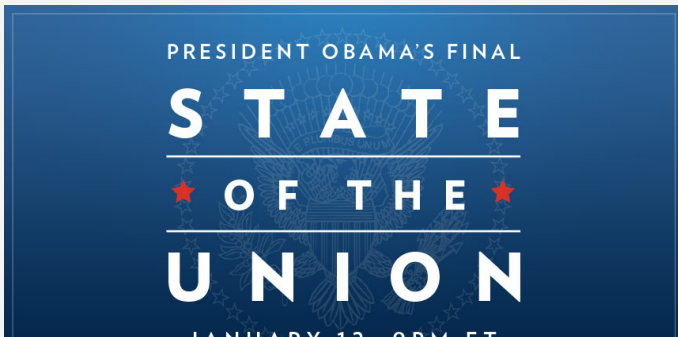
- 2. Created a standard notification letter for appellants requesting submission of all available service records and information. This letter will also inform the appellant that piecemeal submission of evidence can cause unnecessary delay in the submission of their appeal to the Board of Veterans Appeals.
- 3. VA personnel will personally obtain copies of the Affidavit for Philippine Army Personnel (AGO Form 23) for appeals with no Form 23 from the Adjutant General.

The Manila RO anticipates these steps will further expedite the processing of appeals for the appellants with advanced age by minimizing the turnaround time for service verification requests and hearing requests.



[Rosye B. Cloud](#)

Former Policy Director for Veterans, Wounded Warriors, and Military Families



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Seth Watkins

From: Swafford, Christie <Christie.Swafford@ed.gov>
Sent: Tuesday, April 11, 2017 8:07 AM
To: Seth Watkins
Subject: RE: 17-01296-F
Attachments: 1296-f-all docs withheld-b5-watkins.docx

Sorry about that; here it is.

Thanks!

Christie S.

From: Seth Watkins [mailto:watkins@adduci.com]
Sent: Tuesday, April 11, 2017 8:04 AM
To: Swafford, Christie
Subject: Re: 17-01296-F

Ms. Swafford,

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Thank you.

Seth

Seth A. Watkins, Ph.D.
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Christie D. Swafford
Government Information Specialist
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U.S. Department of Education
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Washington, DC 20202
(202) 205-3691

(202)401-0920-Fax

"Go where you are celebrated not where you are tolerated"-Author Unknown



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Office of the Chief Privacy Officer

April 1, 2017

Mr. Seth A. Watkins
Adduci, Mastriani and Schaumberg, LLP
1133 Connecticut Avenue, NW
Washington, DC 20036
Watkins@adduci.com

RE: FOIA Request No. 17-01296-F

Dear Mr. Watkins:

This letter is a final response to your letter dated March 22, 2017 requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the following office to search for documents that may be responsive to your request: Office of the Under Secretary (OUS). You requested the following information:

All Records in the possession, custody, or control of the Department of Education and/or the White House Initiative on Asian Americans and Pacific Islanders that both (1) concern the Filipino Veterans Equity Compensation Fund (FVEC or FVECF) Interagency Working Group (IWG) and (2) reference, refer to, or relate to the report U.S. Army Recognition Program of Philippine Guerrillas, dated *circa* 1949. It is believed that the most relevant time frame of requested Records is 2012-2013.

The following web link is responsive to the request: <https://www.archives.gov/st-louis/military-personnel/memo-1865125.html#2-3>

According to the program office; the documents that you are requesting cannot be released. They are totally withheld according to the FOIA exemption below:

- Pre-decisional internal communications have been withheld under exemption (b)(5) of the FOIA, 5 U.S.C. § 552 and Departmental regulation 34 CFR § 5.71(a). These provisions require us to withhold the government's deliberative process privilege, *inter alia*, protecting records of pre-decisional internal communications reflecting the views or recommendations of agency employees in connection with the government policy or legal matters that are both pre-decisional and deliberative in nature.

Page 2 – Mr. Seth Watkins

No. 17-01296-F

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.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Chief Privacy Officer U.S. Department of Education 400 Maryland Ave., SW, LBJ 2E321 Washington, DC 20202-4536	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

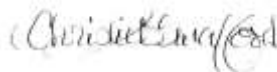
Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement 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.

Appeals can also be submitted by:

E-mail: EDFOIAappeals@ed.gov
 Fax: 202-401-0920
 Mail: Appeals Office
 Office of the Chief Privacy Officer
 U.S. Department of Education
 400 Maryland Avenue, SW, LBJ 2E320
 Washington, DC 20202-4536

Sincerely,



Christie D. Swafford
 Government Information Specialist, OM/OCPO