

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.,

Plaintiff,

v.

Case No. 18-cv-4433

U.S. DEPARTMENT OF EDUCATION,

Defendant.

DECLARATION OF AJMEL QUERESHI

I, Ajmel Quereshi, do hereby declare and say as follows:

1. I am an attorney with the NAACP Legal Defense and Educational Fund, Inc. (LDF) and I represent the Plaintiff in the above-captioned matter. This declaration is based on my personal knowledge and review of documents in my possession.

2. On July 12, 2017, I sent a Freedom of Information Act (FOIA) request (the Request) on behalf of LDF to the FOIA Public Liaison at the U.S. Department of Education seeking records concerning DOE's Office for Civil Rights and its guidance documents and memoranda regarding, among other things, complaints, case processing, enforcement, and internal policies. A true and correct copy of the Request is attached as Exhibit B.

3. On July 18, 2017, a member of the DOE Office for Civil Rights Customer Service and Technology Team, Sally Dunaway, sent me an email confirming receipt of the Request and stating, "I am the person within OCR's Customer Service group assigned to contact the groups within OCR who may have records responsive to your FOIA request. I will do my best to get them

to you as soon as possible.” A true and correct copy of this email is attached as Exhibit C.

4. On July 20, 2017, Ms. Dunaway emailed me asking to speak about the Request and stating, “We need to come up with search terms and parameters for each question (except for number 6 [regarding organization charts]) so that I can tell people who are looking through their emails, etc., what to look for. . . . The sooner we talk the better in terms of getting on with the search.” A true and correct copy of this email is attached as Exhibit D.

5. Ms. Dunaway and I confirmed in a subsequent email exchange that we would speak by phone the following day at 12:30 P.M. As recounted in an email I sent to Ms. Dunaway on July 31, 2017, the subject of this conversation was the proper records custodians for requests 2 and 5. A true and correct copy of this email is attached as Exhibit E.

6. On July 26, 2017, Ms. Dunaway sent me an email with two attachments consisting of organizational charts, which were responsive to item 6 in the Request. In the email, Ms. Dunaway wrote, “I am sending you these charts as the first interim release of records responsive to your FOIA request. These charts respond to your Number 6. Either today or no later than tomorrow, I will send you what I understand to be what you are looking for the other numbers of your request so you can reply.” A true and correct copy of this email is attached as Exhibit F.

7. Ms. Dunaway followed up on July 31, 2017, apologizing for not having sent any records since the email containing the organization charts. She wrote, “I promise, however, that by the end of today, I will send you what I understood you to say you are seeking in your request.” A true and correct copy of this email is attached as Exhibit G.

8. Ms. Dunaway replied later that day, saying, “I made you a promise I could not keep” and informing me that she would not be able to send the records that day due to technical problems with her redaction program. She stated that she intended to send the records the following

day. A true and correct copy of this email is attached as Exhibit H.

9. On August 3, 2017, Ms. Dunaway sent me an email stating that she was “still backed up on other FOIA,” but would “hopefully be able to finish defining your [FOIA request] tomorrow.” A true and correct copy of this email is attached as Exhibit I.

10. On August 4, 2017, I sent an email to Ms. Dunaway containing search terms. A true and correct copy of this email is attached as Exhibit J.

11. Later that day, Ms. Dunaway sent me an email following up on a phone call about the Request and thanking me for sending the list of search terms. Ms. Dunaway wrote, “As I mentioned in today’s conversation, you and I will t[r]ack down the questions, then I will send . . . out the request, as we have finalized it, to the folks in OCR and, at the same time, I will send the finalized request to the FOIA Service Center (FSC).” A true and correct copy of this email is attached as Exhibit K.

12. On August 9, 2017, Ms. Dunaway sent an email with an update on the status of the Request and identifying some issues that had arisen regarding the list of search terms and DOE officers who may have the records being sought. A true and correct copy of this email is attached as Exhibit L.

13. I responded to the email that day, stating that I would forward the written requests in the form requested by close of business on Thursday, August 10, 2017, to which Ms. Dunaway replied, also that day, stating that would be fine. A true and correct copy of these emails is attached as Exhibit M.

14. On August 10, 2017, I sent an email to Ms. Dunaway attaching a list of records custodians within DOE and a list of revised search terms that was “significantly narrowed,” per

DOE's request. A true and correct copy of this email is attached as Exhibit N.

15. After not hearing back from anyone in DOE, I left a voicemail following up on the status of the Request in mid-September. On September 20, 2017, Robert Wehausen, Team Lead of the DOE's FOIA Service Center, emailed me in response to the voicemail. According to Mr. Wehausen:

If we were to conduct a search using the [search terms Mr. Quereshi had provided], along with the long list of custodians that were provided, the search would produce a MASSIVE amount of information that would include a lot of records that you probably have no interest in. We don't want to exert a lot of resources and effort into searching for records that you aren't interested in, just as I'm sure you don't want to delve through tons of information unrelated to your needs.

Mr. Wehausen requested a follow-up phone call. A true and correct copy of this email is attached as Exhibit O.

16. A conference call was held on September 27, 2017, among Mr. Wehausen, Mr. Quereshi, and three other DOE employees—Robert M. Carey, Kristine Minami, and Kevin Slupe. On October 10, 2017, Mr. Wehausen sent me an email summarizing the conversation, including listing the records custodians and language for the requests that was agreed upon. I responded the same day confirming that the summary was correct. A true and correct copy of these emails is attached as Exhibit P.

17. On November 14, 2017, I emailed Mr. Wehausen asking for an update on the Request and inquiring when he should expect the production of the requested records. Mr. Wehausen replied the same day, stating that he would reach out to his colleagues in the Office for Civil Rights for an update and "get back to you right away." A true and correct copy of these emails is attached as Exhibit Q.

18. On November 21, 2017, Mr. Wehausen sent me an email stating, "To date, I've yet to receive any additional information from OCR regarding your pending FOIA, so I plan on

reaching back out to them today.” A true and correct copy of this email is attached as Exhibit R.

19. Having not heard back for over two weeks, I emailed Mr. Wehausen on December 12, 2017, asking to “[p]lease provide an update on the status of the Department’s response to the request.” A true and correct copy of this email is attached as Exhibit S.

20. On December 13, 2017, Mr. Wehausen replied in an email stating, “Over the last few weeks, OCR has had a reduction in their staffing level which put their FOIA program in a state of transition, so they haven’t been able to provide me with a substantive update. I’ll reach out to them now in an effort to obtain an update.” A true and correct copy of this email is attached as Exhibit T.

21. On January 8, 2018, I sent an email to Mr. Wehausen stating, “It has now been close to 3 months since we agreed to search terms for LDF’s remaining requests. Please provide an update on the status of the Department of Education’s response to LDF’s request as well as a concrete date within the next 14 days by which the Department of Education will provide the outstanding materials. If the Department of Education is unable to provide such, we will have no option, but to seek appropriate remedies in federal court.” A true and correct copy of this email is attached as Exhibit U.

22. On January 16, 2018, I received a letter from DOE’s Office of the Chief Privacy Officer, granting LDF’s request for a waiver of all fees connected to the Request. A true and correct copy of this letter is attached as Exhibit V.


23. On January 18, 2018, Mr. Wehausen sent me an email stating, “Based on the scope of the request that was agreed to on October 10, 2017, the searches returned over 10,000 unique emails (over 12,000 unique items)—in this context, unique simply means some of the results satisfied more than one of the searches. We feel there could potentially be an opportunity to further

narrow the scope for items 3 and 5.” He requested another conference call with himself as well as OCR staff. I replied that same day, asking if January 22 or 23 would be convenient for the conference call. A true and correct copy of these emails is attached as Exhibit W.

24. On January 23, 2018, Mr. Wehausen replied to my email, stating, “My apologies for not getting back to you last week on this matter. I reached out to my colleagues in OCR, but have yet to receive a response. Most staff were preoccupied last week preparing for the potential shutdown, *which ultimately did happen*, so I’ll pin[g] them again today.” A true and correct copy of this email is attached as Exhibit X.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 18th day of May, 2018, in Washington, D.C.



Ajmel Quereshi