



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

JUL 23 2013

Allan Blutstein
Cause of Action
1919 Pennsylvania Avenue
Suite 650
Washington, DC 20006

RE: FOIA Request No. 13-01950-F

Dear Mr. Blutstein:

This is in response to your May 30, 2013, Freedom of Information Act (FOIA) request for a copy of our agency's response to Senator Charles Grassley and Representative Darrell Issa's August 23, 2010, request to 29 Inspectors General as to whether political appointees were made aware of FOIA requests and played decision making roles in those requests.

Enclosed you will find information responsive to your request. If you have any questions concerning this response, please contact Ms. Chaun Eason, our FOIA and Privacy Act Coordinator, at (202) 245-7001.

Sincerely,

A handwritten signature in black ink that reads "Marta Erceg".

Marta Erceg
Counsel to the Inspector General

cc: Department FOIA Office



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

September 17, 2010

The Honorable Charles E. Grassley
Ranking Member, Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Darrell Issa
Ranking Member, Committee on
Oversight and Government Reform
United States House of Representatives
B350A Rayburn House Office Building
Washington, D.C. 20515

Dear Senator Grassley and Representative Issa:

Thank you for your August 23, 2010, letter asking the U.S. Department of Education (Department) Office of Inspector General (OIG) to conduct an inquiry into the Department's Freedom of Information Act (FOIA) Office to determine whether and to what extent political appointees are made aware of information requests and have a role in request reviews or decisionmaking. Below you will find the results of our review.

To complete this assignment, OIG staff reviewed the Department's FOIA procedures and practices, which involved interviewing key personnel, reviewing the Department's FOIA policies, and examining a sample of FOIA requests and the Department's responses. We did not find that political appointees review FOIA responses before they are issued, probe for information about requesters, or delay or otherwise impede disclosure of politically-sensitive information. We did find that political appointees are often made aware of FOIA requests for informational purposes, but not for decisionmaking purposes.

Department's FOIA Procedures

The Department's FOIA Service Center (FSC) has delegated authority to sign FOIA final determination letters, and processes most of the FOIA requests that are submitted to the Department. The 12 regional Offices for Civil Rights (OCR) also have delegated authority to sign FOIA final determination letters and, unlike other Principal Operating Components (POCs) within the Department, responses from the regional OCRs are not routed through FSC. Each of the Department's POCs has at least one dedicated FOIA Coordinator who handles FOIA requests

and coordinates FOIA responses. In addition, the Department's Office of General Counsel (OGC) reviews certain FOIA requests and responses upon a POC's request.¹

The Department receives a FOIA request in two ways: it is either submitted directly to FSC or it is submitted directly to a POC. POCs are required to submit to FSC all FOIA requests they receive from an outside source. FSC logs incoming FOIA requests into a database and assigns a tracking number to them. FSC then identifies the POC that has custody of responsive documents and sends the request to the POC with a response deadline. If a response is fully releasable (i.e., not redacted), the POC sends the response directly to the requester. Otherwise, the POC sends the response to FSC by the stated deadline, and FSC forwards the response to the requester.

OIG Review Process

In preparing this response, we reviewed Departmental Directive OCIO: 1-102, Freedom of Information Act (FOIA) Policies and Procedures: Release or Denial of Department of Education Records Responsive to FOIA Requests (July 7, 2004) (Directive). We also reviewed a draft revised Directive, dated September 13, 2010.

We interviewed personnel in seven POCs who are responsible for receiving, reviewing, and/or responding to FOIA requests. We interviewed personnel in the Office of Management (where FSC is located), the Office of the General Counsel, the Office of the Secretary, the Office of Communications and Outreach, the Office of Legislation and Congressional Affairs, Federal Student Aid, and the Office for Civil Rights because of their size or because they are the POCs most likely to receive requests for politically-sensitive information.

We reviewed a random sample of 31 FOIA responses closed by the Department between June 8, 2010, and September 8, 2010, to determine whether the responses were consistent with FOIA. We looked for overly broad redactions or failures to release information that should have been released, either of which might possibly suggest political influence over the FOIA process.

Findings from Interviews

None of the interviewees reported knowing or being aware of any Department directives that required them to submit FOIA responses to political appointees for mandatory review. That was consistent with our review of the Department's existing Directive and the draft Directive, which do not require personnel to make political appointees aware of FOIA requests or have political appointees review FOIA responses before they are submitted to the requester.

However, interviewees reported three instances in which political appointees could become aware of FOIA requests or responses. First, a political appointee could have custody of

¹ OGC advised us that at the White House Counsel Office's request, OGC developed draft procedures requiring OGC legal sufficiency determinations of FOIA responses involving the White House, Congressional communications, interagency communications, or FOIA requests made to several agencies. OGC further advised us that those procedures are still in draft and have not been implemented, and should they go forward, likely will be reevaluated.

documents that are responsive to a FOIA request. In this case, the FOIA Coordinator is obligated to contact the appointee to obtain these documents. Thus, a political appointee could be one of several recipients of a general email message requesting responsive documents.

Second, the majority of interviewees reported notifying political appointees of FOIA requests and certain responses for informational purposes. The interviewees who reported providing “FYI” notices to political appointees told us that these political appointees did not play a role in reviewing the request or in making decisions about the substance of the response.

Third, one interviewee reported that political appointees and career employees participated in discussions about responding to two separate FOIA requests for data that were preliminary. This interviewee provided two examples in which political appointees and career employees discussed factual information regarding the data in order to allow FOIA personnel to make legally sufficient response determinations. In both instances, the decision was made to release the data.

None of the interviewees reported being asked to provide political appointees with information about people who requested records (e.g., information about where they lived, whether they were associated with the media, or details about their organizations). Some interviewees reported asking for such information when it was relevant to determining their legal obligations under FOIA. For example, FOIA personnel may ask requesters for an address to which to send responsive documents if the requester did not provide an address in their FOIA request. Similarly, FOIA personnel may ask whether the requester is a member of the press or a private citizen in order to determine the appropriate fees to assess for providing responsive documents.

Findings from Review of Sample FOIA Responses

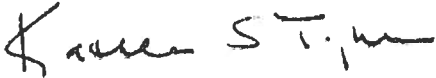
Of the 31 FOIA responses we reviewed, 14 contained redactions or did not provide all the information requested. In most instances, the redactions were of personal information regarding non-Department individuals, which complied with FOIA. We asked Department personnel about their reasons for other particular redactions and non-releases and concluded that the reasons did not relate to interference by political appointees.

Conclusion

The Department has not issued any directives that instruct FOIA personnel to submit responses to political appointees for review. While political appointees are sometimes made aware of FOIA requests if they have custody of responsive documents or for informational purposes, political appointees in the Department do not play a role in determining the substance of FOIA responses.

If you have any questions, or if you require any additional information, please contact me directly at (202) 245-6900, or have a member of your staff contact our Congressional Liaison, Ms. Catherine Grant, at (202) 245-7023.

Sincerely,

A handwritten signature in black ink that reads "Kathleen S. Tighe". The signature is written in a cursive style with a large initial 'K' and a long horizontal stroke at the end.

Kathleen S. Tighe
Inspector General

cc: The Honorable Max Baucus, Chairman, Committee on Finance, U.S. Senate
The Honorable Edolphus Towns, Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives
The Honorable Gabriella Gomez, Assistant Secretary, Office of Legislation and Congressional Affairs, U.S. Department of Education