

GOLDWATER INSTITUTE V. U.S. DEPARTMENT OF EDUCATION

BACKGROUND

Executive Summary

In October 2023, the U.S. Department of Education (Department) assessed a record fine of \$37 million against Grand Canyon University (GCU) – the nation’s largest private, Christian college. The fine is the largest of its kind ever assessed by the federal government. By comparison, the Department assessed a \$2.4 million fine against Penn State for failing to report the crimes of serial pedophile Jerry Sandusky, and a \$4.5 million fine against Michigan State, when that school refused to address sexual assaults committed by its athletic director, Larry Nassar.

The Department claims that GCU violated federal disclosure rules regarding continuing education courses for PhD students; allegations that GCU categorically denies.

The Department also announced its unprecedented fine with a widely-reported press release that was heavy on rhetoric and bereft of any serious complaints from students or the public. It also appears that the fine was assessed in conjunction with suspicious coordination among various federal agencies.

After this unprecedented fine was announced, the Goldwater Institute submitted a Freedom of Information Act (FOIA) request to the Department. The request seeks emails between key individuals of the Department and other federal agencies that discuss the Department’s fine against GCU. The records may help inform the public about this extraordinary fine, as well as coordination between various federal agencies in what appears to be the intentionally targeting of a successful university based on extraordinarily thin allegations. However, the Department has refused to produce the records requested and has failed to otherwise comply with the FOIA.

FOIA was enacted to hold government accountable to the governed and keep government transparent. Under FOIA, a federal agency must respond to the requester within 20 business days and include information about whether it will comply with the records request. But, here, the Department has failed to issue a response informing the Institute of whether it will comply with the public records request. Indeed, the Department has not even responded with a proposed date of when it will make that determination. Instead of being transparent, federal bureaucrats are keeping the public in the dark.

The Goldwater Institute filed a lawsuit against the Department to compel compliance with the FOIA and to require production of the requested documents.

Background

In October 2023, the U.S. Department of Education (Department) publicly announced an unprecedented fine against Grand Canyon University (GCU). GCU is the largest private-Christian college, and by any metric, a success story in education. Nevertheless, the Department claims that after a thorough investigation, it found that GCU allegedly violated the Higher Education Act related to its PhD programs, resulting in a fine of \$37.7 million. The press release

was widely discussed in the public and garnered national media attention for, among other things, its extraordinary fine. GCU refutes all claims against it.

On December 4, 2023, the Goldwater Institute submitted a FOIA request seeking emails of communications between certain key individuals related to the fine of GCU for alleged violations of the Higher Education Act. These key individuals include Department Chief Operating Officer Richard Cordray and Federal Trade Commission Chair Lina Kahn – both individuals are reported acolytes of Senator Elizabeth Warren. The information sought may help inform the public about the reasons for the extraordinary fine, and whether the Department was improperly collaborating with other federal agencies as part of a coordinated attack on GCU.

Under FOIA, the agency must provide a response to the requester within 20 business days of receipt of the request with a determination if the agency will admit, deny, or otherwise comply with the FOIA request.

On December 13, 2023, the Department sent the Institute an email demanding payment of \$2,099.34 for the records, which, after objections from the Institute, the Department waived.

Yet, it has now been substantially more than 20 business days since the Institute submitted its request with no sufficient response from the Department. Instead, the Department provided a vague form letter that did not provide details about why the agency could not comply with the 20-day deadline and did not provide a date for when the records would be produced, both violations of the FOIA.

Based on the Department's unlawful respond to the Institute's FOIA request, the Institute filed a lawsuit to compel the Department to produce records responsive to the request.

Legal Analysis

The federal Freedom of Information Act requires that an agency respond within 20 business days after a public records request is made. 5 U.S.C. § 552(a)(6)(A)(i). The agency's response notifies the requester of the agency's determination to admit, deny, or otherwise comply with the request. *Id.*

The agency may respond within 20 business days with a notice of unusual circumstances requiring an extension for the response. 5 U.S.C. § 552(a)(6)(B). That notice of unusual circumstances must include one of the limited and defined permitted reasons for unusual circumstances and, importantly, the date when the response is expected. *Id.* In some circumstances, tolling may also be possible that would delay the response from the agency. 5 U.S.C. § 552(a)(6)(A)(ii). This occurs when the agency asks the requester to provide additional information or clarify issues about a fee assessment but ends when the requester responds. *Id.*

When a federal agency does not respond within 20 business days, the requester may proceed to district court to compel disclosure of the requested documents. 5 U.S.C. § 552(a)(6)(C).

The Department's response to the FOIA request was due within 20 business days, but the Department did not provide a response with a determination of whether it would be complying with the FOIA request. The notification received from the Department was deficient and did not

provide a date when the determination would occur. The Department has not complied with the FOIA obligations to timely respond to records requests. Due to the Department's failure, the Institute may now seek judicial relief commanding the Department to comply with federal law and produce public information.

Case Logistics

The case is *Goldwater Institute v. U.S. Department of Education*. The complaint was filed on February 13, 2024, in the United States District Court, District of Arizona.

The Legal Team

Stacy Skankey is a Staff Attorney at the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation, where she litigates in areas of property rights, government transparency, free speech, economic liberty, and regulatory reform.

Jon Riches is the Vice President for Litigation for the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation and General Counsel for the Institute. He litigates in federal and state trial and appellate courts in the areas of economic liberty, regulatory reform, free speech, taxpayer protections, public labor issues, government transparency, and school choice, among others. Jon has litigated cases in multiple state and federal trial and appellate courts.