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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 Barry Goldwater Institute for Public Policy  
17 Research,

No. 2:24-cv-00314-SMM

18 Plaintiff,

**ANSWER**

19 v.

20 United States Department of Education,

21 Defendant.

22 Defendant United States Department of Education (“Defendant”), by and through  
23 undersigned counsel, respectfully submits this Answer to Plaintiff’s Amended Complaint  
24 (Doc. 14). Any allegations not specifically admitted are denied:<sup>1</sup>

25 1. Defendant admits that this action is brought under the Freedom of  
26 Information Act (“FOIA”), 5 U.S.C. § 552, against the United States Department of  
27

28 <sup>1</sup> The headings and numbered paragraphs below correspond to the section and numbered paragraphs in Plaintiff’s Amended Complaint. Titles and headings are reproduced in this Answer for organizational purposes only, and Defendant does not admit any matter contained within them. Defendant expressly denies the relief sought and any allegations contained in Plaintiff’s headings.

1 Education. Defendant denies that any records were improperly withheld from Plaintiff and  
2 further denies that Plaintiff is entitled to the relief sought or to any other relief.

3 2. Defendant is without sufficient information to admit or deny the allegation(s)  
4 contained in Paragraph 2, and therefore denies the same.

5 3. Defendant admits that on October 31, 2023, Defendant issued a press release  
6 announcing a \$37.7 million fine against Grand Canyon University for alleged deceptive  
7 practices related to Grand Canyon University's PhD programs. Defendant is without  
8 sufficient information to admit or deny the remaining allegation(s) contained in Paragraph  
9 3, and therefore denies the same.

10 4. Defendant admits that Plaintiff submitted a FOIA Request to Plaintiff on  
11 December 4, 2024. Insofar as the allegations of Paragraph 4 purport to summarize the  
12 contents of Exhibit A to the Amended Complaint, Defendant avers that Exhibit A to the  
13 Amended Complaint speaks for itself and respectfully refers the Court to Exhibit A for a  
14 complete and accurate statement of its contents, and denies the allegation(s) contained in  
15 Paragraph 4 to the extent they are inconsistent with the full text of the document.

16 5. Defendant admits the allegation(s) contained in Paragraph 5. Defendant  
17 avers that, as of May 7, 2024, Defendant completed production of records responsive to  
18 Plaintiff's FOIA request.

19 6. Defendant admits the allegation(s) contained in Paragraph 6. Defendant  
20 avers that, as of May 7, 2024, Defendant completed production of records responsive to  
21 Plaintiff's FOIA request.

22 7. Defendant admits the allegation(s) contained in Paragraph 7. Defendant  
23 denies that any records were improperly withheld from Plaintiff.

24 8. Defendant admits that it released records responsive to Plaintiff's FOIA  
25 Request after Plaintiff filed the Complaint. Defendant admits that the records have been  
26 withheld in whole or in part pursuant to FOIA but denies the remaining allegation(s)  
27 contained in Paragraph 8.

28 9. Defendant denies the allegation(s) contained in Paragraph 9.

1           10. The allegation(s) contained in Paragraph 10 state legal conclusions to which  
2 no response is required. To the extent a response is required, Defendant denies the  
3 allegation(s) contained in Paragraph 10. Defendant denies that Plaintiff is entitled to the  
4 relief sought or to any other relief.

5                                   **JURISDICTION AND VENUE**

6           11. Defendant admits the allegation(s) contained in Paragraph 11.

7           12. Defendant admits the allegation(s) contained in Paragraph 12.

8                                   **PARTIES**

9           13. Defendant is without sufficient information to admit or deny the allegation(s)  
10 contained in Paragraph 13, and therefore denies the same.

11           14. Defendant admits the allegation(s) contained in Paragraph 14.

12           15. Defendant admits the allegation(s) contained in Paragraph 15 as to the  
13 records requested in item 1 of Plaintiff's FOIA Request, but denies the allegation(s)  
14 contained in Paragraph 15 as to the records requested in item 2 of Plaintiff's FOIA Request.

15                                   **BACKGROUND**

16           16. Defendant admits the allegation(s) contained in Paragraph 16.

17           17. Defendant admits that Plaintiff submitted a FOIA request to Defendant on  
18 December 4, 2024. Insofar as the allegations of Paragraph 17 purport to summarize the  
19 contents of Exhibit A to the Amended Complaint, Defendant avers that Exhibit A to the  
20 Amended Complaint speaks for itself and respectfully refers the Court to that document  
21 for a complete and accurate statement of its contents, and denies the allegation(s) contained  
22 in Paragraph 17 to the extent they are inconsistent with the full text of the document.

23           18. Defendant admits that the Request sought expedited production. Defendant  
24 denies that the Request sought a fee waiver. Defendant avers that Exhibit A to the  
25 Amended Complaint speaks for itself and respectfully refers the Court to that document  
26 for a complete and accurate statement of its contents.

1           19. Defendant admits that on December 5, 2023, the ED FOIA Service Center,  
2 Office of the Secretary (“FSC”), acknowledged the Request and assigned the Request the  
3 number 24-00550-F (the “Acknowledgement”).

4           20. Defendant admits that the Acknowledgment denied expedited processing.  
5 Insofar as the allegations of Paragraph 20 purport to summarize the contents of Exhibit B  
6 to the Amended Complaint, Defendant avers that Exhibit B to the Amended Complaint  
7 speaks for itself, respectfully refers the Court to that document for a complete and accurate  
8 statement of its contents, and denies the allegation(s) contained in Paragraph 20 to the  
9 extent they are inconsistent with the full text of the document.

10          21. Defendant admits that the Acknowledgment advised that the current average  
11 processing time for FOIA requests is 185 business days.

12          22. Defendant admits that the Acknowledgment did not state any unusual  
13 circumstances and did not provide a date by which a determination is expected.

14          23. Defendant admits that on December 6, 2023, Plaintiff sent a letter to  
15 Defendant concerning the Acknowledgment. Insofar as the allegations of Paragraph 23  
16 purport to summarize the contents of Exhibit C to the Amended Complaint, Defendant  
17 avers that Exhibit C to the Amended Complaint speaks for itself and respectfully refers the  
18 Court to that document for a complete and accurate statement of its contents, and denies  
19 the allegation(s) contained in Paragraph 23 to the extent they are inconsistent with the full  
20 text of the document.

21          24. Defendant admits the allegation(s) contained in Paragraph 24. Insofar as the  
22 allegations of Paragraph 24 purport to summarize the contents of Exhibit C to the Amended  
23 Complaint, Defendant avers that Exhibit C to the Amended Complaint speaks for itself and  
24 respectfully refers the Court to that document for a complete and accurate statement of its  
25 contents, and denies the allegation(s) contained in Paragraph 24 to the extent they are  
26 inconsistent with the full text of the document.

27          25. Defendant admits that on December 13, 2023, Defendant sent Plaintiff an  
28 email stating Defendant had conducted a search locating approximately 7,000 records of

1 responsive documents and that the fees for the search were calculated to be \$2,099.34 (“Fee  
2 Estimate”). Defendant avers that the 7,000 records were potentially responsive to  
3 Plaintiff’s FOIA Request and that Defendant has now determined that only a portion of  
4 those 7,000 documents are responsive to Plaintiff’s FOIA Request.

5 26. Defendant admits that the Fee Estimate advised that all search and review of  
6 responsive documents would cease until Defendant received notification of Plaintiff’s  
7 willingness to pay the processing costs associated with the Request.

8 27. Defendant admits that on December 14, 2023, Plaintiff sent Defendant a  
9 response to the Fee Estimate. Defendant denies that Plaintiff had requested a fee waiver.  
10 Insofar as the allegations of Paragraph 27 purport to summarize the contents of Exhibit E  
11 to the Amended Complaint, Defendant avers that Exhibit E to the Amended Complaint  
12 speaks for itself and respectfully refers the Court to that document for a complete and  
13 accurate statement of its contents, and denies the allegations contained in Paragraph 27 to  
14 the extent they are inconsistent with the full text of the document.

15 28. Defendant admits the allegation(s) contained in Paragraph 28.

16 29. Defendant admits the allegation(s) contained in Paragraph 29.

17 30. Defendant admits that on December 20, 2023, Plaintiff responded to  
18 Defendant’s December 19, 2023, letter. Defendant denies that Plaintiff had requested a fee  
19 waiver. Insofar as the allegations of Paragraph 30 purport to summarize the contents of  
20 Exhibit G to the Amended Complaint, Defendant avers that Exhibit G to the Amended  
21 Complaint speaks for itself and respectfully refers the Court to that document for a  
22 complete and accurate statement of its contents, and denies the allegation(s) contained in  
23 Paragraph 30 to the extent they are inconsistent with the full text of the document.

24 31. Defendant admits the allegation(s) contained in Paragraph 31.

25 32. Defendant admits the allegation(s) contained in Paragraph 32.

26 33. Defendant admits the allegation(s) contained in Paragraph 33.

27 34. Defendant admits the allegation(s) contained in Paragraph 34.

28

1           35. Defendant denies that Defendant believed Defendant's response was tolled  
2 on December 10, 2023. Defendant avers that Defendant's January 16, 2024, email stated  
3 that Defendant's response was tolled from December 13, 2023, when Defendant provided  
4 the Fee Estimate, until December 22, 2023, when Defendant granted Plaintiff's request for  
5 a fee waiver. Defendant avers that Exhibit J to the Amended Complaint speaks for itself  
6 and respectfully refers the Court to Exhibit J for a complete and accurate statement of its  
7 contents, and denies the allegation(s) contained in Paragraph 35 to the extent they are  
8 inconsistent with the full text of the document.

9           36. Defendant admits the allegation(s) contained in Paragraph 36.

10          37. Defendant admits that on January 16, 2024, Defendant sent Plaintiff a letter  
11 titled "20-Day Status Notification" ("20-Day Notification").

12          38. Defendant admits the allegation(s) contained in Paragraph 38.

13          39. Defendant admits the allegation(s) contained in Paragraph 39.

14          40. Defendant admits the allegation(s) contained in Paragraph 40.

15          41. Defendant admits that the 20-Day Notification did not include information  
16 on how to appeal. Defendant denies that it was required to include information on how to  
17 appeal in the 20-Day Notification because the Notification was not a Determination and  
18 did not require such information pursuant to 5 U.S.C. § 552(a)(6)(III).

19          42. Defendant admits the allegation(s) contained in Paragraph 42.

20          43. Defendant admits the allegation(s) contained in Paragraph 43.

21          44. Defendant admits that the First Interim Response included 802 pages.  
22 Defendant denies that the production contained Bates labels ED 24-00550-F (Apr. 15,  
23 2024)\_000802 to ED 24-00550-F (Apr. 15, 2024)\_000802. Defendant avers that the  
24 production contained Bates labels ED 24-00550-F (Apr. 15, 2024)\_000001 to ED 24-  
25 00550-F (Apr. 15, 2024)\_000802.

26          45. Defendant admits that the documents in the First Interim Response have been  
27 withheld in whole or in part pursuant to FOIA but denies the remaining allegation(s)  
28 contained in Paragraph 45.

1           46. Defendant admits that the First Interim Response withheld records or  
2 portions of records according to FOIA Exemptions 4, 5, 6, 7(A), and 7(C). Defendant  
3 further avers that the First Interim Response withheld records or portions of records  
4 according to FOIA Exemption 3.

5           47. Defendant admits the allegation(s) contained in Paragraph 47.

6           48. Defendant denies the allegation(s) contained in Paragraph 48.

7           49. Defendant admits the allegation in Paragraph 49 that on April 22, 2024,  
8 Defendant emailed Plaintiff a second interim response that did not contain documents  
9 responsive to item 2 of the Request (“Second Interim Response”). Defendant further avers  
10 that there are no records responsive to item 2 of the Request.

11           50. Paragraph 50 consists of Plaintiff’s characterization of the Second Interim  
12 Response, to which no response is required. To the extent a response is required, Defendant  
13 avers that Exhibit M to Plaintiff’s Complaint speaks for itself and respectfully refers the  
14 Court to Exhibit M for a complete and accurate statement of its contents, and denies the  
15 allegation(s) in Paragraph 50 to the extent they are inconsistent with the full text of the  
16 document.

17           51. Defendant admits that the Second Interim Response contained the  
18 information alleged in Paragraph 51. Defendant avers that Exhibit M speaks for itself and  
19 respectfully refers the Court to Exhibit M to Plaintiff’s Amended Complaint for a complete  
20 and accurate statement of its contents, and denies the allegation(s) in Paragraph 51 to the  
21 extent they are inconsistent with the full text of the document.

22           52. Defendant denies that it has withheld records responsive to item 2 of the  
23 Request. Defendant further avers that the written complaints are not responsive to item 2  
24 of the Request.

25           53. Paragraph 53 consists of Plaintiff’s characterization of its purpose for filing  
26 this Amended Complaint, to which no response is required. To the extent a further response  
27 is required, Defendant denies that Plaintiff is entitled to judicial relief.  
28

**COUNT I**  
**Failure to Respond Within the Statutory Time Period**  
**(5 U.S.C. § 552(a)(6)(A), (B))**

54. Defendant repeats and incorporates by reference all prior answers to Plaintiff's Amended Complaint as set forth herein.

55. Defendant admits the allegation(s) contained in Paragraph 55.

56. Defendant admits the allegation(s) contained in Paragraph 56.

57. Defendant admits the allegation(s) contained in Paragraph 57.

58. Paragraph 58 contains a legal conclusion, to which no response is required. To the extent a response is required, the allegation(s) contained in Paragraph 58 are denied.

59. Defendant admits the allegation(s) contained in Paragraph 59.

60. Defendant admits that it sent a 20-Day Notification to Plaintiff on January 16, 2024. Defendant denies any remaining allegation(s) contained in Paragraph 60.

61. Paragraph 61 contains a legal conclusion, to which no response is required. To the extent a response is required, Defendant admits that it sent a 20-Day Notification to Plaintiff on January 16, 2024, and that the 20-Day Notification did not notify Plaintiff whether a determination had been made regarding the Request or provide a time by which the requested records would be produced.

62. Defendant admits the allegation(s) contained in Paragraph 62.

63. Defendant admits the allegation(s) contained in Paragraph 63.

64. Defendant admits the allegation(s) contained in Paragraph 64.

65. Defendant admits that under 34 C.F.R. § 5.32(h), "when necessary for the Department to clarify issues regarding fee assessment with the FOIA requester, the time limit for responding to the FOIA request is tolled until the Department resolves such issues with the requester." Defendant admits that under 5 U.S.C. § 552(a)(6)(A)(ii)(I) "that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester." Defendant denies the remaining allegation(s) contained in Paragraph 65.

66. Defendant admits the allegation(s) contained in Paragraph 66.



1           67. Defendant denies that the Fee Estimate did not seek to clarify issues  
2 regarding the fee assessment and admits that the Fee Estimate did not request additional  
3 information.

4           68. Defendant admits the allegation(s) contained in Paragraph 68.

5           69. Paragraph 69 contains a legal conclusion to which no response is required.  
6 To the extent a response is required, Defendant avers that Defendant's January 16, 2024,  
7 email stated that Defendant's response was tolled from December 13, 2023, when  
8 Defendant provided the Fee Estimate, until December 22, 2023, when Defendant granted  
9 Plaintiff's request for a fee waiver, and denies the remaining allegation(s) contained in  
10 Paragraph 69.

11           70. Paragraph 70 contains a legal conclusion to which no response is required.  
12 To the extent a response is required, Defendant denies the allegation(s) contained in  
13 Paragraph 70.

14           71. Paragraph 71 contains a legal conclusion to which no response is required.  
15 To the extent a response is required, Defendant admits the allegation(s) contained in  
16 Paragraph 71.

17           72. Defendant admits the allegation(s) contained in Paragraph 72.

18           73. Defendant admits that the First Interim Response was produced 132 calendar  
19 days after the Acknowledgment. Defendant admits the First Interim Response included  
20 documents responsive to item 1 of the Request and that the records have been withheld in  
21 whole or in part pursuant to FOIA but denies the remaining allegation(s) contained in  
22 Paragraph 73.

23           74. Defendant admits that the Second Interim Response was produced 139  
24 calendar days after the Acknowledgment. Defendant admits that the Second Interim  
25 Response stated that there were no responsive documents to item 2 of the Request.

26           75. Defendant admits the allegation(s) contained in Paragraph 75.

27           76. Defendant admits the allegation(s) contained in Paragraph 76.  
28

1           77. Defendant admits that under 5 U.S.C. § 552(a)(6)(B)(i) the agency may give  
2 notice of the unusual circumstances requiring an extension to the public records request.  
3 Defendant denies any remaining allegation(s) contained in Paragraph 77 to the extent they  
4 are inconsistent with the foregoing.

5           78. Defendant admits that under 5 U.S.C. § 552(a)(6)(B)(i) the notice must  
6 describe the unusual circumstances and the date on which a determination is expected to  
7 be dispatched. Defendant denies any remaining allegation(s) contained in Paragraph 78 to  
8 the extent they are inconsistent with the foregoing.

9           79. Defendant admits that on January 16, 2024, Defendant stated that an “initial  
10 determination” would be provided that day. Defendant also admits that on January 16,  
11 2024, Defendant sent the 20-Day Notification to Plaintiff.

12           80. Defendant admits that the 20-Day Notification did not indicate whether the  
13 Request had been approved, denied, or partially approved or denied.

14           81. Paragraph 81 contains a legal conclusion, to which no response is required.  
15 To the extent a response is required, Defendant admits that the 20-Day Notification was  
16 not a determination.

17           82. Defendant admits that the 20-Day Notification did not include an expected  
18 determination date and that the 20-Day Notification informed Plaintiff that the average  
19 processing time was 185 business days. Defendant denies any remaining allegation(s)  
20 contained in Paragraph 82 to the extent they are inconsistent with the foregoing.

21           83. Paragraph 83 contains a legal conclusion, to which no response is required.  
22 To the extent a response is required, Defendant denies the allegation(s) contained in  
23 Paragraph 83.

24           84. Paragraph 84 contains a legal conclusion, to which no response is required.  
25 To the extent a response is required, Defendant avers that Defendant acknowledged the  
26 Request on December 5, 2023, in the Acknowledgement and provided a status update on  
27 January 16, 2024, in the 20-Day Notification and that Defendant completed production of  
28 records responsive to the Request on May 7, 2024.

87. Paragraph 87 contains a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegation(s) contained in Paragraph 87.

88. Defendant repeats and incorporates by reference all prior answers to Plaintiff's Amended Complaint as set forth herein.

90. Paragraph 90 contains a legal conclusion, to which no response is required. To the extent a response is required, Defendant denies the allegation(s) contained in Paragraph 90.

92. Defendant admits that FOIA Exemption 5 and 7(A) were used to withhold information. Defendant avers that Exhibits L and M to Plaintiff's Amended Complaint speak for themselves and respectfully refers the Court to Exhibit L and Exhibit M to Plaintiff's Amended Complaint for a full and accurate statement of their contents and denies any allegation(s) inconsistent therewith.

- 11 -

1           94. Paragraph 94 contains a legal conclusion to which no response is required.  
2 To the extent a response is required, Defendant denies the allegation(s) contained in  
3 Paragraph 94.

4           95. Paragraph 95 contains a legal conclusion, to which no response is required.  
5 To the extent a response is required, Defendant denies the allegation(s) contained in  
6 Paragraph 95.

7           96. Paragraph 96 contains a legal conclusion, to which no response is required.  
8 To the extent a response is required, Defendant denies the allegation(s) contained in  
9 Paragraph 96.

10          97. Paragraph 97 contains a legal conclusion to which no response is required.  
11 To the extent a response is required, Defendant denies that Exemption 5 only withholds  
12 records that are part of a deliberative process.

13          98. Paragraph 98 contains a legal conclusion to which no response is required.  
14 To the extent a response is required, Defendant denies the allegation(s) contained in  
15 Paragraph 98.

16          99. Paragraph 99 contains a legal conclusion to which no response is required.  
17 To the extent a response is required, Defendant denies the allegation(s) contained in  
18 Paragraph 99.

19          100. Paragraph 100 contains a legal conclusion to which no response is required.  
20 To the extent a response is required, Defendant lacks sufficient information as to what  
21 records Plaintiff is referring to and therefore denies the allegation(s) contained in Paragraph  
22 100.

23          101. Paragraph 101 contains a legal conclusion to which no response is required.  
24 To the extent a response is required, Defendant lacks sufficient information as to what  
25 records Plaintiff is referring to and therefore denies the allegation(s) contained in Paragraph  
26 101. Defendant denies the remaining allegation(s) contained in Paragraph 101.

27          102. Paragraph 102 contains a legal conclusion to which no response is required.  
28 To the extent a response is required, Defendant lacks sufficient information as to what

1 records Plaintiff is referring to and therefore denies the allegation(s) contained in Paragraph  
2 102. Defendant denies the remaining allegation(s) contained in Paragraph 102.

3 103. Paragraph 103 contains a legal conclusion to which no response is required.  
4 To the extent a response is required, Defendant denies the allegation(s) contained in  
5 Paragraph 103.

6 104. Paragraph 104 contains a legal conclusion to which no response is required.  
7 To the extent a response is required, Defendant lacks sufficient information as to what  
8 records Plaintiff is referring to and therefore denies the allegation(s) contained in Paragraph  
9 104.

10 105. Defendant admits that FOIA Exemption 5 was used to withhold information.  
11 Defendant avers that Exhibits L and M to Plaintiff's Amended Complaint speak for  
12 themselves and respectfully refers the Court to Exhibit L and Exhibit M for a full and  
13 accurate statement of their contents and denies any allegation(s) inconsistent therewith.

14 106. Defendant denies the allegation(s) contained in Paragraph 106.

15 107. Paragraph 107 contains a legal conclusion to which no response is required.  
16 To the extent a response is required, Defendant denies the allegation(s) contained in  
17 Paragraph 107.

18 108. Defendant admits that Exemption 7(A) allows an agency to "withhold  
19 records or information compiled for law enforcement purposes . . . only to the extent that  
20 the production of such law enforcement records or information . . . could reasonably be  
21 expected to interfere with enforcement proceedings." Defendant denies any allegation(s)  
22 contained in Paragraph 108 that are inconsistent with the foregoing.

23 109. Paragraph 109 contains a legal conclusion to which no response is required.  
24 To the extent a response is required, Defendant denies the allegation(s) contained in  
25 Paragraph 109.

26 110. Paragraph 110 contains a legal conclusion to which no response is required.  
27 To the extent a response is required, Defendant denies the allegation(s) contained in  
28 Paragraph 110.



1 any applicable FOIA exemptions or exclusions, 5 U.S.C. § 552, *et seq.*

2 **SECOND DEFENSE**

3 Any document or information that Defendant has withheld, or will withhold, in  
4 response to Plaintiff's FOIA request may be exempt in whole or in part from public  
5 disclosure under FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

6 **THIRD DEFENSE**

7 Plaintiff's FOIA request is improper to the extent it does not reasonably describe  
8 the records requested. 5 U.S.C. § 552(a)(3)(A).

9 **FOURTH DEFENSE**

10 Any relief is limited to that provided for in 5 U.S.C. § 552(a)(4)(B) and the Court  
11 lacks subject-matter jurisdiction to award relief that exceeds that which is authorized by  
12 FOIA.

13 **FIFTH DEFENSE**

14 Plaintiff is not entitled to an award of attorney's fees.

15 **SIXTH DEFENSE**

16 The Amended Complaint raises claims that are or will become moot.

17 **WHEREFORE**, Defendant having fully answered Plaintiff's Amended Complaint,  
18 respectfully requests that Plaintiff's Amended Complaint be dismissed, and they take  
19 nothing thereby, that judgment be entered in Defendant's favor, and grant such further  
20 relief as the Court deems just and proper.

21  
22 RESPECTFULLY SUBMITTED May 24, 2024.

23  
24 GARY M. RESTAINO  
25 United States Attorney  
26 District of Arizona

27 /s/ Victoria H. Gray  
28 VICTORIA H. GRAY  
Assistant United States Attorney  
*Attorneys for the United States*