

January 13, 2023

VIA ELECTRONIC MAIL

The Honorable Dr. Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Mr. Robert Wehausen
FOIA Public Liaison and Team Lead
Office of the Executive Secretariat
400 Maryland Avenue SW
Washington, D.C. 20202

**Re: DFI's Feb. 7, 2022 Request for Records Related to UPenn and the Biden Center
Production Request Inquiry 22-01850-F
(DFI FOIA No. 100-3-22)**

Dear Secretary Cardona and FOIA Public Liaison Wehausen:

I write to inquire about the nearly year-old request for records related to the University of Pennsylvania's ("UPenn") Biden Center for Diplomacy and Global Engagement ("UPenn Biden Center") and the U.S. Department of Education's ("Department") statutory enforcement efforts regarding foreign source contributions to America's colleges and universities, including those related to UPenn. The Defense of Freedom Institute for Policy Studies' ("DFI") request for records is now 340 days old and yet the Department has failed to produce a single record, in defiance of its statutory obligations.

On January 12, 2023, U.S. Attorney General Merrick Garland appointed former U.S. Attorney Robert Hur as special counsel to lead an investigation regarding potential violations of criminal law and the discovery of classified documents at the UPenn Biden Center.¹ As the Department's records reveal,² UPenn has been a tremendous beneficiary of foreign gifts and contracts since then former Vice President Biden's February 2017 announcement of the establishment of the Biden Center at UPenn.³ UPenn enjoyed a truly stunning 389% increase in reportable foreign gifts and contracts between 2018 and 2019 alone.⁴

¹ Anders Hagstrom, "AG Garland appoints special counsel to investigate Biden classified documents," FOX NEWS (Jan. 12, 2023), <https://www.foxnews.com/politics/ag-garland-appoints-special-counsel-investigate-biden-classified-documents>.

² See <https://sites.ed.gov/foreigngifts/>.

³ Isabel Vincent, "Penn Biden Center where classified papers were found is a 'dark-money nightmare,'" NEW YORK POST (Jan. 11, 2023), <https://nypost.com/2023/01/11/penn-biden-center-is-dark-money-nightmare-patronage-mill/>.

⁴ "Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds," THE DAILY PENNSYLVANIAN (Apr. 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.



This critical development follows a search by the White House Counsel’s Office of President Biden’s UPenn Biden Center office and his two Delaware residences.⁵ The Attorney General’s decision also follows the Department’s December 27, 2022 announcement that it plans to downgrade the Department’s enforcement of reportable foreign gifts and contracts to colleges and universities by shifting those enforcement efforts from the Office of the General Counsel (“OGC”) to the Office of Federal Student Aid (“FSA”).⁶ As you are well aware, FSA’s mission is to “direct, coordinate[], and recommend[] policies for programs that are designed to provide financial assistance to eligible students enrolled in postsecondary educational institutions” to provide “grants, loans, and work-study assistance” to students through colleges and universities.⁷ FSA is neither designed to investigate nor capable of overseeing the Department’s important foreign gift reporting enforcement obligations.

Former Department Acting General Counsel Reed Rubinstein correctly observed that “[t]he Biden Administration’s decision to move the [foreign gifts and contracts reporting] compliance program – which requires high order investigatory skills – back to Federal Student Aid *is really a decision to bury the program*. Among other things, this signals to the [higher education foreign fundraising] industry that the foreign money grab-fest is back, because the federal watchdog has been chained up.”⁸ The need for serious investigative capability – something FSA cannot provide - is demonstrated by UPenn’s implausible denial that, despite the massive influx of foreign funds to UPenn after establishment of the Biden Center, it had “never solicited or received any gifts from any Chinese or other foreign entity” and that “the University has never solicited any gifts for the center.”⁹

These circumstances, potentially implicating America’s national security interests, prompted DFI’s request for records from the Department regarding its foreign gifts and contracts reporting enforcement efforts, particularly regarding the UPenn Biden Center. The Department has effectively refused to timely (or otherwise) fulfill its statutory obligation to provide the requested records, despite DFI’s repeatedly proffered willingness to accept rolling production of those records (since the records may be voluminous).

⁵ Dareh Gregorian and Michael Kosnar, “Special counsel named to investigate Biden classified records that included top secret document,” NBC NEWS (Jan. 12, 2023), <https://www.nbcnews.com/politics/white-house/white-house-says-classified-documents-found-bidens-garage-delaware-rcna65509>.

⁶ 87 Fed. Reg. 79,292 (Dec. 27, 2022).

⁷ See <https://www2.ed.gov/about/offices/or/fs/fsa/intro.html#mission>.

⁸ Jerry Dunleavy, “Biden Education Department drops ball on foreign funding investigations, GOP says,” THE WASHINGTON EXAMINER (Nov. 16, 2022), <https://www.washingtonexaminer.com/news/justice/biden-education-department-drops-ball-foreign-funding-investigations-gop-says> (emphasis added).

⁹ Imran Siddiqui, “Penn denies renewed allegations of foreign donations to Biden Center after GOP letter,” THE DAILY PENNSYLVANIAN (Jan. 29, 2021), <https://www.thedp.com/article/2021/01/penn-biden-center-republican-inquiry>.



DFI must now respectfully insist that the Department explain its failure to produce a single responsive record as required by law or, in the alternative, to identify the precise date by which the requested records will be provided to DFI.

DFI's Request for Records Related to the University of Pennsylvania and the Biden Center

On February 7, 2022, DFI submitted a request for records¹⁰ within the possession and control of the U.S. Department of Education (“ED”), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED at 34 C.F.R. Part 5 (“Availability of Information to the Public”). DFI’s FOIA request was for records related to ED’s enforcement policies regarding Section 117 (20 U.S.C. § 1011f), including those related to the University of Pennsylvania’s Biden Center for Diplomacy and Global Engagement.

On February 7, 2022, ED’s FOIA Manager acknowledged receipt of DFI’s request and indicated that it was “forwarded to the primary responsible office(s) for action.”

On March 9, 2022, ED provided DFI with a 20-day notification letter (subsequent to DFI’s successful appeal of ED’s initial denial of DFI’s fee waiver request). ED’s statutory deadline to provide the requested records to DFI was April 6, 2022.

On April 22, 2022, DFI electronically submitted a “Production Request” to ED’s FOIA Manager, inquiring about the status of the request, offering to accept a rolling production of the requested records, and helpfully offering a path for ED to “most efficiently begin rolling production” through an initial production of the requested records by first providing records of outside interest group communications regarding Section 117 enforcement (the specific groups having been identified in the FOIA request) and subsequently providing records of the responses of ED officials to those outside interest group communications.

To date, ED has neither acknowledged nor responded to DFI’s April 22, 2022, “Production Request” inquiry (and offer).

As discussed at length in DFI’s electronic submissions to ED, the American people have a right to be meaningfully informed regarding ED’s enforcement of Section 117, particularly at a time when adversaries such as Russia and China have demonstrated an ongoing interest and ability to access vital U.S. research and development technologies through access to American universities (access which is often reflected in semi-annual disclosures by universities of foreign-source gifts and contracts). Those policies have tremendous impact on students, families, taxpayers, and the security interests of the American people.

The statutory burden imposed on ED is clear: upon receipt of the FOIA request, ED has twenty business days to “determine . . . whether to comply with [the] request” and “shall immediately

¹⁰ See <https://dfipolicy.org/wp-content/uploads/2022/03/FOIA-Request-ED-DFI-No.-100-3-22-Section-117-2.7.2022.pdf>.



notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by ED.¹¹

On March 15, 2022, U.S. Attorney General Merrick Garland issued guidance to federal agencies, clarifying the statutory obligation of those agencies, including ED, to timely disclose information “in the faithful application of FOIA” to “enable information about federal government operations to be more readily available to all.” Attorney General Garland emphasized that “[t]imely disclosure of records is also essential to the core purpose of FOIA” and that “[a]gency FOIA professionals should continue to work with FOIA requesters in a spirit of cooperation” and “work with requesters to remove barriers to access”¹²

These records concern current and vital U.S. national security interests and are worthy of timely production in order to meaningfully inform current public interest in our nation’s security. Delayed production of the requested records has diminished the important value they may hold for informing the American people about the Department’s enforcement of Section 117, particularly regarding UPenn and the Biden Center.

The requested records should be promptly provided to DFI (either by rolling or full production), which has actively attempted to facilitate ED’s production of the responsive records.

As DFI awaits your reply, thank you for your attention to this important matter.

Sincerely yours,

/s/ Paul R. Moore

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.

¹¹ 5 U.S.C. § 552(a)(6)(A)(i).

¹² See <https://www.justice.gov/ag/page/file/1483516/download>.