

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
NEW YORK LEGAL ASSISTANCE)	
GROUP,)	COMPLAINT
)	
Plaintiff,)	
)	
v.)	Case No. 19 Civ. 4028
)	
UNITED STATES DEPARTMENT OF)	
VETERANS AFFAIRS,)	
)	
Defendant.)	
_____)	

PRELIMINARY STATEMENT

1. This action is brought under the Freedom of Information Act (FOIA), challenging the failure of the U.S. Department of Veterans Affairs (VA) to provide records relating to its investigations of colleges and universities approved for the use of VA education benefits, as required by 5 U.S.C. § 552(a)(3) and 38 C.F.R. § 1.550 *et seq.*

JURISDICTION AND VENUE

- 2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
- 3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C § 1391(e).

PARTIES

4. Plaintiff New York Legal Assistance Group (NYLAG) is a nonprofit organization in New York City that provides free civil legal services to low-income New Yorkers in the areas of government benefits, consumer debt, disability rights, family law, housing law, special education, and immigration, among others.

5. NYLAG is one of the largest veterans’ services providers in New York City, providing a wide range of legal services specific to veterans through its Veterans Practice,

LegalHealth Division, and Special Litigation Unit. NYLAG's representation of veterans includes serving those harmed by colleges and universities that engage in deceptive recruitment tactics and predatory lending practices.

6. Defendant U.S. Department of Veterans Affairs (VA) is an agency of the United States government.

7. Defendant has possession of and control over the records NYLAG seeks to have made publicly available under 5 U.S.C. § 552(a)(3).

STATEMENT OF FACTS

I. Statutory Background

8. FOIA requires the VA to produce requested records. 5 U.S.C. § 552(a)(3)(A) provides that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

9. 5 U.S.C. § 552(a)(6)(A)(i) and 38 C.F.R. §§ 1.556-57 require the VA to respond to FOIA requests within twenty business days.

II. VA's Investigations of Institutions Receiving VA Education Benefits

10. Each year the VA provides approximately one million student veterans, and their eligible family members, more than \$13 billion in education benefits to attend postsecondary education institutions.

11. Access to VA education benefits makes veterans attractive enrollment prospects, especially to predatory for-profit schools.

12. According to federal law, 20 U.S.C. § 1094(a)(24), for-profit schools may not receive more than 90% of their revenue from certain U.S. Department of Education financial aid

programs. This “90/10” limit was designed to prevent federal financial aid from propping up low-value and fraudulent for-profit schools that are unable to attract at least 10% of their revenue from private sources.

13. However, the 90% limit does not include VA education benefit programs, so for-profit schools may receive 90% of their revenue from U.S. Department of Education programs, and some or all of the remaining 10% of their revenue from VA programs.

14. As a result, for-profit schools aggressively target veterans for enrollment and often engage in misleading and deceptive recruitment practices to induce them to enroll.

15. NYLAG’s student veteran clients have been deceived by for-profit schools in numerous ways, including being misled by school enrollment officers about their likelihood of finding employment in their chosen field, or about the salary they could expect to earn after graduation, as well as being deceived into signing loan documents by school financial aid officers who told them their VA education benefits would entirely cover their costs.

16. The harm to veterans from attending predatory for-profit schools includes low graduation rates, low employment rates, wasted education benefits, high debt burdens and high loan default rates, often leading to financial crisis.

17. As part of the VA’s administration of education benefits, it has a statutory obligation under 38 U.S.C. § 3696(a) to “not approve the enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission or intimation.”

18. To aid the VA in identifying institutions that engage in deceptive enrollment practices, 38 U.S.C. § 3696(c) requires the VA to enter into a Memorandum of Agreement

(MOA) with the Federal Trade Commission (FTC) that enables the VA to utilize the FTC's services and facilities in carrying out investigations of institutions it suspects to be engaged in deceptive enrollment practices.

19. The VA entered into a MOA with the FTC, effective November 10, 2015 (https://www.ftc.gov/system/files/documents/cooperation_agreements/151110ftc_va_mou.pdf).

20. According to the procedure outlined in the MOA, the VA may refer institutions approved for the enrollment of veterans to the FTC for an investigation.

21. The FTC is required to evaluate the information provided by the VA and determine whether to accept the referral.

22. If the FTC accepts the referral, it conducts an investigation and prepares an analysis of whether the institution utilized unfair or deceptive advertising, marketing, sales, and enrollment practices that are prohibited by Section 5 of the FTC Act, 15 U.S.C. § 45.

23. Upon request from the VA, the FTC provides the VA with its analysis at the conclusion of its investigation.

24. Finally, within 90 days of the VA's receipt of the FTC analysis, the VA is required to take appropriate action.

25. There is little public understanding as to whether, how, or under what circumstances the VA follows the procedures outlined in the MOA, or whether, how, and under what circumstances it in fact disapproves the use of benefits at deceptive schools.

26. The public has a compelling interest in understanding whether, how, and under what circumstances the VA requests investigations of deceptive enrollment practices and how the VA responds to the findings of such investigations.

III. NYLAG's FOIA Request

27. On November 14, 2018, NYLAG submitted a FOIA request to the VA requesting that the VA provide the following records from November 10, 2015 to the present:

- a) All VA guidelines, training manuals, and/or formal instructions provided to VA employees regarding procedures for the investigation of institutions' enrollment practices and/or procedures for referring institutions to the FTC for investigation.
- b) All advertising, sales materials, enrollment materials and/or candidate handbooks inspected by the VA.
- c) All referrals of institutions for investigation made by the VA to the FTC, in accordance with the procedures in the MOA.
- d) All decisions by the FTC to accept or reject a referral from the VA, in accordance with the procedures in the MOA.
- e) All requests by the VA for FTC staff analyses prepared as a result of investigations of referred institutions, in accordance with the procedures in the MOA.
- f) All analyses provided by the FTC in response to a referral from the VA, in accordance with the procedures in the MOA.
- g) All VA actions taken in response to analyses provided by the FTC, in accordance with the procedures in the MOA.
- h) All communications between the VA and the FTC regarding referrals of institutions for investigation.

28. By letter dated December 6, 2018, the VA FOIA Service acknowledged receipt of NYLAG's request and indicated that the request was being directed to the Veterans Benefits

Administration, an agency within the VA. The letter included contact information should NYLAG seek to inquire about the status of its request.

29. On December 21, 2018, NYLAG sent the VA an email to the address provided to note that more than twenty business days had passed since NYLAG filed its request and to ask when it could expect a response. NYLAG never received a response to that email.

30. On January 11, 2019, and then again on January 15, 2019, NYLAG sent follow up emails to the VA to ask when it could expect to receive a response to its FOIA request. NYLAG never received a response to either of those emails.

31. In March 2019, NYLAG called the VA at the number provided to inquire about the status of its FOIA request. The VA said NYLAG would receive a response by March 31, 2019. After that date passed without a response, NYLAG called the VA again and left a message inquiring about when it could expect to receive a response.

32. On Tuesday, April 2, 2019, the VA responded by email that its “goal [was] to have a response ready by the end of the week.” NYLAG did not receive a response by the end of that week.

33. Since April 2, 2019, NYLAG has followed up with the VA four times by email, but has received no meaningful response.

34. In an email to the VA dated April 17, 2019, NYLAG informed the VA that if it did “not receive a response in the next five business days [NYLAG would] treat it as though [its] request has been denied.” NYLAG received no response to that email.

35. To date it has been approximately 120 business days since NYLAG submitted its FOIA request on November 14, 2018.

**FIRST CAUSE OF ACTION
(FOIA, 5 U.S.C. § 552)**

36. NYLAG submitted a valid FOIA request to the VA on November 14, 2018.

37. Defendant has a statutory obligation under 5 U.S.C. § 552(a)(3) and 5 U.S.C. § 552(a)(6)(A)(i) to produce validly requested records within twenty business days.

38. Defendant failed to timely produce any records. It has been approximately 120 business days since NYLAG's request.

39. NYLAG is entitled to injunctive and declaratory relief, as well as costs, expenses, and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, NYLAG respectfully requests that this Court:

- (A) Declare that Defendant's failure to timely produce the records requested by NYLAG is unlawful;
- (B) Issue an injunction ordering Defendant promptly to produce to NYLAG the requested records in their entirety pursuant to 5 U.S.C. § 552(a)(4)(B);
- (C) Award NYLAG its costs, expenses, and reasonable attorneys' fees pursuant to U.S.C. § 552(a)(4)(E); and
- (D) Grant such other and further relief as this Court may deem just and proper.

Dated: May 6, 2019

Respectfully submitted,

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By 
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