



# UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF MANAGEMENT

Regulatory Information Management Services

June 1, 2009

Carl Malamud ([carl@media.org](mailto:carl@media.org))  
Public.Resource.Org  
1005 Gravenstein Highway North  
Sebastopol, CA 95472

RE: FOIA Request No. 09-01290-F

Dear Mr. Malamud:

This is an electronic-mail (e-mail) response to your letter of February 9, 2009, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, that was received in this office on May 27, 2009. Your request has been assigned case number 09-01290-F. A copy of your request is attached.

You have asked for a waiver of all fees, including duplication fees, associated with processing your request based on your status as a member of the news media and that the public interest exceeds the interests of your organization in the extent the Department of Education accesses the PACER system (as described in your request). That request is granted.

Your request has been assigned to the appropriate office within the Department for processing.

If you have any questions, or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "R. Wehausen", written over a horizontal line.

Robert Wehausen  
FOIA Public Liaison  
RM-RIMS

Attachment

Original Request



**PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation**

09-01290-F

**Open Source America's Operating System**

"It's Not Just A Good Idea—It's The Law!"

May 20, 2009

Department of Education  
Delores J. Barber, Chief  
FOIA Service Center  
400 Maryland Ave., SW, 2W202  
Washington, D.C. 20202-4536

Dear Ms. Barber:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552. I am trying to determine how much money the Department of Education is spending on access to federal court documents and other primary legal materials. Specifically, I am requesting copies of:

- Any memoranda or budgetary documents that detail the total amount actually spent or the amount budgeted to be spent by the Department of Education to access the PACER system run by the Administrative Office of the Courts. I am interested in how much was spent or was budgeted to be spent in the period from 2000 to the present, as well as budget items for future fiscal periods.
- Any agreements, contracts, or memoranda of understanding between the Department of Education and the Administrative Office of the Courts governing access to the PACER system by Department of Education staff.
- Any memoranda or other documents from Department of Education management to Department of Education lawyers asking them to curtail, limit, or otherwise ration their use of the PACER system due to cost considerations.
- Any contracts, memoranda, or budgetary materials detailing the specific agreements and amount of money spent by the Department of Education with commercial legal information providers such as Thomson WestLaw or the ReedElsevier LexisNexis service. While I understand such commercial legal information providers have more than just federal data, documents pertaining to the amount spent or budgeted, contracts, and memoranda relating to curtailing use because of cost are all relevant to this inquiry.

**Request for News Media Fee Status**

Public.Resource.Org asks that we not be charged search or review fees for this request because we qualify as a "representative of the news media" pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6).

Public.Resource.Org, Inc. is a 501(c)(3) public charity chartered to create public works projects on the Internet with a particular focus on making government information

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more broadly available without fee to any and all users. Public.Resource.Org has been certified as a "news media" requester for the purposes of obtaining and publishing high-resolution video from the United States Congress Recording Studio and we are engaged in a Joint Venture with the National Technical Information Service ("NTIS") under Agreement No. NTIS-1832 to assist in more broadly disseminating materials from NTIS onto the Internet. Documents from this current FOIA request will be promptly published, joining over 32.4 million pages of U.S. government documents we have made available on the Internet.

Due to our extensive publication activities, Public.Resource.Org is a "representative of the news media" under the FOIA and agency regulations. As such, this request is subject only to duplication fees after the fDepartment of Education 100 pages. However, all duplication fees should be waived, as discussed below, because disclosure of the information requested above is in the public interest.

### **Request for a Public Interest Fee Waiver**

Public.Resource.Org is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, agencies determine whether "[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government," and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

FDepartment of Education, this request concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i). The agency's access to legal research materials produced by the government constitutes government operations or activities.

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). Public.Resource.Org has requested information that will publicly reveal the nature and contents of the access to primary legal materials.

Third, the requested material will "contribute to public understanding" of limitations of access to legal materials. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to Public.Resource.Org's understanding of access to primary legal materials by government lawyers, but to the understanding of a broad audience of persons interested in the subject, since Public.Resource.Org will make the records available to the public at no cost.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of how much government spends to access public domain materials. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will permit the public to access the requested records for free.

Furthermore, a fee waiver is appropriate here because Public.Resource.Org has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). Public.Resource.Org is a 501(c)(3) nonprofit organizations and will derive no commercial benefit from the information at issue here.

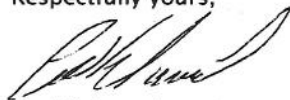
Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (707) 827-7290. As the FOIA

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provides, I will anticipate a determination on this request from your office within 20 working days.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Carl Malamud", written in a cursive style.

Carl Malamud  
President & CEO  
Public.Resource.Org