

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL  
FOUNDATION,  
611 Pennsylvania Ave., SE #231  
Washington, D.C. 20003

*Plaintiff,*

v.

UNITED STATES DEPARTMENT OF  
EDUCATION  
400 Maryland Ave SW  
Washington, DC 20202,

*Defendant.*

Civil Action No.: 24-448

**COMPLAINT**

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against the United States Department of Education (“DOE”), to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

3. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

## PARTIES

4. The Plaintiff, AFL, is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

5. The Defendant DOE is an agency under 5 U.S.C. § 552(f), with its headquarters at 400 Maryland Avenue, SW, Washington, DC 20202.

6. The Defendant has possession, custody, and control of the requested records.

## BACKGROUND

7. The Biden Administration has stated that it is committed to a transparent, open, and ethical government.<sup>1</sup>

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<sup>1</sup> *FACT SHEET: Biden-Harris Administration Prioritizes Effectiveness, Accountability, and Transparency in Bipartisan Infrastructure Law Implementation*, THE WHITE HOUSE (Apr. 29, 2022), <https://tinyurl.com/bdhrccyk>; *Biden White House Pledges Data, Transparency, Respect for Free Press*, REUTERS (Jan. 20, 2021), <https://tinyurl.com/3fzz25mf>; *Mark Joyella, Biden's White House Press Secretary Promises 'Trust and Transparency,'* FORBES (Jan. 20, 2021), <https://tinyurl.com/2p8729wz>.

8. “Timely disclosure of records is also essential to the core purpose of FOIA.” U.S. DEPT JUST., Freedom of Information Act Guidelines (Mar. 15, 2022), <https://tinyurl.com/2yd463dv>.

### **AFL’S FOIA REQUESTS**

#### *National Summit on Equal Opportunity Request*

9. On August 21, 2023, AFL submitted a FOIA request to DOE seeking records and communications related to the DOE’s National Summit on Equal Opportunity and Higher Education and records and communications related to the DOE’s August 14, 2023 “Dear College Letter” and “Question and Answers resource” released via a press release entitled “Advance Diversity and Opportunity in Higher Education: Justice and Education Departments Release Resources to Advance Diversity and Opportunity in Higher Education.” *Ex. 1*.

10. The request named the custodians of the requested documents and communications and established a timeframe for the search – May 1, 2023 to the date the FOIA was fully processed. *Id.*

11. This request sought a fee waiver. *Id.*

12. As of the date of this filing, Defendant DOE has not provided any response or records under this request.

#### *Book Czar Request*

13. On July 27, 2023, AFL submitted a FOIA request to DOE seeking records related to the Biden Administration’s appointment of a coordinator to fight “book bans.” *Ex. 2*.

14. The request named the custodians of the requested documents and communications and established a timeframe for the search – January 1, 2022 to the date each part of the FOIA was processed. *Id.*

15. On August 16, 2023, the DOE sent an email to AFL asking for clarification regarding the request. *Ex. 3.*

16. On August 17, 2023, AFL responded and provided such clarification. *Ex. 4.*

17. On August 25, 2023, DOE notified AFL that the average processing time for a FOIA request at DOE is now 185 business days. *Ex. 5.*

18. As of the date of this filing, Defendant DOE has not provided any records under this request.

*PPRA-NPRM Request*

19. On February 1, 2023, AFL submitted a FOIA request to DOE seeking records concerning DOE's Notice of Proposed Rulemaking on the Protection of Pupil Rights Amendment. *Ex. 6.*

20. The request named the custodians of the requested documents and communications and established a timeframe for the search – February 2, 2022 to the date each part of the FOIA was processed. *Id.*

21. On February 9, 2023, DOE sent two letters to AFL. *Ex. 7.*

22. The first letter granted AFL's request for a fee waiver. *Id.*

23. The second letter denied AFL's request for expedited processing. *Id.*

24. On August 4, 2023, DOE emailed AFL and stated that it was “unable to process your request at this time, because your request does not reasonably describe the records that you have sought under FOIA 5 U.S.C. § 552(a)(3)(A).” *Ex. 8.*

25. DOE’s August 4, 2023 letter requested clarification on the requests. *Id.*

26. AFL responded that same day (August 4, 2023), requesting a phone call to discuss the FOIA. *Ex. 9.*

27. DOE did not respond to AFL’s August 4, 2023 email.

28. On November 3, 2023, AFL emailed the FOIA service center to check on the status of the FOIA request. *Ex. 10.*

29. DOE did not respond to AFL’s November 3, 2023, email.

30. On November 15, 2023, believing that DOE had administratively closed the FOIA request, AFL filed an appeal with DOE. *Ex. 11.*

31. On November 16, 2023, DOE emailed AFL and stated that the FOIA had not been administratively closed and that it remained pending. Thus, DOE was not entertaining AFL’s appeal. *Ex. 12.*

32. As of the date of this filing, Defendant DOE has not provided any records under this request.

### **CLAIM FOR RELIEF**

#### **Violation of the FOIA, 5 U.S.C. § 552**

33. AFL incorporates paragraphs 1–32 by reference.

34. AFL properly requested records within the possession, custody, and control of the Defendant.

35. The Defendant failed to conduct searches for responsive records.

36. Moreover, because Defendant failed to conduct searches, it has failed to disclose any segregable, non-exempt portions of responsive records. *See* 5 U.S.C. § 552(b).

37. The Defendant has failed to respond to AFL's requests within the statutory time period. *See* 5 U.S.C. § 552(a)(6).

38. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

39. The Defendant has violated the FOIA by failing to reasonably search for records responsive to AFL's FOIA request and release nonexempt records within the prescribed time limit.

### **PRAYER FOR RELIEF**

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL's requests must be disclosed pursuant to 5 U.S.C. § 552;
- ii. Order the Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;
- iii. Order the Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA requests, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under a claim of exemption;
- iv. Order the Defendant to grant AFL's requests for fee waivers;

v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

vi. Grant AFL such other and further relief as this Court deems proper.

Date: February 15, 2024

Respectfully Submitted

/s/ Jacob Meckler

Ian Prior (D.C. Bar No. 90001650)

Jacob Meckler (D.C. Bar No. 90005210)

Tel: (202) 964-3721

E-mail: [Jacob.meckler@aflegal.org](mailto:Jacob.meckler@aflegal.org)

AMERICA FIRST LEGAL FOUNDATION

611 Pennsylvania Avenue SE #231

Washington, D.C. 20003

*Counsel for the Plaintiff*

*America First Legal Foundation*