

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

NATIONAL STUDENT LEGAL DEFENSE
NETWORK,
1701 Rhode Island Ave. NW
Washington, DC 20036

GLOBAL IMPACT SOCIAL WELFARE
FUND d/b/a ACCOUNTABLE TECH,
1199 N Fairfax Street, Suite 300
Alexandria, VA 22314

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,
400 Maryland Avenue Southwest
Washington, DC 20202

Defendant.

Case No. 24-cv-2217

COMPLAINT

INTRODUCTION

1. Each year, millions of higher education students entrust their sensitive, personal information to the U.S. Department of Education (“Department”) to access the financial aid necessary to attend college.

2. In 2022, media reports surfaced that the Department shared students’ personal information with Facebook (now known as “Meta”) without students’ consent after activating Facebook’s Pixel code on its federal student aid application to track applicants’ actions while on the website.

3. The Department has never fully explained what happened. So, on June 9, 2022, the National Student Legal Defense Network (“Student Defense”) and Accountable Tech

submitted a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 ("FOIA"), demanding the release of certain information related to the data breach. The Department has failed to respond.

4. Student Defense and Accountable Tech now bring this action against the United States Department of Education under the Freedom of Information Act, 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

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

7. Because the Department has failed to comply with the applicable time-limit provisions of FOIA, Student Defense and Accountable Tech are deemed to have exhausted their administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and are now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

8. Plaintiff Student Defense is a nonpartisan, non-profit organization incorporated in the District of Columbia. Student Defense's mission is to work, through a variety of means, to advance students' rights to educational opportunity and ensure that higher education provides a launching point for economic mobility. To further its mission, Student Defense gathers information, including through responses to FOIA requests submitted to government agencies,

and publicizes these responses on, *inter alia*, its website, social media, press releases and other comments to the media, and regulatory comments to government agencies.

9. Plaintiff Global Impact Social Welfare Fund d/b/a Accountable Tech is a non-profit organization incorporated in Delaware. Accountable Tech's mission is to curb the societal harms driven by big technology companies' toxic business practices. To further its mission, Accountable Tech investigates big technology companies' actions and advocates for structural reforms to repair information ecosystems and promote a healthier democracy.

10. Defendant U.S. Department of Education is a department of the executive branch of the United States government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Department has possession, custody, and control of the records that Student Defense seeks.

STATEMENT OF FACTS

11. Millions of students and their families entrust sensitive information to the Department each year when applying for federal student aid, expecting that the Department will protect their information. However, the Department has failed to fulfill this basic expectation.

12. In April 2022, news outlets reported that the Department used a string of website programming code, known as the Facebook Pixel, allowing it to collect personal data, including personal identifying information (PII), from an unknown number of federal student aid applicants on the Free Application for Federal Student Aid ("FAFSA") and sent that information to the social media website, Facebook, from January 2022 to March 2022. *See* Surya Mattu and Colin Lecher, *Applied for Student Aid Online? Facebook Saw You*, The Markup (Apr. 28, 2022, 8:00 AM), <https://themarkup.org/pixel-hunt/2022/04/28/applied-for-student-aid-online-facebook-saw-you>.

13. Facebook is currently owned by Meta Platforms, Inc., d/b/a Meta. According to Meta’s website, the Facebook Pixel is “a piece of code for your website that lets you measure, optimize and build audiences for your ad campaigns. [It] allows you to measure the effectiveness of your advertising by understanding the actions people take on your website.” *The Facebook Pixel: What It is and How to Use It*, Meta (Feb. 5, 2021), <https://www.facebook.com/government-nonprofits/blog/the-facebook-pixel>.

14. When asked about the potential privacy vulnerability, Federal Student Aid (“FSA”) Chief Operating Officer, Richard Cordray, said that the Department changed their tracking settings for a March 2022 advertising campaign, which “inadvertently caused some StudentAid.gov user information that falls outside of FSA’s normal collection efforts, such as a user’s first and last name, to be tracked.” Surya Mattu and Colin Lecher, *supra*.

15. However, The Markup reported that data collection started earlier and went beyond first and last name, including “first name, last name, country, phone number, and email address[es] being sent to Facebook from the [Department’s] site as early as January 2022, months before the mentioned advertising campaign began.” Surya Mattu and Colin Lecher, *supra*.

16. After The Markup questioned the Department about its tracking practice, the Department stopped sharing students’ PII with Facebook by deactivating the Facebook Pixel code. Surya Mattu and Colin Lecher, *supra*.

17. However, Meta’s privacy policy states that it may retain the data it gathers from the Facebook Pixel for years. *See Meta Business Tools Terms*, Facebook (Apr. 25, 2023).

18. Meta engineers stated that they “do not have an adequate level of control and explainability over how [their] systems use data, and thus...can’t confidently make controlled

policy changes or external commitments such as ‘we will not use X data for Y purpose.’” Surya Mattu and Colin Lecher, *supra*.

19. Parents and student privacy advocates have described the Department’s data-sharing with Facebook as “horrificing” because “only the savviest web users could avoid sending an online [FAFSA] application to the government without also providing potentially sensitive information to Facebook.” Surya Mattu and Colin Lecher, *supra*.

20. This case concerns FOIA Request No. 22-02928-F (the “Request”), which seeks to understand the reasons behind the privacy breach and the full extent of the breach.

21. The Request is important because the public has a significant interest in the extent to which the Department protects the privacy of users of its FAFSA systems and applications for federal student aid. The requested information has the potential to shed light on the Department’s treatment of personally identifiable information and contribute significantly to public understanding of the federal government.

Student Defense and Accountable Tech’s FOIA Request

22. On June 9, 2022, Student Defense and Accountable Tech submitted a FOIA request to the Department seeking “all documents constituting or reflecting communications (including emails) with employees or representatives of Facebook or Meta Platforms, Inc. . . . regarding or any way pertaining to the facts that are the subject of an April 28, 2022, story in The Markup titled ‘Applied for Student Aid Online? Facebook saw you.’”

23. The Request seeks the following records:

(a) All communications from January 1, 2022, to June 9, 2022:

(i) with employees or representatives of Facebook,

(ii) between any employee of the Department and any individual in the Executive Office of the President (“EOP”),

and

(iii) between any employee of the Department and any individual in any Executive Branch Agency.

(b) All documents:

(i) constituting or reflecting any analysis, study, investigation, overview, or report conducted or authored by the Department or any third party regarding the “Facebook Pixel” or “Meta Pixel” or sharing of data obtained through the FAFSA website,

(ii) to the extent not considered otherwise responsive, (including communications within or outside the Department) discussing, describing, or relating to (a) any code embedded in any U.S. Department of Education website (including, but not limited to studentaid.gov) that has the intent or effect of transmitting information to Facebook; and/or (b) the code discussed in TheMarkup article,

and

(iii) in the custody or control of the Department’s Office of the Inspector General dated between January 1, 2022, and June 9, 2022.

24. The Request also provided specific search terms for particular requests to enable the Department to identify the relevant documents. Specifically,

- Facebook
- Meta
- TheMarkup
- Pixel
- Facebook Pixel
- Meta Pixel

25. On June 10, 2022, the Department acknowledged receipt of the Request and assigned it tracking number 22-02928-F.

26. On June 23, 2022, the Department updated the status of the Request to “In Process” and granted Plaintiffs’ request for a fee waiver.

27. On July 11, 2022, Plaintiffs received a 20 Day Status Notification letter from the Department stating that the Request “was forwarded to the appropriate office(s) within the Department for any responsive documents they may have.”

28. On July 27, 2022, Plaintiffs received an email communication from the Department requesting a phone call to discuss the scope of the Request.

29. On July 28, 2022, Plaintiffs received a status update indicating the Request was “On Hold – Need Info/Clarification.”

30. On August 2, 2022, Plaintiffs met with the Department. This meeting resulted in three action items agreed by the Department: (1) to provide Plaintiffs a list of proposed search terms for element three of the Request, (2) to provide Plaintiffs examples of external news blasts/bulletins the Department would like to consider outside the scope of the Request, and (3) to provide a tentative timeline for the first production of records.

31. On September 19, 2022, Plaintiffs requested a status update.

32. On September 27, 2022, the Department sent Plaintiffs a proposed list of search terms for element three of the Request and samples of the email blasts/bulletins the Department considers outside the scope of the Request. The Department was not able to provide an estimated timeline for the first production.

33. On September 30, 2022, Plaintiffs agreed that the Department could exclude the types of email blasts/bulletins it shared from production. Plaintiffs did not agree to limit the search terms for element three of the Request to only the terms the Department outlined in its email communication.

34. On November 7, 2022, Plaintiffs received a status update indicating the Request was “In process.”

35. On April 10, 2024, Plaintiffs requested a status update.

36. On April 16, 2024, Plaintiffs received a status update indicating that the Request “is currently under processing review.”

37. Plaintiffs have not received any further communication from the Department regarding this Request.

Exhaustion of Administrative Remedies

38. As of the date of this complaint, the Department has failed to (a) notify Student Defense and Accountable Tech of any determination regarding their FOIA request, including the scope of any responsive records the Department intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

39. Through the Department’s failure to respond to Student Defense and Accountable Tech’s FOIA request within the time period required by law, Student Defense and Accountable Tech have constructively exhausted their administrative remedies and seek immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

40. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

41. Plaintiffs properly requested records within the possession, custody, and control of ED.

42. The Department is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

43. The Department has failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiffs' FOIA request.

44. The Department's failure to conduct an adequate search for responsive records violates FOIA.

45. Student Defense and Accountable Tech are therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Student Defense and Accountable Tech's FOIA request.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

46. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

47. Plaintiffs properly requested records within the possession, custody, and control of ED.

48. The Department is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

49. The Department is wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to produce non-exempt records responsive to their FOIA request.

50. The Department is wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to Student Defense and Accountable Tech's FOIA request.

51. The Department's failure to provide all non-exempt responsive records violates FOIA.

52. Student Defense and Accountable Tech are therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to their FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Student Defense and Accountable Tech respectfully request the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiffs' FOIA request;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiffs' FOIA request and an index justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA request;
- (4) Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Student Defense and Accountable Tech such other relief as the Court deems just and proper.

Dated: July 29, 2024

Respectfully submitted,

/s/ Eric Rothschild

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