

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:24-cv-00814-JMC**

DEFENSE OF FREEDOM INSTITUTE FOR POLICY STUDIES, INC. v. U.S. DEPARTMENT OF EDUCATION et al
Assigned to: Judge Jia M. Cobb
Case in other court: Florida Middle, 6:23-cv-01515
Cause: 05:552 Freedom of Information Act

Date Filed: 03/21/2024
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**DEFENSE OF FREEDOM
INSTITUTE FOR POLICY STUDIES,
INC.**

represented by **Martha Astor**
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DONALD A. DAUGHERTY, JR.
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ATTORNEY TO BE NOTICED

V.

Defendant

**U.S. DEPARTMENT OF
EDUCATION**

represented by **L'Shauntee J. Robertson**
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Defendant

**WHITE HOUSE OFFICE OF
MANAGEMENT AND BUDGET**

represented by **L'Shauntee J. Robertson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/09/2023	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$402 receipt number AFLMDC-21129445) filed by Defense of Freedom Institute for Policy Studies, Inc . (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Proposed Summons, # <u>3</u> All Exhibits)(Astor, Martha) Modified to edit docket text on 8/10/2023 (RLK). [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/09/2023)
08/09/2023	2	NEW CASE ASSIGNED to Judge Paul G. Byron and Magistrate Judge Embry J. Kidd. New case number: 6:23-cv-01515-PGB-EJK. (JG) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/09/2023)

08/09/2023	<u>3</u>	NOTICE TO COUNSEL Donald A. Daugherty, Jr. of Local Rule 2.01(a), which requires membership or special admission in the Middle District bar to practice in the Middle District, except for the limited exceptions identified in the Rule. To apply for membership in the Middle District, visit www.flmd.uscourts.gov/for-lawyers . (Signed by Deputy Clerk). (JG) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/09/2023)
08/10/2023	<u>4</u>	SUMMONS issued as to The White House Office of Management and Budget, U.S. Department of Education. (RLK) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/10/2023)
08/10/2023	<u>5</u>	INITIAL CASE ORDER re: Case Management and Deadlines. Signed by Judge Paul G. Byron on 8/10/2023. (KM) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/10/2023)
08/10/2023	<u>6</u>	ORDER ON DISCOVERY MOTIONS. Signed by Magistrate Judge Embry J. Kidd on 8/10/2023. (JOR) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/10/2023)
08/15/2023	<u>7</u>	First MOTION for Donald A. Daugherty, Jr. to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC-21148431 for \$150 by Defense of Freedom Institute for Policy Studies, Inc. (Astor, Martha) Motions referred to Magistrate Judge Embry J. Kidd. [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/15/2023)
08/15/2023	<u>8</u>	Amended MOTION for Donald A. Daugherty, Jr. to appear pro hac vice by Defense of Freedom Institute for Policy Studies, Inc.. (Astor, Martha) Motions referred to Magistrate Judge Embry J. Kidd. [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/15/2023)
08/16/2023	<u>9</u>	ENDORSED ORDER denying without prejudice <u>8</u> Amended Motion for Donald A. Daugherty, Jr. to Appear Pro Hac Vice; denying as moot <u>7</u> Motion for Donald A. Daugherty, Jr. to Appear Pro Hac Vice. The Court expects attorneys seeking admission to practice before it to be familiar with and to follow all of the Federal Rules of Civil Procedure and the Local Rules. See Local Rule 2.01(b)(1)(D). Despite certifying his knowledge of these rules, Attorney Daugherty's Motion does not comply with the signature requirements set forth in Federal Rule of Civil Procedure 11(a). Additionally, counsel should review Local Rule 1.08 for the Court's formatting requirements for motions. Signed by Magistrate Judge Embry J. Kidd on 8/16/2023. (RMN) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/16/2023)
08/16/2023	<u>10</u>	Second MOTION for Donald A. Daugherty, Jr. to appear pro hac vice by Defense of Freedom Institute for Policy Studies, Inc. (Astor, Martha) Motions referred to Magistrate Judge Embry J. Kidd. [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/16/2023)
08/16/2023	<u>11</u>	NOTICE of WITHDRAWAL of motion re <u>7</u> Motion to Appear filed by Defense of Freedom Institute for Policy Studies, Inc. by Defense of Freedom Institute for Policy Studies, Inc. (Astor, Martha) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/16/2023)
08/17/2023	<u>12</u>	ORDER granting <u>10</u> Plaintiff's Second Motion for Special Admission of Donald A. Daugherty, Jr. Signed by Magistrate Judge Embry J. Kidd on 8/17/2023. (RMN) [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/17/2023)
08/24/2023	<u>13</u>	CERTIFICATE of interested persons and corporate disclosure statement by Defense of Freedom Institute for Policy Studies, Inc. identifying Corporate Parent Defense of Freedom Institute for Policy Studies, Inc. for Defense of Freedom Institute for Policy Studies, Inc. (Astor, Martha) Modified text on 8/24/2023 (MCB). [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/24/2023)
08/24/2023	<u>14</u>	NOTICE of a related action per Local Rule 1.07(c) by Defense of Freedom Institute for Policy Studies, Inc. Related case(s): No (Astor, Martha) Modified text on 8/24/2023 (MCB). [Transferred from Florida Middle on 3/21/2024.] (Entered: 08/24/2023)

09/08/2023	<u>17</u>	RETURN of service executed on 8/17/2023 by Defense of Freedom Institute for Policy Studies, Inc. as to U.S. Department of Education. (Attachments: # <u>1</u> Proof of Service, # <u>2</u> Proof of Mailing)(Astor, Martha) Modified on 9/8/2023 (SPM). [Transferred from Florida Middle on 3/21/2024.] (Entered: 09/08/2023)
09/20/2023	<u>18</u>	Unopposed MOTION for Extension of Time to File Response to <u>1</u> Complaint by All Defendants. (Sowell, Robert) [Transferred from Florida Middle on 3/21/2024.] (Entered: 09/20/2023)
09/28/2023	<u>19</u>	CERTIFICATE of Interested Persons and Corporate Disclosure Statement by The White House Office of Management and Budget, U.S. Department of Education. (Sowell, Robert) Modified text on 9/29/2023 (GL). [Transferred from Florida Middle on 3/21/2024.] (Entered: 09/28/2023)
09/28/2023	<u>20</u>	NOTICE of a related action per Local Rule 1.07(c) by The White House Office of Management and Budget, U.S. Department of Education. Related case(s): Yes. (Sowell, Robert) Modified text on 9/29/2023 (GL). [Transferred from Florida Middle on 3/21/2024.] (Entered: 09/28/2023)
09/29/2023	21	NOTICE TO COUNSEL Martha Astor and Donald Albert Daugherty, Jr. of Local Rule 2.02(a), which states, "The first paper filed on behalf of a party must designate only one lead counsel who – unless the party changes the designation – remains lead counsel throughout the action." Counsel must file a Notice of Lead Counsel Designation identifying lead counsel. (Signed by Deputy Clerk). (GL) [Transferred from Florida Middle on 3/21/2024.] (Entered: 09/29/2023)
10/03/2023	22	ENDORSED ORDER granting <u>18</u> Motion for Extension of Time. Defendants may have until and through October 5, 2023, to respond to the Complaint. Signed by Magistrate Judge Embry J. Kidd on 10/3/2023. (Kidd, Embry) [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/03/2023)
10/04/2023		Set/reset deadlines/hearings: Answer due by 10/5/2023. (ARL) [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/04/2023)
10/04/2023	<u>23</u>	NOTICE of Lead Counsel Designation by Martha Astor on behalf of Defense of Freedom Institute for Policy Studies, Inc. Lead Counsel: Martha A. Astor. (Astor, Martha) [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/04/2023)
10/04/2023	24	NOTICE TO COUNSEL Martha Astor of Local Rule 2.01(b)(2)(B), which requires members of the Middle District bar to maintain with the clerk a current telephone number, mailing address, and email address. Update your contact information for the Middle District through PACER. (Signed by Deputy Clerk). (ARL) [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/04/2023)
10/05/2023	<u>25</u>	ANSWER and affirmative defenses to <u>1</u> Complaint by The White House Office of Management and Budget, U.S. Department of Education.(Sowell, Robert) [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/05/2023)
10/23/2023	<u>26</u>	MOTION to Dismiss <u>1</u> Complaint Pursuant to 28 U.S.C. 1406 or, Alternatively, to Transfer by All Defendants. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16, # <u>17</u> Exhibit 17, # <u>18</u> Exhibit 18, # <u>19</u> Exhibit 19, # <u>20</u> Exhibit 20)(Sowell, Robert) . Added MOTION to Change Venue / Transfer Case on 10/23/2023 (AJS). [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/23/2023)
10/25/2023	<u>27</u>	MOTION for Miscellaneous Relief, specifically for Rule 16(b) Scheduling Conference by All Defendants. (Sowell, Robert) [Transferred from Florida Middle on 3/21/2024.] (Entered: 10/25/2023)
11/03/2023	<u>28</u>	NOTICE by Defense of Freedom Institute for Policy Studies, Inc. re <u>27</u> MOTION for Miscellaneous Relief, specifically for Rule 16(b) Scheduling Conference (Astor, Martha) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/03/2023)
11/07/2023	<u>29</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>26</u> MOTION to Dismiss <u>1</u> Complaint Pursuant to 28 U.S.C. 1406 or, Alternatively, to Transfer MOTION to Change Venue / Transfer Case by Defense of Freedom Institute

		for Policy Studies, Inc.. (Astor, Martha) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/07/2023)
11/07/2023	<u>30</u>	ENDORSED ORDER granting <u>29</u> Motion for Extension of Time to File Response to Motion to Dismiss or, Alternatively, to Transfer. On or before November 16, 2023, Plaintiff shall respond to <u>26</u> Motion to Dismiss or, Alternatively, to Transfer. Signed by Judge Paul G. Byron on 11/7/2023. (ABP) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/07/2023)
11/08/2023	<u>31</u>	RESPONSE in Opposition re <u>27</u> MOTION for Miscellaneous Relief, specifically for Rule 16(b) Scheduling Conference filed by Defense of Freedom Institute for Policy Studies, Inc. (Astor, Martha) Modified on 11/9/2023 to edit text (ELM). [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/08/2023)
11/13/2023	<u>32</u>	ORDER granting in part and denying in part <u>27</u> Motion for Rule 16(b) Scheduling Conference. See Order for details. Signed by Judge Paul G. Byron on 11/13/2023. (ABP) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/13/2023)
11/16/2023	<u>33</u>	RESPONSE in Opposition re <u>26</u> MOTION to Dismiss <u>1</u> Complaint Pursuant to 28 U.S.C. 1406 or, Alternatively, to Transfer MOTION to Change Venue / Transfer Case filed by Defense of Freedom Institute for Policy Studies, Inc. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration)(Astor, Martha) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/16/2023)
11/18/2023	<u>34</u>	MOTION for Leave to File Reply In Support of <u>26</u> Motion to Dismiss by All Defendants. (Sowell, Robert) Modified motion relief on 11/20/2023 (AJS). [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/18/2023)
11/20/2023	<u>35</u>	ENDORSED ORDER denying <u>34</u> Motion for Leave to File Reply. The Court does not require the benefit of further briefing at this time. However, if additional briefing is deemed necessary in the future, the Court will direct the parties to file accordingly at the appropriate time. Signed by Judge Paul G. Byron on 11/20/2023. (ABP) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/20/2023)
11/20/2023	<u>36</u>	NOTICE of a related action per Local Rule 1.07(c) by Defense of Freedom Institute for Policy Studies, Inc. Related case(s): Yes (Astor, Martha) [Transferred from Florida Middle on 3/21/2024.] (Entered: 11/20/2023)
03/19/2024	<u>37</u>	ORDER granting <u>26</u> Motion to Dismiss for Improper Venue. The Clerk of Court is DIRECTED to transfer this matter to the District Court for the District of Columbia, where venue properly lies pursuant to 5 U.S.C. § 552(a)(4)(B), and close the case. See Order for further details. Signed by Judge Paul G. Byron on 3/19/2024. (ABD) [Transferred from Florida Middle on 3/21/2024.] (Entered: 03/19/2024)
03/21/2024	<u>38</u>	CASE ELECTRONICALLY TRANSFERRED to the District of Columbia. (RPB) [Transferred from Florida Middle on 3/21/2024.] (Entered: 03/21/2024)
03/21/2024	<u>39</u>	Case transferred in from District of Florida Middle; Case Number 6:23-cv-01515. Original file ,transfer order and docket sheet received. (Entered: 03/21/2024)
03/25/2024		MINUTE ORDER: The Court ORDERS that the Parties confer and submit a joint proposed schedule for further proceedings, which shall include a proposed schedule for the processing and release of responsive records or for briefing dispositive motions, by April 8, 2024. Signed by Judge Jia M. Cobb on March 25, 2024. (lcjmc2) (Entered: 03/25/2024)
04/08/2024	<u>40</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF EDUCATION, WHITE HOUSE OFFICE OF MANAGEMENT AND BUDGET. (Robertson, L'Shauntee) (Entered: 04/08/2024)
04/08/2024	<u>41</u>	ERRATA <i>CORRECTING STATUS REPORT</i> by U.S. DEPARTMENT OF EDUCATION, WHITE HOUSE OFFICE OF MANAGEMENT AND BUDGET re <u>40</u> Status Report. (Robertson, L'Shauntee) (Entered: 04/08/2024)

04/09/2024		<p>MINUTE ORDER: Upon consideration of the Parties' <u>41</u> joint status report, the Court hereby ORDERS the Parties to submit an additional joint status report by June 7, 2024.</p> <p>The Court finds no basis to grant Plaintiff's request for discovery. "Discovery is strongly disfavored in FOIA cases" and "is generally permitted only upon a showing that the agency acted in bad faith." <i>Bonfilio v. OSHA</i>, 320 F. Supp. 3d 152, 157 (D.D.C. 2018). "In determining what constitutes bad faith, 'courts routinely find that delays in responding to FOIA requests are not, in and of themselves, indicative of agency bad faith.'" <i>Chase v. DOJ</i>, 301 F. Supp. 3d 146, 158 (D.D.C. 2018) (collecting cases). That is all to say, while the Court is sympathetic to Plaintiff's frustration that "Defendants still have not produced a single document" after more than two years, ECF 41 para. 8, this delay alone does not justify a finding of bad faith nor an order compelling discovery, <i>see also Justice v. IRS</i>, 798 F. Supp. 2d 43, 47 (D.D.C. 2011) ("[D]iscovery in FOIA cases is the exception and not the rule.").</p> <p>Moreover, the Government's representations (which Plaintiff does not appear to dispute) indicate that the Government is likely to finish production of responsive documents for two of the three FOIA requests at issue in a matter of a few months. <i>See</i> ECF 41 paras. 1–3 (stating that all but one office has identified all responsive documents, totaling roughly 1200 pages, and the Government is prepared to process the documents at a rate of 500 pages per month). And as for the final request, the fact that the Parties have already worked collaboratively to reduce the universe of potentially responsive documents from over 3,000,000 down to 78,000, ECF 41 paras. 4–5, suggests that the interests of justice and efficiency favor allowing at least 60 days for the Parties to confer and attempt to resolve their dispute (or at least identify their specific points of disagreement) before diving into summary judgment briefing.</p> <p>Signed by Judge Jia M. Cobb on April 9, 2024. (lcjmc2) (Entered: 04/09/2024)</p>
06/07/2024	<u>42</u>	<p>Joint STATUS REPORT by U.S. DEPARTMENT OF EDUCATION, WHITE HOUSE OFFICE OF MANAGEMENT AND BUDGET. (Robertson, L'Shauntee) (Entered: 06/07/2024)</p>
06/18/2024		<p>MINUTE ORDER: Upon consideration of the Parties' <u>42</u> joint status report, the Court hereby ORDERS the Parties to submit an additional joint status report by August 6, 2024. The Parties agree that this joint status report is appropriate. Plaintiff makes additional requests for limited discovery, <i>Vaughn</i> indices, and a summary judgment schedule, but the Court declines those requests for the reasons below.</p> <p>Regarding discovery, the Court still sees no evidence of bad faith by Defendants and therefore no basis for ordering discovery, which, once again, "is strongly disfavored in FOIA cases." <i>Bonfilio v. OSHA</i>, 320 F. Supp. 3d 152, 157 (D.D.C. 2018). While the Court acknowledges Plaintiff's representation that, as of June 7, 2024, it had not received 15 documents and 2 hyperlinks the Government claims it provided the day before, the Court is confident that the Parties can resolve (and perhaps already have resolved) what appears to be a minor error or miscommunication.</p> <p>As for the <i>Vaughn</i> indices and summary judgment schedule, the Court finds these requests premature. The Department of Education appears to be on track to complete its processing and productions in a matter of months, and the Court sees no reason to order a partial <i>Vaughn</i> index now. The FOIA request to the Office of Management and Budget presents different problems: namely, the combination of (1) the large volume of potentially responsive documents (i.e., more than 78,000) paired with (2) the fact that the vast majority of documents processed thus far (i.e., 236 of 265) were duplicative or nonresponsive. These circumstances suggest to the Court that further efforts by the Parties to streamline this process would serve the interests of justice and efficiency.</p> <p>Signed by Judge Jia M. Cobb on June 18, 2024. (lcjmc2) (Entered: 06/18/2024)</p>
08/06/2024	<u>43</u>	<p>Joint STATUS REPORT by U.S. DEPARTMENT OF EDUCATION, WHITE HOUSE OFFICE OF MANAGEMENT AND BUDGET. (Robertson, L'Shauntee) (Entered: 08/06/2024)</p>
08/08/2024		<p>MINUTE ORDER: Upon consideration of the Parties' <u>43</u> joint status report, the Court hereby ORDERS the Parties to submit an additional joint status report by October 8,</p>

2024. The Parties agree that an additional joint status report is appropriate. Plaintiff, once again, requests that *Vaughn* indices be ordered immediately. But, once again, the Court declines that request.

Plaintiff's request for rolling *Vaughn* indices remains premature. A supplemental search by the Department of Education has uncovered more than 70,000 potentially responsive documents, but there are ongoing discussions between the Parties about excluding certain documents in a manner that would substantially reduce that set. Similarly, the Office of Management and Budget has managed to narrow its set of potentially responsive documents from more than 78,000 to fewer than 5,000. In these circumstances, the Court concludes that the interests of justice and efficiency are better served by—first and foremost—identifying the total pool of responsive documents through good faith and focused coordination between the Parties. Signed by Judge Jia M. Cobb on August 8, 2024. (lcjmc2) (Entered: 08/08/2024)