



responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant United States Department of Education (“DoEd”) is an agency of the United States Government and is headquartered at 400 Maryland Avenue SW, Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On April 10, 2017, Plaintiff submitted a FOIA request to the DoEd seeking the following:

Any records or emails discussing the potential implications for federal voucher or school choice policy in light of the anticipated conclusions of the DoEd’s January 2017 Report “School Improvement Grants: Implementation and Effectiveness.”

The time frame for the request was identified as May 1, 2016 through January 20, 2017.

6. On April 11, 2017, Defendant DoEd confirmed receipt of Plaintiff’s request and referred it to the appropriate DoEd component, the Office of the Secretary, assigning the request FOIA Control Number 17-01467-F.

7. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

### **COUNT I**

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

8. Plaintiff realleges paragraphs 1 through 7 as if fully stated herein.

9. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

10. To trigger FOIA's administrative exhaustion requirement, Defendant was required to determine whether to comply with Plaintiff's requests within twenty (20) business days of receipt. Accordingly, Defendants' determinations were due by about April 19, 2017, at the latest. At a minimum, Defendant was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

11. Because Defendant failed to make a substantive, appealable determination of whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: May 30, 2017

Respectfully submitted,

*s/ Chris Fedeli*

Chris Fedeli

DC Bar No. 472919

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