

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

DAILY CALLER NEWS FOUNDATION,)
1775 Eye Street, N.W., Suite 1150-291)
Washington, DC 20006,)
Plaintiff,)
v.)
U.S. DEPARTMENT OF EDUCATION,)
400 Maryland Avenue, S.W.)
Washington, DC 20202,)
Defendant.)
Civil Action No. 1:19-cv-00833

COMPLAINT

Plaintiff Daily Caller News Foundation brings this action against Defendant U.S. Department of Education to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Daily Caller News Foundation has its principal place of business at 1775 Eye Street, N.W., Suite 1150-291, Washington, DC 20006. Founded in 2011 by Tucker Carlson, a 20-year veteran of print and broadcast media, and Neil Patel, former chief policy adviser to Vice President Dick Cheney, DCNF is a 501(c)(3) non-profit organization providing original investigative reporting from a team of professional reporters that operates for the public benefit.

DCNF's website reaches approximately three million unique monthly visitors and its content, which is available without charge to any eligible news publisher, is published by The Daily Caller, Yahoo News, Business Insider and a growing host of other media outlets, reaching a combined audience estimated in excess of 30 million readers.

4. Defendant U.S. Department of Education is an agency of the United States Government and is headquartered at 400 Maryland Avenue, S.W., Washington, DC 20202. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On August 8, 2023, Plaintiff submitted a FOIA request to Defendant seeking access to the following public records:

Any/all email communication records (including attachments, URL links and electronic database links) sent and/or received by Miguel Cardona to or from Rebecca (Becky) Pringle from June 1, 2023, to July 15, 2023, on the ed.gov domain.

I am requesting records that contain:

1. Any/all communications about book bans or book banning.
2. Any/all communication about Moms For Liberty and/or Ron DeSantis.

6. On August 8, 2023, Defendant acknowledged receipt of this request by email and assigned tracking number FOIA Request No. 23-02506-F. Plaintiff has received no further response.

7. On August 8, 2023, Plaintiff submitted a second FOIA request to Defendant seeking access to the following public records:

Any/all email communication records (including attachments, URL links and electronic database links) sent and/or received by Miguel Cardona to or from Rhonda 'Randi' Weingarten from June 1, 2023, to July 15, 2023, on the ed.gov domain.

I am requesting records that contain:

1. Any/all communications about book bans or book banning.

2. Any/all communications about Moms For Liberty and/or Ron DeSantis.
8. On August 8, 2023, Defendant acknowledged receipt of this request by email and assigned tracking number FOIA Request No. 23-02507-F. Plaintiff has received no further response.
9. On August 8, 2023, Plaintiff submitted a third FOIA request to Defendant seeking access to the following public records:

“Any/all email communication records (including attachments, URL links and electronic database links) sent and/or received by Miguel Cardona to or from any/all: Emily Drabinski, from June 1, 2023, to July 15, 2023, on the ed.gov domain.

I am requesting records that contain:

1. Any/all communications about book bans or book banning.
2. Any/all communication about Moms For Liberty.

10. On August 8, 2023, Defendant acknowledged receipt of this request by email and assigned tracking number FOIA Request No. 23-02505-F.

11. Defendant acknowledged receipt of the third request again by letter dated August 17, 2023 and sought clarification. Specifically, Defendant asked:

In the subsequent requests you submitted, you specified that you were seeking, “Any/all communication about Moms For Liberty and/or Ron DeSantis.” Would you like to include communication about Ron DeSantis in this request as well?

12. On August 28, 2023, Plaintiff responded to Defendant by email stating that it did not seek communications about DeSantis as well.

13. Defendant responded to Plaintiff’s email on August 29, 2023, acknowledging Plaintiff’s clarification and affirmed that processing of the request would continue. Plaintiff has received no further response.

14. As of the date of this Complaint and with respect to all three requests, 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 determinations.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

15. Plaintiff realleges paragraphs 1 through 14 as if fully stated herein.

16. Defendant is in violation of FOIA.

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

18. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make final determinations on Plaintiff's first two requests by September 7, 2023 and on Plaintiff's third request by September 19, 2023, at the latest. Because Defendant failed to make final determinations on Plaintiff's FOIA requests within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and *Vaughn* indices 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 requests; (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: September 21, 2023

Respectfully submitted,

/s/ Michael Bekesha

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