



Fumbling FOIA

How the Biden Education Department's Stonewalling Undermines the Public's Right to Know

By Selena Lin and Paul Zimmerman | May 2024

Introduction

The Freedom of Information Act (“FOIA”) serves a vital function in America’s democratic process, allowing any person to request federal agency records and hold government accountable. The following report tests the commitment of the U.S. Department of Education (the “Department”) across presidential administrations to FOIA’s principle of transparency by comparing the Department’s FOIA response rates during the Trump and Biden administrations, as well as the response rates of each administration with regard to selected liberal and conservative outside groups. The report’s findings demonstrate that the Biden Education Department, compared with that of the preceding administration, has failed to carry out its responsibilities under FOIA by delaying the processing of requests, particularly from organizations with conservative missions.

The Dataset

The data in this report is based on FOIA logs available on the Department’s website.¹ The available data spreadsheets extend from 2011 to 2023. The Department does not provide data from April 2019.

To accurately capture each administration’s actions, this report attributes each FOIA request to the administration that received it. Thus, FOIA requests received between January 20, 2017, and January 19, 2021, are considered records requests to the Trump administration; FOIA requests received between January 20, 2021, and December 2023 (the most recent requests for which data is available) are considered records requests to the Biden administration. Because, as of the date of this report, data is only available for the first three years of the Biden administration, this report compares the general FOIA responses data from the Biden Education Department to that of the first three years of

1 <https://www2.ed.gov/policy/gen/leg/foia/foia-log.html>

the Trump administration to ensure the comparison of parallel datasets.

This report also examines both administrations' responsiveness to FOIA requests based on whether the requesting organization had a liberal or conservative mission. The selected liberal organizations are the Democracy Forward Foundation, the Center for American Progress, American Oversight, American Bridge 21st Century, National Women's Law Center, and Women's Law Project. The selected conservative organizations are the Defense of Freedom Institute for Policy Studies, America First Legal, the Heritage Foundation, Judicial Watch, America First Policy Institute, and Parents Defending Education.

These organizations were selected based on their missions, which align with the conservative or liberal movement, and their history of submitting FOIA requests. The smaller sampling size allows the study to be more feasible, leaving to future studies a broader examination of the relationship between the Department's responsiveness and the varying viewpoints of the organizations filing requests.

In its FOIA logs, the Department assigns one of the following final dispositions to each FOIA request:

1. **Granted in Full:** The Department provided the requested records to the requester in their entirety.
2. **Denied in Full:** The Department denied the request in its entirety. The reason for denial is not specified, but the agency may withhold information pursuant to exemptions provided in the FOIA statute, including material to which certain governmental privileges apply.²
3. **Granted/Denied in Part:** The Department provided a portion of the requested records but denied the remainder of the request.
4. **Other Reasons:** The Department did not fulfill the FOIA request for reasons aside from an applicable statutory exemption, including, but not limited to, the lack of records, the failure to reasonably describe records, a duplicate request, or a withdrawn request.
5. **"-":** The Department has not acted on or completed its response to the FOIA request.

According to the Department's website, the FOIA logs only record actions regarding FOIA requests during the calendar year in which the requests were received. Therefore, if the Department took no action regarding a FOIA request during the year it was received but granted or denied it the following year, the entry in the FOIA log will reflect no action on the request.³

Interpreting the Data

Based on the Department's FOIA logs, during the first three years of the Trump administration, the Department's FOIA response rate (excluding only those on which the Department had not acted) was 67 percent, with 44 percent of FOIAs granted in whole or in part. Only 3.4 percent of requests were denied in full.

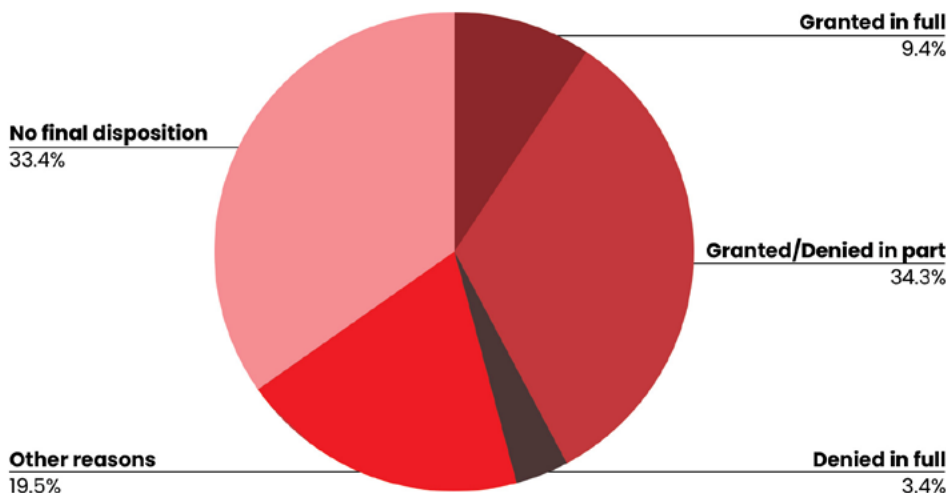
² For a description of the FOIA exemptions, see <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

³ The Department's 2017 and 2018 FOIA logs include a limited number of requests (58) to which the Department responded in the early part of the calendar year after they were filed. Because it is not clear whether the Department has continued in its more recent FOIA logs to count such requests as resolved, this report treats them as resolved during the calendar year in which they were filed. However, treating them as having no final disposition would only lower the Trump Education Department's total response rate by less than one percentage point.

The Department’s response rate during the Biden administration was only 48 percent, with only 19 percent of the requests granted in whole or in part. More than half (52 percent) of the FOIA requests remained in processing—receiving no final disposition. Comparing only the first three years, the Trump administration’s Department still processed 19 percent more FOIA requests than that of the Biden administration—even though the Trump Education Department received 8,000 FOIA requests during that time frame, compared to only 7,352 during the corresponding period in the Biden administration.

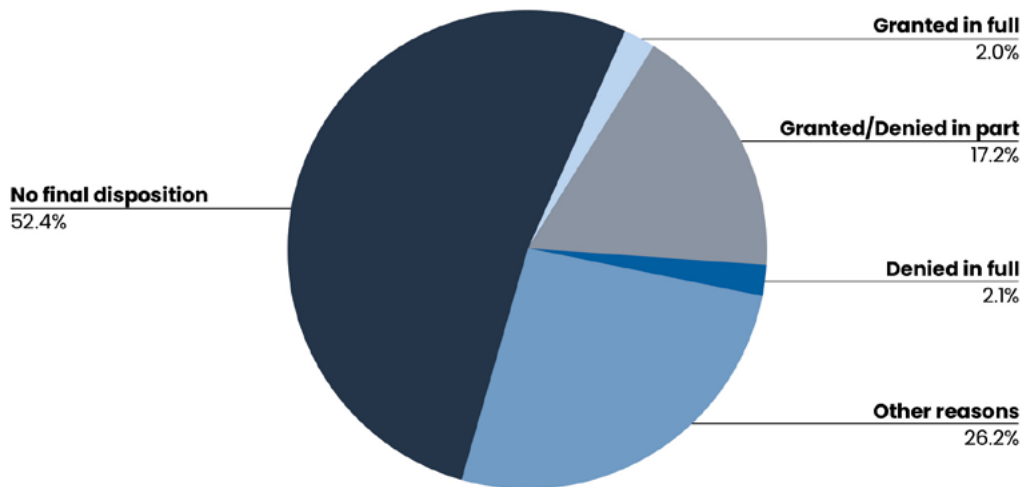
Disposition Breakdown During the Trump Administration

January 20, 2017, to December 31, 2019



Disposition Breakdown During the Biden Administration

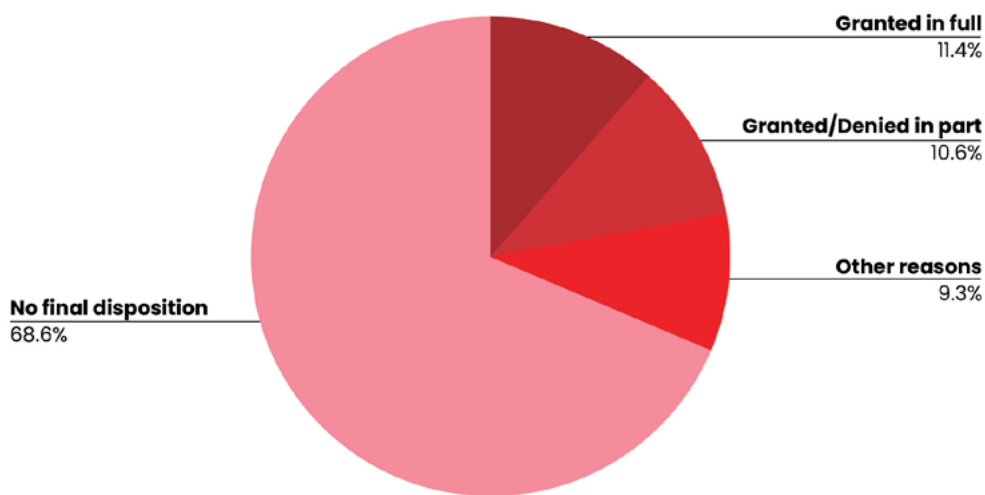
January 20, 2021, to December 31, 2023



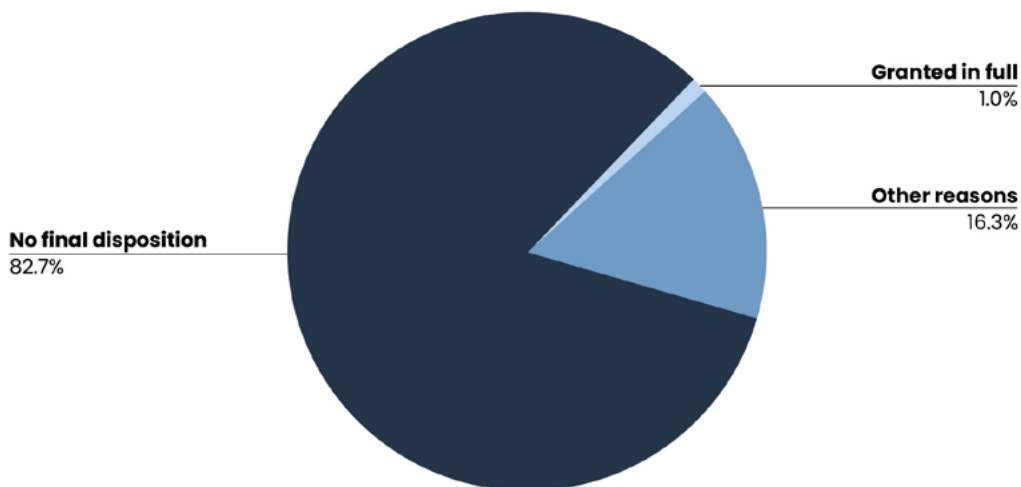
When examining the response rates of the organizations selected on the basis of their conservative or liberal viewpoint, there is a noticeable delay in the Biden administration’s responses to conservative organizations. During the Trump administration, 74 of the 236 FOIA requests submitted to the Department by the selected liberal organizations received a final disposition—a response rate of 31 percent. The Department granted in full or in part 22 percent (52) of the total requests. 69 percent (162) of the FOIA requests did not receive a final disposition.

During the Biden administration, only 17 out of the 98 FOIA requests submitted by the selected conservative organizations received a final disposition—a response rate of 17 percent. Of the 98 requests, only one was granted in whole or in part, which amounts to only 1 percent of all requests. Nearly 83 percent of requests did not receive a final disposition.

Trump Education Department’s Responses to Liberal Organizations



Biden Education Department’s Responses to Conservative Organizations



Conclusion

The foregoing analysis of the Department of Education's FOIA response rates during the Trump and Biden administrations, as well as the comparison of responses to liberal versus conservative organizations, reveals a significant delay and lack of responsiveness in the processing of FOIA requests from the Biden administration. The data suggests a notable disparity in the Biden administration's treatment of FOIA requests from conservative organizations compared to the Trump administration's treatment of liberal organizations. These findings raise concerns about the Biden administration's commitment to transparency and accountability, highlighting the need for further scrutiny and examination of FOIA processes and practices of the Biden administration.

About the Author

Selena Lin serves as Research Assistant at DFI. Her primary expertise is in Asia Pacific security issues, cross-strait relations, and US-China relations. Previously, she participated in the Koch Internship, where she created a K12 STEM activity guide for her university's maker space. She was also selected to participate in the John Quincy Adams Society's 2023 summer conferences. Selena recently graduated from Georgia Institute of Technology with a Bachelor's in International Affairs. Beginning in the fall, she will pursue a Master's degree in International Security at Georgia Tech.

Paul Zimmerman serves as Senior Counsel, Policy & Regulatory, at DFI. He leads the Teacher Union Accountability Project and assists with DFI's federal agency transparency and oversight efforts. Before he joined DFI, Paul served as Counsel at the U.S. Department of Commerce. Prior to that, he worked at the Federalist Society for Law and Public Policy Studies, where, in various roles, he served as sole editor of the Society's law review and helped establish networks of lawyers, judges, academics, and think tanks across Europe and on other continents. He earned his bachelor's degree at Duke University and his J.D. at the Georgetown University Law Center. He is a member of the bars of Maryland and Washington, DC.