

June 21, 2024

VIA TELEFACSIMILE

The Honorable Sandra D. Bruce
Inspector General
U.S. Department of Education
550 12th Street, SW
Washington, DC 20202

Re: The Department of Education’s Failure to Comply with the Freedom of Information Act

Dear Inspector General Bruce:

The Defense of Freedom Institute for Policy Studies (“DFI”) is a national nonprofit organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace. Former senior leaders of the U.S. Department of Education (“Department”) founded DFI in 2021. DFI contributes its expertise to education policy and legal debates and regularly submits Freedom of Information Act (“FOIA”) requests to the Department to inform these debates and educate the public on the Department’s programs and activities.

DFI writes because we are deeply concerned that the Department under the Biden administration (the “Biden-era Department”) has failed to carry out its responsibility to make records “promptly available” to those who request them as required by FOIA.¹ Our concerns are based on research DFI published last month (enclosed with this letter) demonstrating that the Biden-era Department has granted a significantly lower share of FOIA requests than the Department did under the Trump administration (the “Trump-era Department”) based on the total requests received during its first three years. The Biden-era Department has also failed to engage in any final action on a substantially greater proportion of FOIA requests than the Trump-era Department did during the same time period. Most troublingly, our research offers clear evidence of political bias in the Biden-era Department’s treatment of FOIA requests, based on the stark contrast between its response to FOIA requests from organizations with conservative missions as compared to the Trump-era Department’s response to such requests from liberal organizations.

¹ See 5 U.S.C. § 552(a)(3)(A).



Accordingly, we urge your Office of Inspector General (“OIG”), pursuant to its mission “to promote the efficiency, effectiveness, and integrity of the Department’s programs and operations,”² to promptly investigate the Department’s failure to comply with FOIA, with regard to both its general lack of responsiveness to FOIA requests and its exceedingly low rates of response to organizations pursuing conservative missions. Because of the importance of these FOIA-based duties to the public’s right to know about the activities and programs of the government, we also urge you to work with the Department to develop protocols that promote future compliance with FOIA in responding to all requests—regardless of the viewpoint of the requester—in a timely manner.

DFI’s Review of the Department’s FOIA Response Rates

DFI’s report, published on May 29, 2024, is based on data compiled from FOIA logs available on the Department’s website.³ These logs contain every FOIA request submitted to the Department during specified months and years since 2011 and note the final action, if any, the Department took with respect to such request during the calendar year it was received. DFI’s report attributes each request to the administration during which the request was filed. The FOIA response rate for the Department under each administration is the rate at which the Department took final action with respect to FOIA requests during the calendar year it received them.

Based on these logs, during the first three years of the Trump administration, the Department’s FOIA response rate was 67 percent, with 44 percent of FOIAs granted in whole or in part. By contrast, the Department’s response rate during the first three years of the Biden administration was only 48 percent, with only 19 percent of the requests granted in whole or in part. 52 percent of the FOIA requests during the Biden administration remained in processing and received no final disposition. Notably, in its first three years, the Trump-era Department processed 19 percent more FOIA requests during the same calendar year than did the Biden-era Department, even though the Trump-era Department received nearly 650 *more* requests during the corresponding period.

This issue is exacerbated when one takes into consideration the political missions of requesters. DFI’s report compared the Trump-era Department’s responses to six organizations with liberal viewpoints to the Biden-era Department’s responses to six organizations with conservative viewpoints. During the Trump administration, 31 percent of the liberal organizations’ FOIA requests submitted to the Department received a final disposition in the calendar year they were filed, and the Department granted 22 percent of the requests in full or in part. During the Biden administration, only 17 percent of the conservative organizations’ FOIA requests received a final disposition in the same calendar year, and the Department only granted *a single* FOIA request (1 percent of the total) from these organizations in full or in part in the same calendar year.

² <https://oig.ed.gov/about>

³ <https://www2.ed.gov/policy/gen/leg/foia/foia-log.html>



DFI’s experience requesting records from the Department pursuant to FOIA is illustrative of these agency failings. Since early 2022, DFI has filed with the Department 47 carefully focused FOIA requests seeking information about issues of great importance to the public. In response to these requests, the Department has stonewalled, forcing DFI to file four lawsuits to assert our rights to the requested records under FOIA. As of the date of this letter, the Department has produced documents responsive to 11 of those 47 requests—with some responses issued due to court orders—and it has completed its response to only four of our requests. Even the few documents the Department has produced in response to our requests have been subject to overzealous redaction, thus continuing to keep from the public the information to which it is entitled under FOIA. This ongoing obfuscation is not in keeping with the spirit or letter of the law.

DFI’s findings and experience raise grave concerns regarding the Department’s compliance with FOIA and its commitment to transparency and accountability under the Biden administration.

OIG’s Role in Reviewing Compliance with Legal Obligations

The significant disparity between the general responsiveness to FOIA requests of the Biden-era Department versus its responsiveness under President Trump, as well as the evident political bias of the Department under current leadership when it comes to responding to FOIA requests from groups with conservative missions, warrant an immediate investigation by the OIG. Such an investigation is necessary to determine the reasons for the Biden-era Department’s failure to comply with its FOIA-based obligations and to determine how the Department can improve its practices to fulfill the legal right of members of the public to receive records.

The OIG’s work in recent years has included numerous examples of investigating the Department’s compliance with the obligations of federal laws, including FOIA. For instance, earlier this year, the OIG investigated the Department’s compliance with the Payment Integrity Information Act of 2019 (“PIIA”) and made five recommendations for the Department to improve its processes of computing improper and unknown payments.⁴

In the context of FOIA, the OIG has in recent years investigated the Department’s compliance with its legal obligations and made recommendations to improve procedures in responding to FOIA requests. Specifically, on May 16, 2019, in response to the request of a Member of Congress for the OIG to review Department practices regarding the use of personal email, the OIG sent a letter describing its investigation of Department employees’ email use at the Department and whether the Department’s personnel were reviewing all relevant emails in response to FOIA requests.⁵ In

⁴ <https://oig.ed.gov/reports/audit/us-department-educations-compliance-payment-integrity-information-reporting-0>

⁵ <https://www.oversight.gov/sites/default/files/oig-reports/ED/FY19Use-Email030724v100SECURED.pdf>



your capacity as Acting Inspector General at that time, you wrote that “[t]he Department’s FOIA procedures could be improved if for any request related to use of personal email by Department employees, the Department requires the affected employee to search for responsive email and respond to the FOIA Service Center confirming that search was completed.”⁶

Based on this ongoing work to monitor the Department’s compliance with its legal obligations, DFI requests that the OIG conduct a similar investigation into the Department’s failure to properly comply with FOIA requirements during the Biden administration. The enclosed report points demonstrably to the need for the Department to improve its FOIA response rates. More disturbingly, the evidence amassed in our report points to an apparent political bias when it comes to the Department’s treatment of organizations with conservative missions that submit FOIA requests. We are confident that recommendations from the OIG regarding the Department’s protocols in responding to FOIA requests would help resolve this critical issue and result in Americans once again receiving the records to which they are legally entitled.

Conclusion

DFI’s independent research concerning the Department’s responses to FOIA requests during the Biden administration offers substantial evidence that the Department has failed to follow the law in promptly responding to requests and that it is intentionally disfavoring requests from organizations with conservative viewpoints.

DFI respectfully requests that the OIG investigate the Department’s failure to follow FOIA’s requirements. We also urge you to work with the Department to revise FOIA response procedures and make other improvements that will result in prompt and complete responses to FOIA requests, as required by law and as provided under the Department’s previous leadership.

Please contact me at paul.zimmerman@dfipolicy.org if you have any questions.

Sincerely,

Paul Zimmerman
Senior Counsel, Policy & Regulatory

Enclosure

cc:

⁶ <https://www.oversight.gov/sites/default/files/oig-reports/ED/FY19Use-Email030724v100SECURED.pdf> at 7



The Honorable Virginia Foxx, Chairwoman, Committee on Education and the Workforce

The Honorable Robert “Bobby” Scott, Ranking Member, Committee on Education and the Workforce

The Honorable James Comer, Chairman, Committee on Oversight and Accountability

The Honorable Jamie Raskin, Ranking Member, Committee on Oversight and Accountability

The Honorable Bernie Sanders, Chairman, Committee on Health, Education, Labor, and Pensions

The Honorable Bill Cassidy, Ranking Member, Committee on Health, Education, Labor, and Pensions

The Honorable Gary Peters, Chairman, Committee on Homeland Security and Governmental Affairs

The Honorable Rand Paul, Ranking Member, Committee on Homeland Security and Governmental Affairs

The Honorable Miguel Cardona, Secretary, United States Department of Education