

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

THE PROTECT DEMOCRACY PROJECT,)	
INC., 2020 Pennsylvania Avenue, NW, #163,)	
Washington, DC 20006)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
THE OFFICE OF MANAGEMENT AND)	
BUDGET, 725 17 th Street NW, Washington,)	
DC 20503)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff The Protect Democracy Project, Inc. brings this action against Defendant Office of Management and Budget to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552. 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 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff The Protect Democracy Project, Inc. is an organization awaiting 501(c)(3) status, incorporated under the laws of the District of Columbia, and headquartered at 2020 Pennsylvania Avenue, NW, #163, Washington, DC 20006. Plaintiff’s mission is to protect our democracy from descending into a more autocratic form of government by preventing those in power from depriving Americans of a free, fair, and fully-informed opportunity to exercise

ultimate sovereignty. As part of this mission, Plaintiff seeks to inform public understanding of operations and activities of the government by gathering and disseminating information that is likely to contribute significantly to the public understanding of executive branch operations and activities. Plaintiff regularly requests such information pursuant to FOIA. Plaintiff intends to give the public access to documents transmitted via FOIA on its website, www.protectdemocracy.org, and to provide information about and analysis of those documents as appropriate.

4. Defendant Office of Management and Budget is a component of the Executive Office of the President of the United States. Defendant is headquartered at 725 17th Street NW, Washington, DC 20503. Defendant has possession, custody, and control of the documents that Plaintiff seeks in response to its FOIA request.

STATEMENT OF FACTS

5. On February 15, 2017, Plaintiff sent a FOIA request to Defendant seeking the following records:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

- 1) Any and all records created between January 20, 2017 and the present date indicating that Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" was reviewed by any federal agency personnel prior to the Order's issuance on January 27, 2017, including but not limited to any record indicating that EO 13769 was reviewed for lawfulness, or deemed lawful or unlawful, by the Department of Justice.
- 2) Any and all records created between January 20, 2017 and the present date transmitting Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" to any federal agency for review, comment, or awareness, including but not limited to the Department of Homeland Security or the Department of Justice.

- 3) Any and all records created between January 20, 2017 and the present date related to the decision to seek or not seek input from federal agency personnel on the creation or implementation of Executive Order 13769, “Protecting the Nation From Foreign Terrorist Entry Into the United States,” including but not limited to the Department of Homeland Security or the Department of Justice.
- 4) Any and all records created between January 20, 2017 and the present date related to the process for obtaining agency input regarding Executive Order 13769, “Protecting the Nation From Foreign Terrorist Entry Into the United States.”

See Exhibit A (FOIA request).

6. Plaintiff also requested a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) or 5 U.S.C. § 552(a)(4)(A)(ii)(II). *See Exhibit A.*

7. Plaintiff submitted its request electronically on February 15, 2017. The next day, Plaintiff received an email from Defendant acknowledging receipt of the request, assigning it a case reference number, and indicating that it was being processed. *See Exhibit B.*

8. On April 14 and April 18, 2017, Allison F. Murphy, one of the undersigned counsel for Plaintiff, left voicemails for the FOIA Officer of Defendant, which were not returned, seeking to learn the status of Defendant’s response.

9. Pursuant to FOIA, within 20 business days of receipt of Plaintiff’s request – that is, by March 16, 2017 – Defendant was required to “determine . . . whether to comply with such request” and to “immediately notify” Plaintiff of “such determination and the reasons therefor,” Plaintiff’s right “to seek assistance from the FOIA Public Liaison of the agency,” and, in the case of an adverse determination, Plaintiff’s appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

10. To date, Defendant has failed to make the required determination and notifications. Nor has Defendant made a determination regarding Plaintiff’s request for a fee waiver.

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

12. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

13. Defendant is in violation of FOIA by failing to respond to Plaintiff's request within the statutorily prescribed time limit and by unlawfully withholding records responsive to Plaintiff's request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

(1) Order Defendant, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiff's request;

(2) Order Defendant, by a date certain, to demonstrate that it has conducted an adequate search;

(3) Order Defendant, by a date certain, to produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;

(4) Enjoin Defendant from improperly withholding records responsive to Plaintiff's request;

(5) Order Defendant to grant Plaintiff's request for a fee waiver;

(6) Grant Plaintiff an award of attorney fees and other reasonable litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E);

(7) Grant Plaintiff such other relief as the Court deems appropriate.

Date: May 2, 2017

/s/ Allison F. Murphy

Allison F. Murphy (DC Bar No. 975494)
Counsel, The Protect Democracy Project
2020 Pennsylvania Ave., NW #163
Washington, DC 20006
Allison.Murphy@protectdemocracy.org
Phone: 202-599-0466
Fax: 929-777-8428

Counsel for Plaintiff