

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

THE PROTECT DEMOCRACY PROJECT,)	
)	
Plaintiff,)	
)	
v.)	No. 1:17-cv-00814-APM
)	
OFFICE OF MANAGEMENT AND BUDGET,)	
)	
Defendant.)	

UNOPPOSED MOTION TO CONSOLIDATE RELATED CASES

Pursuant to Local Civil Rule 40.5(d), Defendant Office of Management and Budget (“OMB”) hereby moves to consolidate this Freedom of Information Act (“FOIA”) action with a later-numbered action that Plaintiff filed on the same day against the Department of Justice (“DOJ”), *Protect Democracy Project v. DOJ*, 1:17-cv-00815 (D.D.C.) (Howell, C.J.), on the ground that the actions are likely to proceed more efficiently if consolidated before a single district judge. The Protect Democracy Project, which is the sole plaintiff in both related actions, does not oppose the relief requested herein. Nor does DOJ, the sole defendant in the later-numbered case.

In support of this Motion, Defendant states as follows:

1. The Complaints in the two related actions allege that the Protect Democracy Project submitted FOIA requests to OMB and DOJ on February 15, 2017, and has yet to receive a final determination from either agency. *See* Complaint ¶¶ 5, 10, *Protect Democracy Project v. OMB*, 1:17-cv-00815 (D.D.C. filed May 2, 2017), ECF No. 1; Complaint ¶¶ 5, 11, *Protect Democracy Project v. DOJ*, 1:17-cv-00815 (D.D.C. filed May 2, 2017), ECF No. 1.

2. The FOIA request to OMB seeks the following categories of records:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.”
3. Similarly, the FOIA request to DOJ seeks the following categories of records:
 - a. 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 the Department of Justice prior to the Order’s issuance on January 27, 2017.
 - b. 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 the Department of Justice for review, comment, or awareness.
 - c. Any and all records created between January 20, 2017 and the present date related to the decision to seek or not seek input from the Department of Justice on the creation or implementation of Executive Order 13769, “Protecting the Nation From Foreign Terrorist Entry Into the United States.”

- d. Any and all records created between January 20, 2017 and the present date related to the process for obtaining Department of Justice review of Executive Order 13769, “Protecting the Nation From Foreign Terrorist Entry Into the United States.”
- e. 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 other federal agency personnel prior to the Order’s issuance on January 27, 2017.

4. On May 2, 2017, the Protect Democracy Project filed two actions in this Court, one against DOJ and one against OMB. The earlier-numbered case, the action against OMB, was given case number 1:17-cv-00814 and assigned to Judge Mehta. The later-numbered case, the action against DOJ, was given case number 1:17-cv-00815 and assigned to Chief Judge Howell.

5. Having reviewed Plaintiff’s Complaints and the related FOIA requests, Defendants DOJ and OMB have concluded that the two actions are related cases within the meaning of Local Civil Rule 40.5(a)(3).

6. The actions involve common questions of fact relating to the agencies’ anticipated application of the FOIA’s statutory exemptions from disclosure, among other potential issues. The categories of records requested from DOJ and OMB overlap to a significant degree, such that records of certain communications between DOJ and OMB, if they exist, would be responsive to both requests. DOJ and OMB can be expected to consult with each other before releasing such records, and to apply the FOIA’s statutory exemptions from disclosure consistently to each agency’s set of responsive records. To that extent, the action against OMB and the action against DOJ involve common questions of fact relating to the potential bases for the agencies’ application of the FOIA’s statutory exemptions to these records.

7. Accordingly, the two actions would be handled more efficiently if consolidated before a single district judge.

8. Pursuant to Local Rule 7(m), undersigned counsel for Defendants OMB and DOJ e-mailed counsel for Plaintiff on May 25, 2017, to inquire whether Plaintiff would oppose consolidation of the above-referenced actions against OMB and DOJ before Judge Mehta. Counsel for Plaintiff advised by email on May 25, 2017, that Plaintiff does not oppose consolidation.

WHEREFORE, Defendant OMB respectfully requests that this case, *Protect Democracy Project v. OMB*, 1:17-cv-00814 (D.D.C.), be consolidated with the later-numbered case *Protect Democracy Project v. DOJ*, 1:17-cv-00815 (D.D.C.).

Dated: June 9, 2017

Respectfully submitted,

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