

dedicated to education regarding responsible regulation and transparency in government, a key part of which is seeking public records illuminating how policymakers use public resources, and with whom.

4. Defendant Office of Management and Budget (“OMB” or “the Office”) is a federal agency within the meaning of FOIA. 5 U.S.C. § 552(f)(1). The Office has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
6. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because the Defendant is a federal agency operating in the District of Columbia, and because this action is filed in the District of Columbia.
7. Plaintiff is not required to further pursue administrative remedies before seeking relief in this Court because Defendants neither produced records nor made a timely “determination” as that term is defined in *CREW v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013). See also, e.g., *Citizens for Responsibility & Ethics in Wash. v. U.S. Dept. of Justice*, 436 F. Supp. 3d 354, 359 (D.D.C. 2020) (citing various other cases and holding that the statutory text of FOIA relieves plaintiffs of any exhaustion requirement).

PLAINTIFF’S FOIA REQUEST

8. On July 19, 2024, Plaintiff submitted one FOIA request by Defendant’s FOIA.gov internet portal seeking certain described correspondence of a certain employee. The requested information is of public interest for many reasons, including but not limited to because the records will shed light on the use of “chat” applications to correspond about a certain subject and using the word “defiance.”

9. OMB's FOIA portal acknowledged that "[t]he confirmation ID for your request is 1315111."
10. On July 22, 2024, Defendant wrote Plaintiff stating, in pertinent part, "Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 2024-919."
11. As of the date of this Complaint, Defendant has not made any determination to comply with the FOIA request. Nor has OMB notified Plaintiff of any determination or made any further communication regarding the request or demonstrating it is processing the request, sought further information from Plaintiff, notified Plaintiff of its right to appeal any adverse determinations to the head of the Office, provided any records responsive to the request, indicated how many or when any responsive records will be produced, or demonstrated that responsive records are exempt from release. In short, Defendant has provided no response to the FOIA request beyond acknowledging receipt.
12. The FOIA provides that a requesting party is entitled to a substantive agency response within twenty working days, including a determination of whether the agency intends to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Within that deadline, the agency must also "determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents," and "inform the requester that it can appeal whatever portion of" the agency's "determination" is adverse to the requestor. *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013); accord *Shermco Industries v. Secretary of U.S. Air Force*, 452 F. Supp. 306, 317 (N.D. Tex. 1978).
13. 5 U.S.C. § 552(a)(6)(A) prescribes that the 20-day time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester, 5 U.S.C. § 552(a)(6)(A)(ii)(I), and agencies may

also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. 5 U.S.C. § 552(a)(6)(A)(ii)(II). In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

14. No tolling took place with reference to the FOIA request at issue in this case, because Defendant never sought to clarify either the scope of the request or any fee issue.
15. By failing to make a determination or produce records, OMB is improperly denying Plaintiff access to agency records in violation of FOIA.
16. OMB owed GAO a determination in response to its July 19, 2024, request, as that term is defined in *CREW v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013), no later than August 16, 2024. As of this filing, OMB remains out of compliance with the law because no determination has been provided.

FIRST CLAIM FOR RELIEF
Duty to Produce Records – Declaratory Judgment

17. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
18. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business
19. Plaintiff has a statutory right to the information it seeks, and OMB has unlawfully withheld the information.
20. Plaintiff is not required to further pursue administrative remedies.
21. Plaintiff asks this Court to enter a judgment declaring that:
 - a) Plaintiff was owed a determination in response to its July 19, 2024, request, no later than August 16, 2024;

- b) Plaintiff is entitled to records responsive to its FOIA request described above, and any attachments thereto, but OMB failed to provide the records;
- c) OMB's processing of Plaintiff's FOIA request described above is not in accordance with the law, and does not satisfy OMB's obligations under FOIA;
- d) OMB must now produce records responsive to Plaintiff's request.

SECOND CLAIM FOR RELIEF
Duty to Produce Records – Injunctive Relief

- 22. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
- 23. Plaintiff is entitled to injunctive relief compelling OMB to produce the records responsive to the FOIA request described in this pleading.
- 24. Plaintiff asks the Court to enter an injunction ordering OMB to produce to Plaintiff, within 20 business days of the date of the order, the requested records sought in Plaintiff's FOIA request described above, and any attachments thereto.
- 25. Plaintiff asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 30 days after Plaintiff receives the last of the produced documents, addressing OMB's preparation of a *Vaughn* log and a briefing schedule for resolution of remaining issues associated with Plaintiff's challenges to OMB's withholdings, if any, and any other remaining issues.

THIRD CLAIM FOR RELIEF
Costs And Fees – Injunctive Relief

- 26. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

27. Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
28. This Court should enter an injunction ordering the Defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

PRAYER FOR RELIEF

Government Accountability & Oversight respectfully requests this Court:

1. Assume jurisdiction in this matter, and maintain jurisdiction until the Defendant complies with FOIA and every order of this Court;
2. Declare Defendant has violated FOIA by failing to provide Plaintiff with the requested records and failing to notify Plaintiff of a final determination within the statutory time limit;
3. Declare the documents sought by the request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;
4. Order Defendant OMB to expeditiously provide the requested records to Plaintiff within 20 business of the Court's order;
5. Award Plaintiff's attorneys their fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. Grant such other relief as this Court deems just and proper.

Respectfully submitted this the 29th day of August, 2024,

GOVERNMENT ACCOUNTABILITY & OVERSIGHT
By Counsel:

/s/Matthew D. Hardin

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