

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

AMERICAN CENTER FOR)
EQUITABLE TREATMENT, INC.)
6100 Elton Avenue, Suite 1000)
Las Vegas, NV 89107)

Plaintiff)

v.)

THE OFFICE OF MANAGEMENT)
AND BUDGET)
725 17th Street, NW)
Washington, DC 20503)

Defendant)

Civil Action No. 16-1820

COMPLAINT

Plaintiff the AMERICAN CENTER FOR EQUITABLE TREATMENT, INC., through its counsel DINSMORE & SHOHL LLP, brings this complaint against THE OFFICE OF MANAGEMENT AND BUDGET for violating the Freedom of Information Act.

Summary

1. The Office of Management and Budget (OMB) has violated the Freedom of Information Act, 5 U.S.C. § 552 et seq., by unlawfully withholding responsive agency records properly requested by the American Center for Equitable Treatment, Inc. (American Center).

Jurisdiction and Venue

2. This court has subject matter and personal jurisdiction under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C), 28 U.S.C. § 1331, and 5 U.S.C. § 701 et seq.

3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

4. The American Center is a non-profit 501(c)(3) corporation. The American Center's purpose is to investigate, conduct research and educate the public on the importance of fair, efficient, and effective administration of government laws and policies with respect to technology, innovation, and intellectual property; to identify barriers to fair and effective administration of the laws respecting technology, innovation, and intellectual property; to promote accountability and transparency in the government's administration of the Patent Act and other statutes; and to further these goals and protect the rule of law through investigation, research, conferences, electronic and other information dissemination, administrative proceedings, and litigation, if necessary.

5. OMB is an "agency" subject to the Freedom of Information Act.

Facts

OMB FOIA Numbers 2016-096/2016-128

6. On June 14, 2016, OMB acknowledged receipt of the American Center's Freedom of Information Act request dated June 10, 2016, assigning it OMB FOIA number 2016-096. Exhibit A(1). The American Center's request contained four sub-parts and specified suggested search terms.

7. Contrary to the Freedom of Information Act and 5 CFR § 1303.10(c), OMB did not respond to OMB FOIA Number 2016-096 within twenty days (excepting Saturdays, Sundays, and legal public holidays) of its filing.

8. The American Center filed an administrative appeal of this constructive denial on July 21, 2016. Exhibit A(2). OMB did not acknowledge this appeal.

9. On August 2, 2016, OMB responded to the first three sub-parts of the American Center's June 10, 2016 request solely by referring the American Center to a website, and to the fourth sub-part by stating that there were no responsive records. Exhibit A(3).

10. On August 5, 2016, the American Center appealed. OMB acknowledged receipt of this administrative appeal on August 9, 2016, assigning it OMB FOIA number 2016-128. Exhibit A(4).

11. On appeal, the American Center argued *inter alia* that OMB's website reference could not lawfully dispose of the first three sub-parts. First, the website (reginfo.gov) did not include all responsive records. For example, there were at least two Supporting Statements for ICR Reference No. 201301-0651-002, one dated January 28, 2013, and another dated July 22, 2013. However, only the July version was available online. Second, OMB's response demonstrated that it did not search obviously relevant files where records might be located, including but not limited to OMB employee emails (both official and private accounts), text messages, and/or other records bearing on OMB's processing or internal review of the relevant matters.

12. Also, the American Center argued that OMB's "no responsive records" response to the fourth sub-part also demonstrated an inadequate search. The American Center was aware of at least one responsive email exchange with an OMB employee that OMB had failed to produce, despite the fact that this employee's name was a search term suggested in OMB FOIA Number 2016-096. Accordingly, if OMB had carried out a lawful search then it would have discovered responsive records.

13. Contrary to the Freedom of Information Act and 5 CFR § 1303.10(e), OMB has not responded to OMB FOIA Number 2016-128 although more than twenty days (excepting Saturdays, Sundays, and legal public holidays) have elapsed since it was filed.

OMB FOIA Number 2016-126

14. On August 9, 2016, OMB acknowledged receipt of the American Center's Freedom of Information Act request dated August 1, 2016, and assigned it OMB FOIA number 2016-126. Exhibit B.

15. Contrary to the Freedom of Information Act and 5 CFR § 1303.10(c), OMB has not responded to OMB FOIA Number 2016-126 although more than twenty days (excepting Saturdays, Sundays, and legal public holidays) have elapsed since it was filed.

OMB FOIA Number 2016-127

16. On August 9, 2016, OMB acknowledged receipt of the American Center's Freedom of Information Act request dated August 2, 2016, and assigned it OMB FOIA number 2016-127. Exhibit C.

17. Contrary to the Freedom of Information Act and 5 CFR § 1303.10(c), OMB has not responded to OMB FOIA Number 2016-127 although more than twenty days (excepting Saturdays, Sundays, and legal public holidays) have elapsed since it was filed.

Claim for Relief

18. The American Center repeats paragraphs 1 – 17.

19. OMB has violated, and continues to violate, the Freedom of Information Act, including but not limited to the statutory deadline provisions as well as its own Freedom of Information Act regulations.

20. If OMB's regulations authorize its conduct in this case then those regulations unlawfully conflict with the Freedom of Information Act and are therefore unenforceable.

21. The American Center is entitled to a 5 U.S.C. § 552(a)(4)(A)(iii) fee waiver for disclosure of the information requested is in the public interest because it is likely to contribute significantly to public understanding of OMB's operations and activities and is not primarily in the American Center's commercial interest.

22. Alternatively, the American Center is entitled to a fee reduction under 5 U.S.C. § 552(a)(4)(A)(iii) because the requested records are not for commercial use and the American Center is an educational non-profit.

23. Regardless, because OMB has failed to comply with the Freedom of Information Act's time limits it is statutorily barred from assessing fees for any of the Freedom of Information Act requests that are the subject of this action by 5 U.S.C. § 552(a)(4)(A)(viii).

24. The American Center is entitled to injunctive relief compelling the release of all requested records, a fee waiver, its costs, and reasonable attorney fees.

Requested Relief

WHEREFORE, the American Center asks this Court to Order:

A. That OMB must produce all responsive records within ten (10) business days or show cause why it cannot do so with respect to all of the American Center's requests referenced in this Complaint.

B. That as to OMB FOIA Numbers 2016-098/128, OMB must conduct a reasonable and lawfully adequate search for responsive agency records.

C. That OMB must grant the American Center's requested fee waiver.

D. That OMB must pay Plaintiff's costs and reasonable attorney fees as required by 5 U.S.C. § 552(a)(4)(E).

E. That the American Center should be granted such other relief as may be just and proper.

Respectfully submitted,
DINSMORE & SHOHL LLP

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