

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

ARAB AMERICAN INSTITUTE,
1600 K Street, NW Ste 601
Washington, D.C. 20006

Plaintiff

v.

OFFICE OF MANAGEMENT AND BUDGET
1800 G Street NW, Room 9026
Washington, DC 20503

Defendant.

Civil Action No. 18-871

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory and other appropriate relief. Plaintiff, Arab American Institute (“AAI”), challenges the failure of the Office of Management and Budget (“OMB”) to disclose to AAI requested FOIA records relating to OMB inaction, which due to time constraints of the Census process, forced a default decision regarding an anticipated change to the current U.S. Census Bureau (“USCB”) standards. Announced on January 26, 2018, USCB stated it will not use a combined question format for race and ethnicity, and will not include a separate ‘Middle Eastern or North African’ (“MENA”) category.

2. This action seeks a declaratory judgment that OMB is in violation of FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i), and (a)(8), by refusing to respond to AAI’s FOIA request and refusing to search for and provide AAI with all responsive documents sought. Further, this action seeks

injunctive relief ordering the Defendant to process and release to AAI the requested records in their entirety.

Jurisdiction and Venue

3. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff AAI is a non-profit, nonpartisan national leadership organization organized under Section 501(c)(4) of the Internal Revenue Code. AAI was created to nurture and encourage the direct participation of Arab Americans in political and civic life in the United States. AAI represents the policy and community interests of Arab Americans throughout the United States. AAI strives to serve as a central resource to government officials, the media, political leaders and community groups on a variety of public policy issues that concern Arab Americans and U.S.–Arab relations. As part of its mission, AAI serves as a U.S. Census Bureau Census Information Center (“CIC”) partner and uses government records made available to it under FOIA to further this work.

5. Defendant OMB is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. The OMB is an office within the Executive Office of the President of the United States. OMB is the federal agency with possession and control of the requested records and is responsible for fulfilling Plaintiff’s FOIA request.

Facts

6. Over the last three decennial censuses, AAI served as an advocate on behalf of the Arab American community through the CIC Network and the Decennial Census Advisory Committee which are outgrowths of the USCB.

7. Through this work, AAI works on questions of classification of the Arab American community and encourages the USCB to broaden its options pertaining to ancestry, race, and ethnicity.

8. On January 26, 2018, the USCB issued a communication to CIC partners that OMB standards regarding race and ethnicity questions would remain unchanged from the 1997 format.

9. By letter dated February 16, 2018, delivered via facsimile, AAI submitted a FOIA request to OMB for the following:

- a) Any and all communications involving members of the Interagency Working Group for Research on Race and Ethnicity ("IWG") that discuss, mention, or otherwise reference the classification of a MENA group and distinct reporting category, or revisions to the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity occurring between January 20, 2017 and the date the search is conducted;
- b) Any and all communications, electronic or otherwise, on the topic of the classification of a MENA group and distinct reporting category, or revisions to the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity occurring between January 20, 2017 and the date the search is conducted and involving the following personnel: Karen Battle, Angela Brittingham Buchanan, Anthony Campau, Ilona Cohen, John Czwartacki, Emma Doyle, James Galkowski, Ron Jarmin, Jeffrey Harris, Nicholas Jones, Enrique Lamas, Domini Mancini, Rachel Marks, Mick Mulvaney, Rosario Palmieri, Jennifer Park, Beverly Pratt, Roberto Ramirez, Neomi Rao, Hyon Shin, and Merarys Rios Vargas;
- c) Any and all memoranda, statements, or documents provided to any OMB employee; reviewed by any OMB employee; relied upon by any OMB employee; or drafted, signed,

authorized or issued by any OMB employee related to the classification of a MENA group and distinct reporting category, or revisions to the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity occurring between January 20, 2017 and the date the search is conducted;

d) Any and all IWG findings, recommendations, or conclusory materials sent to OMB between January 20, 2017 and the date the search is conducted pursuant to the planned issuance of a Federal Register Notice for December 2017; and

e) Records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If OMB uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

10. AAI's February 16, 2018 letter to OMB also requested expedited processing of its FOIA request in light of the urgency and timeline of USCB's report to Congress on the matter.

11. By an email dated February 21, 2018, OMB acknowledge receipt of AAI's request and stated the request was in process (OMB FOIA number 2018-176).

12. Since OMB's email on February 21, 2018, AAI has received no response or communication from OMB regarding its FOIA request despite follow-up with the OMB's FOIA Request Service Center. OMB has not notified AAI in writing of unusual circumstances requiring a delay of its response pursuant to 5 U.S.C. § 552(a)(6)(B).

13. AAI is deemed to have met the administrative exhaustion requirement as OMB did not make a determination within the statutory time period, see Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n, 711 F.3d 180 (D.C. Cir. 2013).

Plaintiff's Claim for Relief

Claim I

OMB's Failure to Respond to FOIA Request

14. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1-12 as though fully set forth therein.

15. Plaintiff properly requested records within the custody and control of OMB pursuant to FOIA.

16. Defendant OMB received and acknowledged Plaintiff's request for documents.

17. To date, defendant OMB has failed to conduct a search for responsive records, and to provide AAI with all responsive, non-exempt documents, nor has it cited a legal basis for its failure to respond.

18. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for the defendant OMB's refusal to disclose them.

19. Therefore, by failing to release the records specifically requested by the Plaintiff, defendant OMB had violated FOIA.

Requested Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare that the records sought by the Plaintiff are subject to FOIA;
- (2) Declare that the Plaintiff is entitled to immediate processing and disclosure of the requested records;

- (3) Declare that the failure of the Defendant to review and release records responsive to Plaintiff's request is unlawful;
- (4) Order Defendant to fully and expeditiously process Plaintiff's February 16, 2018 FOIA request and disclose all responsive records immediately to the Plaintiff;
- (5) Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld;
- (6) Award Plaintiff its costs and reasonable attorneys' fee in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (7) Grant such other relief as the Court may deem just and proper.

Dated: April 13, 2018

Respectfully submitted,

BAKER HOSTETLER LLP

By:


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¹ Admissions to the U.S. District Court for the District of Columbia will be pending upon forthcoming applications.