

**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 DEPARTMENT OF JUSTICE, 950	)	
Pennsylvania Avenue, NW, Washington, DC	)	
20530-0001	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff The Protect Democracy Project, Inc. brings this action against Defendant U.S. Department of Justice 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](http://www.protectdemocracy.org), and to provide information about and analysis of those documents as appropriate.

4. Defendant U.S. Department of Justice an agency of the executive branch of the federal government of the United States. Defendant is headquartered at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001. 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 the Department of Justice prior to the Order's issuance on January 27, 2017.
- 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 the Department of Justice for review, comment, or awareness.
- 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 the Department of Justice on the creation or implementation of Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States."

- 4) 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.”
- 5) 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.

*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. On February 27, 2017, Plaintiff received a letter from Defendant’s Executive Office for Immigration Review stating that no responsive records were located and closing the review.

8. On March 1, 2017, Plaintiff’s representative, Caroline McKay, and Defendant’s representative, Doug Hibbard, in the Office of Information Policy, held a conversation to clarify areas of the request and redirect it from the Office of Information Policy to the likely location of the requested records, Defendant’s Office of Legal Counsel. On March 2, 2017, Plaintiff received a letter from Defendant’s Office of Information Policy, confirming that Defendant forwarded the request to the Office of Legal Counsel. *See* Exhibit B.

9. On March 31, 2018, Defendant’s Office of Legal Counsel wrote to Plaintiff to acknowledge receipt of the request and assign it a tracking number. Defendant also stated that it would “will be unable to comply with the statutory deadline for responding to your request.” *See* Exhibit C.

10. On April 19, 2017, Plaintiff’s counsel, Allison F. Murphy, sought to determine the status of the response from the Defendant’s Office of Legal Counsel FOIA Officer, but

Defendant was unable to provide an estimate of when responsive records, if any, would be forthcoming to Plaintiff.

10. 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).

11. 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

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