

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE COUNCIL, INC.,)	
)	
Plaintiff,)	
)	
v.)	1:17-cv-2855
)	
OFFICE OF MANAGEMENT AND BUDGET,)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) asserts violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by defendant Office of Management and Budget (OMB) for failing to disclose responsive records concerning the issuance of Executive Order 13,771 and related OMB guidance.

Jurisdiction and Venue

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

3. Venue is proper in the Southern District of New York because NRDC maintains its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

The Parties

4. Plaintiff NRDC is a national, not-for-profit advocacy organization with hundreds of thousands of members nationwide. On behalf of its members, NRDC engages

in research, advocacy, public education, and litigation to protect public health and the environment.

5. Defendant OMB is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and possesses or controls the records NRDC seeks in this action.

Statutory and Regulatory Framework

6. FOIA requires federal agencies to release records to the public upon request, unless one of nine statutory exemptions from disclosure applies. *Id.* § 552(a)–(b).

7. Upon receiving a FOIA request, an agency must determine within twenty business days whether to comply with the request. *Id.* § 552(a)(6)(A)(i); *see also* 5 C.F.R. § 1303.10(c) (OMB FOIA regulation). The agency must “immediately notify” the requester “of such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i); *see also* 5 C.F.R. § 1303.10(c).

8. Once an agency determines that it will comply with a FOIA request, it must “promptly” release responsive, non-exempt records to the requester. 5 U.S.C. § 552(a)(6)(C)(i).

9. An agency must provide requested records at no or reduced cost “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” *id.* § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70, or if the requester qualifies as a “representative of the news media,” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 5 C.F.R. §§ 1303.30(j), 1303.50(c).

10. If the agency fails to notify the requester of its determination within the statutory time limit, the requester is “deemed to have exhausted his administrative remedies” and may immediately file suit. 5 U.S.C. § 552(a)(6)(C)(i).

11. FOIA grants federal district courts authority to “enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

Facts

12. On January 30, 2017, President Trump signed Executive Order 13,771, entitled “Reducing Regulation and Controlling Regulatory Costs.” The Order requires agencies to repeal two or more regulations for every new regulation promulgated, and to offset the costs of all new regulations.

13. A few days later, on February 2, OMB issued “Interim Guidance Implementing Section 2 of [Executive Order 13,771],” which addresses regulations issued in fiscal year 2017.

14. On February 28, NRDC sent OMB a FOIA request seeking records from January 30 or later regarding the implementation of Executive Order 13,771, and the issuance and implementation of OMB’s Interim Guidance.

15. NRDC also sought a waiver of any fees associated with the search and production of responsive records. Disclosure of these records will contribute significantly to public understanding of government activities and operations, and NRDC—a not-for-profit organization with no commercial interest in the records—has a demonstrated ability and intent to analyze and convey the information in them to a broad public audience. Additionally, NRDC qualifies as a representative of the news media.

16. OMB acknowledged receipt on March 2, but otherwise failed to respond to NRDC's request. Under the FOIA statute, such response was due by March 30.

17. To date, OMB has not issued a determination on, or released responsive records to, NRDC's FOIA request. Nor has OMB made any determination on NRDC's fee-waiver request.

18. NRDC seeks a declaration that OMB has violated FOIA by failing to respond to NRDC's FOIA request and to promptly release all responsive, non-exempt records. NRDC also seeks an injunction ordering OMB to provide these records without further delay. Finally, NRDC seeks a declaration that it is entitled to a fee waiver.

19. In the event that this Court orders OMB to release records responsive to NRDC's request, or that OMB agrees, through a consent decree or otherwise, to release such records, NRDC asks this Court to retain jurisdiction to rule on any relevant claims concerning the scope of OMB's FOIA obligations (such as claims that responsive records are exempt from disclosure or that NRDC does not qualify for a fee waiver).

20. NRDC brings this action on behalf of itself and its members. NRDC and its members have been and continue to be injured by OMB's failure to provide responsive records and grant NRDC a fee waiver. The requested relief will redress these injuries.

Claim for Relief

21. NRDC has a statutory right under FOIA to the records it seeks, at no cost. OMB has no legal basis for withholding these records.

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Request for Relief

WHEREFORE, NRDC respectfully requests that this Court enter a judgment:

- A. Declaring that OMB has violated FOIA by failing to issue a determination on, and release all responsive, non-exempt records to, NRDC's FOIA request;
- B. Declaring that NRDC is entitled to a fee waiver in connection with its FOIA request;
- C. Directing OMB to release all responsive, non-exempt records to NRDC promptly and at no cost;
- D. Retaining jurisdiction over this case to rule on any relevant claims concerning the scope of OMB's obligations under FOIA;
- E. Awarding NRDC its reasonable costs and attorneys' fees; and
- F. Granting such other and further relief as the Court deems just and proper.

Dated: April 20, 2017

Respectfully submitted,

/s/ Nancy S. Marks
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