

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

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 19-cv-3213

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

Defendant.

COMPLAINT

1. Plaintiff American Oversight brings this action against the Office of Management and Budget under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant Office of Management and Budget (OMB) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. OMB has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

Ukraine Funding Directives FOIA

7. On September 24, 2019, American Oversight submitted a FOIA request to OMB, seeking:

All decision memoranda, directives, or guidance regarding the potential or actual provision or rescission of aid to Ukraine, including but not limited to security and military assistance (such as the “Ukraine Security Assistance Initiative,” or USAI).

To be clear, this request encompasses both directives or guidance originating outside your agency—including, but not limited to, directives from the White House—as well as directives or guidance created by your agency’s leadership.

As this request is limited to final decision memoranda, directives, or guidance from a period of less than a year that concern a relatively narrow range of subject matters, American Oversight expects that this request can be assigned to a Simple processing track and will result in an expeditious agency response.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

This request is attached as Exhibit A.

8. American Oversight sought expedited processing of this request. Ex. A.
9. By email dated September 27, 2019, OMB acknowledged receipt of this request and assigned the request tracking number 19-478.
10. American Oversight has not received any further communications from OMB concerning this request.

Ukraine Email Communications FOIA

11. Also on September 24, 2019, American Oversight submitted a FOIA request to OMB seeking:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the officials specified below containing any of the following key terms:[FN omitted]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Toensing
- vii. diGenova
- viii. Hunter
- ix. Biden
- x. Parnas
- xi. Fruman
- xii. Kolomoisky
- xiii. Klitschko
- xiv. Burisma

- xv. Shokin
- xvi. Lutsenko
- xvii. Zelensky
- xviii. Zelenskyy
- xix. Zelenskiy
- xx. Yermak
- xxi. "Ukraine Security Assistance Initiative"
- xxii. USAI

Specified officials:

- i. Director Mick Mulvaney
- ii. Deputy Director Russell Vought
- iii. Chief of Staff Michelle Williams
- iv. Senior Advisor and Former Acting Chief of Staff Wesley Denton
- v. General Counsel Mark Paoletta
- vi. Former Associate Director for Legislative Affairs Shahira Knight
- vii. Anyone serving in the capacity of Associate Director for Legislative Affairs
- viii. Anyone serving as Associate Director for National Security Programs
- ix. Anyone serving as Director of the International Affairs Division
- x. Anyone serving as Director of the National Security Division

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

This request is attached as Exhibit B.

12. American Oversight requested expedited processing of this request. Ex. B.

13. By email dated September 27, 2019, OMB acknowledged receipt of this request

and assigned the request tracking number 19-477.

14. American Oversight has received no further communications from OMB concerning this request.

Ukraine Congress Communications FOIA

15. Also on September 24, 2019, American Oversight submitted a FOIA request to OMB seeking:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) between (a) anyone serving as the Associate Director of Legislative Affairs for OMB [and] (b) any Congressional member or staffer, including any email addresses ending in @mail.house.gov or senate.gov, regarding funding for assistance to Ukraine or the withholding of any such assistance.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

This request is attached as Exhibit C.

16. American Oversight requested expedited processing of this request. Ex. C.

17. By email dated September 27, 2019, OMB acknowledged receipt of this request and assigned the request tracking number 19-479.

18. American Oversight has received no further communications from OMB concerning this request.

Exhaustion of Administrative Remedies

19. As of the date of this complaint, Defendant has failed to (a) notify American Oversight of any grant or denial of expedited processing of American Oversight's FOIA requests; (b) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (c) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

20. Through Defendant's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Grant Expedited Processing

21. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

22. American Oversight properly requested records within the possession, custody, and control of Defendant on an expedited basis.

23. Defendant is an agency subject to FOIA, and it must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

24. The records American Oversight has requested are urgently needed to inform the public about government activities of extraordinary public importance, and American Oversight is primarily engaged in disseminating information to the general public. Therefore American Oversight's requests justify expedited processing under FOIA and agency regulations.

25. American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to grant expedited processing of American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records

26. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

27. Plaintiff properly requested records within the possession, custody, and control of Defendant.

28. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

29. Defendant has failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiff's FOIA requests.

30. Defendant's failure to conduct an adequate search for responsive records violates FOIA.

31. Plaintiff is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Plaintiff's FOIA requests.

COUNT III
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

32. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

33. Plaintiff properly requested records within the possession, custody, and control of Defendant.

34. Defendant is an agency subject to FOIA and must therefore release in response to FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

35. Defendant is wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce non-exempt records responsive to its FOIA requests.

36. Defendant is wrongfully withholding non-exempt agency records requested by Plaintiff by failing to segregate exempt information in otherwise non-exempt records responsive to its FOIA requests.

37. Defendant's failure to provide all non-exempt responsive records violates FOIA.

38. Plaintiff is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to process Plaintiff's FOIA requests on an expedited basis;
- (2) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiff's FOIA requests;
- (3) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiff's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;
- (5) Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant Plaintiff such other relief as the Court deems just and proper.

Dated: October 25, 2019

Respectfully submitted,

/s/ Daniel A. McGrath

Daniel A. McGrath

D.C. Bar No. 1531723

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton
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