

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

**LAWYERS’ COMMITTEE FOR CIVIL
RIGHTS UNDER LAW,**
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8600

Plaintiff,

Case No. _____

v.

**UNITED STATES OFFICE OF
MANAGEMENT AND BUDGET,**
725 17th Street NW
Suite 9204
Washington, DC 20503
(202) 395-3642

Defendant.

COMPLAINT

1. Plaintiff Lawyers’ Committee for Civil Rights Under Law (the “Lawyers’ Committee”) brings this action against the United States 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.

INTRODUCTION

2. This action is seeking disclosure of records related to the Consumer Financial Protection Bureau’s (“CFPB”) decisions to repeal part of its regulations protecting low-income consumers from predatory payday and auto title lending practices and Mick Mulvaney’s reorganization of the CFPB’s Office of Fair Lending and Equal Opportunity (“OFLEO”) in a

manner that stripped it of its power to enforce lending discrimination rules. These decisions are particularly harmful to communities of color, including African American and Hispanic communities. On May 14, 2018, the Lawyers' Committee submitted one FOIA request to OMB, along with other FOIA requests to CFPB, out of concern that Mr. Mulvaney was ignoring the risks to communities of color in order to benefit payday and auto title lenders. This industry previously donated a substantial amount to Mr. Mulvaney's congressional campaigns when he was a Member of the House of Representatives. OMB has not produced a single document or provided any substantive response to the FOIA request.

3. Consumers of color are most vulnerable to the unfair and abusive lending practices of payday and vehicle title lenders. Payday and vehicle title borrowers are disproportionately members of racial and ethnic minority groups. They use payday loans in particular at a rate two to three times higher than for non-Hispanic whites. Moreover, 29 percent of African Americans report using small-dollar credit products including payday loans, despite comprising 14 percent of the overall population.

4. The CFPB acknowledged this racial disparity in payday and vehicle title lending when announcing in October 2017 its rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (the "Final Rule"). The Final Rule provides critical protections for consumers – particularly people of color. Now, the CFPB seeks to delay the compliance date of these essential rules while also working to wholly rescind critical provisions of the Final Rule: the mandatory underwriting and record keeping provisions.

5. At the time of the FOIA request, Mr. Mulvaney was both the Director of OMB and the Acting Director of the CFPB. It was unclear how he was dividing his time between the two agencies. The Lawyers' Committee submitted this particular FOIA request to OMB to

determine whether OMB Director Mulvaney, inappropriately used his White House office or its resources to communicate with industry leaders or plan activities related to his CFPB duties and responsibilities.

6. The purpose of the Lawyers' Committee's FOIA request is to further the public interest by surfacing records of government agency activity related to a genuine public concern: namely whether the CFPB, under Mr. Mulvaney's direction, was failing to appropriately protect communities of color from predatory and discriminatory lending practices. These records would further the public's knowledge of how Mr. Mulvaney operated the OMB and CFPB. If the Lawyers' Committee obtains any noteworthy records in response to this FOIA request, it intends to publish them. As a nonprofit civil rights organization, the Lawyers' Committee has no financial interest in these records.

JURISDICTION AND VENUE

7. 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.

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

9. Because Defendant has failed to comply with the applicable time-limit provisions under FOIA, the Lawyers' Committee 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 Defendant from continuing to withhold agency records and ordering Defendants to produce the agency records improperly withheld.

PARTIES

10. Plaintiff Lawyers' Committee is a non-profit, nonpartisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar's resources in

combatting racial discrimination and the resulting inequality of opportunity. The Lawyers' Committee's principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The Lawyers' Committee's Economic Justice Project engages in impact litigation and legal advocacy to ensure that communities of color can access opportunities and meaningfully engage in the economy free from discrimination.

11. Defendant United States Office of Management and Budget ("OMB") is a department of the executive branch of the United States Government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). OMB has possession, custody, and control of the records that the Lawyers' Committee seeks.

STATEMENT OF FACTS

The Lawyers' Committee's Request to OMB

12. On May 14, 2018, the Lawyers' Committee submitted a FOIA request to OMB, seeking various records to uncover the extent to which Mr. Mulvaney used his White House office to meet with financial industry lobbyists and representatives, or to plan future CFPB activities, including rolling back the Final Rule or reorganize OFLEO. Specifically, the Lawyers' Committee sought communications related to CFPB regulations, investigations, litigations or other regulatory actions held by OMB Director Mick Mulvaney or other OMB Office of the Director employees. The Lawyers' Committee also sought communications between various payday lending and financial industry lobbyists and relevant calendar entries. A true and correct copy of the FOIA Request is attached as Exhibit A.

Plaintiff's Fee Waiver Requests

13. In the FOIA request described above, the Lawyers' Committee included a fee waiver request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) since the Lawyers' Committee is not seeking the records for a commercial purpose, and disclosure is in the public interest as it is likely to contribute significantly to the public understanding of the operations and activities of the government.

14. OMB resources, including its staff's time and attention, should be centered on OMB responsibilities. The CFPB exists to protect consumers, not banks and lenders. Payday and auto title lenders often prey on low-income households and those headed by people of color and single women. The public is entitled to information surrounding the rollback of the Final Rule and the reorganization of OFLEO because the CFPB's actions undermine critical protections for consumers, including consumers of color.

15. The Lawyers' Committee plans to use the records obtained from OMB, and its analysis of those records, to educate the public through reports, press releases and other media. It also plans to make the materials available on their public website and promote their availability through social media platforms.

OMB's Failure to Respond

16. OMB acknowledged receipt of the Lawyers' Committee's request via email on May 15, 2018 and assigned the request tracking number 2018-348. The email communication states that the Lawyers' Committee's request was "logged in" and was "being processed." A copy of the acknowledgement of receipt is attached as Exhibit B.

17. On August 7, 2018, David Brody, Counsel for the Lawyers' Committee, called OMB's FOIA phone number. No one answered. Mr. Brody left a voicemail but no one called him back.

18. On September 6, 2018, Mr. Brody called OMB's FOIA phone number and spoke with Dionne Hardy, an OMB FOIA officer. She looked at the file for the FOIA request and noted she was not getting the search results she thought she should be getting but was unsure why. It was unclear to Mr. Brody what this meant. She said she would look into our request and call Mr. Brody back. She did not call back.

19. On September 11, 17, and 18, 2018, Mr. Brody made repeated calls to OMB's FOIA phone number and left multiple messages for Ms. Hardy but never received a response.

20. On October 24, 2018, Mr. Brody sent an email to OMB's FOIA email inbox and requested an update on the status of FOIA Request No. 2018-348. Mr. Brody received no response to his request. A copy of Mr. Brody's October 24 email is attached as Exhibit C.

21. As of the date of this Complaint, Defendant OMB has failed to (a) notify the Lawyers' Committee of a final determination regarding its FOIA requests, including the full scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production. OMB also has not responded to the Lawyers' Committee's waiver request.

22. Through Defendant's failure to respond to the Lawyers' Committee's FOIA request within the time period required by law, the Lawyers' Committee has constructively exhausted its administrative remedies and seeks immediate judicial review. *See* 5 U.S.C. §552(a)(6)(C).

COUNT I

**Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records, and to Respond and Produce
Responsive Documents**

23. The Lawyers' Committee repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

24. The Lawyers' Committee properly requested records within the possession, custody, and control of Defendant.

25. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records pursuant to 5 U.S.C. §552(a)(3).

26. OMB violated 5 U.S.C. §552(a)(3) by failing to reasonably search for and produce records sought in the FOIA request submitted by the Lawyers' Committee.

27. OMB violated 5 U.S.C. §552(a)(6)(A) by failing to timely respond to the FOIA requests submitted by the Lawyers' Committee.

28. Defendant is wrongfully withholding non-exempt agency records requested by the Lawyers' Committee by failing to produce non-exempt records and segregable portions of otherwise exempt records responsive to its FOIA request, and by failing to justify any withholdings.

29. Plaintiff Lawyers' Committee is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for and produce records responsive to the Lawyers' Committee's FOIA request.

COUNT II

Violation of FOIA for Failure to Grant Public Interest Fee Waiver Request

30. The Lawyers' Committee repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth therein.

31. The Lawyers' Committee submitted the FOIA request described above on May 14, 2018, and it contained a request that OMB waive all associated fees because the request was not made for a commercial purpose and disclosure of the records sought would contribute significantly to public understanding of the operations and activities of the government.

32. The Lawyers' Committee provided factual information supporting its fee waiver request.

33. The Lawyers' Committee is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and the regulations promulgated thereunder.

REQUESTED RELIEF

WHEREFORE, the Lawyers' Committee respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to the Lawyers' Committee's FOIA requests;
- (2) Order Defendant to produce, within twenty (20) days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to the Lawyers' Committee's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the Lawyers' Committee's FOIA request;
- (4) Declare that the Lawyers' Committee's FOIA request qualifies for a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii);
- (5) Award the Lawyers' Committee the costs of this proceeding, including litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant the Lawyers' Committee such other relief as the Court deems just and proper.

Dated: April 22, 2019

Respectfully Submitted,

/s/ John E. McCarthy Jr.

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EXHIBIT A



LAWYERS' COMMITTEE FOR
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May 14, 2018

RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”).

The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On November 24, 2017, Office of Management and Budget (OMB) Director Mick Mulvaney also became the Acting Director of the Consumer Financial Protection Bureau (CFPB).¹ On January 16, 2018, Acting Director Mulvaney announced that the CFPB would repeal the Payday Loan Rule, which was adopted in October 2017.² The Rule regulates payday loans, auto title loans, and other types of expensive loans targeted at poor communities with poor credit.³ The Rule is particularly important to African American and Latino communities where studies have shown that payday lenders are concentrated.⁴ As part of its January 16, 2018 announcement,

¹ Victoria Guida, *Trump taps Mulvaney to head CFPB, sparking confusion over agency’s leadership*, Politico (Nov. 24, 2017), <https://www.politico.com/story/2017/11/24/richard-cordray-successor-cfpb-leandra-english-259612>.

² CFPB Statement on Payday Rule, CFPB (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>; CFPB Finalizes Rule to Stop Payday Debt Traps, CFPB (Oct. 5, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

³ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

⁴ Donna Tam, *Are payday loans hurting minorities?*, Marketplace (March 24, 2016), <https://www.marketplace.org/2016/03/24/world/are-payday-loans-are-hurting-minorities>; Natalie Moore, *Payday lenders concentrated in minority communities*, WBEZ (Feb. 10, 2011), <https://www.wbez.org/shows/wbez-news/payday-lenders-concentrated-in-minority-communities/4761e6c2-a0a6-4ab7-9459-ec9bc346206d>; *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for



CFPB said it will grant waivers from compliance with the Payday Loan Rule's registration system, which is slated to go into effect in April 2018.⁵

The Lawyers' Committee has grave concerns that the CFPB is now being run by corporate interests. The payday lending industry has given \$63,000 to Mr. Mulvaney.⁶ Not surprisingly, the CFPB has inexplicably dropped at least three litigations or investigations into lenders engaged in egregious practices. On January 18, CFPB dropped a lawsuit against a group of payday lenders in Kansas who affiliated with Native American tribes in order to evade regulation; their loans carried annual interest rates as high as 950%.⁷ And on January 23, CFPB quietly terminated a four-year investigation of World Acceptance Corporation's abusive payday lending practices; the company has given \$4,500 to Mr. Mulvaney's past political campaigns.⁸ Mr. Mulvaney's CFPB has also dropped an investigation into a different lender, World Finance.⁹ The chief executive of the Community Financial Services Association of America, which represents the payday lending industry, reports that they are "finding it easier to have our voice heard on the staff level [of the CFPB.]"¹⁰ The former CEO of World Acceptance even contacted Mr. Mulvaney at his personal email address to ask that she be considered for CFPB director (prior to Mr. Mulvaney's own appointment).¹¹

The Lawyers' Committee seeks to uncover the extent to which OMB Director Mulvaney uses his White House office to meet with financial industry lobbyists and representatives, or plan the future activities of CFPB Acting Director Mulvaney, including plans to roll back the Payday Loan Rule or restructure the Office of Fair Lending and Equal Opportunity.

Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.

⁵ *CFPB Statement on Payday Rule*.

⁶ Alan Rappeport, *Payday Rules Relax on Trump's Watch After Lobbying by Lenders*, N.Y. Times (Feb. 2, 2018), <https://www.nytimes.com/2018/02/02/us/politics/payday-lenders-lobbying-regulations.html>.

⁷ Zeke Faux, *CFPB Signals Shift by Dropping Payday Lender Lawsuit*, Bloomberg (Jan. 18, 2018), <https://www.bloomberg.com/news/articles/2018-01-18/trump-led-cfpb-signals-shift-by-dropping-payday-lender-lawsuit>; see also *CFPB v. Golden Valley Lending, Inc.*, 2:17-cv-02521 (D. Kan.).

⁸ Josh Keefe, *CFPB Drops Investigation Into Payday Lender that Contributed to Mick Mulvaney's Campaigns*, Int'l Bus. Times (Jan. 23, 2018), <http://www.ibtimes.com/political-capital/cfpb-drops-investigation-payday-lender-contributed-mick-mulvaney-campaigns>.

⁹ Paul Kiel, *Newly Defanged, Top Consumer Protection Agency Drops Investigation of High-Cost Lender*, ProPublica (Jan. 23, 2018), <https://www.propublica.org/article/consumer-financial-protection-bureau-drops-investigation-of-high-cost-lender>.

¹⁰ Renee Merle, *Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases*, Wash. Post (Feb. 1, 2018), https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.ac24d787de51.

¹¹ Associated Press, *Under Trump, payday lenders and consumer protection agency exhibit cozier relationship*, L.A. Times (Mar. 6, 2018), <http://www.latimes.com/business/la-fi-cfpb-payday-lender-20180306-story.html>.



Requested Records

The Lawyers' Committee requests that OMB produce the following within twenty business days:

- Communications and/or calendar entries (including invitations) related to Consumer Financial Protection Bureau (CFPB) regulations, investigations, litigations, or other regulatory actions, held by OMB Director Mick Mulvaney, his chief of staff, and their direct reports. Please provide all responsive records from February 16, 2017, to November 25, 2017.
- Communications and/or calendar entries (including invitations) related to Consumer Financial Protection Bureau (CFPB) regulations, investigations, litigations, or other regulatory actions, held by other employees of the OMB Office of the Director. Please provide all responsive records from February 16, 2017, to November 25, 2017.
- Communications and/or calendar entries (including invitations) involving OMB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from February 16, 2017, to November 25, 2017.
 - Golden Valley Lending
 - Silver Cloud Financial
 - Mountain Summit Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America, including any of its Board of Directors:¹²
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn

¹² *Board of Directors*, Community Financial Services Association of America, <https://www.cfsaa.com/board-of-directors> (last visited April 6, 2018).



- Communications and/or calendar entries (including invitations) involving any other employee of the OMB Office of the Director and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from February 16, 2017, to November 25, 2017.
 - Golden Valley Lending
 - Silver Cloud Financial
 - Mountain Summit Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America, including any of its Board of Directors:¹³
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn

OMB should search for the above companies, organizations, and individuals both using keyword searching within the body of records and as an entry in the to/from/cc/bcc fields of emails or calendar entries.

The Lawyers' Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are not interested in non-final drafts of documents in instances where multiple drafts or versions exist. We are not interested in OMB records not held by the Office of the Director.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic,

¹³ *Board of Directors*, Community Financial Services Association of America, <https://www.cfsaa.com/board-of-directors> (last visited April 6, 2018).



whether on government-issued or personal devices – used to track or coordinate how OMB employees, including these individuals, allocate their time on agency business.

The Lawyers' Committee seeks all responsive records regardless of format, medium or physical characteristics. In conducting your search, please understand the terms “communication” and “calendar entry” in their broadest sense, to include any written, typed, recorded, graphic, printed or audio material of any kind. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.¹⁴ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.¹⁵

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.¹⁶ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but OMB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that OMB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have

¹⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official's] work email account.” (citations omitted)).

¹⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.



direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”¹⁷ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers’ Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹⁸ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”¹⁹ Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”²⁰ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”²¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.²² Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers’ Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, OMB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers’ Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

¹⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹⁸ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

¹⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

²⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

²¹ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

²² *Mead Data Central*, 566 F.2d at 261.



Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody; Lawyers' Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.²³

OMB resources, including its staff's time and attention, should be centered on OMB responsibilities. The CFPB exists to protect consumers, not banks and lenders. Payday and auto title lenders often prey on low-income consumers who lack access to conventional loans with reasonable interest rates.²⁴ "[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women."²⁵ These low-income consumers are disproportionately unbanked or under-banked people of color. "Predatory lending in protected communities may constitute discrimination—not because it excludes minorities, but because it targets and exploits them by offering loans with abusive terms and conditions."²⁶

The Lawyers' Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers' Committee. The Lawyers' Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and addressing predatory lending practices that stymie economic development in these communities. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

²³ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

²⁴ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

²⁵ *Id.*

²⁶ *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
 U N D E R L A W

1401 New York Avenue, NW
 Suite 400
 Washington, DC 20005-2124

Tel: 202.662.8600
 Fax: 202.783.0857
www.lawyerscommittee.org

The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Application for Expedited Records

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the change in CFPB leadership and to what extent OMB resources were used to do the work of another (and independent) agency. It is uniquely unusual to have one individual running both a White House office and an independent agency. In fact, there is ongoing litigation between CFPB deputy director Leandra English and Mr. Mulvaney regarding who is the rightful acting director of the CFPB pursuant to its authorizing statute; that case is being expedited at the D.C. Circuit.²⁷ While this dispute is ongoing, Mr. Mulvaney is aggressively taking deregulatory actions at CFPB to undermine fair lending enforcement in a manner that could have disparate negative impacts on communities of color. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's enforcement practices.

Accordingly, the Lawyers' Committee qualifies for expedited processing under the statute.

²⁷ Jim Puzzanghera, *Judge denies injunction to remove Mick Mulvaney as consumer bureau's acting director*, L.A. Times (Jan. 11, 2018), <http://www.latimes.com/business/la-fi-cfpb-acting-director-20180110-story.html>.



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Conclusion

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in purple ink that reads "Kristen Clarke".

Kristen Clarke
President and Executive Director
The Lawyers' Committee for Civil Rights Under Law

EXHIBIT B

From: MBX OMB FOIA <MBX.OMB.FOIA@OMB.eop.gov>
Sent: Tuesday, May 15, 2018 2:53 PM
To: David Brody
Subject: RE: OMB FOIA Request from Lawyers' Committee for Civil Rights Under Law

Greetings: This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated May 14, 2018, and received in the office on May 15, 2018. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 2018-348.

Sincerely,
Dionne Hardy

From: David Brody <dbrody@lawyerscommittee.org>
Sent: Monday, May 14, 2018 5:29 PM
To: MBX OMB FOIA <MBX.OMB.FOIA@OMB.eop.gov>
Subject: [EXTERNAL] OMB FOIA Request from Lawyers' Committee for Civil Rights Under Law

Dear FOIA Officer,

Please find attached a FOIA request to OMB from the Lawyers' Committee for Civil Rights Under Law. Please acknowledge receipt of this request, and please feel free to reach out to me directly with any questions or concerns.

Thank you,
David Brody

David Brody
Associate Counsel & Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
>www.lawyerscommittee.org<
202-662-8320

EXHIBIT C

From: David Brody
Sent: Wednesday, October 24, 2018 4:58 PM
To: 'OMBFOIA@omb.eop.gov'
Subject: Checking status of FOIA request #2018-348

Hello,

Can you please update me on the status of my FOIA request, #2018-348, submitted on May 14, 2018?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

<p>I. (a) PLAINTIFFS LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Washington</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) John E. McCarthy Jr., (202) 624-2500 Crowell & Moring LLP 1001 Pennsylvania Ave NW Washington, DC 20004</p>	<p>DEFENDANTS UNITED STATES OFFICE OF MANAGEMENT AND BUDGET</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p> <p>ATTORNEYS (IF KNOWN)</p>																								
<p>II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> B. Personal Injury/Malpractice</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p>Social Security</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>Other Statutes</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>				
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Freedom of Information Act, 5 U.S.C. § 552 et seq.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: April 22/2019 SIGNATURE OF ATTORNEY OF RECORD:

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

