

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

JUDICIAL WATCH, INC.,)
501 School Street, S.W., Suite 500)
Washington, DC 20024,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF HOMELAND)
SECURITY,)
601 South 12th Street)
Arlington, VA 22202,)
)
Defendant.)
_____)

Case: 1:09-cv-00150
Assigned To : Kennedy, Henry H.
Assign. Date : 1/27/2009
Description: FOIA/Privavy Act

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Homeland Security to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, 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 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 500, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and

accountability in government and fidelity to the rule of law. In furtherance of its public interest mission, Plaintiff regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and has its headquarters at 601 South 12th Street, Arlington, VA 22202. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On November 7, 2008, Plaintiff sent a FOIA request on U.S. Customs and Border Protection (“CBP”), a component of Defendant, seeking access to the following records:

Mexican Government Incidents, 2008 Fiscal Year Report:
Mexican Government Incursions, Encounters and Sightings
on the Southwestern Border (SWB).

The request was served by certified U.S. mail and was received by CBP on November 12, 2008.

6. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), CBP was required to respond to Plaintiff’s request within twenty (20) working days, or on or before December 10, 2008, at the latest.

7. As of January 26, 2009, CBP has failed to produce any records responsive to Plaintiff’s request or demonstrate that responsive records are exempt from production. Nor has it indicated whether or when any responsive records will be produced. In short, CBP has failed to respond to Plaintiff’s request in any fashion.

8. Because CBP failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA)

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.

10. Defendant has violated FOIA by failing to respond to Plaintiff's November 7, 2008 request.

11. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the requirements of FOIA.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's November 7, 2008 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.


Dated: January 26, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.



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