

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

JUDICIAL WATCH, INC.,	)	
501 School Street, S.W., Suite 700	)	
Washington, DC 20024,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
CENTRAL INTELLIGENCE AGENCY	)	
Office of General Counsel	)	
Washington, DC 20505,	)	
	)	
Defendant.	)	
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**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., brings this action against Defendant Central Intelligence Agency (“CIA”) 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 700, 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 serves FOIA requests on 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 is headquartered at Central Intelligence Agency, General Counsel's Office, Washington, DC 20505. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

#### STATEMENT OF FACTS

5. On May 18, 2009, Plaintiff sent a FOIA request to Defendant, seeking access to the following records:

- a. CIA Report dated **July 13, 2004**, from Collection title "OVP Cheney, Immediate Office Files," Folder Title "Detainees."
- b. CIA Report dated **June 1, 2005**, from Collection title "OVP Cheney, Immediate Office Files," Folder Title "Detainees."

*See Exhibit 1.*

6. Defendant acknowledged receipt of Plaintiff's FOIA request by letter dated June 25, 2009. However, Defendant's June 25, 2009 letter did not include any responsive documents or state with specificity when Plaintiff could expect to receive a substantive response.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i), Defendant was required to respond to Plaintiff's May 18, 2009 FOIA request within thirty (30) working days or by June 30, 2009.

8. Because Defendant failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its May 18, 2009 FOIA request, 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 produce any and all non-exempt records responsive to Plaintiff's May 18, 2009 request within the time limits required by 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B).

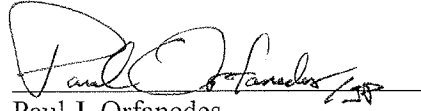
11. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

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 May 18, 2009 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: July 14, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Paul J. Orfanedes", written over a horizontal line.

Paul J. Orfanedes  
D.C. Bar No. 429716

A handwritten signature in black ink, appearing to read "Jason B. Aldrich", written over a horizontal line.

Jason B. Aldrich  
D.C. Bar No. 495488  
Suite 700  
501 School Street, S.W.  
Washington, DC 20024  
(202) 646-5172

*Attorneys for Plaintiff*

## EXHIBIT 1



# Judicial Watch

*Because no one is above the law!*

May 18, 2009

VIA CERTIFIED MAIL & FACSIMILE

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, DC 20505  
Fax: 703-613-3007

Re: Freedom of Information Act Request

Dear Coordinator:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Central Intelligence Agency (CIA) produce any and all agency records concerning the following subjects within ten (10) business days:

- 1) CIA Report dated **July 13, 2004**, from Collection Title "OVP Cheney, Immediate Office Files," Folder Title "Detainees."
- 2) CIA report dated **June 1, 2005**, from Collection Title "OVP Cheney, Immediate Office Files," Folder Title "Detainees." (See attached.)

The requested information would shed light on the ongoing news story concerning former Vice President Cheney and CIA interrogations, and is indisputably a subject of great public relevance and interest. Given the compelling circumstance of this request, **Judicial Watch**, as a member of the news media, hereby requests expedited processing, pursuant to 28 C.F.R. 16.5 (d)(ii)(iv) and 36 C.F.R. 1250.28. In accordance with 28 C.F.R. 16.5 (d)(ii)(iv), Judicial Watch certifies to be true and correct to the best of its knowledge and belief that it has, as a member of the media, a compelling urgency in order to inform the public concerning actual or alleged federal government activity, *see* 32 C.F.R.286.4 and 36 C.F.R. 1250.28.

Central Intelligence Agency

May 18, 2009

Page 2 of 4

We call your attention to President Obama's January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving FOIA.<sup>1</sup>

President Obama adds that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails." Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purpose of this request, the term "record" shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term "record" also shall mean any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

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<sup>1</sup> President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act," January 21, 2009; <[http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct)>

Central Intelligence Agency

May 18, 2009

Page 3 of 4

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. See *National Security Archive v. U.S. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). In fact, Judicial Watch has been recognized as a member of the news media in other FOIA litigation. See *Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Dep't of Defense*, 2006 U.S. Dist. LEXIS 44003, \*1 (D.D.C. June 28, 2006). Judicial Watch, Inc. regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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 government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under the OPEN Government Act of 2007, Section 6(b).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts, including radio and television programs, website, newsletter, periodic published reports, public appearances, and other educational undertakings.



Central Intelligence Agency

May 18, 2009

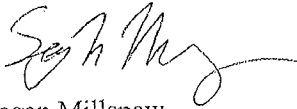
Page 4 of 4

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or [tmillspaw@judicialwatch.org](mailto:tmillspaw@judicialwatch.org). We look forward to receiving the requested documents and a waiver of both search and duplication costs within ten (10) business days. Thank you for your cooperation.

Sincerely,



Tegan Millspaw  
Judicial Watch



## National Archives and Records Administration

700 Pennsylvania Avenue, NW  
Washington, DC 20408-0001

April 8, 2009

The Honorable Richard B. Cheney



b(6)

Dear Vice President Cheney:

We have completed processing your mandatory review request for documents from your Vice Presidential records. Enclosed is an unclassified copy of your mandatory review request. We have assigned the case number NLMS 2009-001 to your request and numbered the individual documents. Please retain this list for future reference. All further correspondence regarding your case will refer only to your case and document numbers.

The two documents you requested require an agency review. This office has submitted those documents to the appropriate agencies for review and they will notify us of their declassification review decisions. Once coordination with the agencies is complete, we will inform you of the final determinations on the documents.

If you have any questions regarding your request, please feel free to call me at 202-357-5403 or send an email to [stephannie.oriabure@nara.gov](mailto:stephannie.oriabure@nara.gov) (Subject: Mandatory Review). In all correspondence, please refer to your case number (NLMS 2009-001).

Sincerely,

STEPHANNIE ORIABURE  
Archivist  
Presidential Materials Staff

