

**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: 1:08-cv-02133  
Assigned To : Sullivan, Emmet G.  
Assign. Date : 12/9/2008  
Description: FOIA/Privacy 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 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 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 September 10, 2008, Plaintiff sent FOIA requests to both the El Paso, Texas Station and the Washington, D.C. headquarters of U.S. Customs and Border Protection (“CBP”), a component of Defendant, seeking access to the following records:

Any and all video recorded on May 1, 2008, between the hours of 7:00 pm and 9:00 pm local time, containing footage/recording of an incursion by Mexican police officers into the United States near the American Levee Road at the end of the West Railroad Bridge, along the El Paso, TX/Juarez, Mexico border.

6. The requests were served by facsimile and certified U.S. mail. According to U.S. Postal Service records, the requests sent by certified mail were received by both the El Paso, Texas Station and CBP’s Washington, D.C. headquarters on September 15, 2008.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), CBP was required to respond to Plaintiff’s September 10, 2008 FOIA requests within twenty (20) working days, or on or before October 8, 2008. As of December 8, 2008, CBP has failed to produce any records responsive to the requests 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 the requests in any fashion.

8. Because CBP failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) or extend that time limit pursuant to 5 U.S.C. § 552(a)(6)(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its September 10, 2008 FOIA requests, 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 September 10, 2008 requests within the twenty (20) day time period required by 5 U.S.C. § 552(a)(6)(A)(i) and by failing to demonstrate that any withheld records responsive to these same requests are exempt from production.

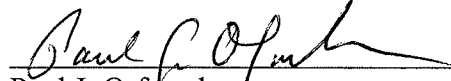
11. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

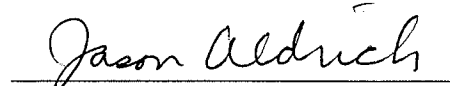
WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's September 10, 2008 requests and a *Vaughn* index of allegedly exempt records responsive to the requests by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the requests; (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: December 8, 2008

Respectfully submitted,

JUDICIAL WATCH, INC.

  
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