

**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-00151
Assigned To : Leon, Richard J.
Assign. Date : 1/27/2009
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 (“DHS”) 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 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 November 13, 2008, Plaintiff sent a FOIA request to Immigration and Customs Enforcement (“ICE”), a component of Defendant, seeking access to the following records:

- a. Any and all records pertaining to a “directive” (to include but not limited to other terms for policy guidance – *i.e.*, order, memo, etc.) requiring arrests to be approved at least by a Field Office Director (or their deputy).
- b. Any records of a 72-hour-cease-and-desist order on fugitive apprehension (including but not limited to memos, correspondence, emails, assessments, reports, statistics, briefings, etc).
- c. Records detailing the requirement for Field Office Directors to certify on proposed operations plan(s) language to the effect of: “I certify that arresting this alien will not cause media or congressional interest.”

6. By letter dated November 20, 2008, ICE acknowledged receipt of Plaintiff’s FOIA request on November 19, 2008.

7. Pursuant to 5 U.S.C. § 552 (a)(6)(A)(i), ICE was required to respond to Plaintiff’s request within twenty (20) working days of receipt of the request. In its acknowledgment letter, however, ICE asserted that it was granting itself an additional ten (10) working days to respond to the request pursuant to the provisions of 5 U.S.C. § 552(a)(6)(B)(i).

8. Even taking into consideration the additional time ICE granted itself to respond to Plaintiff's request, ICE's response was due by January 5, 2009, at the latest. However, as of January 26, 2009, ICE has failed to produce any records responsive to Plaintiff's request or demonstrate that responsive records are exempt from production. Nor has it indicated when or whether any responsive records will be produced.

9. Because ICE failed to comply with the time limits set forth in 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(a)(6)(B)(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)

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

11. Defendant has violated FOIA by failing to respond to Plaintiff's November 13, 2008 request.

12. 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.

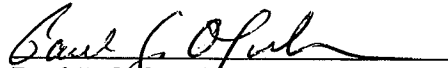
WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's November 13, 2008 request and a *Vaughn* index of allegedly exempt records 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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