

**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 DEFENSE,)
Office of Freedom of Information)
1155 Defense Pentagon)
Washington, DC 20301-1155,)
)
Defendant.)
_____)

Civil Action No.

Case: 1:08-cv-01748
Assigned To : Friedman, Paul L.
Assign. Date : 10/15/2008
Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Defense (“DOD”) 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 has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On or about August 7, 2008, Plaintiff sent a FOIA request to Defendant seeking access to the following records:

1. All documents concerning or relating to the Department's procedure of providing members of the Armed Forces with Federal Post Card Applications;
2. All documents concerning or relating to how the Department informs members of the Armed Forces of their right and ability to vote in the 2008 Federal Election;
3. All documents concerning or relating to how the votes of members of the Armed Forces will be collected and counted for the 2008 Federal Election;
4. All documents concerning or relating to the January 15, 2008 deadline for providing members of the Armed Forces with post card applications;
5. All documents concerning or relating to Armed Forces Voter Week 2008; and
6. All documents concerning or relating to the Department's implementation of the Uniformed and Overseas Citizens Absentee Voting Act with respect to the 2008 Federal Election.

6. Plaintiff also requested expedited consideration of its request and 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).

7. By letter dated August 11, 2008, Defendant acknowledged receiving Plaintiff's FOIA request on August 7, 2008. Defendant denied Plaintiff's request for expedited processing and for a waiver of search costs pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). It did not rule on Plaintiff's request for a waiver of search and duplication costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to the request within twenty (20) working days, or on or before September 5, 2008.

9. As of October 14, 2008, Defendant has failed to produce any records responsive to the request or demonstrate that responsive records are exempt from production. Nor has it indicated when any responsive records would be produced.

10. Because Defendant 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 August 7, 2008 FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA)

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

12. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's August 7, 2008 request 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 this same request are exempt from production.

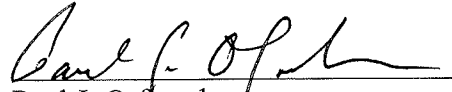
13. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

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 August 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.

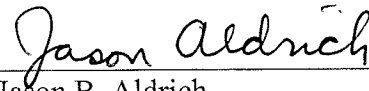
Dated: October 14, 2008

Respectfully submitted,

JUDICIAL WATCH, INC.

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

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

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

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Attorneys for Plaintiff