

**Opening Statement
Tom Fitton, President
Judicial Watch**

**“The Freedom of Information Act:
Crowd-Sourcing Government Oversight”**

**Hearing of the U.S. House’s Committee on
Oversight and Government Reform**

March 17, 2011, 2154 Rayburn House Office Building

Good morning, I’m Tom Fitton, President of Judicial Watch. Judicial Watch is a conservative, non-partisan educational foundation dedicated to promoting transparency, accountability and integrity in government, politics and the law. We are the nation’s largest and most effective government watchdog group.

Thank you, Chairman Issa and Congressman Cummings. It is an honor for me, on behalf of Judicial Watch, to appear before this Committee. Judicial Watch appreciates the Committee’s renewed focus on government transparency.

Essential to Judicial Watch’s anti-corruption and transparency mission is the Freedom of Information Act (FOIA). Judicial Watch used this tool effectively to root out corruption in the Clinton administration and to take on the Bush administration’s penchant for improper secrecy. Founded in 1994, Judicial Watch has nearly 17 years’ experience in using FOIA to advance the public interest. Judicial Watch is, without a doubt, the most active FOIA requestor and litigator operating today.

The American people were promised a new era of transparency with the Obama administration. Unfortunately, this promise has not been kept.

To be clear: the Obama administration is less transparent than the Bush administration.

We have filed over 325 FOIA requests with the Obama administration. And we have filed 44 FOIA lawsuits in federal court against this administration.

Administratively, agencies created additional hurdles and stonewalled even the most basic FOIA requests. The Bush administration was tough and tricky, but the Obama administration is tougher and trickier. For instance, we recently asked the Transportation and Security Administration for documents detailing passenger complaints about TSA pat-downs and imaging procedures at airports. The response: TSA asked to us to define what we meant by “complaint”! (Exhibit A)

And once we’re forced to go to federal court, the Obama administration continues to fight us tooth and nail. The Obama administration’s litigious approach to FOIA is

exactly the same as the Bush administration's – so one can imagine the difficulties we encounter litigating these issues in court against the Obama Justice Department.

Judicial Watch has been digging hard into the scandals behind the collapse of Fannie Mae and Freddie Mac and their role in helping trigger the global financial and related housing crises. A key component of this investigation involves the role political corruption played in the failure of adequate congressional oversight and the catastrophic collapse of these "government-sponsored enterprises" in 2008. That is why we filed a Freedom of Information Act (FOIA) lawsuit (*Judicial Watch, Inc. v. U.S. Federal Housing Finance Agency*, USDC Case No. 9-1537; <http://www.judicialwatch.org/judicial-watch-v-u-s-federal-housing-finance-agency>) against the Obama administration to get a hold of documents related to Fannie's and Freddie's campaign contributions over the last several election cycles.

Since American taxpayers are on the hook for trillions of dollars, potentially including already \$153 billion alone for Fannie and Freddie, we deserve to know how and why this financial collapse occurred and who in Washington, D.C., is responsible.

Unfortunately the Obama administration disagrees.

Last year, the Federal Housing Finance Agency (FHFA), the agency responsible for Fannie Mae and Freddie Mac, responded to our FOIA lawsuit by telling us that all of the documents we seek are not subject to FOIA.

Here is the exact language the Obama agency used in its court filing (<http://www.judicialwatch.org/files/documents/2010/jw-v-fhfa-defmem4sj-01292010.pdf>):

...Any records created by or held in the custody of the Enterprises (Fannie Mae and Freddie Mac) reflecting their political campaign contributions or policies, stipulations and requirements concerning campaign contributions necessarily are private corporate documents. They are not "agency records" subject to disclosure under FOIA.

And here is why the Obama administration's reasoning is flat-out wrong, as detailed in a court motion (<http://www.judicialwatch.org/files/documents/2010/jw-fhfa-opp2sj-cm4sj-03052010.pdf>) our lawyers filed in response (on March 5, 2010):

At issue in this Freedom of Information Act ("FOIA") lawsuit is whether FHFA, the federal agency that has custody and control of the records of Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Company ("Freddie Mac"), must comply with a FOIA request for records relating to those previously independent entities. Until they were seized by FHFA in September 2008, Fannie Mae and Freddie Mac were private corporations with independent directors, officers, and shareholders. Since that time, FHFA, a federal agency subject to FOIA, has assumed full legal custody and control of the records

of these previously independent entities. Hence, these records are subject to FOIA like any other agency records.

In addition to the problem of walling off FHFA's control of our nation's mortgage market through Fannie and Freddie from public accountability, the Obama Treasury Department has been seemingly incapable of disclosing even basic information on the various government bailouts.

So I can't quite fathom how this administration can laud a new era of transparency, while over \$1 trillion in government spending is shielded from practical oversight and scrutiny by the American people. This government is growing by leaps and bounds, and FOIA and transparency are simply not keeping up.

This Committee might also be interested to learn about the truth behind the Obama White House's repeated trumpeting of the release of Secret Service White House visitor logs.

In fact, the Obama administration is refusing to release tens of thousands of visitor logs and insists, repeating a Bush administration last-ditch legal position, that the visitor logs are not subject to the Freedom of Information Act.

So while the Obama administration attempts to take the "high ground" in the debate by releasing a select number of visitor logs, it shields tens of thousands of other records that continue to be withheld in defiance of FOIA law. Why release some and not all?

In the fall of 2009, Judicial Watch staff visited with senior White House official Norm Eisen, then-Special Counsel to the President for Ethics and Government, to discuss Judicial Watch's pursuit of the White House visitor logs. The White House encouraged us to publicly praise the Obama administration's commitment to transparency, saying it would be good for them and good for us. However, the Obama team refused to abandon their legally indefensible contention that Secret Service White House visitor logs are not subject to disclosure under FOIA law.

So we filed a lawsuit to ask the court to enforce the law.

As with Fannie and Freddie, the Obama administration continues to advance its ridiculous and bogus claim that the visitor logs "are not agency records subject to the FOIA." But the Obama administration doesn't have a legal leg to stand on. As we noted in our original complaint (*Judicial Watch, Inc. v. United States Secret Service*, USDC Case No. 9-2312; <http://www.judicialwatch.org/files/documents/2009/jw-v-ussc-complaint-12072009.pdf>) filed on December 7, 2009, the administration's claim "has been litigated and rejected repeatedly" by the courts.

To date, every court that has reached this issue has concluded that the White House Secret Service visitor logs are agency records and must be processed in response to a properly submitted FOIA request.

In fact, the Secret Service had released White House visitor logs in response to previous FOIA requests (<http://www.judicialwatch.org/judicial-watch-v-u-s-secret-service>) from Judicial Watch and other parties.

And now we know from published reports that White House officials have been meeting with lobbyists and interests at a nearby Caribou Coffee shop or across the street in an anonymous conference center to specifically prevent disclosure of visitors who might otherwise have their names disclosed as a result of visiting the White House complex itself. The Obama White House is playing games on transparency.

On major issue after major issue, FOIA is ignored by this administration.

Many have been reading the news about the astonishing 1,000 + Obamacare waivers issued by the Department of Health and Human Services. Judicial Watch first began asking for documents about this issue last October. We sued in January. (*Judicial Watch, Inc. v. Department of Health & Human Services*, USDC Case No. 10-2328; <http://www.judicialwatch.org/files/documents/2010/jw-v-hhs-complaint-12302010.pdf>.) Five months after our initial request, we do not have one document about these highly controversial waivers. Given the obvious public interest in this matter, this stonewall seems to us nothing more than arrogant lawlessness.

Another example is the Department of Homeland Security's handling of a report detailing the agency's investigation of an illegal alien, Carlos Martinelly-Montano, who is charged with killing a Virginia nun in a drunken driving accident in August 2010. We asked for that report, were rebuffed, and so we sued last year. (*Judicial Watch, Inc. v. U.S. Department of Homeland Security*, USDC Case No. 10-2054; <http://www.judicialwatch.org/files/documents/2010/jw-v-dhs-complaint-12022010.pdf>.) The administration told the court that they would release this final report to us in late January. And then, when their own self-imposed deadline came, we were told the "final" report was actually a draft and they would not disclose it. The "final" report, we (and the court) were told, was still being worked on. Well, we received that "final" report last week. It was dated November 24, 2010. Yet we had been told as recently as last month that it was still being edited! This gamesmanship and trifling with the courts is beyond the pale for an administration supposedly devoted to unprecedented transparency.

A final egregious example of the abuse of FOIA is the FBI's response to our request about the late Senator Ted Kennedy, whose file we requested after he passed away. Exhibit B documents how, over seven months of hard-fought litigation, the FBI resisted disclosing controversial material about Senator Kennedy. (*Judicial Watch, Inc. v. Federal Bureau of Investigation*, USDC Case No. 10-963; <http://www.judicialwatch.org/files/documents/2010/jw-v-fbi-complaint-06092010.pdf>.) It was like pulling teeth. The only basis for withholding the requested material was to protect the historic legacy of

Senator Kennedy (or to protect from embarrassment President Obama, who has gone out of his way to lionize Kennedy). This FOIA fight shows that the FBI is not above politics and that President Obama's admonition that the "government should not keep information confidential merely because public officials might be embarrassed by disclosure" has no force in our nation's top law enforcement agency (<http://www.whitehouse.gov/the-press-office/transparency-and-open-government>).

So on major transparency issues, the Obama administration has come down on the side of secrecy. The Obama administration's releasing "high value data sets" from government bureaucracies is meaningless in the face of key decisions to keep politically explosive material out of the public domain.

As far as Judicial Watch is concerned, the Obama administration gets a failing grade on transparency.

Let me end by noting that a commitment to transparency should cut across partisan and ideological lines. The Founding Fathers understood the importance of knowing what our government is up to. John Adams wrote:

Liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge, as their great Creator, who does nothing in vain, has given them understandings, and a desire to know; but besides this, they have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge; I mean, of the characters and conduct of their rulers.

Thank you.

EXHIBIT A



Transportation
Security
Administration

January 25, 2011

Mr. John Althen
Judicial Watch
425 Third St., SW, Suite 800
Washington, DC 20024

Re: **TSA11-0142**

Dear Mr. Emerson:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Transportation Security Administration (TSA), dated November 23, 2010, and seeking All records of complaints in response to the Transportation Security Administration's new pat-down procedures at checkpoints nationwide, first implemented at the end of October, 2010. All records of complaints in response to the Transportation Security Administration's Advanced Imaging Technology (AIT). TSA began deploying 450 advanced imaging technology units in March 2010. **We need to define "complaint"**. Your request was received in this office on December 2, 2010.

After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

If we do not hear from you within [10] days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned reference number **TSA11-0142**. Please refer to this identifier in any future correspondence. You may contact this office at 866-289-9673.

Sincerely,

TSA FOIA Officer
Freedom of Information Act



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

January 28, 2011

Dear Requester:

This will acknowledge receipt of your Freedom of Information (FOIA) request of January, 2011. Your request has been assigned a case number based on the date of its receipt in this office and is being processed as expeditiously as possible. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components. These agencies will provide a direct response to you. There may be a charge for those records and, in some cases, the charges may be substantial.

If you have any questions, please call (202) 690-7453 refer to case number 2011-0465GD.

Freedom of Information/Privacy Acts Division
Office of the Assistant Secretary for Public Affairs
330 C Street, S.W.
Switzer Building, Room 2206
Washington, DC 20201

EXHIBIT B

EXEMPT FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTO DECLASSIFICATION GUIDE T
EXEMPTION CODE 25X(1)
DATE 2-22-10

Obtained by Judicial Watch
through FOIA: June 14, 2010

~~SECRET~~

Tolson	_____
Belmont	_____
Mohr	_____
Callahan	_____
Conrad	_____
DeLoach	_____
Evans	_____
Malone	_____
Rosen	_____
Sullivan	_____
Tavel	_____
Trotter	_____
Tele. Room	_____
Ingram	_____
Gandy	_____

TO : MR. A. H. BELMONT
FROM : J.C. SULLIVAN
SUBJECT: TED KENNEDY

DATE: December 28, 1961

ALL INFORMATION CONTAINED
HERE IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

See Mr. Belmont

Edward M. Kennedy

You may be interested in the following information which
was furnished to the Bureau Agents during the course of the South
America assessment survey:

As you know, a few weeks ago Ted Kennedy made a tour of
several Latin American countries. According to

[Redacted]

[Redacted]

[Redacted]

[Redacted]

ACTION:

For information.

- 1 - Mr. Belmont
 - 1 - Mr. Sullivan
 - 1 - Mr. Ferris
 - 1 - Mr. Papich
- (Mission to South America)

SJP:gp (7)

57 JAN 18 1962

REC-72

MCT-18

EX-102

JAN 11 1962

~~SECRET~~

Obtained by Judicial Watch
through FOIA: September 2, 2010

EXEMPT FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTO DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 2-22-10

Dept. of State, ISS/IPS, Margaret P. Grafeld, Dir.
(X) Release () Excise () Deny () Declassify
Exemption (b)(), E.O. 12958, 25X()
Declassify after _____
With concurrence _____ (not) obtained
IPS by _____ Date 7/23/10

Tolson _____
DeLoach _____
Mohr _____
Bishop _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Ingram _____
Gandy _____

TO : MR. A. H. BELMONT
FROM : C. SULLIVAN
SUBJECT: TED KENNEDY

DATE: December 28, 1961

ALL INFORMATION CONTAINED
HERE IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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You may be interested in the following information which
was furnished to the Bureau Agents during the course of the South
America assessment survey:

As you know, a few weeks ago Ted Kennedy made a tour of
several Latin American countries. According to

See Jr. & K...
Edward M. Kennedy

Douglas Henderson, State official in Lima, confidentially
advised that Kennedy had made similar requests in Peru. Henderson
described Kennedy as pompous and a spoiled brat.

ACTION:

For information.

- 1 - Mr. Belmont
 - 1 - Mr. Sullivan
 - 1 - Liaison
 - 1 - Mr. Ferris
 - 1 - Mr. Papich
- (Mission to South America)

SJP:gp (7)

SECRET

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(S)

57 JAN 18 1962

REC-72

EX-108

JAN 11 1962

5708

Obtained by Judicial Watch
through FOIA: November 29, 2010

C05584131

**EXEMPT FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTO DECLASSIFICATION GUIDE T
EXEMPTION CODE 25X(1)
DATE 2-22-10**

SECRET
(b)(3)

DATE: December 28, 1961

TO: Mr. A. E. DELMONT

FROM: Mr. J. C. SULLIVAN

SUBJECT: TED KENNEDY

ALL INFORMATION CONTAINED
HERE IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

You may be interested in the following information which was furnished to the Bureau Agents during the course of the South America assessment survey:

As you know, a few weeks ago Ted Kennedy made a tour of several Latin American countries. Kennedy was accompanied by Professor Plank, who may be identical with John Nathan Plank, Associate Professor, Center of International Affairs, Harvard University. Bufiles contain no previous references to Plank prior to his trip with Kennedy. Plank apparently served as Kennedy's political counselor on the trip.

Bogota, said the first person whom Kennedy wanted to meet was Lauchlin Currie.

Douglas Henderson, State official in Lima, confidentially advised that Kennedy had made similar requests in Peru. Henderson described Kennedy as pompous and a spoiled brat.

ACTION:

For information.

Mr. Belmont 1 - Liaison
Mr. Sullivan 1 - Mr. Forristal
1 - Mr. Papich
(Mission to South America)

SJP:OP (7)

SECRET

Obtained by Judicial Watch through FOIA: February 24, 2011

SECRET

Tolson	_____
Belmont	_____
Mohr	_____
Callahan	_____
Conrad	_____
DeLoach	_____
Evans	_____
Malone	_____
Rosen	_____
Sullivan	_____
Tavel	_____
Trotter	_____
Tele. Room	_____
Ingram	_____
Gandy	_____

(b) (1)

(b) (3)

Per CIA DATE: December 28, 1961

TO : MR. A. H. BELMONT

FROM : SAC, SULLIVAN

SUBJECT: TED KENNEDY

ALL INFORMATION CONTAINED HERE IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

See Mr. Plank

Edward M. Kennedy

You may be interested in the following information which was furnished to the Bureau Agents during the course of the South America assessment survey:

As you know, a few weeks ago Ted Kennedy made a tour of several Latin American countries. (b)(3) per CIA Kennedy was accompanied by Professor Plank, who may be identical with John Nathan Plank, Associate Professor, Center of International Affairs, Harvard University. Bufiles contain no previous references to Plank prior to his trip with Kennedy. Plank apparently served as Kennedy's political counselor on the trip. (b)(3) per CIA in each country Kennedy insisted on interviewing "the angry young men" of the country. He wanted to meet with communists and others who had left-wing views. Plank allegedly was the person who recommended that certain local politicians be made available. Ambassador Freeman, Bogota, said the first person whom Kennedy wanted to meet was Lauchlin Currie.

(b)(3) per CIA in Mexico Kennedy asked Ambassador Mann that certain left-wingers be invited to the Embassy residence where interviews could be held. Mann took the strong position that he would not invite such people and stated that if any such interviews were to be conducted, all arrangements should be made by Kennedy himself.

Douglas Henderson, State official in Lima, confidentially advised that Kennedy had made similar requests in Peru. Henderson described Kennedy as pompous and a spoiled brat.

(b)(1), (b)(3) per CIA (b)(1), (b)(3) per CIA while Kennedy was in Santiago, he made arrangements to "rent" a brothel for an entire night. Kennedy allegedly invited one of the Embassy chauffeurs to participate in the night's activities.

ACTION:

For information.

- 1 - Mr. Belmont
 - 1 - Mr. Sullivan
 - 1 - Liaison
 - 1 - Mr. Ferris
 - 1 - Mr. Papich
- (Mission to South America)

SJP:gp (7)

57 JAN 11 1962 107298

SECRET

FBI-MSJ-3

REC-72 MCT-18 55-75
 JAN 11 1962
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**Judicial
Watch®**

*Because no one
is above the law!*

BIOGRAPHY OF THOMAS FITTON PRESIDENT OF JUDICIAL WATCH, INC.

Mr. Fitton is the President of Judicial Watch, the public interest group that investigates and prosecutes government corruption. Founded in 1994, Judicial Watch seeks to ensure government and judicial officials act ethically and do not abuse the powers entrusted to them by the American public.

With 20 years experience in conservative public policy, Tom Fitton has helped lead Judicial Watch since 1998 and overseen its tremendous growth and success in recent years. Under his leadership, Judicial Watch was named one of Washington's top ten most effective government watchdog organizations by *The Hill* newspaper.

Mr. Fitton provides strategic guidance and leadership on Judicial Watch's comprehensive efforts to fight government corruption. He has testified before Congress and is a nationally recognized expert on government corruption, immigration enforcement, congressional and judicial ethics, and open government.

A former talk radio and television host and analyst, Tom is well known across the country as a national spokesperson for the conservative cause. He has been quoted in *TIME*, *Vanity Fair*, *The Washington Post*, *The New York Times*, *The Associated Press*, *Los Angeles Times*, *New York Post*, and most every other major newspaper in the country. He has also appeared on ABC, CBS, NBC, CNN, FOX News Channel, C-SPAN and MSNBC.

Judicial Watch also publishes the monthly 200,000+ circulation *Verdict* newsletter and runs the cutting-edge Internet site JudicialWatch.org, which includes the oft-cited Corruption Chronicles blog.

Mr. Fitton gained national attention as a political analyst, previously working for America's Voice and National Empowerment Television. He is a former employee of the International Policy Forum, the Leadership Institute, and Accuracy in Media.

He holds a B.A. in English from George Washington University.

Committee on Oversight and Government Reform
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Judicial Watch, Inc. (President)

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature:



Date: 3/14/11