

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

JUDICIAL WATCH, INC.,)
425 Third Street, S.W., Suite 800)
Washington, DC 20024,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF DEFENSE,)
1600 Defense Pentagon)
Washington, DC 20301-1600,)
)
Defendant.)

Case: 1:11-cv-00863
Assigned To : Bates, John D.
Assign. Date : 5/9/2011
Description: FOIA/Privacy Act

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendant U.S. Department of Defense 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 425 Third Street, S.W., Suite 800, 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 1600 Defense Pentagon, Washington, DC 20301-1600. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On December 15, 2010, Plaintiff sent a FOIA request to Defendant seeking access to the following:

- a. DoDIG Report of Investigation, Case Number H05L97905217; dated 18 SEP 2006; Subject: Alleged Misconduct by Senior DoD Officials Concerning the ABLE DANGER Program and Lieutenant Colonel Anthony A. Shaffer, US Army Reserve; prepared by the Office of the Deputy Inspector General for Investigations. (Hereafter referred to as the “ABLE DANGER IG Report.”).
- b. Drafts of the ABLE DANGER IG Report.
- c. Associated work papers of the ABLE DANGER IG Report.
- d. Transcripts of the interviews of Captain Scott J. Phillipott, USN.
- e. Transcripts of the interviews of Mr. Robert Giesler.
- f. Transcripts of the interviews of Dr. Newton Howard.

6. By letter dated December 21, 2010, Defendant acknowledged receipt of Plaintiff's FOIA request and designated the request as case number 11-00052-F. In addition, Defendant advised Plaintiff that the ABLE DANGER IG Report had been made available on Defendant's website, but that it would conduct a search for the remaining items of Plaintiff's request.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant was required to respond to Plaintiff's FOIA request within twenty (20) working days or by January 18, 2011.

8. As of the date of this Complaint, Defendant has failed to produce any records responsive to items b through f of Plaintiff's FOIA request or demonstrate that responsive records are exempt from production. Nor has it indicated whether or when any responsive records will be produced. In short, Defendant has failed to respond to items b through f of the request in any substantive manner.

9. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

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

11. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

12. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

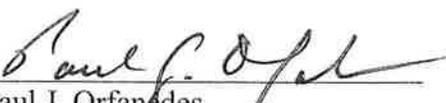
WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records

withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' 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: May 6, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.


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