

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

JUDICIAL WATCH, INC.)
425 Third Street, SW, Suite 800)
Washington, D.C. 20024,)

Plaintiff,

v.

BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES)
99 New York Ave., NE)
Washington, DC 20226,)

Defendant.)
_____)

Case: 1:11-cv-01797
Assigned To : Sullivan, Emmet G.
Assign. Date : 10/11/2011
Description: FOIA/Privacy Act

COMPLAINT

Plaintiff, Judicial Watch, Inc., brings this action against Defendant Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”) 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 U.S. Government and is headquartered at 99 New York Ave., NE, Washington, DC 20226. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On July 13, 2011, Plaintiff submitted a FOIA request to Defendant, by facsimile and certified mail, seeking access to the following public records:

1. All records of communication, contacts and correspondence between Director Kenneth E. Melson and any official, officer or employee of the Office of the Deputy Attorney General regarding ATF Phoenix Operation Fast and Furious.

2. All records prepared for or submitted to the House Committee on Oversight and Government Reform related to Director Melson's interview with the committee on July 4, 2011.

3. All records of communication between any ATF official, officer or employee (including Director Melson and ATF Phoenix Special Agent in Charge William Newell) and any official, officer or employee of the Drug Enforcement Administration regarding Operation Fast and Furious.

4. All records regarding, concerning or related to the October 26, 2009 meeting/telephonic conference call between Director Melson, DAG David Ogden, AAG Lanny Breuer, DEA Administrator Michelle Leonhart, FBI Director Mueller, and other Department of Justice officials regarding the Southwest Border Strategy (including, but not limited to, any agendas, minutes, transcripts, notes or presentations).

The timeframe for the request was identified as January 20, 2009 to July 13, 2011.

6. According to U.S. Postal Service records, Plaintiff's FOIA request was received by Defendant on July 19, 2011.

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant's response to Plaintiff's July 13, 2011 FOIA request was due by no later than August 16, 2011.

8. As of the date of this Complaint, Defendant has failed to produce any records responsive to Plaintiff's July 13, 2011 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 fact, Defendant has failed to respond to Plaintiff's FOIA request in any substantive manner.

9. Because Defendant has 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 July 13, 2011 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 July 13, 2011 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: October 11, 2011

Respectfully submitted,

JUDICIAL WATCH, INC.



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