

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

**“The Freedom of Information Act: Ensuring Transparency and Accountability in
the Digital Age”**

Hearing of the U.S. Senate’s Committee on the Judiciary

March 15, 2011, 226 Dirksen Senate 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 Leahy and Sen. Grassley for hosting this hearing. It is an honor for me, on behalf of Judicial Watch, to appear before this committee. I want to take some time to extend personal thanks to you, Chairman Leahy, and you, Senator Grassley, for not only your leadership on government transparency but your often unheralded work on behalf of government whistleblowers. You helped at least one of our clients many years ago, and I’m sure you’ve helped many other whistleblowers over the years. These brave folk are often alone in their efforts to expose government wrongdoing, so your help is crucial to saving jobs and careers.

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 built 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.

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](http://www.judicialwatch.org/judicial-watch-v-u-s-federal-housing-finance-agency) (*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) (<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) (<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 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](http://www.judicialwatch.org/files/documents/2009/jw-v-ussc-complaint-12072009.pdf) (*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. In fact, it has been rejected by every court that has considered it.

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.

Our brief also notes that 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) (<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.

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.

My final 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, was 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.

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.