



**Judicial
Watch**
*Because no one
is above the law!*

May 17, 2011

VIA CERTIFIED MAIL & FACSIMILE (202) 619-8365

Shaun Donovan, Secretary
U.S. Dept. of Housing & Urban Development
Freedom of Information Act Office
451 7th Street, SW, Room 10139
Washington, DC 20410-3000
Facsimile: (202) 619-8365

Re: EXPEDITED PROCESSING REQUESTED for Set of Audits & Term Sheet

Dear Mr. Shaun Donovan:

At 4:42 p.m. on May 16, 2011, Shahien Nasiripour of The Huffington Post published online a news article asserting that four federal officials had briefed him on a set of audits accusing “the nation’s five largest mortgage companies of defrauding taxpayers in their handling of foreclosures on homes purchased with government-backed loans.” In the next to last paragraph of the May 16 article, Nasiripour further referred to a term sheet that federal officials had disclosed to him the week before.

That term sheet was the subject of a separate news article published at 8:26 p.m. on May 11, 2011. In that Huffington Post article, Nasiripour explained that the term sheet outlined a plan for “the creation of a federal account funded by the nation’s 14 largest mortgage firms to help distressed borrowers avoid foreclosure and settle ongoing probes into faulty mortgage practices.”

Despite the purportedly confidential nature of these records, federal courts agree that selective disclosure of matters in the public interest violates the letter and spirit of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* See *Caton v. Norton*, 2005 DNH 155 (D.N.H. 2005) (“when the records in question have already been disclosed, an agency cannot credibly claim that releasing them in response to a FOIA request will impede the proper functioning of the administrative process or inhibit the free and frank exchange of opinions among government personnel, because the agency has already indicated a diminished expectation of privacy concerning these documents through its prior voluntary disclosure”)(internal citations and quotation marks omitted); *Peck v. United States*, 514 F. Supp. 210, 212 (S.D.N.Y. 1981)(voluntary disclosure of the privileged communications may waive the privilege); *North Dakota ex rel. Olson v. Andrus*, 581 F.2d 177, 182 (8th Cir. N.D. 1978) (“Preferential treatment of persons or interest groups fosters precisely the distrust of government that the FOIA was intended to

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obviate.”)

Accordingly, pursuant to FOIA, Judicial Watch, Inc., (Judicial Watch) hereby requests that the U.S. Department of the Housing & Urban Development (HUD) produce within twenty (20) business days:

- 1) The set of audits accusing “the nation’s five largest mortgage companies of defrauding taxpayers in their handling of foreclosures on homes purchased with government-backed loans”; and,
- 2) The term sheet outlining for “the creation of a federal account funded by the nation’s 14 largest mortgage firms to help distressed borrowers avoid foreclosure and settle ongoing probes into faulty mortgage practices.”

In placing this request, Judicial Watch directs the HUD’s attention to President Obama’s January 21, 2009 Memorandum concerning FOIA which states:

All agencies should adopt a presumption in favor of disclosure in order to renew their commitment to the principles embodied in FOIA...The presumption of disclosure should be applied to all decisions involving FOIA.¹

The memorandum goes on to state that FOIA “should be administered with a clear presumption: In the case of doubt, openness prevails.” Nevertheless, if any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and 552(a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. See *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. See *Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of

¹ Freedom of Information Act. Pres. Mem. of January 21, 2009, 74 Fed. Reg. 4683.

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government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

U.S.C. § 552(a)(4)(A)(iii).

In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under Section 6(b) of the OPEN Government Act of 2007, which amended FOIA at 5 U.S.C. § 552(a)(4)(A)(viii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts. In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

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If you do not understand this request or any portion thereof, or if you feel you require clarification, please immediately contact Judicial Watch FOIA Manager John Althen at 202-646-5172 or jalthen@judicialwatch.org. Judicial Watch looks forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to be "Lisette Garcia", written over a circular stamp or seal.

Lisette Garcia, J.D.
Senior Investigator