

**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 INTERIOR,)
1951 Constitution Ave., N.W.)
Washington, DC 20240,)

and)

U.S. DEPARTMENT OF TREASURY,)
1500 Pennsylvania Ave., N.W.)
Washington, DC 20220)

Defendants.)

Civil Action No.

Case: 1:12-cv-00170
Assigned To : Howell, Beryl A.
Assign. Date : 2/1/2012
Description: FOIA/Privacy Act

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendants U.S. Department of Interior (“Interior”) and U.S. Department of Treasury (“Treasury”) 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 Interior is an agency of the United States Government and is headquartered at United States Department of Interior, 1951 Constitution Ave., N.W., Washington, DC 20240. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant Treasury is an agency of the United States Government and is headquartered at United States Department of Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. On October 21, 2011, Plaintiff sent a FOIA request to the Office of the Secretary of Defendant Interior, seeking access to the following:

1. Any and all records regarding, concerning or related to the issuance of a Department of Energy loan guarantee to SunPower, Inc. and/or NRG Energy, Inc. on or about September 30, 2011.

2. Any and all records of communication between any official, officer, or employee of the Department of the Interior and any official, officer or employee of any other government agency, department of office regarding, concerning or related to any loan

guarantees applied for by and/or awarded to SunPower, Inc. and/or NRG Energy.

3. Any and all records of communication between any official, officer or employecc of the Department of Interior and any officer, employee or representative of Lang, Hansen, O'Malley and Miller, a government relations firm headquartered in Sacramento, CA.

4. Any and all records regarding, concerning or related to the October 14, 2010 visit to SunPower's Richmond, CA production facility by Secretary Kenneth L. Salazar, Rep. George Miller, and others.

7. Also on October 21, 2011, Plaintiff sent a FOIA request to the Director of

Disclosure Services of Dcfendant Treasury, seeking access to the following:

1. ~~Any and all records regarding, concerning or related to the~~ issuance of a Department of Energy loan guarantcc to SunPower, Inc. and/or NRG Energy, Inc. on or about September 30, 2011.

2. Any and all records of communication between any official, officer, or employee of the Department of the Treasury and any official, officer or employee of any other government agency, department of office regarding, concerning or related to any loan guarantees applied for by and/or awarded to SunPower, Inc. and/or NRG Energy.

3. Any and all records of communication between any official, officer or employee of the Department of the Treasury and any officer, employee or representative of Lang, Hansen, O'Malley and Miller, a government relations firm headquartered in Sacramento, CA.

Disclosure Services is the component of Defendant Treasury that is designated by Defendant Treasury to receive FOIA requests.

8. The Office of the Secretary, acknowledged receipt of Plaintiff's FOIA request by letter dated October 26, 2011 and assigned it No. OS-2012-00036. The letter further stated that pursuant to 43 C.F.R. §2.13(3), Defendant was taking an extension of "10 working days" to

respond Plaintiff's October 21, 2011 request. However, Defendant Interior's acknowledgment letter did not state when Plaintiff could expect to receive a substantive response to its request.

9. Because the Office of the Secretary of Defendant Interior received Plaintiff's October 21, 2011 FOIA request no later than October 26, 2011, pursuant to 5 U.S.C. § 552(a)(6)(A), 5 U.S.C. § 552(a)(6)(B) and 43 C.F.R. §2.13(3) Defendant Interior was required to respond to Plaintiff's October 21, 2011 FOIA request within thirty (30) working days or by December 12, 2011.

10. Defendant Treasury's Disclosure Services acknowledged receipt of Plaintiff's FOIA request by letter dated November 4, 2011 and assigned it No. 2011-11-005. Defendant Treasury's acknowledgment letter stated that Plaintiff's request had been received by Defendant Treasury on November 1, 2011. The acknowledgment letter further stated, without specifying a particular statute or regulation, that Defendant Treasury was taking "an additional processing extension of ten (10) days" to respond Plaintiff's October 21, 2011 request. However, Defendant Treasury's acknowledgment letter did not state when Plaintiff could expect to receive a substantive response to its request.

11. Because the Defendant Treasury's Disclosure Services received Plaintiff's October 21, 2011 FOIA request no later than November 1, 2011, pursuant to 5 U.S.C. § 552(a)(6)(A)(ii) and 5 U.S.C. § 552(a)(6)(B), Defendant Treasury was required to respond to Plaintiff's October 21, 2011 FOIA request within forty (40) working days or by January 3, 2012.

12. As of the date of this Complaint, Defendants have failed to produce any records responsive to Plaintiff's request or demonstrate that responsive records are exempt from production. Nor have Defendants indicated whether or when any responsive records will be

produced. Other than to acknowledge receipt of the request and inform Plaintiff that its request was being processed, Defendants have failed to respond to the request in any manner.

13. Because Defendants failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(6)(B) 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)**

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Defendants are unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

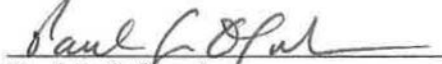
16. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform its conduct to the requirements of the law.

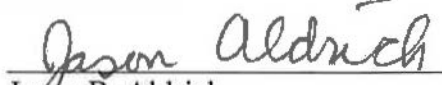
WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendants to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendants 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 Defendants 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: February 1, 2012

Respectfully submitted,

JUDICIAL WATCH, INC.


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